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## Requirements for Grain Dealers:

*Maine*



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**Requirements for Grain Dealers: Maine**

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- 4) Indemnity Fund:
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*Current with legislation through the 2019 First Regular Session and Chapter 531 of the First Special Session of the 129th Legislature.*

**§ 401. Methods and costs**

The commissioner is authorized and directed, through such agents as he may appoint for the purpose and in cooperation with such agricultural corporations or associations as he may deem proper, to investigate the existing methods and costs of marketing farm products and purchasing farm supplies and to secure improvement therein.

**§ 401-A. Legislative findings**

The Legislature finds that the marketing of agricultural commodities produced in the State is crucial to the maintenance and expansion of the agricultural industry, to the preservation of rural life in the State and to the economic well-being of all of the State's people. There exists a need to provide the necessary market information to enable Maine farmers to make wise short-term and long-term production decisions; to establish standards for proper storage, packing and grading of agricultural products; and to create adequate enforceable programs for quality assurance as well as for the effective coordination of promotion and advertising efforts. In order to ensure that these responsibilities are fulfilled, the Legislature finds it necessary to provide state assistance to agricultural marketing and promotion.

#### **§ 401-B. Responsibilities of the commissioner**

To further the purposes of this Part, the commissioner shall initiate and implement programs necessary to facilitate the effective, profitable marketing of Maine agricultural products. For the purposes of this subchapter, the terms “agricultural products” and “farm products” include, but are not limited to, products of aquaculture as defined in Title 12, section 6001, subsection 1. These programs include, but are not limited to, the following.

**1. Research.** The commissioner, in conjunction with the Maine Agricultural Experiment Station and the Cooperative Extension Service, shall conduct, assist and foster research to improve the marketing, handling, storage, processing, transportation and distribution of agricultural products in order to develop new and wider markets and reduce distribution costs.

**2. Information to producers.** The commissioner, in conjunction with the Maine Agricultural Experiment Station and the Cooperative Extension Service and other public or private agencies, shall provide producers information regarding current market conditions and such other information as may be needed to maintain quality control and promote quality improvement for Maine agricultural products.

**3. Information to consumers.** The commissioner, in conjunction with the Cooperative Extension Service, shall provide for the dissemination of information to consumers about Maine agricultural products.

**4. Organization.** The commissioner shall aid Maine producers and consumers by assisting cooperative societies of buyers and sellers, encouraging direct marketing and by facilitating the efficient distribution of farm products.

**5. Coordination and assistance.** The commissioner shall consult with, coordinate and assist producer and dealer organizations and other groups interested in the production, processing and packing, grading, promotion and sale of agricultural goods.

**6. Monitoring consumption of Maine-produced food.** By November 1, 2000, the commissioner shall develop a method and baseline research to estimate the percentage of food consumed in Maine that is produced within Maine. The commissioner shall update the methodology and estimate every 2 years and include the latest estimate in the biennial report submitted to the Legislature pursuant to section 2, subsection 5.

#### **§ 402. Advertising of products**

The commissioner may enter into agreements or cooperative arrangements with any person, firm or corporation for the purpose of advertising and increasing the sale and consumption of

Maine farm products or disseminating information concerning Maine farm products. He may receive, administer and disburse any funds or contributions from these persons, firms or corporations, either independently or in conjunction with state funds allocated to the purpose, provided that funds so contributed shall be used only for the purposes set forth. He may employ such agents and assistants, subject to the Civil Service Law,<sup>1</sup> and make such purchases as may be necessary in the proper performance of his duties.

#### **§ 402-A. Agriculture promotion**

**1. Repealed.** Laws 1995, c. 233, § A-2.

**2. Fund.** There is created a nonlapsing Agriculture Promotion Fund. The commissioner is authorized to accept moneys for this fund from any public or private source and to credit to this fund any moneys received from the sale of agricultural promotional materials.

**3. Repealed.** Laws 1995, c. 233, § A-3.

**4. Rule-making authority.** The commissioner may adopt such rules as he considers necessary to achieve the purposes of this chapter including, but not limited to, rules requiring registration of persons wishing to identify products as Maine products under a logo or trademark adopted by the department and requiring verification of the origin of those products.

#### **§ 402-B. Annual General Fund transfer**

On or before July 31st of each fiscal year, the State Controller shall transfer \$500,000 from General Fund undedicated revenue to the Agriculture Promotion Fund established in section 402-A.

#### **§ 403. State of Maine Building at Eastern States Exposition**

**1. State of Maine Building.** The department shall operate and maintain the State of Maine Building, previously erected upon the Eastern States Agricultural and Industrial Exposition, Inc., at West Springfield, Massachusetts, for the purpose of exhibiting, publicizing and advertising Maine's products and resources in agriculture, industry, fisheries, forests, wildlife and recreation. Except as otherwise provided in this section, the department has complete control and supervision of all exhibits held in these buildings.

**2. Advice.** From time to time, the department shall consult regarding operation and maintenance of the building with, and for any major exhibition shall prior to the exhibition develop a plan after a public hearing and obtain advice on the proposed use of building space from, the following persons: The Commissioner of Marine Resources; Commissioner of Inland

Fisheries and Wildlife; Commissioner of Agriculture, Conservation and Forestry; and Commissioner of Economic and Community Development.

**3. Repealed.** Laws 1987, c. 786, § 10.

#### **§ 411. Definitions**

As used in this subchapter, the following terms shall have the following meanings.

**1. Commissioner.** “Commissioner” means the Commissioner of Agriculture, Conservation and Forestry.

**2. Direct-marketing.** “Direct-marketing” means the marketing of agricultural commodities by farmers directly to consumers.

#### **§ 412. Research and preparation of information**

The commissioner shall research and prepare information designed to develop and promote direct-marketing. The commissioner shall consult with the farm community, with the faculty of the College of Natural Sciences, Forestry and Agriculture of the University of Maine and with the various county extension agents in compiling information under this section. The information must include, but not be limited to, the following:

**1. Description and evaluation.** A description and evaluation of the various methods of direct-marketing, such as farmers’ markets, roadside stands and sales to consumer cooperative;

**2. Practical information.** Prepare practical information concerning the establishment and operation of various methods of direct-marketing, including promotion, advertisement, management, food stamp purchases and liability insurance;

**3. Survey.** A survey, by county, of the present demand for agricultural commodities to enable farmers to plan future production in closer accord with marketing demands;

**4. Feasibility study.** A study of the feasibility of direct-marketing to institutions, such as hospitals and schools; and

**5. List of farmers.** A list of the names and addresses of all Maine farmers and of the agricultural commodities which each produces.

#### **§ 413. Distribution**

The commissioner shall develop suitable means to distribute information compiled under section 412 to all Maine farmers. If the commissioner considers the cost of distributing any research or instructional publication prohibitive, he shall, by whatever means appropriate, notify farmers of the availability of the information. Distribution may be accomplished by means currently within the Department of Agriculture, Conservation and Forestry.

#### **§ 414. Assistance**

The commissioner shall assist and advise individual farmers or groups of farmers in their efforts to market more effectively directly to consumers by:

**1. Soliciting participation.** Informing farmers of, and soliciting their participation in, any proposed method of direct-marketing; and

**2. Deleted.** Laws 2013, c. 65, § 2, eff. Oct. 9, 2013.

**3. Referral.** Referring farmers to other appropriate sources of assistance.

#### **§ 415. Farmers' market**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

**A.** "Farmers' market" means a building, structure or place used by 2 or more farmers for the direct sale of farm and food products to consumers, at which all sellers of farm and food products meet the requirements of subsection 2, paragraph B.

**B.** "Farm and food products" means any agricultural, horticultural, forest or other product of the soil or water, including, but not limited to, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, maple products, apple cider, fruit juice, malt liquor, wine, ornamental or vegetable plants, nursery products, fiber or fiber products, firewood and Christmas trees.

**2. Prohibitions.** The following acts are prohibited.

**A.** A person may not use the term “farmers’ market” to describe a market or other sales location that does not meet the terms of the definition set forth in subsection 1.

**B.** A person may not sell farm and food products at a market labeled “farmers’ market” unless at least 75% of the products offered by that person were grown or processed by that person or under that person’s direction. A product not grown or processed by that person or under that person’s direction must have been grown or processed by and purchased directly from another farmer and the name and location of the farm must be identified on the product or on a sign in close proximity to the displayed product.

**3. Penalty.** A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$200 may be adjudged.

**4. Relationship to farmers’ market rules.** This section does not prohibit a market from imposing more stringent requirements on its sellers than those imposed by subsection 2, paragraph B.

**5. Enforcement; prima facie evidence.** The commissioner or an agent of the commissioner may request proof of the origin of a product for the purpose of enforcing this section. Failure to provide written documentation or other reasonable proof upon request as to the origin of the products offered for sale at a farmers’ market is prima facie evidence that a person is in violation of this section.

#### **§ 421. Title**

This subchapter shall be known and may be cited as the “Maine Agricultural Commodities Marketing Act.”

#### **§ 422. Purposes**

The purposes of this subchapter are:

**1. Correlated marketing.** To enable producers of agricultural commodities of this State, with the aid of the State, to more effectively correlate the marketing of their crops with market demands;

**2. Uniform grading.** To provide for uniform grading and proper preparation of agricultural commodities for market;

**3. Development of markets.** To provide methods and means for the development of new and larger markets for agricultural commodities grown within the State;

**4. Orderly marketing.** To establish orderly marketing and pricing of agricultural commodities grown within this State; and

**5. Elimination of economic waste.** To eliminate or reduce economic waste in the marketing of agricultural commodities grown within the State.

#### **§ 423. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Agricultural commodity.** “Agricultural commodity” means any and all agricultural, horticultural and vineyard crops and products when produced or sold in this State, either in their natural state or as processed by the producer, including such products as:

**A.** Poultry or poultry products;

**B.** Bees;

**C.** Maple syrup;

**D.** Livestock, including swine; and

**E.** Honey.

Agricultural commodity does not include potatoes or potato products, timber or timber products.

**2. Commissioner.** “Commissioner” means the Commissioner of Agriculture, Conservation and Forestry or his designee.

**3. Repealed.** Laws 1999, c. 668, § 66.

**4. District.** “District” means geographical division of the production areas in this State as may be established by the commissioner pursuant to this subchapter.

**5. Grade.** “Grade” means one of the officially established grades for an agricultural commodity as defined by the commissioner.

**6. Handler.** “Handler” means any person, except a common carrier, exempt carrier or contract carrier of agricultural commodities, who is engaged in packing, grading, selling, offering for sale or marketing any agricultural commodities, who as owner, agent or otherwise ships or causes to be shipped an agricultural commodity.

**7. Market agreement.** “Market agreement” means an agreement with the commissioner entered into pursuant to this subchapter.

**8. Market order.** “Market order” means an order issued by the commissioner pursuant to this subchapter, prescribing rules governing the marketing, distribution, sale or handling, in any manner of any agricultural commodity during any specified period.

**9. Person.** “Person” means an individual, partnership, corporation, association, legal representative or any organized group or business unit.

**10. Processor.** “Processor” means any person, other than a consumer, who purchases or contracts to purchase an agricultural commodity primarily for manufacture into food or other products by operations which change the physical form which that agricultural commodity possessed when produced.

**11. Producer.** “Producer” means any person engaged within this State in the business of producing, or causing to be produced, for any market, any agricultural commodity.

## **§ 424. Administration**

The commissioner shall administer and enforce this subchapter.

**1. Rules.** The commissioner may, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act, Title 5, chapter 375,<sup>1</sup> adopt such rules as may be necessary to carry out and interpret the provisions and purposes of this subchapter.

**2. Considerations.** In carrying out the purposes of this subchapter the commissioner shall consider any and all facts available to him with respect to the following economic factors:

**A.** The quality of an agricultural commodity available for distribution as well as the quantity of the agricultural commodity which would normally be required by consumers;

**B.** The cost of producing an agricultural commodity, the purchasing power of consumers, and the level of prices of commodities, services and articles which producers commonly buy;

**C.** The level of prices of other commodities which compete with or are utilized as substitutes for an agricultural commodity; and

**D.** Such other factors as the nature of the location, volume and marketing structure of production of the agricultural commodity.

**3. Enforcement.** The commissioner may institute investigations, hold hearings, require reports, subpoena records and persons and take other actions that the commissioner finds necessary to implement this subchapter. The commissioner may institute such action as may appear necessary to enforce compliance with any provision of this subchapter or any rule, market agreement or order committed to the commissioner's administration under this subchapter. In addition to any other remedy under this subchapter or otherwise, the commissioner may apply for relief by injunction to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist and without being compelled to post bond.

## **§ 425. Market orders and agreements**

**1. Market orders.** To carry out the purposes of this subchapter, the commissioner may issue, administer and adopt orders regulating the marketing of any agricultural commodity or designated portion of that commodity. Before issuing a proposed market order or market agreement under this subsection, the commissioner shall, by rule, define the commodity, area and persons proposed to be affected and may, to the extent he considers necessary, establish

by rule, the procedures for adopting and implementing that proposal. Such market orders shall be proposed and adopted after public hearing, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act.<sup>1</sup> All testimony at the hearings shall be received under oath.

**2. Referendum approval.** No market order adopted under this subchapter may take effect unless and until the commissioner determines that the adoption of the order is favored by:

**A.** Not less than  $66\frac{2}{3}\%$  of the persons participating in a referendum in the area affected and having marketed not less than 51% of the total quantity of the commodity which was marketed in the preceding marketing season by all persons that participated in the referendum; or

**B.** Not less than 51% of the persons participating in a referendum in the area affected and having marketed not less than  $66\frac{2}{3}\%$  of the total quantity of the commodity which was marketed in the preceding marketing season by all persons that participated in the referendum.

**3. Market agreements.** To carry out the declared purposes of this subchapter, the commissioner may enter into market agreements with producers, handlers or processors of agricultural commodities. These market agreements shall be binding only upon the signatories. The market agreements shall be proposed and adopted, after public hearing, in a manner consistent with the rulemaking provisions of the Maine Administrative Procedure Act. All testimony at the hearings shall be received under oath. The commissioner may, by rule, establish the minimum number of signatories necessary to effectuate a market agreement.

**4. Coexistence of market orders and market agreements.** The commissioner may, in his discretion, hold concurrent hearings upon proposed market agreements and proposed market orders. The commissioner may issue a market order without executing a market agreement or may execute a market agreement without issuing a market order covering the same commodity. The execution of a market agreement shall in no manner affect the issuance, administration or enforcement of any market order for the same agricultural commodity.

#### **§ 426. Contents of market order or market agreement**

Any market order or market agreement adopted by the commissioner may contain any or all of the following:

**1. Surplus.** Provisions for determining the existence and extent of the surplus of any agricultural commodity, or of any grade, size or quality thereof, and for regulating and disposing of the surplus;

**2. Quantity.** Provisions for limiting the total quantity of any agricultural product, or of any grade or grades, size or sizes, or quality or portions of those agricultural products which may be marketed during any specified period or periods. The total limitations of any commodity so regulated shall not provide for the marketing of less than the quantity which the commissioner finds is reasonably necessary to supply the market demand of consumers for that commodity;

**3. Time periods.** Provisions for regulating the period or periods, during which any agricultural commodity, or any grade or grades, size or sizes or quality or portions or combinations of a commodity, may be marketed;

**4. Standards.** Provisions for establishing uniform standards of quality, grade, condition, size, maturity or pack of any agricultural commodity delivered by producers or other persons to handlers or processors or others engaged in the handling of agricultural commodities;

**5. Prohibition on sale; mandatory inspection.** Provisions prohibiting a producer of an agricultural commodity to which a market order or market agreement applies from selling, offering for sale or delivering a commodity not meeting and complying with standards established pursuant to subsection 4. A provision for mandatory inspection under a market order must be indicated in the market order and specifically included in the referendum proposal under section 425, subsection 2;

**6. Other sales.** Provisions for requiring that no handler or processor of any agricultural commodity for which standards are established pursuant to subsection 4 may, except as otherwise provided in the market agreement or order, have in his possession, sell, offer for sale, process, distribute or otherwise handle any such commodity produced within or without the State, not meeting or complying with the established standards;

**7. Other provisions.** Such other provisions as may be necessary to carry out the declared purposes of this subchapter.

#### **§ 432. Market information**

The commissioner shall collect relevant information from the market place, both directly and from appropriate secondary sources. This information may include product prices, both wholesale and retail, taking into account quantity, packaging, quality, specific market and time of year, purchasing habits of wholesale and retail buyers and preferences of consumers in terms of quantity, packaging, quality and season and availability of supplies of both directly competitive products and substitute products. In addition to these factors needed to make short-

term marketing decisions, information may also be collected relevant to long-term marketing decisions, such as production costs, profitability and market structure.

#### **§ 433. Preparation and distribution of information**

The commissioner shall analyze and interpret relevant market information and shall develop a suitable means to distribute that information to Maine agricultural producers in cooperation with other state and federal agencies of like purpose, including the Cooperative Extension Service.

#### **§ 434. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Agricultural enterprise.** “Agricultural enterprise” means a person or business located in this State and engaged in the commercial growing or harvesting of plants; raising of animals; growing or obtaining plant or animal by-products; aquaculture, as defined in Title 12, section 6001, subsection 1; or further processing, storing, packaging or marketing a raw product derived from plants, animals, plant or animal by-products or aquaculture, as defined in Title 12, section 6001, subsection 1, with the intent that the product be sold or otherwise disposed of to generate income. “Agricultural enterprise” includes a business or activity that attracts visitors to a farm for the purpose of supplementing income from the primary crop or livestock operation. “Agricultural enterprise” does not include a business engaged primarily in the growing, harvesting or further processing of forest species of trees for the purpose of producing pulp or other materials used in the paper manufacturing or wood manufacturing process.

**2. Repealed.** Laws 2007, c. 660, § 9, eff. April 18, 2008.

#### **§ 435. Agricultural marketing loans**

**1. Administration.** The commissioner shall administer the Agricultural Marketing Loan Fund established under Title 10, section 1023-J.

**2. Conditions.** Agricultural marketing loans are subject to the following conditions.

**A.** An agricultural marketing loan for any project under this subchapter, the total cost of which exceeds \$100,000, may not exceed 75% of the project cost. A loan from the fund may not be provided for such a project unless the applicant demonstrates a commitment of private funds of at least 5% of the total cost of the project; except that, in order to encourage the undertaking of cooperative projects by 2 or more agricultural enterprises, an agricultural marketing loan may

not be provided unless the cooperating agricultural enterprises as a group demonstrate a commitment of private funds of at least 5% of the total cost of the project.

**B.** An agricultural marketing loan for any project under this subchapter, the total cost of which is \$100,000 or less, may not exceed 90% of the total cost of the project.

**C.** An agricultural marketing loan must be at the interest rate established pursuant to subsection 3 or 3-A.

**D.** A purchaser of a modern storage facility that was previously financed with a state loan from the Potato Marketing Improvement Fund may receive a loan from the Agricultural Marketing Loan Fund, but not for the same project financed by the Potato Marketing Improvement Fund. Mortgages obtained from the Agricultural Marketing Loan Fund may be assumed by subsequent purchasers of the property. The department shall adopt rules concerning the purchase of existing buildings. These rules must include provisions that ensure that the purchases are consistent with the purposes of this subchapter.

**E.** An agricultural marketing loan is subject to other terms and conditions prescribed, by rule, by the commissioner, including, but not limited to, a mechanism for reserving funds for, or giving priority to, projects in agricultural enterprises or areas of the State determined by the commissioner to require special assistance. When considering loans for aquacultural enterprises, the commissioner shall consult with the Department of Marine Resources.

**F. Repealed.** Pursuant to its terms, eff. Dec. 31, 2001.

**G. Repealed.** Laws 2007, c. 660, § 11, eff. April 18, 2008.

**H. Repealed.** Laws 2001, c. 769, § 5.

**I. Repealed.** Pursuant to its terms, eff. Dec. 31, 2004.

**3. Interest rate.** Except as provided in subsection 3-A, the interest rate for loans is 5% per year.

**3-A. Loans for participants in the Maine Farms for the Future Program.** The interest rate for loans for capital improvements identified in a business plan developed under section 318 for a farm determined eligible under section 319 is 2% per year.

**4. Administrative costs.** The commissioner may establish, by rule, a fee for administrative costs on loans in excess of \$100,000. This fee may not exceed 1% of the loan. The commissioner may contract with the Finance Authority of Maine to assist in the administration of this subchapter.

**5. Report.** The commissioner shall submit an annual report on or before March 1st of each year to the joint standing committee of the Legislature having jurisdiction over agricultural matters. The report must include a summary of loans made under this section during the previous fiscal year and loans outstanding categorized by the types of agricultural enterprises receiving the loans. The report must address the effectiveness of the program. Effectiveness measures may include, but are not limited to, evaluation of the number of companies retained, expanded or created; the increase in the number of jobs created or retained; any increased business revenues and new capital raised; improved wages paid to employees; and any new capital investment and increase in profitability.

#### **§ 436. Grants for technical assistance and research**

The commissioner may use all or a portion of the accrued interest in the cash balance of the Agricultural Marketing Loan Fund and all or a portion of loan repayments for grants for technical assistance and the agricultural development grant program in chapter 10. The commissioner may expend grant dollars designated to an applicant in one fiscal year during any of the 3 fiscal years following designation.

#### **§ 437. Routine technical rules**

Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

#### **§ 441. Rules**

The commissioner may prescribe, in a manner consistent with the Maine Administrative Procedure Act,<sup>1</sup> rules for carrying out this subchapter, including the fixing of fees to be charged any individual, firm or organization requesting an inspection pursuant to section 446 or receiving an inspection pursuant to section 951. These fees must, as nearly as possible, cover the costs of the inspection services for the commodity inspected. All fees collected must be paid by the commissioner to the Treasurer of State and are appropriated for the purposes of this subchapter. Any unexpended balance from the funds thus appropriated may not lapse, but must be carried forward to the same fund for the next fiscal year.

#### **§ 441-A. Legislative purpose**

The Legislature finds that Maine agricultural producers have, in many cases, tended to focus on production, with less attention to marketing, including the adoption of and adherence to quality standards. Consistent high quality of Maine agricultural products is essential to the maintenance and expansion of Maine markets and to the success of agriculture in the State. In order to assure that those quality standards are properly adopted, enforced and promoted, the Legislature finds it is necessary to provide state assistance in these aspects of marketing.

#### **§ 441-B. Federal-State Inspection Fund**

There is established the Federal-State Inspection Fund, referred to in this section as the "fund." The fund receives all revenues collected by the Federal-State Inspection Service from conducting inspections and inspection-related work including but not limited to inspection fees, fees from state and federal agencies and grants or other funds received by the Federal-State Inspection Service in support of operating a statewide inspection program. All money collected must be deposited in the fund to be used for the management and operation of the Federal-State Inspection Service. Unexpended balances in the fund do not lapse and must be carried forward to be used for the purposes specified in this section.

Any interest earned on the revenue deposited in the fund only accrues to the fund.

#### **§ 442. Hearings**

The commissioner may establish and promulgate official grades and standards for farm products, excepting dairy products produced within the State for the purposes of sale, and may from time to time amend or modify such grades and standards. Before establishing, amending or modifying any such grades or standards, the said commissioner shall hold public hearings in such places within the State as shall be most convenient to producers of the commodity under consideration. Notice of such hearings shall be provided in the manner specified in the Maine Administrative Procedure Act<sup>1</sup> and shall further be provided in a newspaper or newspapers of general circulation within the county where the hearing is to be held.

#### **§ 443. Brands, labels and trademarks; revocation**

The commissioner may determine or design brands, labels or trademarks for identifying farm products, sardines and, subject to the additional conditions of this section, other natural resource products and commodities, packed in accordance with such official grades and standards established as provided by law and may furnish information to packers and shippers as to where those labels and trademarks may be obtained. A written application to the commissioner requesting permission to use brands, labels or trademarks, and a written acceptance by the commissioner or duly authorized assistants, shall be a condition precedent to the use of those brands, labels or trademarks. The right to use those brands, labels or trademarks may be suspended or revoked in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375,<sup>1</sup> whenever it appears on investigation that they have been

used to identify farm products, sardines or other natural resource products and commodities not in fact conforming to the grade indicated.

**1. Nonagricultural products.** Before any natural resource product or commodity that is not a farm product is eligible to use a brand, label or trademark designed by the Commissioner of Agriculture, Conservation and Forestry, a commissioner of any other department with regulatory authority, marketing or promotion responsibility or other authority for that product or commodity shall determine whether the use of the brand, label or trademark is in the best interests of packers and shippers of the product or commodity and shall request that the Commissioner of Agriculture, Conservation and Forestry permit the use of the brand, label or trademark in accordance with the provisions of this subchapter. Grades and standards may be established by reference to marketing orders or to federal or state laws and regulations. Grades and standards may also be established through joint rulemaking by the appropriate department and the Department of Agriculture, Conservation and Forestry.

**2. Marine resource products.** All marine resource products, as defined in Title 12, section 6001, except sardines, are excluded from the provisions of this subchapter except when the Commissioner of Marine Resources finds that a resource and its related industry would benefit by participation.

#### **§ 443-A. Native produce**

**1. Prohibition.** Farm produce sold or offered for sale within the State may not be labeled or advertised as “native,” “native-grown,” “locally grown” or by a similar designation, unless that product was actually grown in the State.

**2. Penalty.** Violation of subsection 1 is a civil violation punishable by a fine of not less than \$200 nor more than \$300.

**3. Repealed.** Laws 2005, c. 512, § 9.

**4. Enforcement.** This section is enforced by the Department of Agriculture, Conservation and Forestry.

**5. Enforcement; prima facie evidence.** The commissioner or an agent of the commissioner may request proof of the origin of farm produce for the purpose of enforcing this section. Failure to provide written documentation or other reasonable proof upon request as to the origin of the produce offered for sale is prima facie evidence that a person is in violation of this section.

## **§ 443-B. Certification trademark for Maine products**

**1. Registration of trademark.** The Commissioner of Agriculture, Food and Rural Resources shall, before December 31, 1988, apply to the United States Patent and Trademark Office for registration for a certification trademark or trademarks consisting of a seal in the form of the outline of the State, the word "Maine" and any other appropriate identifying words. Any certification trademark obtained may only be used on farm products or other natural resource products and commodities, as provided in section 443, produced within the State. Any certification trademark obtained may be registered with the State in accordance with Title 10, chapter 301-A.<sup>1</sup>

**2. Origin of product.** For purposes of this section, the commissioner shall define, by rule, for each commodity group, the meaning of the term "produced within the State" and the minimum percent of the content of any package that must have actually been produced within the State to meet the requirements for use of any mark under this section.

The commissioner shall grant a waiver to the minimum content criteria when emergency market conditions arise which are abnormal to the historic flow of a specific commodity, with the degree of the waiver to be determined by the commissioner. The commissioner shall determine what constitutes an emergency condition.

**3. Quality grades and standards.** Any product bearing a certification trademark obtained under this section shall meet the official grades and standards established in accordance with section 443 for that commodity.

**4. Promotion.** The commissioner shall contract for services to promote the use of the proposed state trademark.

## **§ 444. Publicity**

Upon the establishment of the grades or standards, brands, labels or trademarks, the commissioner shall give due publicity through the newspapers of the State, setting forth the grade or grades so established and the date on which such establishment is to become effective, and distribute information explaining the same and their use.

## **§ 445. Permits**

**1. Violation.** After notice of the establishment of grades or standards and the determination of brands, labels or trademarks, a person may not use a brand, label or trademark to identify farm products and sardines as being of a grade established before a permit is granted or after the revocation of the right to use such brand, label or trademark by the commissioner.

**2. Penalty.** The following penalties apply to violations of this section.

**A.** A person who violates subsection 1 commits a civil violation for which a fine of not more than \$50 may be adjudged.

**B.** A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not more than \$200 may be adjudged.

#### **§ 446. Inspections**

The commissioner or the commissioner's duly authorized agents may inspect any fruits, vegetables, poultry, eggs, farm products, livestock or other commodities that are marked, branded or labeled in accordance with official grades or standards established and adopted by the commissioner for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of that inspection and executed by the inspector must state the date and place of inspection, the grade, condition and approximate quality of the fruits, vegetables, poultry, eggs, farm products, livestock or other commodities inspected and such other pertinent facts as the commissioner may require. Such a certificate relative to the condition or quality of the farm products is prima facie evidence in all courts of the State of the facts required to be stated in the certificate.

#### **§ 447. Access for inspection purposes**

The commissioner, in person or by deputy, shall have free access at all reasonable hours to any building or other place wherein it is reasonably believed that farm products are marked, branded or labeled in accordance with official grades established and promulgated by the said commissioner or are being marketed or held for commercial purposes. He shall have power in person or by deputy to open any bags, crates or other containers containing said farm products and examine the contents thereof and may, upon tendering the market price, take samples therefrom. Whoever obstructs or hinders the commissioner or any of his duly qualified assistants in the performance of his duties under this subchapter commits a civil violation for which a forfeiture of not less than \$10 nor more than \$100 shall be adjudged.

#### **§ 448. Quality assurance**

The commissioner shall, in conjunction with the Maine Agricultural Experiment Station, the Cooperative Extension Service and other public or private agencies, maintain a program of quality assurance by the diligent enforcement of all provisions of this Part which pertain to grading, labeling, licensing and advertising of agricultural products, and by providing direct and indirect assistance to the industry in the adoption of those new technologies and methods of production which will improve the quality of Maine agricultural products.

### **§ 451. Purpose**

The Legislature finds that agricultural production has a substantial and unique effect on the economy and way of life of the entire State. Large numbers of the people in the State are directly or indirectly dependent on agricultural production and related industries. It is of vital importance that producers be assured of payment for their production in order to assure commensurate stability in the productive capacity and economy. To a great extent the well-being of the industry is dependent upon those persons engaged in the buying and marketing of the agricultural commodities grown by others and the manner in which their services are performed. The entire manner of marketing of our agricultural production requires special consideration.

The Legislature intends through this legislation to exercise the police power of the State in order to protect and promote the general welfare of the agricultural producers and the people of the State and maintain and encourage fair and equitable practices in the purchase, handling and sale of agricultural commodities, which will, in turn, have the beneficial effect of improving the economy and well-being of the entire State.

### **§ 452. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Agent.** “Agent” means any person who sells or distributes licensed commodities in commerce for or on behalf of producers or others and whose operations may include planting, cultivating, harvesting, grading, packing and furnishing containers, supplies or other services.

**2. Applicant.** “Applicant” means any person applying for a license under this subchapter.

**3. Broker.** “Broker” means any person engaged in the business of negotiating sales of licensed commodities in commerce for or on behalf of the seller or the purchaser, respectively. The term “broker” applies to nonresidents of this State who transact business with respect to licensed commodities produced or processed within this State, whether the broker is licensed in another state or not.

**4. Commissioner.** “Commissioner” means the Commissioner of Agriculture, Conservation and Forestry.

**5. Consumer.** “Consumer” means any person who purchases a licensed commodity for consumption or use other than sale, storage or retention for the purpose of sale.

**6. Dealer.** “Dealer” means any person other than a consumer, engaged in the business of buying or selling licensed commodities in commerce, except as provided in section 458. The term “dealer” applies to nonresidents of this State who transact business of buying and selling licensed commodities produced or processed in this State, whether the dealer is licensed in another state or not.

**7. Licensed commodities.** “Licensed commodities” means dry beans and other vegetables listed in rules established pursuant to section 453, but does not mean potatoes, which are governed by chapter 103, subchapter 10, article 3.<sup>1</sup>

**8. Licensee.** “Licensee” means any person who holds a commodities license issued under this subchapter.

**9. Processor.** “Processor” means any person other than a consumer who purchases or contracts to purchase licensed commodities primarily for manufacture into articles of food by operations which change the physical form the commodities possessed when harvested. The effects of the following operations shall be considered as so changing the physical form possessed when harvested: Chopping, slicing, cutting, dicing, mashing, removal of skin or peel, frying or otherwise cooking, freezing, canning, dehydrating or comparable methods of preparation for marketing in what is generally considered to be a processed form.

**10. Retailer.** “Retailer” means a person engaged in the business of buying licensed commodities in wholesale quantities and reselling the licensed commodities bought, primarily to consumers.

**11. Sale.** “Sale” includes every contract of purchase or sale, contract to purchase or sell, purchase, sale and disposition of licensed commodities for value.

**12. Seller.** “Seller” means any person who sells or contracts to sell licensed commodities in the regular course of business.

### **§ 453. Rules and regulations**

The commissioner may, in a manner consistent with Title 5, chapter 375,<sup>1</sup> adopt rules for carrying out this subchapter and establishing a list of commodities for which a person must have a license under section 454 to act as an agent, broker, dealer or processor.

### **§ 454. Licensing required**

A person may not act as agent, broker, dealer or processor unless duly licensed as provided in this subchapter. Before acting as a dealer, processor, broker or agent, a person shall file an application with the commissioner for a license to transact the business of a dealer, processor, broker or agent and the application must be accompanied by the license fee provided in this subchapter.

A person may not buy, solicit or negotiate the sale of any licensed commodity in this State as a representative of any agent, broker, dealer or processor unless that person has been authorized as a representative by a licensee in writing, and a copy of the authorization is filed with the commissioner, except when the person conducts business in the office of the licensee. A licensee shall notify the commissioner in writing immediately upon terminating the authorization for a person to act as that licensee's representative.

### **§ 455. Application for license**

**1. Application.** The applicant shall file an application on forms as prescribed and furnished by the commissioner. These forms shall include the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative or officer, director, partner or member thereof, all names and positions are to be stated on the application. If the applicant is a foreign corporation, it shall certify that it is registered with the Secretary of State under Title 13-A, chapter 12<sup>1</sup> and further state the principal business address of the applicant in the State or elsewhere, the address of all places of business in the State and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State. All questions required to be answered in application for licenses shall be sworn to.

**2. Notice to interested persons.** Upon receipt of the applications, the commissioner shall cause written notice to be provided to any person who has filed, within the preceding year, a written request to receive the notice of applications. Any interested person shall have 10 days in which to file comments as to the applicant's qualifications or to request a hearing prior to the issuance of the license.

**3. Qualifications of applicant.** The applicant shall satisfy the commissioner of his character, financial responsibility and good faith in seeking to engage in the business. The commissioner may issue a license to the applicant if he is satisfied as to the applicant's qualifications. When

the license is issued, the applicant may act in the capacity described in the license for a period of one year from the date of issuance.

**4. Bond.** In order to insure the licensee's financial responsibility and to protect producers of licensed commodities, the commissioner shall require the licensee to file a bond in a form and amount satisfactory to the commissioner, but in any event not less than \$5,000 nor more than \$100,000, payable to the commissioner in his official capacity and conditioned on the full and prompt payment for all licensed commodities received or purchased from producers or other licensees during the effective period of the license.

**5. License fees.** Each license shall plainly state the name and business address or addresses of the licensee and shall be posted in a conspicuous place in each office where the business is transacted. The fee for each license is \$50. If the licensee desires to carry on business in more than one place within the State, he shall procure additional copies of the license, certified by the commissioner, for each place where business is to be conducted. The fee for each certification is \$10. All fees collected under this subchapter shall be paid forthwith to the Treasurer of State and credited to the Department of Agriculture, Conservation and Forestry for the administration of this subchapter and other expenses incident to the administration of the department, and shall be expended by the commissioner for the purposes for which the department is created. If any fees are not expended during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account available for the purposes specified, until expended.

#### **§ 456. Complaints; investigation; hearings**

The commissioner or his duly authorized agent may investigate, upon the complaint of any interested person, or on his own motion, the conduct and activities of any person applying for or holding a license under this subchapter and, for that purpose, may examine the books and papers of any applicant or licensee and may require testimony and affidavits thereon under oath. The commissioner may, in a manner consistent with the Maine Administrative Procedure Act,<sup>1</sup> conduct such hearings as he deems necessary pursuant to this subchapter. He shall have full power to subpoena such witnesses and documents as he deems necessary.

#### **§ 457. Refusal, suspension, revocation of license**

**1. Acts enumerated.** The commissioner or his duly authorized agent may refuse to grant a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act<sup>1</sup> as to adjudicatory proceedings, upon a finding that any of the following acts have occurred:

**A.** That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of licensed commodities or for the rendering of any service in connection with the handling, sale or storage of licensed commodities;

**B.** That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this subchapter or has failed to or refused to pay for licensed commodities purchased by the applicant or licensee within 30 days after acceptance of the licensed commodities;

**C.** That the applicant or licensee has knowingly made any false material statement as to the condition, quality or quantity of licensed commodities received, handled, sold, purchased or stored by him;

**D.** That the applicant or licensee has knowingly made any substantial misrepresentation as to the condition of the market for licensed commodities;

**E.** That the applicant or licensee has defrauded or attempted to defraud a producer;

**F.** That the applicant or licensee to whom any consignment is made has reconsigned the consignment to another dealer, processor, broker or agent and has received, collected or charged by such means more than one commission for making the sale for the consignor without previously obtaining the written consent of the consignor;

**G.** That the applicant or licensee knowingly made any false material statements in the procurement of a license under this subchapter;

**H.** That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by him for the producer;

**I.** That the applicant or licensee has failed or refused, upon demand, to permit the commissioner or his agents to make the investigations, examinations or audits as provided in this subchapter or that the applicant or licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits or has otherwise obstructed the same;

**J.** That the applicant or licensee has failed or refused to keep and maintain the records as required by this subchapter; or

**K.** That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of licensed commodities, whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings.

**2. District Court.** The District Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding that the licensee has committed any of the Acts enumerated in subsection 1.

Any order revoking or suspending a license may, within the discretion of the District Court, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified and the operation of such an order may be deferred for that purpose. Any order may contain provisions for its modification or dismissal upon presentation to the District Court of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before the order becomes final.

**3. Notification of insufficient payment or nonpayment.** Producers may notify the commissioner of insufficient payment or nonpayment for licensed commodities delivered to any agent, broker, dealer or processor in violation of subsection 1, paragraph B. In addition to any other remedies available under this subchapter:

**A.** The commissioner or his agent, upon notification by a producer of insufficient payment or nonpayment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act, hold a hearing. The person accused of nonpayment, the respondent, shall provide the commissioner with a copy of the contract, if any, and all other materials and information necessary to enable the commissioner to carry out this section. Upon finding that the respondent has violated the contract or other obligation, express or implied, the commissioner shall require the respondent to post a bond sufficient to cover the debt owed to the producer or producers. Failure to post the bond shall be considered a violation of this subchapter and each day failure continues shall be considered a separate violation;

**B.** The commissioner may require the licensee, accused of or found after a hearing to be in default of payment to a producer, to submit a payment schedule to the commissioner. In the event that the schedule of payment proposed is not satisfactory to the commissioner, he may establish the schedule of payment; and

**C.** The commissioner may file a complaint with the District Court to compel the posting of a bond required under paragraph A and to suspend the license of any licensee who fails to conform to the payment schedule established in this subsection until the producer is paid the

total claim to which the producer is entitled. Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim on the date on which the complaint is filed. The bond required in a court proceeding may be waived by the District Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claimed. Nothing in this subsection may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any other state and federal procedure established to obtain redress.

### **§ 458. Exemptions**

**1. Producers.** Producers are exempt from this subchapter when selling licensed commodities which they have grown, which they are presently growing or which they intend to grow.

**2. Other persons.** The commissioner, by rule, may provide an exemption from this subchapter for persons who deal in quantities of licensed commodities sufficiently small so as to not require the imposition of the standards of financial responsibility established by this subchapter.

**3. Retailers.** A retailer who sells licensed commodities to consumers is exempt from this subchapter with respect to those sales.

### **§ 459. Forfeiture of bond; recovery on bond**

If a licensee fails to make payment as provided in section 457, subsection 1, paragraph B, that licensee by reason of the nonpayment is in default as to all producers or licensees whose accounts then remain unpaid and the bond provided for must be forfeited to the extent of all sums then due from the licensee to the producers or licensees. Whenever the commissioner determines that a licensee has failed to make payment, the commissioner shall provide notice, in a manner consistent with the Maine Administrative Procedure Act,<sup>1</sup> that payment under the bond will be sought and indicating the time within which other producer or licensee claims may be made known to the commissioner. Upon determination of the commissioner that there has been a default in payment by a licensee, the conditions of the bond are deemed to be broken and the commissioner may bring action on the defaulted bond for the benefit of producers or licensees. Whenever the amount of the bond is not sufficient to cover all valid claims, the commissioner shall distribute the amount available on a pro rata basis.

### **§ 460. Violations**

Any person who commits any of the actions specified in section 457, except in section 457, subsection 1, paragraph B, or otherwise fails, neglects or refuses to comply with the provisions of this subchapter or any rule promulgated hereunder is subject to the following civil penalties payable to the State, to be recovered in a civil action:

**1. First violation.** For the first violation, a civil penalty not to exceed \$1,000; and

**2. Subsequent violation.** For each subsequent violation, a civil penalty not to exceed \$3,000.

The commissioner may recover the penalties imposed for violations in a civil action brought in his own name and, if he prevails in that action, he may recover full costs. The District Court and the Superior Court shall have concurrent jurisdiction of the actions. The Attorney General and the several district attorneys shall provide assistance to the commissioner.

All penalties received under this subchapter shall be paid to the Treasurer of State for deposit in the General Fund.

#### **§ 482. Manufacture and sale prohibited**

A person may not manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation any article of commercial feeding stuff, commercial fertilizer or food that is adulterated or misbranded within the meaning of this chapter or chapter 103.<sup>1</sup>

#### **§ 483. Adulteration**

For the purpose of this chapter and chapter 103,<sup>1</sup> unless the term is more specifically defined, “adulterated” means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities under Title 22, section 2167 and that contain marijuana for medical use by a qualifying patient, pursuant to Title 22, chapter 558-C, are not considered to be adulterated under this subchapter.

**1. Deleted.** Laws 2005, c. 512, § 18.

**2. Meat or meat products.** In case of meat or meat products: If any sodium sulphite, sodium bisulphite or any drug, chemical, chemical compound or preservative from which sulphur dioxide can be liberated has been added thereto or mixed therewith.

#### **§ 484. Misbranding**

The term “misbranded” as used in this chapter or chapter 103 applies to all articles of commercial feeding stuff, commercial fertilizer or food, the package or label of which bears any statement, design or device regarding such article, or the ingredients or substances contained therein, that is false or misleading in any particular or that is falsely branded in any particular.

### **§ 488-A. Prohibitions and penalties**

**1. Violation.** A person may not adulterate or misbrand, within the meaning of this chapter or chapter 103, any commercial feeding stuff, commercial fertilizer, food or vinegar or manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation any article of commercial feeding stuff, commercial fertilizer, food or vinegar in violation of this chapter or chapter 103.

**2. Penalty.** The following penalties apply to violations of this section.

**A.** A person who violates subsection 1 commits a civil violation for which a fine of not more than \$100 may be adjudged.

**B.** A person who violates subsection 1 after having previously violated subsection 1 commits a civil violation for which a fine of not more than \$200 may be adjudged.

### **§ 489. Exceptions**

A person may not be prosecuted under chapter 401, and sections 482 to 488-A, 490 and 640 to 643, when that person can establish proof of purchase, and a guaranty signed by the person residing in the United States from whom the purchase was made, to the effect that the article in question is not adulterated or misbranded within the meaning of this chapter or chapter 103.

### **§ 490. Sampling and analysis of seed, commercial feed, commercial fertilizer and food**

**1. Right of entry.** For the purposes of administering and enforcing this subchapter, the commissioner and agents authorized by the commissioner have rights of access, ingress and egress at reasonable hours to any place or building where seeds, commercial feed, commercial fertilizer or food is sold or offered for sale or where those items are stored, manufactured or transported prior to sale or being offered for sale.

**2. Taking of samples.** For the purposes of administering and enforcing this subchapter, the commissioner and agents authorized by the commissioner may open any case, package or other container of seeds, commercial feed, commercial fertilizer or food. Upon receipt of a written request for payment, the commissioner shall pay the fair market value of any samples taken and retained or destroyed.

**3. Analysis and disclosure of test results.** The commissioner may submit a sample obtained for the purposes of enforcing this subchapter to a public or private laboratory for analysis. The commissioner shall make available to the public the results of such an analysis, including the

name of the person from whom the sample was obtained, the name of the manufacturer of the sample and additional information that the commissioner believes is advisable.

**4. Issuance of certificate.** A certificate stating the results of an analysis performed in accordance with this section and signed by the director of the laboratory performing the analysis is presumptive evidence of the facts stated in the certificate.

#### **§ 501. Title**

This subchapter shall be known and may be cited as the “Uniform Hazardous Substances Labeling Act.”

#### **§ 502. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

**1. Commissioner.** “Commissioner” means the Commissioner of Agriculture, Conservation and Forestry and his agents.

**2. Corrosive.** “Corrosive” means any substance which in contact with living tissue causes destruction of tissue by chemical action; but does not refer to action on inanimate surfaces.

**3. Department.** “Department” means the Department of Agriculture, Conservation and Forestry.

**4. Flammable.** “Flammable” means any substance which has a flashpoint of above 20 degrees to and including 80 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester, except that the flammability of solids and of the contents of self-pressurized containers is determined by methods generally applicable to such containers and established by regulations issued by the commissioner and “extremely flammable” means any substance which has a flashpoint at or below 20 degrees Fahrenheit as determined by the Tagliabue Open Cup Tester.

**5. Hazardous substance.** “Hazardous substance” means any substance or mixture of substances which is toxic, corrosive, an irritant, strong sensitizer, flammable, or which generates pressure through decomposition, heat or other means and which may cause substantial personal injury or illness during any customary or reasonable anticipated handling or use including reasonably foreseeable ingestion by children and also means any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the commissioner determines by regulation that the substance is sufficiently

hazardous to require labeling in accordance with this subchapter in order to protect the public health.

**6. Highly toxic.** “Highly toxic” means any substance which produces death within 14 days in at least half of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams, when a single dose of 50 milligrams or less per kilogram of body weight, is orally administered or when inhaled continuously for a period of one hour or less at an atmospheric concentration of 200 parts per million by volume or less of gas, vapor, mist or dust, or which produces death within 14 days in at least half of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for 24 hours or less.

If the commissioner finds that available data on human experience with any substance indicate results different from those on animals in the above-named dosages or concentrations, the human data shall take precedence.

**7. Household use.** “Household use” means any use, or intended use of an article in or about the living area or living quarters of a house, apartment house or other place of abode.

**8. Immediate container.** “Immediate container” does not include package liners.

**9. Irritant.** “Irritant” means any substance, not corrosive, which on immediate, prolonged or repeated contact with normal living tissue will induce inflammatory reaction.

**10. Label.** “Label” means a display of written, printed or graphic matter upon or attached to the immediate package or container of any substance; and a requirement made by or under authority of this subchapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper, and on all accompanying literature where there are directions for use, written or otherwise.

**11. Misbranded package.** “Misbranded package” or “misbranded package of a hazardous substance” means a hazardous substance in a container intended or suitable for household use unless the product bears a label with the information specified in section 507, except as otherwise provided by or pursuant to this subchapter.

**12. Person.** "Person" means and includes any corporation, association, copartnership or one or more individuals.

**13. Radioactive substance.** "Radioactive substance" means any substance which emits ionizing radiation.

**14. Strong sensitizer.** "Strong sensitizer" means any substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the commissioner. Before designating any substance as a strong sensitizer, the commissioner shall find that the frequency of occurrence and severity of the reaction indicate a significant potential for causing hypersensitivity.

**15. Toxic.** "Toxic" means any substance other than a radioactive substance, which has the inherent capacity to produce bodily injury or illness to man through ingestion, inhalation or absorption through any body surface.

#### **§ 503. Submission of names and amounts**

The commissioner, when he deems it necessary in the administration of this subchapter, may require the submission of the names and amounts of any hazardous ingredients in any hazardous substance.

#### **§ 504. Duties**

The department is authorized:

**1. Investigate and examine.** To investigate and examine hazardous substances subject to this subchapter.

**2. Collection.** To effect the collection and examination of samples of hazardous substances to determine the compliance with the requirements of this subchapter and the officers and employees of the department have authority at all reasonable hours to enter into any motor vehicle, warehouse, store, building, boat, vessel, aircraft or place supposed to contain hazardous substances, for the purpose of inspection or sampling, and to procure samples for analysis or examination from any lot, package or parcel or hazardous substance.

**3. Rules and regulations.** To make and enforce such reasonable rules and regulations necessary to carry out this subchapter. The rules and regulations so promulgated shall be

adopted in a manner consistent with the Maine Administrative Procedure Act<sup>1</sup> and shall conform so far as practicable to rules and regulations promulgated under authority of the Federal Act.

#### **§ 505. Access to carriers**

Carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such substances so received, shall upon the request of an officer or employee duly designated by the department permit such officer or employee, at reasonable times, to have access to and to copy all records showing movement in commerce of any hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof. It is unlawful for any such carrier or person to fail to permit access to and copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of hazardous substance to which the request relates. Evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained and carriers shall not be subject to the other provisions of this subchapter by reason of their receipt, carriage, holding or delivery of hazardous substances in the usual course of business as carriers.

#### **§ 506. Withdrawal from sale; condemnation and confiscation**

**1. “Withdrawal from sale” orders.** When the commissioner finds by inspection or examination of a hazardous substance that it is being sold or distributed in violation of any of the provisions of this subchapter, he may issue and enforce a written or printed “withdrawal from sale” order warning the distributor not to dispose of the hazardous substance in any manner until written permission is given by the commissioner or the court. The issuance of such an order shall not be considered licensing or an adjudicatory proceeding as defined by the Maine Administrative Procedure Act.<sup>1</sup> The commissioner shall release the hazardous substance so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within 30 days, the commissioner may begin proceedings for condemnation.

**2. Condemnation and confiscation.** Any hazardous substance not in compliance with this subchapter shall be subject to seizure on complaint of the commissioner to a court of competent jurisdiction in the area in which said hazardous substance is located. In the event the court finds the said hazardous substance to be in violation of this subchapter, and orders the condemnation of said hazardous substance, it shall be disposed of in any manner consistent with the quality of the hazardous substance and the laws of the State. In no instance shall the disposition of said hazardous substance be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said hazardous substance or for permission to process or relabel said hazardous substance to bring it into compliance with this subchapter.

### **§ 507. Labeling provisions**

It is unlawful for any person to distribute, sell or offer for sale within the State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

**1. Household use.** Any hazardous substance intended or suitable for household use, unless there is affixed to the container, a label bearing:

**A.** The name and address of the manufacturer, packer or distributor;

**B.** The common or usual name, or the chemical name or the recognized generic name, not trade name only, of the hazardous substance or of each component which contributes substantially to its hazard;

**C.** One of the following words: "Danger," "Warning" or "Caution." The word "Danger" shall be used for substances which are highly toxic, extremely flammable or corrosive. The word "Warning" or "Caution" shall be used on all other hazardous substances;

**D.** An affirmative statement of the principal hazard, such as "flammable," "vapor harmful," "causes burns," "absorbed through skin," or similar wording descriptive of the hazard;

**E.** Precautionary measures describing the action to be followed or avoided;

**F.** Instructions, when necessary, for the first aid treatment in case of contact or exposure, if the substance is hazardous through contact or exposure;

**G.** Instructions for handling and storage of packages which require special care in handling or storage;

**H.** A statement, "Keep out of reach of children," or its practical equivalent;

**I.** The word "Poison" for any hazardous substance which is highly toxic; and

**J.** A hazardous substance upon which a stop-sale order has been placed by the commissioner.

**2. Statement.** Any statements required under this subchapter shall be located prominently and shall be in the English language in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label.

If the commissioner finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this subchapter is impracticable or is not necessary for the adequate protection of the public health and safety, the commissioner shall promulgate regulations exempting such substance from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety, or if the commissioner finds that the requirements of this section are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be a misbranded package of a hazardous substance.

Whenever in the judgment of the commissioner, such action will promote the objectives of this subchapter by avoiding or resolving uncertainty as to its application, the commissioner may by regulation declare to be a hazardous substance, for the purposes of this subchapter, any substance or mixture of substances which he finds meets the requirements of section 502, subsection 5.

### **§ 508. Unlawful acts**

It is unlawful:

**1. Alteration.** For any person to detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in this subchapter or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from a hazardous substance in a manner that may defeat the purposes of this subchapter;

**2. Use of information.** For any person to use for his own advantage or to reveal, other than to the commissioner, or officials or employees of the commissioner or officials or employees of the United States Department of Agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons for use in the preparation of antidotes, in accordance with such directions as the commissioner may prescribe, any information relative to formulas of products acquired by authority of this subchapter;

**3. Interference.** For any person to oppose or interfere in any way with the commissioner or his duly authorized agents in carrying out the duties imposed by this subchapter;

**4. False guaranty.** For any person to give a guaranty which is false;

**5. Manufacture.** For any person to manufacture a misbranded package of a hazardous substance within this State;

**6. Delivery.** For any person to introduce or deliver for introduction into commerce of any misbranded package of a hazardous substance; or

**7. Reused food or drugs.** To introduce or deliver for introduction into commerce, or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container that, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or other identification. The reuse of a food, drug or cosmetic container as a container for a hazardous substance is an act that results in the hazardous substance being a misbranded package. For the purposes of this subsection and section 509, "drug" has the same meaning as defined in Title 32, section 13702-A, subsection 11.

#### **§ 509. Application**

This subchapter shall not apply to:

**1. Carrier.** Any carrier, while lawfully engaged in transporting a hazardous substance within this State, if such carrier shall, upon request, permit the commissioner or his designated agent to copy all records showing the transactions in and movements of the articles;

**2. Public officials.** Public officials of this State and of the Federal Government engaged in the performance of their official duties;

**3. Experimental use.** The manufacturer or shipper of a hazardous substance for experimental use only:

**A.** By or under the supervision of an agency of this State or of the Federal Government authorized by law to conduct research in the field of hazardous substances; or

**B.** By others if the hazardous substance is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only--Not to be sold," together with the manufacturer's name and address. If a written permit has been obtained from the commissioner, hazardous substances may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

**4. Federal and state law.** Any preparation, drug or chemical subject to the laws of the United States relating to drugs, devices or cosmetics, the Uniform Drug Device and Cosmetic Act, or to preparations, drugs and chemicals which are dispensed by pharmacists authorized by and pursuant to the pharmacy laws of this State;

**5. Certain poisons.** Any economic poison registered with the United States Department of Agriculture pursuant to the Federal Insecticide, Fungicide and Rodenticide Act<sup>1</sup> and subject thereto;

**6. Fuel.** Fuel used primarily for cooking, heating or refrigeration when stored in containers and used in the heating, cooking or refrigeration system of a household.

The commissioner may exempt from the requirements established by or pursuant to this subchapter any container of a hazardous substance with respect to which he finds adequate requirements satisfying the purposes of this subchapter have been established by or pursuant to and in compliance with any other federal or state law.

#### **§ 510. Injunction**

The department may, by application to any court having jurisdiction, obtain an injunction restraining any person who engages in acts which violate this subchapter or the rules and regulations adopted pursuant thereto. Upon refusal or neglect to obey the order of court, the court may compel obedience thereof by proceedings for contempt.

#### **§ 511. Enforcement**

It is the duty of the department, its officers, agents, inspectors and employees to enforce this subchapter.

#### **§ 512. Penalties**

A person who violates a provision of this subchapter commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged. A person is not subject to

the penalties provided in this section if the person establishes a written guarantee or undertaking in which is furnished the name and address of the manufacturer or distributor, and the statement that the person received the products in good faith in reliance upon the manufacturer or distributor to the effect that such products were manufactured and labeled in compliance with this subchapter or with federal law that may relate to the regulations of the distribution of hazardous substances covered by this subchapter.

### **§ 513. Exception**

No person shall be prosecuted for violation of any provision of this subchapter if such person has been acquitted or convicted under the Federal Hazardous Substances Labeling Act<sup>1</sup> of the same act or omission which, it is alleged, constitutes a violation of this subchapter.

### **§ 521. Short title**

This subchapter shall be known and be cited as the “Maine Fair Packaging and Labeling Act.”

### **§ 522. Unfair and deceptive packaging and labeling**

It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity, as defined in section 523, for the distribution in commerce, or for any person other than a common carrier for hire, a contract carrier for hire or a freight forwarder for hire engaged in the distribution in commerce of any packaged or labeled commodity, to distribute or cause to be distributed in commerce any commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to this subchapter and to the regulations promulgated thereunder.

Persons engaged in business as wholesale or retail distributors of consumer commodities shall be exempt from this subchapter except to the extent that such persons are engaged in the packaging and labeling of such commodities or prescribe or specify by any means the manner in which such commodities are packaged or labeled.

### **§ 523. Definitions**

**1. Label.** “Label” shall mean any written, printed or graphic matter affixed to, applied to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a commodity or package containing any consumer commodity, for the purpose of branding, identifying or giving any information in respect to the commodity or to the contents of the package.

**2. Commodity in package form.** “Commodity in package form” shall mean a commodity put up or packaged in a manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container enclosing packages that individually conform to the requirements of this subchapter. An individual item or lot of any commodity not in package form

as defined in this section but on which there is marked a selling price based on an established price per unit of weight or measure shall mean a commodity in package form.

**3. Consumer commodity.** “Consumer commodity,” except as specifically provided by this subchapter, means any food, as defined by the Maine Food Law, Title 22, chapter 551, subchapter I,<sup>1</sup> and any other article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.

**4. Principal display panel.** “Principal display panel” shall mean that part, or those parts, of the label so designed as to be most likely to be displayed, presented, shown or examined under normal conditions of display or for retail sale.

**5. Container.** “Container” means a glass, metal or plastic bottle, can, jar or other receptacle for holding liquids, powders or other materials, which has been sealed by a manufacturer and which, at the time of sale, contains less than one gallon or 231 cubic inches.

#### **§ 524. Requirements and prohibitions**

No person shall distribute or cause to be distributed in commerce any packaged consumer commodity unless the commodity bears a label specifying the identity of the commodity, the name and place of business of the manufacturer, packer or distributor, the net quantity of contents in terms of weight, measure or numerical count, separately and accurately stated in a uniform location upon the principal display panel of the label and the label statement of net quantity.

A package containing less than 4 pounds or one gallon, and labeled in terms of weight or fluid measure, shall be expressed both in ounces, either avoirdupois or fluid ounces, and if applicable in pounds for weight, with the remainder in terms of ounces or common decimal fractions of the pound, or in the case of liquid measure, in the largest whole unit, quarts, quarts and pints, with the remainder in terms of fluid ounces or common decimal fraction of the pint or quart.

A random package shall be expressed in terms of the pound carried out to not more than 2 decimal places.

A package labeled in terms of linear measure, shall be expressed both in terms of inches and the largest whole unit, yards, yards and feet, or feet, with any remainder in terms of inches or common decimal fractions of the foot or yard.

A package labeled in terms of measure of area shall be expressed both in terms of square inches and the largest whole square unit, square yards, square yards and square feet, or square feet, with the remainder in terms of square inches or common decimal fractions of the square foot or square yard.

#### **§ 524-A. Produce packed in State**

When produce that was grown or raised in a foreign country is packed in this State, the label must identify the country in which the produce was grown in letters as large or larger than the letters identifying the name and place of business of the packer.

#### **§ 525. Net quantity of contents**

The net quantity of contents shall appear in conspicuous and easily legible type in distinct contrast, by topography, layout, color, embossing or molding, with other matter on the package. The letters or numerals used shall be in type size which shall be established in relationship to the area of the principal display panel of the package and uniform for all packages of substantially the same size. The lines of printed matter included in that statement shall be placed generally parallel to the base on which the package rests as it is designed to be displayed.

#### **§ 526. Consumer commodity label**

The label on a package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity in terms of weight, measure or numerical count, of each serving.

#### **§ 527. Promulgation of regulations**

The authority to promulgate regulations for the enforcement of this subchapter is vested in the State Sealer of Weights and Measures. Regulations shall be adopted in a manner consistent with the Maine Administrative Procedure Act.<sup>1</sup> The regulation or regulations so promulgated shall become effective on a date fixed by the sealer which date shall not be prior to 30 days after filing with the Secretary of State. Such promulgation may be amended or repealed in the same manner as is provided for its adoption, except in the case of emergency rulemaking rules shall become effective as provided in the Maine Administrative Procedure Act. In the promulgation of regulations, the sealer shall, in the interest of promoting uniformity, give consideration to regulations promulgated under the Fair Packaging and Labeling Act of November 3, 1966, Public Law 89-755. The sealer, among other things, may give consideration to:

**1. Exemptions.** Exempting a particular commodity because of nature, form or quantity or for other good and sufficient reason making it impracticable or not necessary for adequate protection of consumers;

**2. Standards.** Establishing and defining standards for characterization of the size of a package enclosing a consumer commodity which may be used to supplement the label statement of net quantity of contents of packages containing such commodity;

**3. Printed matter.** The placement upon any package containing any commodity or upon any label printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than ordinary and customary retail price or that a retail sale price is accorded purchasers thereof by reason of size of the package or quantity of its contents;

**4. Usual name.** Requiring that the label on each package of a consumer commodity bear the common or usual name of such commodity and in the case such commodity consists of 2 or more ingredients, the common or usual name of each ingredient listed in decreasing predominance.

#### **§ 528. Exemptions**

All packages of consumer commodities that have been labeled in accordance with federal regulations established by the United States Department of Health and Human Services, the Federal Trade Commission or the United States Department of Agriculture are in compliance with this subchapter.

#### **§ 529. Violations**

Any person, firm or corporation who shall fail, neglect or refuse to comply with any of the provisions of this subchapter, or the rules and regulations issued thereunder, commits a civil violation for which the following forfeiture may be adjudged:

**1. First violation.** For the first violation, a forfeiture not to exceed \$100; and

**2. Subsequent violations.** For each subsequent violation, a forfeiture not to exceed \$200.

#### **§ 530. Country of origin required**

**1. Label required.** Fresh produce must be labeled in accordance with this section.

**A.** Fresh produce sold or offered for retail sale in this State that was grown or raised in a foreign country must be identified by labeling with the country of origin as provided in paragraphs B to D.

**B.** Except as provided in paragraph D, each item of fresh produce offered for retail sale as an individual unit must be individually labeled in accordance with subsection 3.

**C.** Except as provided in paragraph D, fresh produce packaged in consumer units must be labeled in accordance with subsection 3 and section 524-A. For purposes of this section, banana and grape clusters are a consumer unit.

**D.** Fresh produce that is not labeled in accordance with paragraph B or C may be sold at retail if the labeling information required by subsection 3 appears on a bin label or placard contiguous to the produce being displayed for retail sale or on the original shipping container if it contains the produce offered for sale.

**2. Repealed.** Laws 1999, c. 405, § 3.

**3. Label statement.** The country of origin label shall:

**A.** Clearly state the country in which the fresh produce was raised or grown;

**B.** Be conspicuously and prominently placed so as to be easily seen by the consumer; and

**C.** Be as legible, indelible and permanent as the nature and display of the product allow without causing adulteration to the product.

**4. Educational program.** Subject to available funding, the department shall institute an educational program designed to inform the general public about this section. This program must include, but not be limited to, dissemination of information about the countries and produce affected and the pesticides, residues and known and potential adverse health effects of those pesticides. This dissemination must be made by at least the following:

**A.** Brochures to be made available to consumers through retail outlets; and

**B.** Media coverage, such as public service announcements, press releases and press conferences.

**5. Enforcement.** If inspection personnel of the department find that fresh produce is not properly labeled as required by this section, the commissioner shall issue a stop order for the product until it is labeled in accordance with this section.

**6. Penalty.** A person who fails to comply with the provisions of this section commits a civil violation and may be adjudged a fine not more than \$100. Each day in violation constitutes a separate offense.

**7. Repealed.** Laws 1991, c. 506, § 2, eff. June 24, 1991.

#### **§ 530-A. Voluntary labeling**

**1. Labeling permitted; rules.** Beginning January 1, 2002, a label may be placed on any food, food product or food ingredient offered for sale in the State designating that food, food product or food ingredient as free of or made without recombinant deoxyribonucleic acid technology, genetic engineering or bioengineering. The department shall adopt rules implementing this subsection. The rules must allow any food 1% or less of which consists of genetically engineered ingredients to be labeled as free of genetically engineered ingredients. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**2. Department verification.** The department may investigate a business operation that claims a food, food product or food ingredient sold in the State by the business operation is free of or made without recombinant deoxyribonucleic acid technology, genetic engineering or bioengineering for the purposes of verifying the claim.

**3. Misbranding.** If a manufacturer, distributor, processor, wholesaler or retailer falsely labels or advertises any food, food product or food ingredient offered for sale in the State as free of or made without recombinant deoxyribonucleic acid technology, genetic engineering or bioengineering, the food, food product or food ingredient is misbranded in violation of section 488-A.