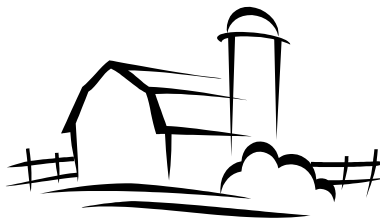


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# **Occupational Regulation Review**

## **Potato Shipper**



**Report of the Agriculture Committee pursuant to the  
Occupational Board Reform Act (§§84-933 to 84-948)**

**Date: December 15, 2024**



## Introduction

The Occupational Board Reform Act (§§84-933 to 84-948 of the Nebraska Revised Statutes) was enacted by the Nebraska Legislature to establish a process for systematic examination of occupational regulations in Nebraska. The Act assigns a primary responsibility to the standing committees of the Legislature to perform periodic evaluation of those occupational regulations that fall within the subject matter jurisdiction of each committee.

Such evaluation is to include identifying the underlying public welfare objectives intended to be served by a set of occupational regulations and whether such public welfare concerns remain valid or have evolved. The goal of the Occupational Board Reform Act is to realize the public welfare interests with the least burdensome forms of regulation. The evaluation is to determine whether existing regulations impose an excessive or unnecessary barrier to entry into, or burden to participate in, an occupation that limits competition, entrepreneurial opportunities or availability of services in relation to the public welfare benefits intended.

§84-940 defines occupational regulation to mean “a statute, rule, regulation, practice, policy or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation.” Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

Licensing of potato shippers is a regulation that falls within the jurisdiction of the Agriculture Committee. This report is submitted to fulfill the requirements of the Agriculture Committee under §84-948 of the Occupational Board Reform Act with respect to this occupational regulation.



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Nebraska Potato Shippers	



**Occupation:** Potato Shipper

**Occupational Board:** Nebraska Department of Agriculture

**Statutory Citation:** Nebraska Potato Development Act (§§2-1801 through 2-1811)

**Description of Occupation:**

Potato shippers in general include persons or business entities engaging in the business of shipping raw potatoes for commercial processing. For purposes of the license requirement reviewed in this report, the term potato shipper includes both growers and commercial end users of potatoes who do not utilize a third-party shipper for delivery of potatoes purchased from Nebraska producers.

**Description of Occupational Regulation:**

**Nebraska Potato Development Act:**

The Nebraska Potato Development Act is a commodity promotion (checkoff) program to facilitate potato industry investment in market development for Nebraska grown potatoes, particularly in supporting growers through research to increase yield and quality, disease and pest resistance, and improved methods of storage, transport and grading. The program is funded through an excise tax collected from potato shippers not to exceed 2 cents / cwt. of potatoes sold or shipped each year as authorized by §2-1807. The Act creates the Division of Potato Development within the Department for the purpose of collection and expenditure of checkoff funds. The Department is advised in this duty by the Nebraska Potato Development Committee consisting of 7 appointed members (three growers and four shippers), and two exofficio members, the vice chancellor of UNL/IANR and the Director of Agriculture who is by statute designated the chair of the Committee.

§2-1810 limits applicability of the checkoff liability to a handful of larger commercial entities through the definition of potato shipper (a list of potato shippers under this definition is included in the appendix):

2-1810. Terms, defined.

*“As used in the Nebraska Potato Development Act:*

*. . . (2) Potato shipper shall mean and include any person engaged in the business of shipping potatoes who, in any calendar year, sells one hundred eighty thousand pounds of potatoes grown in Nebraska, including potato growers who sell one hundred eighty thousand pounds of potatoes not through licensed shippers and any person who utilizes for any purpose in any calendar year one hundred eighty thousand pounds of potatoes grown in Nebraska not purchased from licensed shippers”*

§2-1805 provides that it is unlawful to conduct business as a potato shipper as defined without having obtained a license from the Department of Agriculture. While a shipper is required to file application for a license, there is no license fee. §2-1806 provides that a license shall be issued if the shipper is in compliance with the provisions of the Act. Conducting business as a shipper without a license is a Class IV misdemeanor.

Licensees are required by §2-1807 to file an annual statement prescribed by the Department by July 31 disclosing the number of pounds of potatoes grown in Nebraska sold or shipped by the licensee during the preceding year ending on June 30. Payment of the excise assessment is remitted by the shipper with the statement filing. Failure to pay the excise assessment, or falsifying information, is a Class IV misdemeanor. The Act further imposes recordkeeping requirements for shippers to create and retain documentation of potato shipments open to inspection by the Department. The Department may cancel a license upon a finding of noncompliance with the obligations of shippers under the Act after notice and hearing.

### **Nebraska Potato Inspection Act:**

§§2-1813 to 2-1825 create the Nebraska Potato Inspection Act. While the Act is not an occupational regulation for purposes of the Occupational Board Reform Act (OBRA), the Act is implemented by the Division of Potato Development which coordinates with the Potato Development Committee and the Potato Certification Association of Nebraska (PCAN) to establish regulations regarding inspection of potato shipments and certification standards for Nebraska grown potatoes. The Act is an additional element of potato market development as its authorities are available to assist the industry in preventing the introduction and spread of economically harmful potato diseases and pests. §2-1816 of the Act provides for the ability of producers to petition for the establishment of compulsory inspection areas of the state to require inspection of commercial shipments of potatoes originating in the inspection area with the cost of inspection recovered through inspection fees. The state currently has no compulsory inspection areas.

While not an activity prescribed by the Potato Inspection Act, the Department of Agriculture participates in the USDA-APHIS National Potato Cyst Nematode Survey whereby the Department, through contracted inspectors, annually collects samples during the growing season to monitor for the presence of nematodes. Under authority of the Plant Protection and Plant Pest Act, the Department of Agriculture has placed a quarantine on the importation into the state of any seed potatoes for planting, table stock, or processing originating in areas infested with Columbia Root Knot Nematode. Additionally, Nebraska producers participate in a voluntary certification program offered through PCAN and the College of Agriculture of the University of Nebraska pursuant to sections 81-2, 149 to 81-2, 154.

### **Occupational Board Information:**

Report contents specified under subdivisions (3)(a) through (f) of §84-948 are not applicable to this occupation. The Nebraska Department of Agriculture, a code agency, is solely responsible for the receipt and processing of license applications, and the issuance, monitoring and discipline of licensees and lack of licensure. These functions are not delegated to an industry board and qualification for licensure largely prescribed by statute.

### **Regulatory Activity and Costs:**

To assist the Agriculture Committee in preparing this report Chairman Steve Halloran submitted an inquiry form to the Director of the Department of Agriculture. The information in this section consists of information provided in the Department's response.



## Potato Shipper Licensure – 5-year Summary of Activity

Activity by Year					
	2022/23	2021/22	2020/21	2019/20	2018/19
<b>License Activity</b>					
<b>Potato Shipper (§2-1805)</b>					
New	0	0	0	0	0
Applications Denied	0	0	0	0	0
<b>Disciplinary/Enforcement Activity (All Applicator Categories)</b>					
Complaints Received	0	0	0	0	0
Licenses Suspended, Revoked, Cancelled or Limited	0	0	0	0	0
Number of Fines Assessed	0	0	0	0	0
Criminal Referrals	0	0	0	0	0

The potato shipper license is a permanent license and does not require annual renewal. The Department’s info suggests no new entrants for which licensure is required have occurred recently.

### **Enforcement Activity**

A. Please list and briefly describe any disciplinary actions taken against licensees over the past 5 years.

*There have been no disciplinary actions against licensees over the past 5 years.*

B. Does the agency perform routine or regular examinations/inspections/audits of licensees? If so, how many are performed per year?

*The Department does not perform routine or regular examinations, inspections, or audits of licensees. The Department does have an agreement with the Potato Certification Association of Nebraska who conduct inspections.*

C. Does the agency perform complaint/investigative examinations/inspections/ audits of licensees? If so, how many of these have been performed over the past 5 years.

*The Department does not perform complaint investigations or inspections directly through these programs.*

### **Cost of Regulation:**

A. Please list staff positions to support the Agency’s operations under the Nebraska Potato Development and Potato Inspection Act.

*There are no staff positions in the Department to support these operations.*

- B. If possible to isolate costs, please provide annual expenditures by the Agency to carry out the Nebraska Potato Development and Potato Inspection Act for each of the past 5 fiscal years.

*Potato Inspection Act has no isolated costs. The following are checkoff assessments collected over the previous 5 years which are expended through the promotional program*

FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23
97,914	111,514	38,009	186,585	56,217

### **Comparison to Other States’ Regulation:**

The licensure of potato shippers under the Potato Development Act is not comparable to other states within the context of the Occupational Board Reform Act. The licensure of potato shippers facilitates the collection of a promotional assessment only and does not regulate the qualifications of persons to engage in commercial activities defined as potato shipping under the Act.

### **Occupational Board Reform Act Analysis:**

#### **Assumptions underlying the creation of the occupational regulation:**

***Do the policy justifications/need for regulation identified when the occupational regulation was enacted remain valid?***

*§2-1804 of the Act states: It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by conserving, developing, and promoting the state's potato industry.*

The purpose of the Potato Development Act replicates similar programs authorized under state law to provide for a producer funded and governed program of market development. Whether the assumptions underlying the creation of the potato promotion program remain valid would be based on considerations outside the scope of the Occupational Board Reform Act.

The license requirement facilitates the collection of an excise tax to fund research and promotional activities carried out under the Act, is a source for information and data to characterize and quantify the state’s potato industry and may have value in planning for deployment of inspection and certification resources.

#### **Occupational board statement of efficacy:**

- A. Please provide a brief description of the benefits of the occupational regulation.

*To conserve, develop and promote the states potato industry.*

- B. Please provide a brief description of potential harm should the occupational regulation be discontinued.

*There would not seem to be budgetary or operational impacts if such regulation was discontinued.*

**Occupational regulation in relation to Occupational Board Reform Act policy:**

The potato shipper license requirement pursuant to the Potato Development Act is not an occupational regulation as contemplated for purposes of the Occupational Board Reform Act. The Act imposes no personal experience, training, or competency certification or other qualifications for individuals to acquire a license or to lawfully engage in commercial activities defined as potato shipping under the act. There is no license fee and the issuance of a license is a ministerial act.

**Agriculture Committee Recommendations**

The Agriculture Committee does not recommend repeal or modification of the license requirement to engage in activities defined as potato shipping. As noted in the previous discussion, the potato shipper license is more accurately categorized as a business license and not an occupational regulation within the context of the Occupational Board Reform Act.



# Appendix

## Nebraska Potato Shippers

Thompson Seed  
6541 Jefferson Road  
Alliance, NE 69301

Pro-Health LLC  
Brandon Larsen  
2100 Luna Rd Suite 140  
Carrollton , TX 75006

Chimney Rock Potatoes  
Mike Chrisman  
Box 224  
McGrew, NE 69353

Cornerstone Production Company  
36635 A Street  
Box 413  
Wray, CO 80758

County Pride Potatoes, LLC  
Randy May  
PO Box 58  
LaGrange, WY 82221

Schekall Seed Potatoes  
Joe Schekall  
Box 747  
Hemingford, NE 69343

Don Opliger  
Box 854  
Clovis, NM 88101

Kramer Farms  
Bruce Kramer  
PO Box 485  
Wauneta, NE 69045

Elkhorn River Farms I  
Malaine Sprope  
RR 1 Box 134  
O'Neill, NE 68763

Lincoln Farms  
Brian Blad  
14301 Caliber Dr Suite 100  
Oklahoma City, OK 73134

Walther Three Rivers  
Jason Walther  
52944 US 131  
Three Rivers, MI 49093

Frenchman Valley Produce  
Tim May  
Box 879  
Imperial, NE 69033

Western Potatoes, Inc.  
Box 755  
Alliance, NE 69301

CSS Farms  
Milt Carter  
706 E Airport Dr  
Watertown, SD 57201

Brown Enterprises  
Don Brown  
PO Box 708  
Pine Bluffs, WY 82082