

CHAPTER 4-11

REGULATION OF WHOLESALE POTATO DEALERS

4-11-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the state seed commissioner.
2. "Insolvency" means an unableness or unwillingness to provide payment for potatoes purchased by the dealer.
3. "Potato" means a tuber commonly classed as white or Irish.
4. "Wholesale potato dealer" means any person who buys potatoes in wholesale lots directly from a grower or grower cooperative, who sells or handles potatoes in wholesale lots for the purpose of processing or resale, or who handles potatoes on account of or as an agent for another.

4-11-02. 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 commissioner.

4-11-03. Application for license - Contents. To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the commissioner. The application must be signed by the applicant under oath and must include:

1. The location in which the applicant intends to operate as a wholesale potato dealer.
2. The estimated amount of business to be done monthly.
3. The 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 and showing the assets and liabilities of the applicant.
11. A list of similar licenses issued to the applicant in other states.
12. The name of every state that has:
 - a. Denied the applicant's request for similar licensure;
 - b. Denied a request for similar licensure submitted by an agent employed by the applicant;

- c. Issued to the applicant a similar license and thereafter suspended or revoked the license; or
- d. Issued to an agent of the applicant a similar license and thereafter suspended or revoked the agent's license.

4-11-04. Form of security to accompany application for license. The commissioner may require the applicant to file a current financial statement prepared in accordance with generally accepted accounting principles, a cash bond or a surety bond in an amount and form determined by the commissioner, or an irrevocable letter of credit. The form of security required by the commissioner must be conditioned for the faithful performance of the applicant's duties as a wholesale potato dealer, for compliance with all laws and rules relating to the purchase of potatoes by the dealer, for prompt payment in the case of insolvency, and for the protection and benefit of any potato producer in this state during the period the license is in effect.

4-11-04.1. Termination of bond - Notice to commissioner. The surety may terminate its liability under a bond by giving the commissioner at least ninety days' notice of intent to terminate. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date the 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 at least thirty days before the surety's liability ceases, the commissioner, without hearing, shall suspend the wholesale potato dealer's license. The commissioner may not remove the suspension until a new bond or other form of surety has been filed and approved by the commissioner.

4-11-05. Issuance of license. Repealed by S.L. 2003, ch. 56, § 26.

4-11-06. License - Fee - Expiration. The commissioner shall establish the fee for a wholesale potato dealer's license. The license expires on June thirtieth of each year.

4-11-07. 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.

4-11-08. Refusal, cancellation, or suspension of license - Grounds.

1. The 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 in another state;
 - b. The applicant had a wholesale potato dealer's license suspended or revoked in 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 in another state.
2. The commissioner may suspend or revoke a license to operate as a wholesale potato dealer if:
 - a. The dealer was the subject of a license suspension or revocation in another state;
 - b. The dealer had a wholesale potato dealer's license suspended or revoked in another state; or
 - c. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked in another state.

4-11-09. Agent of licensee - Ineligibility. The 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 in another state or if the individual had a wholesale potato dealer's license suspended or revoked in another state.

4-11-10. Identification cards required. Repealed by S.L. 2007, ch. 58, § 8.

4-11-11. Licensee to file schedule of commissions and charges. Repealed by S.L. 2003, ch. 56, § 26.

4-11-12. Accounts and records. A wholesale potato dealer shall keep accurate accounts and records of all transactions as a dealer and shall retain the records for eighteen months. The commissioner is entitled access to the records at all times.

4-11-13. 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 commissioner in writing and, at the request of the commissioner, shall produce a statement of assets and liabilities as of the date the business was sold, disposed of, or discontinued.

4-11-14. Bonds - Additional required. The commissioner may at any time require an increase in the amount of the wholesale potato dealer's bond. The commissioner may at any time require verified financial statements from a dealer. If a dealer fails to furnish the information or fails to furnish a new or higher bond when directed by the commissioner, the commissioner shall suspend the dealer's license. After providing the dealer with at least ten days' notice and a hearing, the commissioner may revoke the dealer's license.

4-11-15. Damage claims - Hearing - Procedure.

1. If a person notifies the commissioner that a wholesale potato dealer has breached any of the conditions for which security was given under this chapter, the commissioner shall investigate the allegation.
2. The commissioner may hold a hearing to obtain additional testimony and documentary evidence. If the commissioner determines that the allegation is supportable, the 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 section 4-11-04, and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the commissioner execute the trust, the court shall issue an order appointing the commissioner as a trustee, without bond. The commissioner shall proceed in the manner provided for in this chapter.
4. The commissioner, as trustee, shall notify all persons having claims against the dealer by certified mail that the claims must be filed with the 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 commissioner under this chapter.
5. All moneys collected and received by the commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

4-11-15.1. Recovery of trust fund - Report - Notice to claimants. Upon recovery of the trust fund, or so much of the fund as is possible to recover or as is necessary to pay all outstanding claims, the commissioner shall file the report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the 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 commissioner from all duties as trustee.

4-11-15.2. Representation of commissioner by attorney general. The attorney general shall represent the commissioner in any action or proceeding brought under this chapter and may employ legal assistance when necessary. Any expenses incurred by the attorney general in providing representation to the commissioner may be deducted from the trust fund.

4-11-16. Inspection of potatoes - Right to demand - Certificate of inspection.

1. Whenever 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 for 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 dealer at wholesale 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 commissioner for that purpose. The inspector shall execute and deliver a certificate to the dealer, stating the day, the time, and the place of inspection and the condition of the potatoes. The dealer shall mail or deliver a copy of the certificate to the shipper of the inspected potatoes.

4-11-17. Consignee of potatoes to make report. A wholesale potato dealer to whom potatoes have been shipped or consigned for sale and to whom title has not yet passed shall provide the shipper, within a reasonable time after receiving the potatoes, a written report detailing the potatoes' time of arrival, the quantity, the quality, and the price per unit. At the time of providing the report, the wholesale potato dealer shall pay the shipper the net amount due the shipper for the potatoes.

4-11-18. Sales reports unsatisfactory - Remedy of shipper. Whenever a shipper, after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report, the shipper may file a complaint with the commissioner. Upon receipt of a complaint, the commissioner shall initiate an investigation.

4-11-19. Rules. The commissioner may adopt rules to implement this chapter, to govern the rates charged by wholesale potato dealers, and to regulate the buying, selling, advertising, and trading practices of wholesale potato dealers.

4-11-20. Investigation - Hearing - Action on license. If the commissioner receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, the commissioner may initiate an investigation. The commissioner and the commissioner's agents have access, at all times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples. After an investigation, the commissioner may suspend the license of any wholesale potato dealer. The commissioner shall schedule, provide notice of, and hold a hearing on the suspension within ten days of the action. After receiving both testimony and documentary evidence, the commissioner may reverse the suspension, continue the suspension, or revoke the wholesale potato dealer's license. If appropriate, the commissioner may demand the return of any agent's identification card issued by the commissioner. Any hearing held under this section must be conducted in accordance with chapter 28-32. Any aggrieved party may appeal a decision of the commissioner under this section to the district court in accordance with chapter 28-32.

4-11-21. Fees and collections - Revolving fund - Appropriation. The commissioner shall deposit all moneys arising from the collection of fees and other charges under this chapter with the state treasurer for credit to the seed department revolving fund. Moneys in this fund must be disbursed upon order of the commissioner, with the approval of the office of management and budget, and funds so approved by the office of management and budget must be disbursed within limits of legislative appropriations.

4-11-22. Enforcement of chapter. The commissioner is charged with the enforcement of this chapter and all rules adopted to implement this chapter. The attorney general or the state's attorney in the county where a case arises shall prosecute violations of this chapter and the rules.

4-11-23. Violations of chapter defined - Penalty.

1. A person is guilty of a class A misdemeanor if the person:
 - a. 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;
 - b. Refuses to accept, on agreed terms, any shipment for which the person has contracted, unless the refusal 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;
 - c. Fails to account for potatoes or to pay for potatoes within the time required by this chapter;
 - d. Breaches any contract entered by the person for the purchase or sale of potatoes;
 - e. Purchases for the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
 - f. Issues false or misleading market quotations;
 - g. Cancels any quotations during the period advertised by the person;
 - h. Makes any false or misleading statement on an application for licensure as a wholesale potato dealer;
 - i. Increases the sales charges on shipped potatoes by means of fictitious sales;
 - j. Fails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer;
 - k. 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
 - l. Violates this chapter or any rule adopted to implement this chapter.
2. If the commissioner is notified that a wholesale potato dealer has been convicted of an offense listed in this section, of an offense involving fraudulent use of the mails, or of any other criminal act pertaining to the conduct of the person as a wholesale potato dealer, the commissioner shall provide at least ten days' notice and hold a hearing to determine whether the wholesale potato dealer's license should be suspended or revoked.

4-11-24. Cooperation with governmental agencies. The commissioner may cooperate with federal entities and with state and local entities of this and other states and may do all things necessary to carry out this chapter.