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

 **OFFICE OF THE COMMISSIONER**

**Chapter 25: RULES FOR ADOPTION OF FRESH BLUEBERRY MARKET ORDERS**

**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 unless the context otherwise requires.

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

 B. **Blueberries** means all so-called wild, low-bush blueberries produced in the State of Maine for purposes of sale on the fresh market.

 C. **Blueberry Marketing Committee** means the Committee established pursuant to Section 3 herein.

 D. **Blueberry handler** means any person engaged in packing blueberries, or any cooperative which is marketing blueberries packed by its producer-members.

 E. **Commodity area**, for purposes of §425 of the Act, shall mean the entire State of Maine.

 F. **Consumer pack** means a container of blueberries which is destined for sale to consumers and which is not greater than a liter in capacity.

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

 H. **Marketed within the State**, for purposes of §429 of the Act, means any blueberries marketed or destined for fresh market use, regardless of destination, by blueberry handlers.

 I. **Marketing** means the act or process of selling, offering or holding for sale, shipping, packing or branding for sale, advertising or otherwise dealing in blueberries.

 J. **Marketing year** means the calendar year.

 K. **Packing** means packaging or placing in consumer packs destined for market.

 L. **Participated in the Referendum**, for purposes of establishing compliance with §425 of the Act, means filed a qualifying and properly completed ballot in the initial referendum, including both affirmative and negative ballots.

 M. **Persons to be affected**, for purposes of § 425 of the Act, shall include all blueberry handlers.

 N. **Pint(s) or equivalent** means an amount of blueberries, whether or not packed in pint containers, which is quantified in terms of the number of pints therein.

 O. **Preceding marketing season**, for purposes of §425 of the Act and the terms of these regulations means the preceding calendar year.

**2. Exemptions**

 Neither these rules nor the Fresh Blueberry Market Order shall apply to any of the following:

 A. Blueberry handlers who market less than 10,000 pints or equivalent of blueberries in the then current calendar year;

 B. Blueberries sold at farmstands; or

 C. Blueberry handlers who apply for and receive written waiver from the Commissioner. The Commissioner shall grant such a waiver only upon written application of the handler, demonstrating to the Commissioner's satisfaction that the blueberries at issue will be sold only to relatively small local markets in the area, and that granting the waiver will not adversely affect the blueberry industry. 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 he deems appropriate in response to comments received.

 B. **Distribution of Ballots**. Upon his adoption of a market order, referendum ballots shall be distributed by the Commissioner to all blueberry handlers, the names of which the Commissioner shall use due diligence to determine.

 C. **Return of Ballot**. Blueberry handlers shall return the referendum ballot within the time specified thereon. On the ballot, the handler shall indicate its name, address, the volume of blueberries in pints or equivalent marketed in consumer packs during the preceding marketing season and an affirmative or negative vote on the proposed market order. Any person voting on behalf of a handler which is a corporation or business association shall indicate his 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 he determines is not 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 the blueberry handlers 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 blueberries marketed in the preceding marketing season, as shown on the ballots submitted by those participating in the referendum,- or, in the alternative, if the Commissioner determines that 51% or more of the blueberry handlers who participated in the referendum have voted in favor of the market order and that affirmative vote represents at least 66 2/3% of the quantity of blueberries marketed during the preceding marketing season, as shown on the ballots submitted by those participating in the referendum.

 F. **Certification**. The Commissioner shall certify the results of the referendum to the Attorney General and shall file the order with the Secretary of State.

**4. Establishment of the Blueberry Marketing Committee**

 A. **Membership**. There shall be six members of the Blueberry Marketing Committee. These members shall use their best efforts to represent the entire blueberry industry. Two members shall be blueberry producers who are not blueberry handlers. One member shall be the commissioner or his designee, who shall be an *ex-officio*, non-voting member of the Committee.

 B. **Initial Appointments**. The members of the initial Blueberry Marketing Committee, other than the ex-officio member, shall be selected and appointed by the Commissioner from nominations made through the following procedure:

 I. As soon as possible following the adoption of the Blueberry Marketing Order, the Commissioner shall cause to be held a meeting or meetings of blueberry handlers, at which time those in attendance shall nominate as many persons from the industry, including handlers and producers, as they wish.

 II. 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 the affected industry. In order to achieve this end, he may consider persons who are not nominated by blueberry handlers, although not less than three of their nominees shall be appointed.

 The persons initially appointed by the Commissioner to the Blueberry Marketing Committee shall continue in such capacity until replaced by elected members, but not later than July 1, 1986.

 C. **Election Procedures**. The following election procedures shall be employed in electing members of the Blueberry Marketing Committee to replace those initially appointed by the Commissioner:

 I. Beginning in the calendar year 1986, an annual meeting of all blueberry handlers shall be held between January 1 and June 1 for the purpose of electing members of the Blueberry Marketing Committee for the following year.

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

 D. **Term of office**. Members of the Blueberry Marketing Committee shall serve for the following periods:

 I. A person selected for appointment by the Commissioner shall serve until replaced by an elected member as provided herein.

 II. Elected members shall serve three year terms; except that, of those initially elected (in 1986), one member shall serve a one year term, two members shall serve a two year term, and two members shall serve a three year term.

 III. 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 within 30 days of being notified of selection.

 IV. 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 the 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 Blueberry Marketing Committee shall advise and assist the Commissioner in all matters pertaining to the operation of the Blueberry Market Order, subject only to the limitations of § 427 of the Act. Such duties may include any or all of the following:

 I. The recommendation to the Commissioner of rules and regulations relating to the Market Order;

 II. The recommendation to the Commissioner of such amendments to the Market Order as seem advisable;

 III. The preparation and submission to the Commissioner of the estimated budget required for the proper operation of the Market Order;

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

 V. The provision of assistance to the Commissioner and the collection and assembling of information and data necessary to the proper administration of the Order;

 VI. 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. Three members shall form a quorum for purposes of the Committee's taking formal action.

**5. Purposes of the Blueberry Market Order**

 The Blueberry Marketing Committee, with the approval of the Commissioner, may expend funds and carry out the following functions in furtherance of the Blueberry Market order, the Act and the following purposes:

 A. **Promotion**. The Blueberry Marketing Committee, with the approval of the Commissioner, may carry out such advertising, promotion and publicity program as they believe will maintain or enhance present markets or create new markets for blueberries. 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**. The Blueberry Marketing Committee, with the approval of the Commissioner, may carry out such marketing and/or product research as they believe to be beneficial to the blueberry industry.

 C. **Information Services**. The Blueberry Marketing Committee, with the approval of the Commissioner, may establish mechanisms to 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**. The Blueberry Marketing Committee shall assist the Commissioner in the development of appropriate standards of quality, grade, condition, size, maturity or pack for blueberries, or for other handling procedures of such commodities. The Committee shall also assist the Commissioner and his representatives in providing for appropriate inspection necessary to enforcement of such standards.

**6. Budget and Assessment**

 All blueberry handlers shall be subject to the assessment levied under the Blueberry Market order in accordance with this section.

 A. **Budget**. The Blueberry Marketing Committee shall estimate a budget necessary for the administration and enforcement of the order and these regulations and for carrying out the program created thereunder for each calendar year. Based upon such recommendation of the Committee and such other factors as he deems appropriate, the Commissioner shall announce the final budget for the calendar year.

 B. **Assessment**. Consistent with the budget established pursuant to subsection A, the Commissioner 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**

 Reports by blueberry handlers are required to facilitate accurate information services and to provide a basis for budget estimation and assessment. Not later than October 1 of each calendar year, each blueberry handler shall file with the Blueberry Marketing Committee, on forms prescribed by that Committee, a declaration of the volume in pounds of blueberries packed and sold in such calendar year by such handler for fresh market purposes.

**8. Collection**

 A. **Liability of Handler**. Each blueberry handler shall be responsible for proper accounting and payment of the proper assessment for the blueberries which he markets in consumer packs.

 B. **Payment Schedule**. Blueberry handlers shall make remittance and accounting of the proper assessment to the Commissioner or his designated fiscal agent not later than October I of each calendar year. Payment shall be made at that time for the assessment levied on all blueberries marketed in consumer packs by blueberry handlers during the marketing year; provided that, for the first year, payment of the assessment and accounting therefor is due only for blueberries marketed in consumer packs between the effective date of this rule and October 1, 1985.

 C. Blueberry handlers who do not timely remit and account for assessments in accordance with these rules 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 of excusable neglect.

**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. The Commissioner shall terminate the market Order on or before July 1 if he has received, prior to April 15 of that year, a properly completed Petition for Termination and has determined, prior to June 15 of that year, that termination is favored by at least 50% of the blueberry handlers who produced at least 51% of the volume represented by all blueberry handlers in the immediately preceding calendar year. Petitions and termination procedures shall be governed by the following provisions:

 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 blueberry handler engaged in the packing and marketing of blueberries &ring the preceding marketing year and shall certify the volume in pounds of blueberries marketed by him.

 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 blueberry handlers who marketed at least 25% of the blueberries marketed by all blueberry handlers.

 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 (Chapter 26) shall require a new referendum; provided that amendments to these rules (Chapter 25) may be promulgated by the Commissioner by rulemaking under the Administrative Procedure Act, and with the recommendation or consent of the Blueberry Marketing Committee, but without further referendum.

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

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