

## §994. Administration

The commissioner shall administer and enforce sections 991 to 994 and has and may exercise any or all of the administrative powers conferred upon the head of a department of the State. In order to effectuate the declared purposes of said sections, the commissioner is authorized to issue, administer and enforce the marketing orders regulating the marketing of potatoes within the State. [RR 1999, c. 2, §10 (COR).]

Whenever the commissioner has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of sections 991 to 994, the commissioner shall, in a manner consistent with the rule-making provisions of the Maine Administrative Procedure Act, either upon the commissioner's own motion or upon application of any producer or handler of potatoes, give due notice of and an opportunity for a public hearing upon a proposed marketing order. [RR 1999, c. 2, §10 (COR).]

Due notice of any hearing called for such purpose must be given to all persons who may be directly affected by any action of the commissioner pursuant to sections 991 to 994 and whose names appear upon lists to be filed with the commissioner. Such hearing must be open to the public. All testimony must be received under oath and a full and complete record of all proceedings at any such hearing must be made and filed by the commissioner at the commissioner's office. [RR 1999, c. 2, §10 (COR).]

In order to effectuate the declared policy of sections 991 to 994, the commissioner has the power, after due notice and opportunity for hearing, to enter into marketing agreements with handlers, producers and others engaged in the handling of potatoes, regulating the preparation, sale and handling of potatoes, which said marketing agreement is binding upon the signatories thereto exclusively. The execution of such marketing agreement may in no manner affect the issuance, administration or enforcement of any marketing order provided for in sections 991 to 994. The commissioner may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same subject matter. The commissioner, in the commissioner's discretion, may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in sections 991 to 994. [RR 1999, c. 2, §10 (COR).]

After such notice and hearing, the commissioner may issue a marketing order if the commissioner finds it will tend to effectuate the declared policy of sections 991 to 994, subject to the following: [RR 1999, c. 2, §10 (COR).]

**1. Approved by 2/3 of producers participating in referendum.** No marketing order or amendment thereto issued pursuant to sections 991 to 994 may become effective unless and until the commissioner determines that the issuance of such order is approved and favored by at least 2/3 of the producers who participated in a referendum on the question of its approval and who, during the preceding fiscal year, have been engaged in the production of potatoes for market within the production area specified in such marketing order, and who, during such year, have produced at least 2/3 of the volume of potatoes produced for market within such production area specified herein by all producers who participated in the said referendum. [RR 1999, c. 2, §10 (COR).]

**2. Assent of handlers.** No marketing agreement or amendment thereto, directly affecting handlers, issued pursuant to sections 991 to 994, may become effective unless and until the commissioner finds that such agreement has been assented to in writing by the handlers who handle not less than 50% of the volume of the potatoes handled within the area defined in such agreement and by not less than 50% of the number of handlers engaged in handling potatoes within such area. [RR 1999, c. 2, §10 (COR).]

### SECTION HISTORY

PL 1977, c. 694, §91 (AMD). PL 1981, c. 154, §§2,3 (RP). PL 1981, c. 513, §11 (AMD). RR 1999, c. 2, §10 (COR).

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