# **01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

 **OFFICE OF THE COMMISSIONER**

**Chapter 2: RULES FOR ADOPTION OF MARKET ORDERS AFFECTING AGRICULTURAL COMMODITIES**

**1. Definitions**

 Unless otherwise provided in these rules, all terms shall have the meanings indicated in the *Agricultural Commodities Marketing Act*, 7 M.R.S.A. §423. In addition, the following terms shall have the following meanings for purposes of these rules and any market order adopted hereunder except as otherwise specified in a particular market order or unless the context otherwise requires.

 A. **Act** means the *Agricultural Commodities Marketing Act*, 7 M.R.S.A. §§ 421-430.

 B. **Agricultural commodity** means an agricultural commodity, as defined in the Act, which is covered by a market order adopted under the Act.

 C. **Commodity area**, for purposes of §425 of the Act, means the entire State of Maine, except as a particular market order may specify one or more counties or areas of the State to which that market order is limited in effect.

 D. **Commercial Pack** means a container of an agricultural commodity, packaged for shipment or sale to a consumer, wholesaler, retailer or other purchaser.

 E. **Initial Referendum** means the referendum ratifying the market order pursuant to the Act.

 F. **Market or Marketing**. means the act or process of selling, purchasing, offering or holding for sale, shipping, storing, packing or branding for sale, advertising or otherwise dealing in an agricultural commodity produced in Maine, regardless of destination.

 G. **Marketing year** means the year beginning with the date of harvest of an agricultural commodity and extending until the date of the harvest of that commodity in the following year. The particular beginning and ending dates of a marketing year may be established by each market order.

 H. **Packing** means packaging or placing in commercial packs.

 I. **Participated in the Referendum**, for purposes of §425 of the Act, means filed a qualifying and properly completed ballot in the initial or any subsequent referendum, including both affirmative and negative ballots.

 J. **Persons affected**, for purposes of §425 of the Act, shall include all non-exempt producers of the agricultural commodity covered by a market order; provided that a particular market order may include within this term others involved in marketing an agricultural commodity.

2. **Exemptions**. A market order shall not apply to any of the following:

 A. Producers or handlers who market agricultural commodities in an amount or of a type which is exempt under an applicable market order.

 B. Agricultural commodities sold at markets which are exempted by an applicable market order.

 C. Others who apply for and receive a written waiver from the Commissioner if provided for under an applicable market order. The Commissioner shall grant such a waiver only upon written application of the person involved demonstrating to the Commissioner's satisfaction that the agricultural commodity at issue will be sold only to small local markets in the area, and that granting the waiver will not adversely affect the markets or best interests of the industry involved. The waiver shall be for such time period and on such conditions as the Commissioner may specify.

**3. Referendum Procedures**

 A. **Adoption by the Commissioner**. After public hearing and the close of time for submission of written comments on any proposed market order, the Commissioner may, upon finding that the market order will effectuate the legislative policy of the Act, adopt such order with such amendments as are deemed appropriate.

 B. **Distribution of Ballots**. Upon adoption of a market order, referendum ballots shall be distributed by the Commissioner to all persons affected by the market order, as specified therein. The Commissioner shall use due diligence to determine such names but shall not be responsible for failure to send ballots to those whose names are not known to the Commissioner, and the effectiveness of the market order shall not be affected thereby.

 C. **Return of Ballot**. Persons receiving ballots shall return the same within the time specified thereon. On the ballot, the person shall indicate his/her/its name, address, the volume of agricultural commodity, in terms as specified in the market order or on the ballot, which was marketed during the preceding marketing year, and an affirmative or negative vote on the proposed market order. Anyone voting on behalf of a corporation or business association shall indicate the authority to do so. All ballots shall be signed and certified as to their truth.

 D. **Validity of Ballots**. The referendum ballots shall be considered by the Commissioner if they are received within the specified period. The Commissioner shall not consider a referendum ballot which is determined not to be properly completed and signed.

 E. **Criteria for Passage**. The referendum shall be deemed to have passed if the Commissioner determines that 66 2/3% or more of those participating in the referendum have voted in favor of the market order and that the affirmative vote represents at least 51% of the quantity of the agricultural commodity subject to the market order that was marketed in the preceding marketing year by those participating, as reflected by the ballots submitted; or, in the alternative, if the Commissioner determines that 51% or more of those who participated in the referendum have voted in favor of the market order and that the affirmative vote represents at least 66 2/3% of the quantity of the agricultural commodity subject to the market order that was marketed during the preceding marketing year by those participating, as reflected by the ballots submitted.

 F. **Certification**. If the market order is ratified, the Commissioner shall certify the results of the referendum to the Attorney General and shall file the market order with the Secretary of State.

**4. Marketing Committee**

 A. **Membership**. The number of members of the Marketing Committee, together with the interests which they represent, shall be established in accordance with the market order. One member shall be the commissioner or his designee, who shall be an ex-officio, non-voting member of the Committee.

 B. **Initial Appointments**. Unless otherwise specified in a market order, the members of the initial Marketing Committee, other than the ex-officio member, shall be selected and appointed by the Commissioner from nominations made through the following procedure:

 \*1. As soon as possible following the adoption of the market order, the Commissioner shall cause to be held a meeting of persons affected thereby, including persons otherwise eligible to serve on the committee, at which time those in attendance shall nominate as many persons from the industry as they wish.

 \*2. In making initial appointments to the Committee, the Commissioner shall consider those nominated and shall select a group which he considers to be equitably representative of those affected, subject to section 4A hereof. In order to achieve this end, he may consider and appoint persons who have not been nominated.

 \*3. Initial appointments made by the Commissioner shall be for a term of not more than one year, or until replaced by elected members.

 C. **Election Procedures**. Unless otherwise specified in a market order, the following election procedures shall be employed in electing members of the Marketing Committee to replace those initially appointed by the Commissioner:

 \*1. During the marketing year following adoption of the market order, an annual meeting of persons affected by the market order, and others as specified in the order, shall be held for the purpose of electing members of the Marketing Committee for terms beginning the year following the initial appointments.

 \*2. Election of the Committee members shall be conducted by written ballot and be subject to the approval of the Commissioner.

 D. **Term of Office**. Unless otherwise specified in the market order members of the Marketing Committee shall serve for the following periods:

 \*1. Elected members shall serve three year terms; except that, of those initially elected, one third shall serve a one year term, one third shall serve a two year term, and one third shall serve a three year term.

 \*2. In all cases, members of the Committee shall serve upon qualification by being sworn to office by a Justice of the Peace and by filing a written acceptance with the Secretary of State following being notified of selection.

 \*3. Elected members shall serve not more than two consecutive terms.

 \*4. Notwithstanding the terms of office provided for herein, members shall continue to serve until a successor has been elected and qualified.

 E. **Vacancies**. In the event of the failure by an initially appointed or subsequently elected member to qualify or in the event of the death, removal, resignation or disqualification of any member, a successor for the unexpired term shall be appointed by the Commissioner in such manner as he deems appropriate with the advice of the existing members of the Committee.

 F. **Duties**. The Marketing Committee shall advise and assist the Commissioner in all matters pertaining to the operation of the market order. Such duties may include any or all of the following:

 \*1. The recommendation to the Commissioner of rules and regulations relating to the market order;

 \*2. The recommendation to the Commissioner of such amendments to the market order as seem advisable;

 \*3. The preparation and submission to the Commissioner of the estimated budget required for the proper operation of the market order;

 \*4. The recommendation to the Commissioner of methods for assessing fees and for collecting the necessary funds;

 \*5. The assistance to the Commissioner in the collection and assembling of information and data necessary to the proper administration of the market order;

 \*6. The performance of such other duties in connection with the market order as the Commissioner considers appropriate.

 G. **Meetings**. Meetings of the Committee shall be held periodically, no less often than annually, at the call of the chairman elected by the Committee, any three voting members of the Committee or the Commissioner. A majority of voting members shall form a quorum for purposes of the Committee's taking formal action.

 H. **Officers**. The Committee shall elect officers to include chairman, vice chairman and secretary, and shall keep minutes of all meetings and records of its activities.

5. **Purposes of the Market Order**. The market order may specify one or more of the following functions as its purposes:

 A. **Promotion**. Provide for advertising, promotion, and publicity programs that will maintain or enhance present markets or create new markets for the agricultural commodity involved in the market order. However, no such advertising, promotion or publicity program shall be conducted with reference to any particular private brand or trade name and no such program shall disparage the quality, value, sale or use of any other agricultural commodity.

 B. **Marketing and Product Research**. Provide for marketing and/or product research believed to be beneficial to the industry.

 C. **Information Services**. Provide for information services designed to keep the industry informed of such factors as crops, packs, storage facilities, marketing and product research, promotion, advertising and publicity programs, and similar information useful to the industry.

 D. **Standards**. Provide for appropriate standards of quality, grade, condition, size, storage, shipment, maturity or commercial pack for the agricultural commodity subject to the market order, or for other handling procedures of such commodity. The Marketing Committee shall assist the Commissioner in developing such standards and in providing for appropriate inspection, including mandatory inspection if specified in the market order, and enforcement necessary to the purposes of the order.

 E. **Other**. Such other purposes which are consistent with the Act.

6. **Budget and Assessment**. All commodity producers, handlers and/or other persons affected by the market order shall be subject to any assessment levied in accordance with the market order, all in accordance with this section and any pertinent provisions of the order.

 A. **Budget**. The Marketing Committee shall estimate a budget necessary for the administration and enforcement of the order and for carrying out the program created thereunder for each marketing year. Based upon such recommendations of the Committee and such other factors as he deems appropriate, the Commissioner shall determine the budget for the marketing year.

 B. **Assessment**. Consistent with the budget established pursuant to subsection A, if assessments are provided for under the market order, the Commissioner, with the advice of the Marketing Committee, shall fix rates of assessment to provide adequate funds to defray expenditures in the budget. The assessment rate shall not exceed that which is established under the market order and, in any case, shall not exceed the maximum statutory rate.

7. **Reporting**. If provided by the market order, persons affected by the market order shall report on a periodic basis information regarding production, sales and other relevant data. With advice from the Marketing committee, the Commissioner shall determine the types of information to be provided.

**8. Collection**

 A. **Liability**. Subject to the terms of the market order, each producer, handier or other person affected by the order shall be responsible for proper accounting and payment of the proper assessment on the agricultural commodity which is marketed for or on behalf of that producer, handler, or other person.

 B. **Payment Schedule**. Persons required to pay assessments shall make remittance and accounting of the proper assessment to the Commissioner or his designated fiscal agent on dates as specified by the market order. Payment shall be made at that time or times for the assessment levied on all of the agricultural commodity marketed by or on behalf of that person during the preceding marketing period.

 C. **Late Charge**. Persons who do not timely remit and account for assessments in accordance with these rules and the order shall pay an additional assessment of 10% of the amount owed plus interest thereon computed at the rate of 12% per annum together with any civil penalty imposed under the law; provided that the Commissioner may waive these additional charges in cases involving good cause.

 D. **Payment Arrangements**. For any producer for whom a broker or other agent markets the commodity, the broker or agent shall, at the producer's option, deduct from moneys owed to the producer the proper assessment on the commodity marketed and shall pay the same to the Commissioner; provided that a broker or agent's failure to do so shall not release the producer from his responsibility for the assessment.

**9. Termination**

 A. **By the Commissioner**. The Commissioner may terminate a market order in the manner provided in §429 of the Act whenever he determines that the provisions of the market order do not effectuate legislative policy.

 B. **By Petition**. The commissioner shall terminate the market order if he has received a properly completed Petition for Termination and has determined that termination is favored by at least 51% of the persons affected by the market order as specified therein, who marketed at least 51% of the quantity of the agricultural commodity subject to the order in the immediately preceding marketing year. Petitions and termination procedures shall be governed by the following provisions:

 \*1. A petition for termination shall provide that its signatories favor termination of the existing market order. Each person signing shall certify that he was a person affected by the order, as specified therein, during the immediately preceding marketing year and shall certify the quantity of the agricultural commodity marketed by him.

 \*2. A petition for termination shall be considered properly completed only if it contains a sufficient number of signatures to represent at least 25% of the persons affected by the market order who marketed at least 25% of the quantity of the agricultural commodity subject to the order in the immediately preceding marketing year.

 \*3. Upon receipt of a petition for termination, the Commissioner shall distribute and tabulate termination ballots in the same manner as referendum ballots pursuant to section 3 herein.

 C. **Amendments to these Rules or to the Market Order**. Except as otherwise provided therein, amendments to the terms set forth in the market order itself shall require a new referendum. Amendments to these rules may be promulgated by the Commissioner by rulemaking under the *Administrative Procedure Act*, but without referendum. Any inconsistency between these rules and any market order shall be resolved in favor of the latter with respect to the subject matter of that order.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 421-430.

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