

## **CHAPTER 4.1-57 POTATO DEALERS**

### **4.1-57-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Potato" means an Irish potato.
2. "Wholesale potato dealer" means any person who:
  - a. Buys potatoes in wholesale lots directly from a producer or a producer cooperative;
  - b. Sells or handles potatoes in wholesale lots for the purpose of processing or resale; or
  - c. Handles potatoes on account of or as an agent for another.

### **4.1-57-02. Wholesale potato dealer - License required.**

Before a person may engage in the business of a wholesale potato dealer, the person must be licensed by the seed commissioner.

### **4.1-57-03. Application for license - Content.**

To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the seed commissioner. The application must be signed by the applicant and notarized and must include:

1. The location in which the applicant intends to operate as a wholesale potato dealer;
2. The estimated dollar amount of business to be done monthly;
3. The dollar amount of business done the preceding year, if any;
4. The greatest volume of potatoes, by hundredweight, purchased during any one month in the preceding calendar year;
5. The greatest value of potatoes purchased during any one month in the preceding calendar year;
6. The name of each partner if the applicant is a partnership;
7. The name of each corporate officer and the state of incorporation if the applicant is a corporation;
8. The name of each manager and the state of organization if the applicant is a limited liability company;
9. The name of every agent employed by the applicant on the date of the application;
10. A financial statement prepared in accordance with generally accepted accounting principles showing the assets and liabilities of the applicant;
11. A list of similar licenses issued to the applicant by other states; and
12. The name of each state that has:
  - a. Refused to issue the applicant a wholesale potato dealer's license;
  - b. Suspended or revoked a wholesale potato dealer's license that had been issued to the applicant;
  - c. Refused to issue a wholesale potato dealer's license to an agent of the applicant; or
  - d. Suspended or revoked a wholesale potato dealer's license that had been issued to an agent of the applicant.

### **4.1-57-04. Application for license - Required security.**

1. As a condition of licensure, the seed commissioner shall require an applicant to file:
  - a. A cash bond or a surety bond, in an amount and form determined by the seed commissioner; or
  - b. An irrevocable letter of credit.
2. The security required by the seed commissioner under subsection 1 is for the benefit of potato producers in this state and must be conditioned for the payment of any financial obligation owed by a wholesale potato dealer to a potato producer in this state.

**4.1-57-05. Termination of bond - Notice to seed commissioner - Suspension of license.**

The surety may terminate its liability under a bond by giving the seed commissioner at least ninety days' written notice of intent to terminate. The surety is released from all future liability accruing on the bond after the expiration of ninety days from the date the seed commissioner received the notice or on a later date specified by the surety. This section does not relieve, release, or discharge the surety from any liability incurred before the expiration of the ninety-day period. Unless the wholesale potato dealer files a new bond or an irrevocable letter of credit at least thirty days before the surety's liability ceases, the seed commissioner, without hearing, shall suspend the wholesale potato dealer's license. The seed commissioner may not remove the suspension until a new bond or an irrevocable letter of credit has been filed with and approved by the seed commissioner.

**4.1-57-06. License - Fee - Expiration.**

The seed commissioner shall establish the fee for a wholesale potato dealer's license, subject to approval by the seed commission. A license issued under this chapter expires on June thirtieth of each year.

**4.1-57-07. License - Posting.**

The wholesale potato dealer shall post the license or a certified copy of the license in the office at each location where the dealer transacts business.

**4.1-57-08. License - Refusal - Suspension - Cancellation - Grounds.**

1. The seed commissioner may refuse to issue a license to operate as a wholesale potato dealer if:
  - a. The applicant was refused a wholesale potato dealer's license by another state;
  - b. The applicant had a wholesale potato dealer's license suspended or revoked by another state; or
  - c. The applicant employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state.
2. The seed commissioner may suspend or revoke a license to operate as a wholesale potato dealer if:
  - a. The dealer had a wholesale potato dealer's license suspended or revoked by another state;
  - b. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked by another state; or
  - c. The dealer has been convicted of:
    - (1) An offense under section 4.1-57-22;
    - (2) An offense involving fraudulent use of the mails; or
    - (3) Any other offense pertaining to the conduct of the person as a wholesale potato dealer.

**4.1-57-09. Agent of licensee - Ineligibility.**

The seed commissioner may determine that an individual may not act as an authorized agent for a licensee if the individual was refused a wholesale potato dealer's license by another state or if the individual had a wholesale potato dealer's license suspended or revoked by another state.

**4.1-57-10. Accounts and records.**

A wholesale potato dealer shall keep accurate accounts and retain records of all transactions as a dealer for eighteen months. The dealer shall make the records available to the seed commissioner upon request.

#### **4.1-57-11. Discontinuation of business - Duty of dealer.**

If a wholesale potato dealer sells, disposes of, or discontinues the business for which the dealer obtained a license during the period covered by the license, the dealer shall notify the seed commissioner in writing and, at the request of the seed commissioner, produce a statement of assets and liabilities as of the date the business was sold, disposed of, or discontinued.

#### **4.1-57-12. Security - Requirements for increase - Production of verified financial statements - Hearing.**

The seed commissioner at any time may increase the security required of a wholesale potato dealer. The seed commissioner at any time may require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to provide increased security when directed by the seed commissioner, the seed commissioner shall suspend the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the seed commissioner may revoke the dealer's license.

#### **4.1-57-13. Seed commissioner - Appointment as trustee.**

1. If a person notifies the seed commissioner that a wholesale potato dealer has breached any of the conditions for which security was given under this chapter, the seed commissioner shall investigate the allegation.
2. The seed commissioner may hold a hearing to obtain additional testimony and documentary evidence. If the seed commissioner determines that the allegation is supportable, the seed commissioner shall apply to the district court of the county in which the claim is alleged to have occurred for appointment as trustee.
3. Upon notice to the wholesale potato dealer as the court may prescribe or upon waiver of notice by the dealer, the court shall hear the matter in a summary manner. If the court determines that the dealer has breached any condition for which security was given under this chapter and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the seed commissioner execute the trust, the court shall issue an order appointing the seed commissioner as a trustee, without bond. The seed commissioner shall proceed in the manner provided for in this chapter.
4. The seed commissioner, as trustee, shall notify by certified mail all persons having claims against the dealer that the claims must be filed with the seed commissioner by a date certain. Any person who fails to file a claim within the time allotted is barred from participation in any fund marshalled by the seed commissioner under this chapter.
5. All moneys collected and received by the seed commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

#### **4.1-57-14. Report - Notice to claimants - Payment of claims.**

Upon recovery of the trust fund, or so much of the fund as is possible to recover or necessary to pay all outstanding claims, the seed commissioner shall file a report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the seed commissioner shall prorate the fund among the claimants. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report should not be approved and distribution made in accordance with the report. After holding a hearing on the matter, the court shall approve or modify the report, issue an order directing the distribution of the fund, and discharge the seed commissioner from all duties as trustee.

#### **4.1-57-15. Expenses of seed commissioner - Deduction from trust fund.**

Any expenses incurred by the seed commissioner in carrying out the duties set forth in sections 4.1-57-13 and 4.1-57-14 may be deducted from the trust fund.

#### **4.1-57-16. Inspection of potatoes - Rights to demand certificate of inspection.**

1. When potatoes are ready for sale or are on their way to market, the owner, conveyor, prospective buyer, or any other interested party may demand and is entitled to inspection of the potatoes and to an inspection certificate as provided by law.
2. Whenever potatoes are shipped to or received by a wholesale potato dealer for handling, purchase, or sale in this state and the wholesale potato dealer finds the potatoes to be spoiled, damaged, unmarketable, in unsatisfactory condition, mislabeled, or misrepresented in any way, unless both parties waive inspection before sale or other disposition, the wholesale potato dealer shall cause the potatoes to be examined by an inspector assigned by the seed commissioner for that purpose. The inspector shall execute and deliver a certificate to the wholesale potato dealer stating the day, the time, and the place of inspection and the condition of the potatoes. The wholesale potato dealer shall mail or deliver a copy of the certificate to the shipper of the inspected potatoes.

#### **4.1-57-17. Report by wholesale potato dealer - payment.**

Repealed by S.L. 2011, ch. 70, § 23.

#### **4.1-57-18. Sales reports unsatisfactory - Remedy of shipper.**

Repealed by S.L. 2011, ch. 70, § 23.

#### **4.1-57-18.1. 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 wholesale potato dealers licensed under this chapter, 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.

#### **4.1-57-19. Investigation - Hearing - Action on license.**

1. The seed commissioner may enter upon real property and access any structure and personal property at any time to inspect and sample potatoes for compliance with the laws of this state.
2. After an investigation, the seed commissioner may suspend the license of any wholesale potato dealer. Within ten days of the suspension, the seed commissioner shall schedule, provide notice of, and hold a hearing on the suspension.
3. After receiving both testimony and documentary evidence, the seed commissioner may reverse the suspension, continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the seed commissioner may demand the return of any agent's identification card issued by the seed commissioner.
4. Any aggrieved party may appeal a decision of the seed commissioner under this section to the district court.

#### **4.1-57-20. Fees and collections - Continuing appropriation.**

Repealed by S.L. 2013, ch. 71, § 5.

#### **4.1-57-21. Enforcement of chapter.**

Repealed by S.L. 2013, ch. 71, § 5.

#### **4.1-57-22. Violations of chapter - Penalty.**

A person is guilty of a class A misdemeanor and subject to a civil penalty in an amount up to one thousand dollars per violation, which may be imposed by a court or by the seed commissioner in an administrative hearing, if the person:

1. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or acts in a manner designed to deceive the consignor or purchaser of the potatoes;
2. Breaches any contract for the purchase or sale of potatoes to which the person was a party unless the breach is based on a state inspection certificate, secured with reasonable promptness after receipt of the shipment and showing that the kind or quality of potatoes is not that which was purchased or ordered;
3. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
4. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
5. Issues false or misleading market quotations;
6. Cancels any quotations during the period advertised by the person;
7. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
8. Increases the sales charges on shipped potatoes by means of fictitious sales;
9. Receives potatoes from foreign states or countries for sale or resale, within or outside this state, and gives the purchaser the impression through any method of advertising or description that the potatoes are from a source other than their true origin; or
10. Violates this chapter or any rule implementing this chapter.