

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2006

Regulation if, in the exercise of due diligence, a plaintiff cannot effect personal service upon the applicant.

Sec. 8. 32 MRSA §9858, sub-§2, ¶A, as enacted by PL 1983, c. 672, is amended to read:

A. The applicant ~~shall~~ must possess a Maine license that is current national certification and in good standing to practice as a radiographer;

Sec. 9. 32 MRSA §9859, as amended by PL 2001, c. 323, §29, is further amended to read:

§9859. Licensure renewal; fees

An original or renewal licensure fee under section 9859-A must be paid by the applicant or licensee. All licenses must be renewed ~~biennially on or before August 31st of each even numbered year or at such other times as the Commissioner of Professional and Financial Regulation may designate, as set forth in Title 10, section 8003, subsection 4. The board shall notify each licensee, at the licensee's last known address, 30 days in advance of the expiration of the license. Renewal notices must be on forms provided by the Department of Professional and Financial Regulation.~~ Any license not renewed by the designated renewal date automatically expires. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee ~~in addition to the and renewal fee, as set under section 9859-A.~~ Any person who submits an application for renewal more than 90 days after the licensing renewal date must submit a renewal fee, a late fee and a filing fee as set under section 9859-A and is subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination or other requirements. ~~Penalties may be assessed by the director for late renewals more than 90 days after the expiration.~~

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 27, 2006.

CHAPTER 512

H.P. 1227 - L.D. 1720

**An Act To Make Revisions to the
Maine Revised Statutes Relating to
Agriculture**

**Be it enacted by the People of the State of
Maine as follows:**

Sec. 1. 7 MRSA §14, as amended by PL 1983, c. 308, §§5 and 14, is repealed.

Sec. 2. 7 MRSA §122, first ¶, as amended by PL 1997, c. 711, §4, is further amended to read:

The Maine Agricultural Experiment Station shall conduct scientific investigations in orcharding, corn and other farm crops and, to this end, shall maintain the farms ~~heretofore~~ purchased in the name of the State, and stocked and equipped for the use and benefit of the station. The Director of the Maine Agricultural Experiment Station, with the agreement of the Board of Agriculture, has the general supervision, management and control of those farms and of all investigations thereon. The board and the director shall seek agreement on all issues. In the event that agreement can not be reached, final authority rests with the director.

Sec. 3. 7 MRSA §195, first ¶, as amended by PL 1985, c. 779, §29, is further amended to read:

~~It shall be the duty of the A county extension association; shall annually, as required, to present to the University of Maine and the county commissioners its plan of extension work for the ensuing year and to render to both the trustees of the University of Maine and the county commissioners a full detailed report of its extension activities for the preceding fiscal year, including a detailed report of its receipts and expenditures from all sources. The financial report of such a county extension association shall must be on such forms as may be prescribed by the University of Maine and the county commissioners.~~

Sec. 4. 7 MRSA §401-A, first ¶, as enacted by PL 1983, c. 563, §1, is amended to read:

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~~ State's people. ~~The Legislature further finds that over the years, marketing issues have been inadequately addressed and some of the major agricultural commodities of the State have lost substantial market shares to competitors. In addition, there is a lack of pertinent market information to assist in the development of new commodities to maximize their contribution to the state's agricultural economy. There exists a need for a comprehensive marketing program applicable to all agricultural products. Such a program will 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.

Sec. 5. 7 MRSA §415, sub-§2, ¶B, as enacted by PL 1993, c. 138, §1, is amended to read:

B. A person may not sell farm and food products at a market labeled "farmers' market" unless at least 75% of the product offered by that person was grown or processed by that person or under that person's direction. A product not grown or processed by that person must have been grown or processed by and purchased directly from another farmer.

Sec. 6. 7 MRSA §415, sub-§5 is enacted to read:

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.

Sec. 7. 7 MRSA §424, sub-§3, as enacted by PL 1981, c. 154, §1, is amended to read:

3. Enforcement. The commissioner may institute ~~such~~ investigations, hold ~~such~~ hearings, require ~~such~~ reports, subpoena ~~such~~ records and persons and take ~~such~~ other actions ~~as he~~ that the commissioner finds necessary to implement this subchapter. The commissioner may institute such action ~~at law or in equity~~ as may appear necessary to enforce compliance with any provision of this subchapter, or any rule, market agreement or order, committed to ~~his~~ 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.

Sec. 8. 7 MRSA §426, sub-§5, as enacted by PL 1981, c. 154, §1, is repealed and the following enacted in its place:

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;

Sec. 9. 7 MRSA §443-A, sub-§3, as enacted by PL 1995, c. 294, §1, is repealed.

Sec. 10. 7 MRSA §443-A, sub-§5 is enacted to read:

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.

Sec. 11. 7 MRSA §452, sub-§7, as enacted by PL 1981, c. 139, is amended to read:

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 ~~X~~ 10, article 3.

Sec. 12. 7 MRSA §453, first ¶, as enacted by PL 1981, c. 139, is amended to read:

The commissioner may, in a manner consistent with ~~the Maine Administrative Procedure Act~~, Title 5, chapter 375, 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.

Sec. 13. 7 MRSA §454, as enacted by PL 1981, c. 139, is amended to read:

§454. Licensing required

~~No A~~ A person may not act as agent, broker, dealer or processor unless duly licensed as provided in this subchapter. ~~Every person, before~~ 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 ~~shall~~ must be accompanied by the license fee provided in this subchapter.

~~No A~~ 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 ~~the representative that person~~ that person has been ~~so~~ authorized as a representative by a licensee in writing, and a copy of the authorization is filed with the commissioner, except ~~where~~ when the ~~representative person~~ representative conducts business in the office of the licensee. ~~The commissioner shall be notified in writing by the licensee immediately upon the termination of the~~

~~authorization. A licensee shall notify the commissioner in writing immediately upon terminating the authorization for a person to act as that licensee's representative.~~

Sec. 14. 7 MRSA §458, sub-§3, as enacted by PL 1981, c. 139, is amended to read:

3. Retailers. ~~Any person~~ A retailer who sells licensed commodities to consumers ~~shall be is~~ exempt from this subchapter with respect to those sales.

Sec. 15. 7 MRSA §459, first ¶, as enacted by PL 1981, c. 139, is amended to read:

If ~~any~~ a licensee fails to make ~~such~~ 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 ~~shall~~ 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, ~~he~~ the commissioner shall ~~provide notice~~, in a manner consistent with the ~~rule-making provisions of the~~ Maine Administrative Procedure Act, ~~provide notice~~ that payment under the bond will be sought and indicating the time within which other producer or licensee claims may be made known to ~~him~~ the commissioner. Upon determination of the commissioner that there has been a default in payment by a licensee, the conditions of the bond ~~shall be~~ 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.

Sec. 16. 7 MRSA §481 is repealed.

Sec. 17. 7 MRSA §482, first ¶ is amended to read:

~~No~~ A person ~~shall~~ may not manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation any article of commercial feeding stuff, commercial fertilizer, ~~drug~~ or food ~~which that~~ is adulterated or misbranded within the meaning of this ~~Title~~ chapter or chapter 103.

Sec. 18. 7 MRSA §483 is amended to read:

§483. Adulteration

For the purpose of this ~~Title~~ an article shall be deemed to be adulterated chapter and chapter 103, unless the term is more specifically defined, "adulterated" means made impure or inferior by adding extraneous ingredients.

1. Drug. In case of a drug:

~~A. If, when a drug is sold under or by a name recognized in the United States pharmacopoeia or national formulary, it differs from the standard of strength, quality or purity as laid down in the United States pharmacopoeia or national formulary official at the time of investigation, or as fixed by the commissioner. No drug defined in the United States pharmacopoeia, the national formulary or by said commissioner shall be deemed to be adulterated under the provision if the standard of strength, quality or purity be plainly stated, so as to be understood by the non-professional person, upon the bottle, box or other container thereof, although the standard may differ from that laid down in the United States pharmacopoeia, national formulary or that fixed by said commissioner.~~

~~B. If its strength or purity differs from the professed standard or quality under which it is sold.~~

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.

Sec. 19. 7 MRSA §484 is amended to read:

§484. Misbranding

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

~~For the purpose of this Title an article shall be deemed to be misbranded:-~~

1. Drug. In case of a drug:

~~A. If it be an imitation of or offered for sale under the name of another article;~~

~~B. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or except in the case of a physician's prescription compounded by a physician or a registered pharmacist, if the package fails to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, or~~

~~any derivative or any preparation of any such substances contained therein.~~

Sec. 20. 7 MRSA §485, as amended by PL 1975, c. 382, §1, is repealed.

Sec. 21. 7 MRSA §486, as amended by PL 1979, c. 672, Pt. A, §18, is repealed.

Sec. 22. 7 MRSA §487 is repealed.

Sec. 23. 7 MRSA §488-A, sub-§1, as enacted by PL 2003, c. 452, Pt. B, §3 and affected by Pt. X, §2, is amended to read:

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

Sec. 24. 7 MRSA §489, first ¶, as amended by PL 2003, c. 452, Pt. B, §4 and affected by Pt. X, §2, is further amended to read:

A person may not be prosecuted under chapter 401, and sections ~~481~~ 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 ~~Title chapter or chapter 103~~.

Sec. 25. 7 MRSA §490 is enacted to read:

§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.

Sec. 26. 7 MRSA §508, sub-§7, as enacted by PL 1965, c. 65, is amended to read:

7. Reused food or drugs. ~~The introduction To introduce or delivery 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 which 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 which 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, subsection 9.

Sec. 27. 7 MRSA §528, as amended by PL 1973, c. 625, §38, is further amended to read:

§528. Exemptions

~~Neither this subchapter nor regulations promulgated under this subchapter shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of October 1, 1969 or any such regulation, nor shall any regulation or this subchapter preclude the orderly disposal of packages or containers in inventory or with the trade as of the effective date of such regulation or of this subchapter.~~

All packages of consumer commodities ~~which that have been labled~~ labeled in accordance with federal regulations established by the United States Secretary of Health, Education and Welfare Department of Health and Human Services, the Federal Trade Commission or ~~by the United States Department of Agriculture shall not be included under~~ are in compliance with this subchapter.

Sec. 28. 7 MRSA §539, as amended by PL 1971, c. 13, §1, is further amended to read:

§539. Sale, exchange or transport of "controlled atmosphere" apples

~~No~~ A person ~~shall~~ may not sell or exchange or offer or expose for sale or exchange or transport for sale any apples represented as having been exposed to "controlled atmosphere," or "modified atmosphere," alone or with other words, or ~~shall so~~ use any such term or form of words or symbols of similar import on any container or lot of apples advertised, sold, offered for sale or transported for sale within this State unless such apples have been kept in a room or storage building with not more than 5% oxygen for a minimum of ~~90~~ 45 days, except that the commissioner, after notice and public hearing, may change the minimum of ~~90 days to any~~ number of ~~less~~ days, as conditions in the apple industry may require.

If within a period of ~~100~~ 50 consecutive days the oxygen content of a sealed storage room ~~shall be~~ is at 5% or less for a total of ~~90~~ 45 days, the room ~~shall qualify~~ qualifies as a legal controlled atmosphere room.

Sec. 29. 7 MRSA §540-B, as amended by PL 1979, c. 731, §19, is further amended to read:

§540-B. Department of Agriculture, Food and Rural Resources seal

All controlled atmosphere storage rooms ~~shall~~ must be sealed by a Department of Agriculture, Food and Rural Resources seal, affixed by an authorized representative of the department. All storages to qualify for controlled atmosphere must have been sealed by a department representative on or before November 15th of the storage year.

No seal ~~shall may~~ be broken; nor any such room be entered during the ~~90-day~~ 45-day required period, except as provided in section 539. Whenever such interruptions occur, the ~~Division of Markets of the Department of Agriculture, Food and Rural Resources~~ department must be notified within 48 hours after the opening of such rooms. Such entered room ~~shall must~~ thereafter be resealed by an authorized representative of the department.

Sec. 30. 7 MRSA §631-A, as amended by PL 1977, c. 694, §67, is further amended to read:

§631-A. Official standards

The commissioner ~~is authorized, after holding public hearing, to~~ may by rule establish and promulgate, in a manner consistent with the rule making procedures of the Maine Administrative Procedure Act, official definitions and standards and sizes for grading or classifying, packaging and labeling eggs ~~and to change such official standards and sizes from time to time.~~

~~Such official~~ The standards and sizes ~~shall pursuant to this section may~~ not be lower in their requirements than the minimum requirements and the official standards and sizes for corresponding grades or classifications as ~~promulgated from time to time~~ adopted by the Secretary of Agriculture of the United States, commonly known as U.S. Grades. The commissioner may adopt by reference the United States standards, grades and weight classes for shell eggs as adopted by the United States Department of Agriculture Agricultural Marketing Service. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 31. 7 MRSA §633, first ¶, as repealed and replaced by PL 1973, c. 48, §3, is amended to read:

~~The~~ Except as provided in section 636, the standards of quality for Maine consumer grades for shell eggs, ~~Grade AA, Grade A and Grade B, that are or may be~~ established by the commissioner, ~~shall~~ apply to all shell eggs sold or offered for sale. The final determination of the grades ~~shall be~~ is made by candling.

Sec. 32. 7 MRSA §635-A is enacted to read:

§635-A. Prohibition on sale of restricted eggs

A person may not sell restricted eggs except that an egg producer or packer may sell restricted eggs on that producer's or packer's premises directly to a household consumer for use by that consumer and members of the consumer's household and the consumer's nonpaying guests and employees.

Sec. 33. 7 MRSA §636, as repealed and replaced by PL 1973, c. 48, §5, is repealed and the following enacted in its place:

§636. Exemptions

1. Direct sales to consumers. Producers selling eggs of their own production direct to consumers are exempt from sections 631-A to 635 for those sales.

2. Eggs shipped for wholesale sale. An egg producer may ship eggs to a wholesaler or to another shipper without labeling and grading the eggs in accordance with sections 631-A to 635. When an egg producer ships eggs that are marked as to grade and size, the labeling must be accurate and comply with the standards of this subchapter and rules adopted pursuant to section 631-A.

Sec. 34. 7 MRSA §637, first ¶, as amended by PL 1977, c. 696, §66, is further amended to read:

The commissioner shall ~~have authority to~~ administer sections 631 to ~~639~~ 643 and ~~to may~~ adopt, in a manner consistent with the Maine Administrative Procedure Act, uniform rules ~~and regulations~~ for such administration. The commissioner may recover the ~~forfeitures~~ fines imposed for violations of ~~section~~ sections 631 to ~~639~~ 643 in a civil action brought in ~~his own the commissioner's name, with the venue to be as in other civil actions, and if he prevails prevailing in that action, the commissioner shall recover full costs.~~

Sec. 35. 7 MRSA §638, as repealed and replaced by PL 1977, c. 696, §67, is amended to read:

§638. Disposal of fines

~~All forfeitures received under section 631 to 639 by county treasurers shall fines imposed for violation of this subchapter must be paid by them to the commissioner. All money received by the commissioner under those sections shall be paid by him. The commissioner shall send all fines received for violations of this subchapter to the Treasurer of State for deposit in the General Fund.~~

Sec. 36. 7 MRSA §712, sub-§1, as enacted by PL 1971, c. 77, §1, is amended to read:

1. Brand name. "Brand name" means ~~any~~ a word, name, symbol or device, or any combination thereof, ~~identifying that identifies~~ the commercial feed of a distributor or registrant and ~~distinguishing distinguishes~~ it from that of others.

Sec. 37. 7 MRSA §712, sub-§18, as enacted by PL 1971, c. 77, §1, is amended to read:

18. Product name. "Product name" means the name of the commercial feed ~~which that~~ identifies it as to kind, class or specific use and distinguishes it from all other products bearing the same brand name.

Sec. 38. 7 MRSA §714, sub-§1, as amended by PL 2001, c. 422, §1, is further amended to read:

1. Application for registration. A person may not distribute in this State a commercial feed, except a customer-formula feed, that has not been registered pursuant to this section. The application for registration must be submitted in the manner prescribed by the commissioner on forms furnished by the commissioner, and accompanied by an annual fee of \$80 per ~~brand~~ product name for pet food and \$80 per ~~brand~~ product name for all other commercial feed. Upon approval by the commissioner the registration must be issued to the applicant. All registrations expire on the 31st day of December. The commissioner may issue a registration for a one-year, 2-year or 3-year period. Registrations for a period in excess of one year may only be issued with the agreement of or at the request of the applicant. The fee for a 2-year registration is 2

times the annual fee. The fee for a 3-year registration is 3 times the annual fee.

Sec. 39. 7 MRSA §714, sub-§4, as enacted by PL 2005, c. 281, §1, is amended to read:

4. Surcharge on registration of pet food. For each ~~brand~~ product name of pet food registered in accordance with subsection 1, the applicant shall pay a \$20 surcharge in addition to the registration fee. The commissioner shall deposit the surcharge into the Animal Welfare Fund established under section 3906-B, subsection 2.

Sec. 40. 7 MRSA §720, sub-§6, as enacted by PL 1971, c. 77, §1, is amended to read:

6. Methods. Sampling and analysis ~~shall must~~ be conducted in accordance with methods published by the Association of Official Analytical Chemists, or in accordance with other generally recognized methods. ~~The Director of the Maine Agricultural Experiment Station shall annually analyze, or cause to be analyzed, samples of commercial feeds submitted by the commissioner.~~

Sec. 41. 7 MRSA §724, first ¶, as enacted by PL 1971, c. 77, §1, is amended to read:

The commissioner shall publish the results of analysis of commercial feeds as determined by the Director of the Maine Agricultural Experiment Station shall be published by him in the bulletins or reports of the experiment station, together with the names of persons from whom the samples were obtained, the names of the manufacturers thereof and such additional information as ~~to him may seem~~ the commissioner determines is advisable.

Sec. 42. 7 MRSA §745 is amended to read:

§745. Inspection, sampling and analysis

~~It shall be the duty of the~~ The commissioner ~~to shall~~ inspect and sample for analysis in accordance with section ~~485~~ 490 commercial fertilizers distributed within this State ~~at such time and place to such an to~~ the extent as ~~he may deem~~ the commissioner deems necessary to determine ~~whether such commercial fertilizers are in compliance with this subchapter.~~ The commissioner is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers, subject to this subchapter and the rules ~~and regulations pertaining thereto~~ adopted pursuant to section 748.

The methods of sampling, sample preparation and analysis ~~shall be~~ are those adopted from sources such as the Journal of the Association of Official Agricultural Chemists. The commissioner, in determining for administrative purposes whether a

commercial fertilizer is deficient in any component, ~~shall be~~ is guided solely by the official sample as defined and obtained and analyzed as provided for in this section.

When the inspection and analysis of an official sample indicate a commercial fertilizer has been adulterated or misbranded, ~~the results of analysis shall be forwarded by the commissioner~~ shall forward the results of the analysis to the distributor or manufacturer. Upon request within 30 days, the commissioner shall furnish to the registrant a portion of the sample concerned.

Sec. 43. 7 MRSA §1007-A, sub-§6, as enacted by PL 1997, c. 538, §1, is amended to read:

6. Civil penalties. Any person who violates any of the requirements of this section or any rules adopted under this section commits a civil violation for which a ~~forfeiture fine~~ of not more than \$1,000 for each violation, together with not more than ~~\$200~~ \$1,000 for each succeeding day of a continuing violation, may be adjudged.

Sec. 44. 10 MRSA §1661-B, sub-§3, as enacted by PL 2003, c. 452, Pt. E, §4 and affected by Pt. X, §2, is amended to read:

3. Enforcement. The Commissioner of Agriculture, Food and Rural Resources shall enforce this section pursuant to Title 7, section 44 ~~13~~.

See title page for effective date.

CHAPTER 513

H.P. 1312 - L.D. 1872

An Act To Provide Forest Certification Cost-share Incentives to Forest Landowners and Licensed Foresters

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA c. 801-A, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 801-A

FOREST CERTIFICATION INCENTIVE COST-SHARE FUND

Sec. 2. 12 MRSA §8011, as enacted by PL 2001, c. 439, Pt. KKKK, §1, is repealed and the following enacted in its place:

§8011. Cost-share fund established; purpose

A forest certification incentive cost-share fund, referred to in this chapter as "the fund," is established as a nonlapsing dedicated account to provide incentives to licensed foresters and landowners for obtaining independent 3rd-party certification and recertification. The bureau shall administer the fund in accordance with section 8014. The bureau may accept donations and grants from public and private sources for deposit in the fund.

Sec. 3. 12 MRSA §8012, sub-§3, as enacted by PL 2001, c. 439, Pt. KKKK, §1, is amended to read:

3. Independent 3rd-party certification. "Independent 3rd-party certification" means a system that verifies ~~sustainable forest management through an independent 3rd party audit of a licensed professional forester's management of a client's forest lands; that forest management is consistent with a certification program's standards through an independent 3rd-party audit of the management of forest lands. To be considered an "independent 3rd-party certification" system:~~

A. The certification program, including, but not limited to, the standards for awarding certification and the protocols for ascertaining compliance, must be developed and administered by an entity with no financial interest in the entity seeking certification except by reason of the contract for certification services; and

B. The organization retained to perform the certification audit may not receive any financial benefit from timber harvesting on the land or from the entity being audited, except for the contractual relationship for the audit service.

Sec. 4. 12 MRSA §8012, sub-§4, as enacted by PL 2001, c. 439, Pt. KKKK, §1, is amended to read:

4. Licensed forester. "Licensed ~~professional~~ forester" means a person licensed pursuant to Title 32, chapter ~~75~~ 76.

Sec. 5. 12 MRSA §8013, as enacted by PL 2001, c. 439, Pt. KKKK, §1, is repealed.

Sec. 6. 12 MRSA §8014 is enacted to read:

§8014. Administration of cost-share fund; procedure

The bureau shall administer the fund to reimburse eligible persons for a portion of the costs of obtaining independent 3rd-party certification in accordance with this section.