

Revised
October, 1994

NEBRASKA POTATO INSPECTION ACT

- Administration: This Act is administered by the Nebraska Department of Agriculture, Division of Potato Development, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-2341.
- Advisory Committee: The Department of Agriculture is advised on matters relevant to the administration of the Act by the Nebraska Potato Development Committee.
- Revisions: The provisions of this Act were last revised during the 1994 session of the Nebraska Legislature.
- Rules: Currently, there are no regulations promulgated under the provisions of this Act.

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2-1813. Act, how cited. Sections 2-1813 to 2-1825 may be cited as the Nebraska Potato Inspection Act.

2-1814. Terms, defined. As used in sections 2-1813 to 2-1825, unless the context otherwise requires:

(1) Department shall mean the Department of Agriculture;

(2) Director shall mean the Director of Agriculture;

(3) Nebraska Potato Development Committee shall mean the advisory committee established by section 2-1803;

(4) Commercial potato growing area shall mean a geographic area in which potatoes are produced and offered for sale in commercial quantities;

(5) Commercial shipment shall mean any potatoes shipped in commerce or processed and destined for human consumption, and noncertified seed potatoes shipped out of the state;

(6) Commercial potato acreage shall mean a potato field of three acres or more; and

(7) Preceding crop year shall mean the last calendar year for which official acreage statistics have been compiled by the state-federal division of agricultural statistics.

2-1815. Seed potatoes; when exempt from act. The provisions of sections 2-1813 to 2-1825 shall not include seed potatoes officially designated by law as Nebraska Certified.

2-1816. Inspection fee; estimate, how obtained; compulsory potato inspection; establishment; termination. Any person, for the purpose of obtaining information relative to the cost of potato inspection and grading services for a designated area, may request in writing that an estimate be prepared by the director of the costs of such a service. The director may consult with the Nebraska Potato Development Committee to establish an estimated inspection fee based upon the inspector's salary, mileage and other travel expenses, cost of inspection certificates, and other necessary expenses to cover the inspection service and the administration thereof.

To establish compulsory inspection of commercial shipments of potatoes in a designated area, a petition, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, with an estimate of inspection costs attached, may be presented to the director requesting that all commercial shipments of potatoes originating in the designated area be officially inspected and graded by the department at the point of origin or at locations approved by the

director. The director shall fix a time and place for hearing on the petition and shall publish notice thereof in a newspaper having general circulation in the area designated in the petition for three consecutive weeks. At the time and place established by such notice, the director or his designate shall hold a public hearing upon the petition at which time evidence will be taken in support of or in opposition to the petition. If the evidence reveals that potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year are in favor of the compulsory program set forth in the petition request, the director shall enter an order establishing compulsory inspection of commercial shipments of potatoes in the area designated in the petition. A petition to terminate compulsory inspection, signed by potato growers representing fifty-one percent or more of the commercial potato acreage of the last preceding crop year, may be filed with the director at any time and such petition shall be set for public hearing in the manner aforesaid. If the director finds from the evidence submitted at such hearing to terminate inspection services that the petition to terminate represents fifty-one percent or more of the commercial potato acreage of the last preceding crop year, he or she shall enter an order declaring that compulsory potato inspection is terminated. In order to determine the commercial potato acreage of the last preceding crop year, the director shall use the tabulated crop acreage reports of the county assessors, compiled by the state-federal division of agricultural statistics.

2-1817. Petition; contents; prima facie evidence. A petition filed pursuant to section 2-1816 shall be prima facie evidence that (1) it has been properly circulated, (2) the signatures thereon are genuine, (3) the signatures thereon reflect the correct representation of the number of acres specified, (4) the land described therein was devoted to potato production in the last preceding crop year, (5) such petition represents fifty-one percent or more of the commercial acreage in the area designated therein, and (6) each and every other allegation contained therein is true. Any fact contained therein may be rebutted at the hearing before the director.

2-1818. Potato inspection; director; powers. The director is empowered to make all arrangements to implement the inspection service or terminate existing inspection service following entry of an order establishing or terminating such services and to this extent he is authorized to appoint persons or designate agents as may be necessary to carry out the duties of the department and to expend such funds as are necessary to accomplish the purposes of sections 2-1813 to 2-1825. The director may require that all persons assigned to inspection and grading duties possess a federal potato inspector's license.

2-1819. Director; rules and regulations; cooperate; agreements.

The director may promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of sections 2-1813 to 2-1825; and is authorized to cooperate with the United States Department of Agriculture, the University of Nebraska Institute of Agriculture and Natural Resources, and other public or private agencies or groups and to enter into agreements with the same in carrying out the provisions of sections 2-1813 to 2-1825.

2-1820. Director; provide for inspection and grading services; expense.

The director may, upon written request of any potato grower, provide for inspection and grading services for commercial shipments of potatoes in areas where compulsory inspection and grading are not in force. In all such cases, the inspection and grading service shall be at the expense of the potato grower requesting the same and shall be determined in the manner prescribed in section 2-1816.

2-1821. Inspection; certificate; grades used. An official certificate evidencing official inspection and designating the grade of potatoes inspected shall be issued by the appointed inspector or agent of the director to the person or persons for whom the inspection and grading service was completed. All inspections shall be made on the basis of the official grades established from time to time by the United States Department of Agriculture and such additional grades as may be duly adopted by the director; PROVIDED, that when United States grades are used, they shall conform in all respects to the requirements and standards prescribed by the United States Department of Agriculture.

2-1822. Inspection; grade; appeal; procedure. Any person having a direct financial interest, who is dissatisfied with the grade established by inspection under the Nebraska Potato Inspection Act, may appeal to the director in writing for reinspection. Such appeal shall be made within ten days after inspection and before shipment of the inspected potatoes. Upon receipt of such appeal, the director shall cause a reinspection to be completed to determine the grade in dispute, and upon completion of the reinspection, he or she shall make known his or her findings to all persons having a direct financial interest. All parties shall be bound by the findings following the reinspection. In the event that the reinspection does not determine a new or different grade, all costs of the reinspection shall be paid to the director by the person requesting reinspection. Any official inspection certificate issued as the result of a reinspection shall supersede the original official certificate. The findings may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

2-1823. Compulsory inspection and grading; special permits; application; issuance. In any area designated for compulsory

inspection and grading by order of the director pursuant to the provisions of sections 2-1813 to 2-1825, special permits may be issued authorizing shipment of uninspected potatoes when an official inspection cannot be made. Application to the director for special permits authorizing shipment must establish an emergency in which delay may cause substantial financial injury to the applicant.

2-1824. Department; official inspection and grade legend; adopt.

The department may adopt an official Nebraska inspection and grade legend, assign official inspection numbers to persons or establishments under inspection and require that such numbers be exclusive to them, and otherwise control the use of the official Nebraska legend. United States grade designations and authorized legends in connection therewith shall be used in accordance with the requirements of the United States Department of Agriculture.

2-1825. Violations; penalties. (1) Any person, firm, corporation, limited liability company, association, or officer or member thereof who (a) destroys or alters any official certificate, (b) ships or attempts to ship any potatoes out of any designated area where compulsory inspection is maintained without first obtaining a special permit or without first complying with section 2-1816, or (c) violates any other provision of the Nebraska Potato Inspection Act or the rules and regulations promulgated thereunder for which no specific penalty is provided shall be guilty of a Class III misdemeanor.

(2) Any inspector or agent of the director who fails to remit to the department all fees collected in his or her official capacity shall be guilty of a Class III misdemeanor.

(3) Any person, firm, corporation, limited liability company, association, or officer or member thereof who forges or counterfeits any official inspection legend or official certificate adopted by the director for use under the Nebraska Potato Inspection Act or who, not being an inspector or appointed agent of the director, attaches any certificate of inspection whether or not forged or counterfeited to any commercial shipment of potatoes shall be guilty of a Class IV felony.

2-1826. Acts; how designated. The Nebraska Potato Development Act and the Nebraska Potato Inspection Act shall become one act in two parts with the Nebraska Potato Development Act designated as Part I and the Nebraska Potato Inspection Act designated as Part II thereof and the Revisor of Statutes shall make appropriate changes in the statutes necessitated by such redesignation.

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