

CHAPTER 74-03-01
GENERAL SEED CERTIFICATION REQUIREMENTS

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74-03-01-01. Seed Certification in North Dakota. The certification of seed in North Dakota is a function of the state seed department as outlined in North Dakota Century Code chapter 4.1-53. This chapter applies to all crops, except seed potatoes, which are regulated pursuant to North Dakota Century Code chapter 4-10 and Administrative Code article 74-04, grown for the production of all classes of North Dakota certified seed. If a North Dakota crop is accepted for field inspection and certification for which there are no North Dakota field or seed standards, the latest standards published by the association of official seed certifying agencies for that crop will apply.

History: Amended effective January 2, 2006; July 1, 2007.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-02, 4.1-53-42

74-03-01-02. Purpose of seed certification. The purpose of seed certification is to maintain and make available to the public high quality seed of crop varieties so produced, handled, and distributed as to ensure proper identity and genetic purity. This rule is exhortatory and does not create a cause of action on account of any failure by the department to correctly identify or certify seed variety or selection.

History: Amended effective July 1, 2007.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42, 4.1-53-45

74-03-01-03. Eligibility requirement for certification of crop varieties.

As used in this chapter, "variety" includes hybrids and breeding lines, and selections, clones, or strains of true varieties.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by one or more of the following:
 - a. A national variety review board.
 - b. The plant variety protection office, including additional information itemized in subdivisions e through i of subsection 2 of section 74-03-01-03, which is required.
 - c. An official seed certifying agency.
 - d. The organization for economic cooperation and development (OECD).

In the absence of a national review board, a state or regional variety review committee may determine the eligibility for certification, if operating under similar criteria and approved by the seed commissioner. Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility.

2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant. After a variety has been released there is no limitation as to when it may be accepted into certification by AOSCA or its vested member agencies providing that all other provisions of this section are met.
 - a. The name of the variety. This name must be the established name if the variety has previously been marketed.
 - b. A statement concerning the variety's origin and the breeding procedure used in its development.
 - c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.
 - d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.
 - e. A statement delineating the geographic area of adaptation of the variety.

- f. A statement on the plans and procedures for the maintenance of stock seed classes, including the number of generations through which the variety may be multiplied.
- g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.
- h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.
 - 1. Should testing be required to verify the presence of a particular trait by the developer, sponsoring breeder or originator before final certification, the exact protocols, approved facilities, tolerances, and all other relevant information will be provided to the seed certifying agency that may retain the results of any test for its records.
 - 2. Additional certification requirements: Seed may require additional certification requirements that are clearly referenced in the variety description, provided that the following is completed:
 - i. Additional certification requirements have been communicated by the sponsoring breeder or originator to all parties involved with regulation and production of the variety;
 - ii. The sponsoring breeder or originator shall authorize the seed certifying agency to verify specific characteristics that are referenced in the variety description. Verification of such characteristics will be completed before a certificate (tag) of final certification is issued by the seed certifying agency.
- i. A sample of seed representative of the variety that will be planted for certified seed production.
- 3. This rule does not create a mandatory duty or a cause of action on account of the department's recognizing or refusing to recognize a variety as meriting certification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-43

74-03-01-04. Classes (generation) and sources of certified seed.

1. Four classes (generations) of seed shall be recognized in seed certification: breeder, foundation, registered, and certified.
 - a. Breeder seed is directly controlled by the originating plant breeder, sponsoring institution or firm, which supplies the source for the initial and recurring increase of foundation seed.
 - b. Foundation seed is the progeny of breeder or foundation seed produced under control of the originator or sponsoring plant breeding institution, or person, or designee thereof. As applied to certified seed, foundation seed is a class of certified seed produced under procedures established by the certifying agency for the purpose of maintaining genetic purity and identity.
 - c. Registered seed is the progeny of foundation or other approved seed stocks that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. This class of seed shall be of a quality suitable for the production of certified seed.
 - d. Certified seed is the progeny of foundation, registered, or other approved seed stocks that is so handled as to maintain satisfactory genetic identity and purity and that has been approved by the state seed department.

2. The number of generations ~~through~~ which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of a variety, but shall not exceed two generations beyond foundation seed. The following exceptions to the limitation of generations are allowed with permission from the variety owner and authorization from the state seed department:

- a. Unlimited recertification of the certified class may be permitted for crop varieties when foundation seed is not being maintained.
 - b. The production of an additional generation of the certified class may be permitted on a one-year basis when:
 - (1) ~~An emergency is declared prior to the planting season by the certifying agency stating that f~~ Foundation and registered seed supplies are not adequate to plant the needed certified acreage of the variety; and
 - (2) The additional generation of certified seed produced to meet the emergency is declared ineligible for recertification.
3. Seed that fails to meet the certification standards for reasons other than those affecting genetic purity may be certified ~~in emergency situations~~ and will be labeled ~~with~~ as "substandard grade" label.

History: Amended effective May 1, 1986; January 2, 2006; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42, 4.1-53-44, 4.1-53-45

74-03-01-05. Eligibility of growers. Any person shall be eligible to produce registered or certified seed providing such seed is produced, handled, and distributed in accordance with article 74-02, applicable certification rules, and all applicable North Dakota seed laws and rules. The state seed commissioner reserves the right to reject any application for certification or refuse certification on any lot of seed if essential evidence is incomplete, if information given is incorrect, or if circumstances indicate that it would be advisable for the good of the certified seed industry.

History: Amended effective May 1, 1986.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42, 4.1-53-47

74-03-01-06. Seed eligibility.

1. The seed department shall be supplied with satisfactory evidence of the source and class of seed used to plant each crop considered for certification.

2. Eligible seed stocks include breeder's, foundation, registered or, in special cases, approved lots of the certified class. Eligible seed obtained from another person must be accompanied by the official tag or bulk certificate from an approved certifying agency, which will be the documentation of acceptance required for field inspection.
3. Certified seed growers may plant seed from their own fields if the field passed inspection and if the class of seed is eligible to be certified. The grower must provide sufficient evidence to the department to verify eligibility.
4. Certified seed growers may only plant seed from their own fields that failed field inspection previously ~~only~~ if the field did not fail due to genetic purity, and the grower is the applicant for field inspection. If the field fails inspection a second time for any reason, that seed shall no longer be eligible for the production of certified.
5. Contract growers may not replant any of the seed produced unless final certification has been completed.
6. Growers should check with the state seed department regarding approved lots of the certified class eligible for recertification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42, 4.1-53-44, 4.1-53-45

74-03-01-07. Field eligibility and requirements.

1. A crop will not be eligible for the production of foundation, registered, or certified class seed if planted on land on which the same kind was grown previously for the number of years as stated in the specific crop standards. Exceptions may be made if the previous crop was the same variety and was inspected for certification.
2. A grower may establish field eligibility history for the next production year by planting certified seed on the field in the current year, applying for field inspection, and having the field declared eligible for production of seed of the same variety the next year.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42

74-03-01-08. Field management and isolation. The production unit for certification shall be a field. No field or part of a field will be accepted unless field boundaries are clearly defined and properly isolated according to the specific crop standards. Isolation distances may be extended at the request of the seed

commissioner or the commissioner's agents for reasons including the production of transgenic crops or other kinds in proximity to fields being grown for the purpose of seed certification.

When it is necessary to remove a strip to obtain proper isolation, the part of the strip to be removed must be cut into the field to be inspected.

If two classes of the same variety are planted adjacent to one another in the same field, and field inspection has been applied for both, isolation may be accomplished by placing a flag at each end of the field ten feet [3.05 meters] into the higher class of seed, prior to inspection. The flags must be plainly visible at the time of inspection. The grower may harvest that isolated ten-foot [3.05-meter] section of crop with the lower class of seed.

History: Amended effective September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, payment of past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for grass seed must be received by May first to avoid late penalty. Applications for millet and buckwheat must ~~will~~ be received ~~accepted~~ until ~~by~~ July fifteenth to avoid ~~without~~ late penalty. Applications for soybeans requiring only a single inspection (preharvest) must ~~will~~ be received by ~~accepted~~ until August first to avoid ~~without~~ late penalty. In case of an emergency or unusual circumstances due to weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.
2. Information required on application. The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps must be provided by the applicant. If the seed is the grower's own seed, sufficient evidence must be provided to the department to verify eligibility. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application.
3. Roguing and spraying fields. Roguing is essential to maintain the purity of varieties and high standards of certified seed. Roguing fields prior to inspection is recommended to remove undesirable plants from fields.

Plants that should be removed include off-type plants, other crop plants,

prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

Roguing is usually done by pulling off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection.

Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label to control pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.

- a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, ~~hemp having more than three-tenths of one percent tetrahydrocannabinol~~, musk thistle, spotted knapweed, and yellow starthistle.
- b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.
- c. A field may be rejected if it is the field inspector's opinion that the amount and kind of weeds present make it difficult to conduct the inspection, or the field condition is such that the quality of the cleaned seed may be questionable.
- d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.
- e. Diseases not governed by specific crop standards may be cause for rejection if it is the field inspector's opinion that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the applicant before the field inspection is completed. The application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the

field or before inspection has occurred. Refunds will not be made after the field is inspected or because the field has been rejected.

6. Appeal. Reinspection of rejected fields may be considered, provided the application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.
7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the applicant grower will be presumed correct if the documentation provided is valid.
8. ~~Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, Certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.~~

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-37, 4.1-53-42, 4.1-53-59

74-03-01-10. Fees. Charges for fees and services are subject to change. For current fees contact the state seed department.

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988; December 18, 1989; May 1, 2001; September 1, 2002.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-11

74-03-01-11. Seed conditioning, sampling, conditioning, and laboratory inspection.

1. **Identification in storage.** Field-inspected seed must be identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was produced. Conditioned seed in storage must be identified by kind, variety, class, and lot number displayed on the bin or storage container.
2. **Preconditioned sample testing.** To hasten labeling tagging or and determine the quality of seed which has passed field inspection prior to conditioning, a representative sample of seed ~~from each field which has passed field inspection~~ may be submitted to the state seed department for the purpose of germination and disease testing. This sample should be cleaned on a small mill or hand sieve to approximate correspond as nearly as possible to the quality condition of the entire lot after ~~cleaning or~~ conditioning.

Results of germination and disease tests conducted on preconditioned samples may be used for final certification purposes. A labeler grower may request new tests for labeling purposes after the seed lot is conditioned ~~to be used for labeling purposes~~. Fragile crops such as soybeans, field beans, lentils, chickpeas, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information ~~provided or~~ stated on seed labels.

3. Conditioning. All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class. Field-inspected seed may be conditioned either by the grower or by an approved seed conditioner.

a. Conditioning by seed grower.

- (1) A seed grower does not need an approved conditioning facility permit if the grower conditions the grower's own seed on the grower's premises with the grower's equipment.
- (2) The seed grower must complete a sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed lot, and deliver to the state seed department for analysis.

b. Conditioning by an approved facility.

- (1) To be eligible for final certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final certification.
- (2) If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner.
- (3) While conditioning, the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.

43. Sampling procedures.

- a. All seed lots eligible for final certification shall be sampled during conditioning as follows: ~~by taking representative samples at periodic intervals throughout the process of conditioning the seed lot.~~

- (1) Portions of conditioned seed may be drawn by hand as seed is

conditioned to form a composite, representative sample for a seed lot; or,

(2) Automatic mechanical devices may be used to continually or intermittently draw representative samples as a seed lot is conditioned.

b. Specific instructions to samplers are found on the reverse side of the samplers report.

54. Maximum lot size and numbering.

a. The maximum lot size for bagged seed is five thousand bushels [17619.54 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000 kilograms]. Bulk seed lots do not have a maximum size limit except bin capacity. Each bin is considered a separate seed lot.

For all crops, one sample for each lot is required. The entire lot must be certified at the time final certification is completed.

b. The lot number shall be designated by the labeler. The lot number of the seed planted may not be used as the new lot number for the seed being certified during the current crop year.

65. Commingling (mixing) of inspected seed fields. Seed of the same kind and variety from different fields that pass field inspection may be commingled if the seed is of the same class and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only.

76. Commingling carryover certified seed lots. Carryover seed from certified lots may be commingled if the seed is of the same variety, class, and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only. A new germination test is required for labeling. Germination tests should be done on each lot prior to commingling to ensure none of the lots have gone out of condition.

~~7. Conditioning.~~

~~a. All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class.~~

- b. ~~Field-inspected seed may be conditioned either by the grower or by an approved seed conditioner.~~

~~8. Conditioning by seed grower.~~

- 1. ~~A seed grower does not need an approved conditioning facility permit if the grower conditions the grower's own seed on the grower's premises with the grower's equipment.~~
- b. ~~The seed grower must complete a sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed lot, and deliver to the state seed department in Fargo for analysis.~~

~~9. Conditioning by an approved facility.~~

- (4) ~~To be eligible for final Certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final Certification.~~
- (5) ~~If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner or the commissioner's agent.~~
- (6) ~~While conditioning, the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.~~

~~810. **Regulatory sampling.** The state seed department may resample any lot of seed before final Certification or after the seed is labeled.~~

~~9. **Official samples.** At the request of a customer, an official sample may be collected by a representative of the seed department, with expenses incurred by the customer. The seed department shall determine the appropriate collection method and sample size. Sampling bulk seed in bins requires that a minimal amount of seed is withdrawn from the bin. The amount shall be determined by the quantity of seed in the lot, but shall be no less than five percent of the total lot size. Test results from official samples shall supersede all previous test results and shall be final.~~

~~104. **Laboratory analysis.**~~

- a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysts (AOSA). In certain cases when time constraints are critical to the efficient movement of certified seed, the commissioner may accept germination or other test results from an approved laboratory,

through the certification agency of the state of origin of the seed.

- b. If more than one sample of seed from the same lot is tested for purity without additional conditioning, an average shall be taken of

all purity tests conducted. Results from the most recent germination or disease test shall be used as the final result.

~~c. The test results from official samples drawn by state seed department personnel shall supersede all other test results from submitted samples.~~

cd. Seed from certain classes or kinds, or both, may be subject to variety identification analysis at the discretion of the department, with testing fees payable by the grower or labeler.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-11, 4.1-53-46

74-03-01-12. Labeling. All classes of certified seed, when offered for sale, shall have an official certification label affixed to each container clearly identifying the certification agency, the lot number or other identification, variety name and kind and class of seed. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.

1. Records. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours. Records shall include:

- a. Quantity of seed grown and conditioned or purchased for bulk sale.
- b. Quantity of bulk certified seed sold by variety and lot number.
- c. A current inventory of each variety of seed available for sale.
- d. Consult Federal Seed Act Regulations Part 201 for record-keeping requirements for seed in interstate commerce.

2. Samples. It is the initial labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, class, and lot number of each lot of certified seed sold, whether bagged or in bulk, for a period of one year after the final disposition of the seed lot.

3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.

4. Bagged seed.

- a. All bagged seed represented or sold as foundation, registered, or certified must be bagged in new bags and the official Certification tag properly affixed on the bag. Certification tags are void if improperly used or not attached to the bag. Containers or tote

bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.

~~b. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.~~

~~b. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, or certified seed is optional. When two tags are used, the Certification tag, will not carry the seed analysis. An additional seed analysis tag must be used or the analysis printed on the bag.~~

~~c. d. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.~~

~~d. e. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.~~

52. Bulk seed Certification. All rules and standards for production, conditioning, and testing of certified seed shall apply except that seed does not have to be in bags.

In the case of seed sold in bulk, the bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.

- a. Foundation and registered class seed may be sold in bulk only by the applicant producer, or by an approved conditioner ~~only~~.
- b. Certified class seed may be sold in bulk by the applicant producer, an approved conditioner, or an approved bulk retail facility.
- c. Approved bulk retail facilities may be allowed to handle bulk registered seed on a case-by-case basis only when authorized by the state seed department. If authorized by the seed department, the bulk retailer must designate which bins will be used for registered seed.

Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.

Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.

f. Handling bulk certified seed:

(1) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.

(2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.

(3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.

(4) All augers used to convey seed must be reversible.

(5) All bins must be clearly and prominently marked to show kind, variety, class, and lot number.

(6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.

~~g-d.~~ A maximum of two physical transfers are permitted after final certification:

~~A~~ (1) ~~From the applicant labeler to an approved retailer or~~
~~m~~ ~~consumer.~~

~~a~~ (2) ~~From an approved retailer to consumer.~~
~~xi~~

~~m~~ h e. It is the seller's responsibility to:
~~u~~

~~m~~ (1) Handle seed in a manner to prevent mixtures and
~~e~~ contamination.
~~f~~

~~t~~ (2) Supply seed that is representative of the seed tested and
~~w~~ approved for certification.
~~e-~~

~~p~~ (3) Ensure all bins, augers, conveyors, and other equipment
~~h~~ are adequately cleaned before handling certified seed.

~~y~~ (4) Determine that the vehicle receiving bulk certified seed has
~~si~~ been cleaned prior to receiving the seed. If it is not clean,
~~e~~ this is to be noted on the bill of sale or transfer certificate.

~~at~~ (5) Provide to the purchaser a bulk certificate for each load of
~~tr~~ bulk certified seed at the time of delivery.
~~a~~

~~n~~ (6) Ensure that the conditioned lot is not moved from the
~~sf~~ premises of the approved conditioning facility or labeler's
~~e~~ facility until the sample has been tested by the state seed
~~rs~~ department laboratory and shows that the lot is eligible for
~~a~~ certification.
~~r~~

~~e-~~ i f. It is the buyer's responsibility to:
~~p~~

~~e~~ (1) Obtain a bulk certificate from the seller for each load of bulk
~~r~~ certified seed at the time of delivery.
~~g-~~

- (2) Provide a clean vehicle or container in which to load seed.
- (3) Maintain purity of the seed after it has been loaded into the buyer's vehicle.

~~g. The bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.~~

~~h. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.~~

~~i. For all bulk certified seed:~~

~~(7) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.~~

~~(8) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.~~

~~(9) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.~~

~~(10) All augers used to convey seed must be reversible.~~

~~(11) All bins must be clearly and prominently marked to show kind, variety, class, and lot number.~~

~~(12) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.~~

~~(13) Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.~~

~~j. Records. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner~~

~~at any time during customary business hours. Records shall include:~~

~~f. Amount of seed grown and conditioned or purchased for bulk sale.~~

~~g. Amount of bulk certified seed sold by variety and lot number.~~

~~h. A current inventory of each variety of seed available for sale.~~

~~i. It is the initial labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, class, and lot number of each lot of certified seed sold, whether bagged or in bulk, for a period of two years after the final disposition of the seed lot.~~

- ~~3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.~~

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4.1-53-10

Law Implemented: NDCC 4.1-53-11, 4.1-53-10, 4.1-53-12, 4.1-53-13, 4.1-53-39

74-03-01-13. Preissued Certification tags. Certified tags may be issued before conditioning only if prior approval has been granted by the state seed department. Tags will be preissued only under the following conditions:

~~1. Tags will be issued only to approved conditioning facilities.~~

~~12. A representative Final samples from the conditioned seed lot, along with the grower's declaration, if required, sampler's report, and printed analysis tag must be submitted immediately after the each lot is conditioned.~~

~~3. The conditioned lot shall not be moved from the labeler's premises of the approved conditioning facility or labeler's facility until the sample has been tested by the state seed department laboratory and final certification has been completed. If the seed lot does not meet label claims, the lot will be is rejected, the approved facility or and the labeler must ~~assume responsibility for removing~~ certification tags and returning them to the state seed department.~~

~~4. The use of a certification label preprinted on bags will be permitted if prior approval by the state seed department is granted. Analysis information may also be printed on the bag. The approved conditioning~~

facility must submit a preprinted analysis tag from the bags used with the sample for final certification.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-12, 4.1-53-13, 4.1-53-44

74-03-01-14. Carryover seed.

1. Unconditioned carryover. All unconditioned carryover seed eligible for certification must be reported to the state seed department ~~by October first of each year.~~
~~Growers must report all field inspected seed that was not submitted for final certification.~~ Failure to report will disqualify the seed for certification.

2. Certified carryover.

- ~~a. Carryover~~ b. Bagged seed. All carryover seed must be retested for germination before new certified tags will be issued by the seed department. ~~New certification tags will be furnished for carryover bagged seed.~~
- ~~3. b. Carryover~~ b. Bulk seed. All carryover bulk seed must be retested for germination before new bulk certificates will be issued. Carryover bulk seed cannot be recertified in bags unless a new samples is ~~are~~ submitted for purity and germination analysis.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4.1-53-12

Law Implemented: NDCC 4.1-53-42

74-03-01-14.1. Applicant's responsibility. It is the responsibility of the applicant to maintain genetic purity and identity at all stages of certification including seeding, harvesting, and storing. The applicant or grower, approved conditioner, and bulk retailer are responsible for maintaining genetic purity and identity during conditioning and handling. Evidence that any lot of seed has not been protected from contamination that might affect genetic purity or is not properly identified shall be cause for possible rejection of certification.

History: Effective May 1, 1986; amended effective January 2, 2006; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42

74-03-01-15. Misuse of certification privileges. Any seed

grower, conditioner, or retailer found guilty of misusing certification tags, misrepresenting seed, or violating any of the rules governing the growing, conditioning, and marketing of foundation, registered, or certified seed, or guilty of violations of the North Dakota seed laws and rules with respect to any seed which the grower, conditioner, or retailer sells, may at the discretion of the state seed commissioner ~~or the commissioner's agents~~ be denied the right to produce, condition, or market seed for ~~under~~ certification. Violators may be subject to fines by administrative action of the state seed department.

History: Amended effective May 1, 1986; May 1, 1988; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42, 4.1-53-45, 4.1-53-53, 4.1-53-57

74-03-01-16. Approved conditioners. Any seed conditioner may be designated as an "approved conditioner" to condition field-inspected seed for final certification if, after inspection, it is the state seed department inspector's opinion that the facility is properly managed and equipped to maintain genetic purity and varietal identity of each seed lot. A separate inspection and permit is required for each fixed facility or mobile conditioning unit. The managers and the designated samplers in these facilities are under agreement to handle all seed and seed records and to draw representative samples of all seed lots for certification according to the certification rules and regulations.

1. Approved conditioners of small grains are required to have the following operational equipment capable of: (1) length grading - either a disc separator or indent cylinder or combination machine which removes long and short fractions and (2) width grading - either an air screen machine or precision graders with aspiration in line.

- ~~2. Permission to operate as an approved conditioner is granted on an annual basis. All approved conditioners must condition and complete final certification on at least one lot of certified seed every two years before renewal of a permit will be granted. A fee will be charged for each reinspection. An approved conditioner is required to have a separate inspection and permit for each fixed facility or mobile conditioning unit.~~

- ~~23. The commissioner may approve specialized equipment and facilities utilized for the purpose or repackaging, treating, or inoculating certified seed.~~

History: Amended effective May 1, 1986; December 18, 1989; September 1, 2002; July 1, 2010.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-42, 4.1-53-46

74-03-01-17. Interagency certification.

Interagency certification is a procedure established to maintain certification eligibility of seed originating in another state.

1. Field inspected in another state and transferred to North Dakota for final certification.

- a. North Dakota labelers may purchase seed that passed field inspection in another state and complete final certification and labeling in North Dakota. A Certificate of Transfer from the state in which the seed originated must be submitted to the seed department to verify eligibility.
- b. The labeler is responsible for completing final certification. If conditioning is necessary, a representative sample must be submitted to the seed department along with a completed sampler's report and a copy of the Certificate of Transfer. The seed shall meet North Dakota seed standards for certification.
- c. Interagency certification labels will be issued by the North Dakota state seed department.

2. Field inspected in North Dakota and transferred to another state for final certification.

- a. A seed producer may transfer seed that passed field inspection in North Dakota to a purchaser in another state with approval from the seed department. The producer must submit a completed Certificate of Transfer to the seed department verifying eligibility of the seed. Once approved, the seed department will forward copies to the purchaser and the official certification agency of the state where the seed is destined.
- b. The purchaser is responsible for completing the requirements for certification with their certification agency.

3. Certified in another state and transferred to North Dakota for relabeling.

- a. Seed that has been previously certified and labeled

by an official certifying agency from another state may be reconditioned, rebagged and relabeled in North Dakota.

- b. When the seed is reconditioned or rebagged, a new sample must be submitted to the seed department for analysis. The North Dakota labeler must submit a certification label from the state of origin as proof of eligibility along with a completed sampler's report.
- c. New interagency certification labels will be issued by the seed department.

Interagency seed lots not meeting North Dakota certification standards may require resampling or retesting to ensure compliance with North Dakota certification standards.

~~1. Upon the request of an officially recognized certification agency of another state, the state seed department will act as agent in making inspections, drawing samples, or labeling of seed to be certified.~~

~~2. For certified seed carrying the Certification tag or label of an official certifying agency, no official request from a recognized agency of another state is required to recondition, relabel, or rebag certified seed under interagency certification. Application for interagency Certification shall be made directly to the state seed department and the following documentary evidence shall be supplied:~~

- ~~a. Variety and kind.~~
- ~~b. Class of certified seed.~~
- ~~c. Number of bags or bulk bushels.~~
- ~~d. Weight of each bag.~~
- ~~e. Complete original label with purity analysis, germination, and other required tests.~~
- ~~f. Name and address of grower or the inspection or lot number traceable to the records of the agency making the field inspections.~~

~~3. A lot of seed that passed field inspection, or is completely certified by another officially recognized certification agency, may be sold or moved into North Dakota for further conditioning or completion of certification provided:~~

~~a.~~

~~—Prior arrangements for moving the seed is made with and approved by the cooperating certification agency and the state seed department.~~

~~b. A grower's transfer certificate is led by the original applicant for certification of such seed.~~

~~4. Interagency certification tags shall show the certification agencies involved, the lot number, variety, kind, and class of seed.~~

~~5. Interagency seed lots not meeting North Dakota certification standards may require resampling or retesting to ensure compliance with North Dakota certification standards.~~

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-13, 4.1-53-42

74-03-01-18. Exclusion of warranty. Field seeds certified in accordance with this chapter have been field inspected and laboratory tested as specified in this chapter. The state seed department and inspection services function and serve only in an official regulatory manner and do not relieve the grower or owner of the grower's or owner's responsibility. Neither the producer, the seller, the North Dakota seed commission, the seed commissioner, or the commissioner's employees make any warranty or representation of any kind, express or implied, as the quantity or quality of the crop produced from certified seed, including merchantability, fitness for a particular purpose, absence of disease, or varietal or selection identity. The only representation is that the seed was inspected under the seed certification rules and regulations of the North Dakota state seed department.

Inspections, tests, Certifications, and other acts are not intended to induce reliance on the seed department's inspections, Certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.

History: Effective September 1, 2002; amended effective July 1, 2007.

General Authority: NDCC 4.1-53-11

Law Implemented: NDCC 4.1-53-59