

## **CHAPTER 4.1-55 SEED POTATOES**

### **4.1-55-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Certification" means a process that includes the random inspection of potato plants growing in the field, the random inspection of seed potatoes after they have been harvested, and a determination that the seed potatoes are within acceptable disease tolerance levels.
2. "Certified" means a designation, the use of which is authorized by the seed commissioner, to indicate that the seed potatoes have met the requirements for certification.
3. "Closed container" means a container that is sewn, tied, sealed, glued, nailed, or otherwise secured for handling.
4. "Inspection" means the examination of a random sample of potato plants or potato tubers in accordance with rules of the seed department or requirements of the United States department of agriculture.
5. "Label" means a tag or device attached to a container, stamped or printed information on a container, or documentation accompanying a container, which sets forth the information required by law.
6. "Potato" means an Irish potato.
7. "Selection" means a subgroup of a potato variety and includes clones, lines, strains, and sports.
8. "Variety" means a subdivision of a kind that:
  - a. Can be differentiated by one or more identifiable morphological, physiological, or other characteristics from other varieties of the same kind;
  - b. Has describable variations in essential and distinct characteristics; and
  - c. Will remain unchanged in its essential and distinct characteristics and uniformity when reproduced or reconstituted, as required by the different categories of varieties.

### **4.1-55-02. Seed commissioner - Duties.**

The seed commissioner shall:

1. Establish a system for the certification of seed potatoes; and
2. Provide for grade inspections of commercial potatoes in accordance with standards established by the United States department of agriculture or by contract.

### **4.1-55-03. Seed potato grades.**

1. Seed potatoes may be graded:
  - a. (1) U.S. No. 1 seed potatoes;
  - (2) U.S. No. 2 seed potatoes; or
  - (3) North Dakota Certified Seed; or
  - b. As otherwise designated by the seed commissioner.
2. The U.S. grades must meet all of the requirements and standards established by the United States department of agriculture provided, however, that the seed commissioner may authorize an exception based on size.

### **4.1-55-04. Label requirements.**

1. a. Except as otherwise provided in this subsection, every container of seed potatoes must be labeled if the potatoes:
  - (1) Were grown in this state;
  - (2) Are transported or shipped into this state; or
  - (3) Are offered for sale or consignment in this state.
- b. Subdivision a does not apply to potatoes that are not intended for planting purposes.

2. The label must:
  - a. Be plainly printed in English;
  - b. Indicate the net weight when packed;
  - c. Indicate the correct grade or designation; and
  - d. Meet any other criteria established by the seed commissioner.

#### **4.1-55-05. Seed potatoes - Certification - Exception.**

1. a. A person may not plant seed potatoes unless the seed potatoes:
  - (1) Have been certified by the seed commissioner as meeting the standards of this state;
  - (2) Have been certified by another state or province having seed potato standards that are determined by the seed commissioner to meet or exceed the standards of this state; or
  - (3) At the request of the producer, were field inspected and approved for planting by the seed commissioner.
- b. Subdivision a does not apply to a person who:
  - (1) Plants less than one acre [.405 hectare] of seed potatoes; or
  - (2) Is within twelve months of having that person's own certified parent seed potatoes.
2. The seed commissioner shall permit a North Dakota producer to sell or otherwise transfer certified seed potatoes to another North Dakota producer. The recipient producer may plant the seed potatoes only for commercial production. The seed potatoes may not be recertified or retained for use in the following production cycle.
3. If the seed commissioner determines that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the seed commissioner may permit the planting of seed potatoes with a higher disease content, provided that bacterial ring rot is not present and that no other serious disease threat is posed.
4. For purposes of this section, a "North Dakota producer" means a person that grows potatoes on property located within this state.

#### **4.1-55-06. Records.**

Any producer that plants more than one acre [.405 hectare] of seed potatoes shall maintain records indicating the acreage [hectareage], varieties, and source of all seed potatoes planted. The producer shall retain the records for a period of two years from the completion of planting and make the records available to the seed commissioner upon request.

#### **4.1-55-07. Imported seed potatoes - Certification requirement.**

All seed potatoes brought into this state must be accompanied by:

1. A grade certificate;
2. A health certificate indicating that the seed potatoes were field inspected by an official certifying agency and meet standards that are determined by the seed commissioner to be similar to those established by this chapter; and
3. Any other documentation required by the jurisdiction of origin for seed potatoes entering that jurisdiction.

#### **4.1-55-08. Exported seed potatoes - Certification requirement.**

All seed potatoes leaving this state must be accompanied by:

1. A grade certificate; and
2. If required by the receiving jurisdiction, a health certificate.

#### **4.1-55-09. Official inspection locations - Designation.**

1. The seed commissioner shall designate the locations at which potato shipment inspections are conducted. In determining the locations, the seed commissioner shall

consider the volume of shipments requiring inspection and the expense of maintaining the locations.

2. Upon request, the seed commissioner may provide inspection services at locations other than those designated in subsection 1. The seed commissioner may charge a fee for conducting any inspections requested under this subsection.

**4.1-55-10. Potatoes shipped into state - Labeling requirement - Exception.**

If seed potatoes are shipped into this state, the person receiving the potatoes shall ensure that the potatoes are labeled:

1. In the same manner as required for potatoes grown in this state; or
2. In accordance with the requirements of the state, territory, or country of origin, if permitted by the seed commissioner.

**4.1-55-11. Grade inspection certificate - Prima facie evidence.**

A grade inspection certificate issued by the seed commissioner is prima facie evidence that the seed potatoes described in the certificate were of the grade, quality, and condition indicated on the certificate at the time of inspection.

**4.1-55-12. Liability - Potato crop quantity and quality.**

A warranty of any kind, either expressed or implied, including a warranty of merchantability, fitness for a particular purpose, absence of disease, varietal identity, or selection identity, is not made by the seed commission, the seed department, the seed commissioner, or any certified seed potato producer, as to the quantity or quality of the crop produced from the seed potatoes that were inspected and certified. The sole warranty is that the potatoes were inspected under the rules of the seed department or the United States department of agriculture. The seed commissioner functions and serves only in an official regulatory manner.

**4.1-55-13. Plant and seed records - Exempt.**

The following records of the seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determinations conducted by the seed department on a fee-for-service basis for nonpublic entities or persons; and
2. Information received by the seed commissioner under this chapter from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

**4.1-55-14. Prohibitions.**

1. A person may not offer for sale, sell, transport, or ship any seed potatoes that:
  - a. Are not labeled in accordance with this chapter; or
  - b. Are labeled with information the person knows is false or misleading.
2. A person that sells seed may not alter the label or a grade inspection certificate issued by the seed commissioner.

**4.1-55-15. Seizure of seed potatoes - Liability.**

1. The seed commissioner may seize any seed potatoes, if the seed commissioner believes that the seed potatoes are mislabeled.
2. The seed commissioner may hold any seed potatoes seized under this section until they are:
  - a. Graded or reconditioned to meet the claims on their label; or
  - b. Properly relabeled.
3. The seed commissioner is not liable for any loss or damage, or any other costs due to seizure when acting in accordance with this chapter and any applicable rules.
4. A person aggrieved by a seizure under this section may request a hearing pursuant to chapter 28-32.

**4.1-55-16. Enforcement - Hearing.**

1. If the seed commissioner believes that a violation of this chapter or the rules implementing this chapter may have occurred, the seed commissioner may hold a hearing.
2. If based on the testimony and evidence presented at the hearing the seed commissioner determines that a violation has occurred or if the person involved fails to appear, the seed commissioner may impose the civil penalty provided for in this chapter or consult with the attorney general regarding the institution of further legal proceedings.

**4.1-55-17. Penalties.**

1. Any person willfully violating this chapter is guilty of a class A misdemeanor.
2. Any person willfully violating this chapter is subject to a civil penalty in an amount not exceeding ten thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the seed commissioner.

**4.1-55-22.1. Facility operations and maintenance costs.**

Repealed by S.L. 2019, ch. 54, § 13.