

MINNESOTA RULES 1997

1

CHAPTER 1500 DEPARTMENT OF AGRICULTURE WHOLESALE PRODUCE DEALERS

| | | | |
|-----------|---|-----------|--|
| 1500.0101 | PURPOSE. | 1500.1501 | FEDERAL PREEMPTION. |
| 1500.0201 | DEFINITIONS. | 1500.1800 | CONFIRMATION OF PRODUCE SALES CONTRACT. |
| 1500.0301 | SIGNED INVOICE. | 1500.1900 | CONFISCATION. |
| 1500.0401 | CASH. | 1500.2000 | INSPECTION. |
| 1500.0501 | PERISHABLE PRODUCTS. | 1500.2100 | ESCROW IN BEHALF OF SHIPPER. |
| 1500.0601 | FINANCIAL STATEMENTS | | MARKETING AND BARGAINING |
| 1500.0701 | BONDS AND IRREVOCABLE LETTER OF CREDIT. | 1500.3300 | DEFINITIONS. |
| 1500.0801 | CLAIMS AGAINST A BOND. | 1500.3400 | VALUE LIMITS FOR PRODUCER ACTING AS HANDLER. |
| 1500.0901 | MEDIATION AND ARBITRATION. | 1500.3500 | PROCESSING FEES FOR ACCREDITATION. |
| 1500.1001 | PARENT COMPANY. | 1500.3600 | ALTERNATE MARKETING YEAR. |
| 1500.1101 | WHOLESALE PRODUCE DEALERS TRUST. | 1500.3700 | DISPUTE SUPERVISION. |
| 1500.1201 | NOTICE OF PAYMENT PROTECTION. | 1500.3800 | LATE APPLICATION FOR PETITION FOR SUPERVISION. |
| 1500.1301 | COMMITMENT TO PAY. | | |
| 1500.1401 | UNFAIR TRADE PRACTICES. | | |

1500.0100 [Repealed, 16 SR 2441]

1500.0101 PURPOSE.

The purpose of parts 1500.0101 to 1500.1501 is to provide economic protection for the producers and sellers of perishable agricultural products.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0200 [Repealed, 16 SR 2441]

1500.0201 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1500.0101 to 1500.1501.

Subp. 2. **Bond.** "Bond" means an obligation for which one is bound that is executed and filed with the commissioner of agriculture in the name of the state of Minnesota requiring that the wholesale produce dealer must live up to the contracts and obey the laws and rules covering wholesale produce dealers.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of agriculture or a designee.

Subp. 4. **Pool.** "Pool" means a fund containing contributions by farmers and wholesale produce dealers to reimburse farmers for produce committed for but not harvested.

Subp. 5. **Principal.** "Principal" means a person who empowers another to act on his or her behalf.

Subp. 6. **Purchase.** "Purchase" means the acquisition of produce by a wholesale produce dealer in exchange for payment. It is immaterial whether the purchaser or the seller has title to the produce.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0300 [Repealed, 16 SR 2441]

1500.0301 SIGNED INVOICE.

An invoice that is being treated as a contract under Minnesota Statutes, section 27.01, subdivision 5, must be signed by the buyer of the produce.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0400 [Repealed, 16 SR 2441]

1500.0401 WHOLESALE PRODUCE DEALERS

2

1500.0401 CASH.

Cash, as defined in Minnesota Statutes, section 27.01, subdivision 8, paragraph (c), clause (3), does not include personal or business account checks.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0500 [Repealed, 16 SR 2441]

1500.0501 PERISHABLE PRODUCTS.

Under Minnesota Statutes, section 27.01, subdivision 8, paragraph (c), clause (4), perishable agricultural products protected by the Wholesale Produce Dealers Act include:

- A. poultry and poultry products;
- B. milk and milk products that have a shelf life of less than 60 days; and
- C. perishable fruits and vegetables, including all fruits, vegetables, and mushrooms in fresh form whether or not packed in ice or held in cold storage, but not including perishable fruits and vegetables that have been manufactured into articles of food of a different kind or character. The effects of the following operations must not be considered as changing a commodity into a food of a different kind or character: water or steam blanching, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture, fumigating, gassing, heating for insect control, ripening, coloring, removal of seed, pits, stems, calyx, husk, pods, rind, skin or peel, polishing, precooking, refrigerating, shredding, slicing, trimming, washing with or without chemicals, waxing or adding of sugar or other sweetening agents, adding ascorbic acid or other agents used to retard oxidation, mixing of several kinds of sliced, chopped, or diced fruits or vegetables for packaging in any type of containers, pasteurization, homogenization, and grading.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0600 [Repealed, 16 SR 2441]

1500.0601 FINANCIAL STATEMENTS.

An application for licensing under the Wholesale Produce Dealers Act must be accompanied by a financial statement as required under Minnesota Statutes, section 27.04, subdivision 2, paragraph (a), clause (5). The financial statement must be prepared according to generally accepted accounting principles that meet the requirements in items A to D.

A. The financial statement must include, but is not limited to:

- (1) accountant's report;
- (2) statement of financial position (balance sheet); and
- (3) statement of operations (income statement).

B. The financial statement must be accompanied by a certification by the chief executive officer or the chief executive officer's designee of the licensee, under penalty of perjury, that the financial statement accurately reflects the financial condition of the licensee for the period specified in the statement.

C. The commissioner may refuse to issue or renew a license or may suspend a license upon determining, based upon the financial statement filed under this part or other financial information obtained by the commissioner, that the applicant or the licensee is not financially able to properly perform the services and operate the business for which the license is issued.

D. The copies of contracts required by Minnesota Statutes, section 27.04, subdivision 2, paragraph (b), do not have to contain price schedules and charges. If the same contract is given to more than one seller, only one copy of that contract is required.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0700 [Repealed, 16 SR 2441]

1500.0701 BONDS AND IRREVOCABLE LETTER OF CREDIT.

In lieu of a surety bond, the commissioner may accept an irrevocable letter of credit if the licensee has been licensed for at least three years and there have been no complaints con-

cerning the licensee during the past three years, the licensee's ratio of current assets to current liabilities is at least 1.2 to 1, and the licensee's total assets exceed total liabilities.

The Department of Agriculture "Minnesota Bond of Wholesale Produce Dealer" form must be used for all wholesale produce dealer bonds.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0800 [Repealed, 16 SR 2441]

1500.0801 CLAIMS AGAINST A BOND.

Subpart 1. **Filing a claim.** Claims against a bond may be filed by a producer or wholesale produce dealer claiming to be damaged by the breach of an agreement to purchase produce. A claim must be filed with the commissioner within 40 days following the due date. Due date means ten days from the date of delivery of produce by the seller to the licensee or the due date specified in a contract between the buyer and seller. In the case of milk processing plants, the due date means 15 days following the monthly day of accounting.

Subp. 2. **Form of claim.** All claims must be in writing, must state the facts upon which the claim is based, must include all supporting evidence, and must be signed by the claimant. The supporting evidence must consist of, but is not limited to, a contract, purchase agreement, a check indicating insufficient funds, and purchase receipts.

Subp. 3. **Where to file.** All claims must be filed at the following address: Minnesota Department of Agriculture, Plant Industry Division, Fruit and Vegetable Section, 90 West Plato Boulevard, Saint Paul, Minnesota 55107.

Subp. 4. **Notice to licensee.** Upon receipt of a claim, the licensee must be informed that a claim has been made and given ten days in which to pay or challenge the claim.

Subp. 5. **Bond proceeds.** If bond proceeds are inadequate to cover all claims, claims of farmers must take priority. Proceeds must be distributed in pro rata shares.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.0900 [Repealed, 16 SR 2441]

1500.0901 MEDIATION AND ARBITRATION.

Subpart 1. **Definitions.** The definitions in items A and B apply to this part.

A. "Mediation" is a process by which the parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute themselves. The mediator has no authority to impose a settlement.

B. "Arbitration" is a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision (grant an award) resolving the dispute.

Subp. 2. **Procedure.** If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the Department of Agriculture. Mediation and arbitration activities of the commissioner must be conducted according to Minnesota Statutes, chapter 572.

Subp. 3. **Required clauses.** Mediation or arbitration clauses are required in all contracts signed by Minnesota producers.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1000 [Repealed, 16 SR 2441]

1500.1001 PARENT COMPANY.

Subpart 1. **Voting power.** A corporation, partnership, or association that directly, or indirectly through related entities, owns more than 50 percent of the voting power of the shares entitled to vote for directors of a subsidiary corporation is liable to a seller of agricul-

1500.1001 WHOLESALE PRODUCE DEALERS

4

tural commodities for any unpaid claim or contract performance claim of that subsidiary corporation.

Subp. 2. Management or control. A corporation, partnership, or association that directly, or indirectly through related entities, provides more than 50 percent of the management or control of a subsidiary is liable to the seller of an agricultural commodity for any unpaid claim or contract performance claim of the subsidiary.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1100 [Repealed, 16 SR 2441]

1500.1101 WHOLESALE PRODUCE DEALERS TRUST.

Subpart 1. Scope. The requirements of this part cover all transactions existing as of and entered into on or after May 18, 1992, that have been issued under Minnesota Statutes, section 27.137.

Subp. 2. Definitions. The definitions in this subpart apply to parts 1500.1101 and 1500.1201.

A. "Calendar days" means every day of the week, including Saturdays, Sundays, and holidays except that if the 40th calendar day falls on a Saturday, Sunday, or holiday, the final day with respect to the time for filing a beneficiaries' notice is the next day upon which there is a postal delivery service.

B. "Default" means the failure to pay promptly money owed by the due date.

C. "Dissipation" means an act or failure to act that could result in the diversion of trust assets or that could prejudice or impair the ability of unpaid suppliers, sellers, or agents to recover money owed in connection with produce transactions.

D. "Due date" means ten days from the date of delivery of produce by the seller to the licensee if the due date is not specified in a contract between the parties. Otherwise, the due date is the contract due date.

E. "Received" means the time when the buyer, receiver, or agent gains ownership, control, or possession of produce, except that if produce has not been received as described above and if there is a rejection without reasonable cause, the goods must be considered to have been received when proffered.

F. "Trust assets" means produce received in all transactions, all inventories of food or other products derived from that produce, and all receivables or proceeds from the sale of that produce and derived food or products. Trust assets must be preserved as a nonsegregated floating trust. Commingling of trust assets is contemplated.

Subp. 3. Beneficiaries' notice. Wholesale produce dealers acting on the behalf of others have the duty to preserve their principals' rights to trust benefits by filing a timely beneficiaries' notice provided by the commissioner with their principal, the produce buyer, the commissioner, and the Secretary of State, 180 State Office Building, 100 Constitution Avenue, Saint Paul, Minnesota 55155.

Subp. 4. Trust maintenance. Wholesale produce dealers are required to maintain trust assets so that the assets are freely available to satisfy outstanding obligations to sellers of produce. An act or omission that is inconsistent with this responsibility, including dissipation of trust assets, is unlawful and constitutes irreparable injury and harm.

Subp. 5. Valid claim. A claim is valid if the claim form identifies the product and the amount due and a beneficiaries' notice is filed with the wholesale produce dealer to whom the produce was transferred, the commissioner, and the secretary of state by 40 days after the due date.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1200 [Repealed, 16 SR 2441]

1500.1201 NOTICE OF PAYMENT PROTECTION.

Wholesale produce dealers who purchase produce from sellers inside the state of Minnesota must provide the following notice of payment protection, in at least ten point, all capital type, to each seller of produce on or before payment is due:

WE ARE A LICENSED AND BONDED MINNESOTA WHOLESALE PRODUCE DEALER. AS A SUPPLIER OF PRODUCE, YOU ARE PROTECTED BY A BOND AND A WHOLESALE PRODUCE DEALERS TRUST IF YOU FILE A CLAIM WITHIN 40 DAYS AFTER THE DUE DATE WITH THE MINNESOTA DEPARTMENT OF AGRICULTURE. FOR FURTHER INFORMATION, CALL (612) 297-2200 OR WRITE: MINNESOTA DEPARTMENT OF AGRICULTURE, PLANT INDUSTRY DIVISION, 90 WEST PLATO BOULEVARD, SAINT PAUL, MINNESOTA 55107

Wholesale produce dealers need only notify each of their sellers once. A new seller must be notified on or before the time a seller is to receive his or her first payment.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1300 [Repealed, 16 SR 2441]

1500.1301 COMMITMENT TO PAY.

Subpart 1. **Terms of commitment.** A processor may use a pooling arrangement to partially or fully meet the statutory obligation to pay the full contract price for produce committed for.

Subp. 2. **Contracts with pool arrangements.** If contracts contain pool arrangements, the processor shall pay a minimum of 50 percent, with the remainder of the pool to be paid for by the growers or others.

For purposes of determining compensation, yield and grade of unharvested acreage must be based on the actual yield and grade of a part of the grower's field that has been harvested for the purpose of determining yield and grade.

If it is impossible or impractical to harvest part of a grower's field, the grower and processor may agree on the method for determining yield and grade.

A grower who disagrees with the processor's determination of compensation may contact the Department of Agriculture for mediation or arbitration services to resolve the dispute.

Subp. 3. **Statement of aggregate disposition of passed acreage funds.** At the end of each season after passed acreage totals have been determined, each processor whose contract provides for a pooling arrangement shall provide contract growers with a statement summarizing the aggregate disposition of passed acreage funds. The statement must be provided to each grower with the grower's final paycheck. At a minimum, the statement must include:

- A. the total amount of acreage left unharvested by the processor;
- B. the amount of unsuitable acreage abandoned by the processor and the aggregate compensation paid for that acreage;
- C. the amount of suitable acreage passed by the processor and the total passed acreage compensation paid for that acreage;
- D. total grower contributions to the passed acreage pool;
- E. total processor contributions for passed acreage compensation; and
- F. total payment to growers, broken down into number of growers being paid, amount of acreage paid for, and total payment to all growers for passed acreage.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1400 [Repealed, 16 SR 2441]

1500.1401 UNFAIR TRADE PRACTICES.

It is unlawful in or in connection with any produce transaction:

A. for a wholesale produce dealer to make, for a fraudulent purpose, a false or misleading statement in connection with a transaction involving produce, including statements made to induce a person to sign a contract;

B. for a wholesale produce dealer to misrepresent by word, act, mark, stencil, label, statement, or deed, the character, kind, grade, quality, quantity, size, pack, weight, condi-

1500.1401 WHOLESALE PRODUCE DEALERS

6

tion, degree of maturity, or origin of any produce received, shipped, sold, or offered to be sold;

C. for a wholesale produce dealer, for a fraudulent purpose, to remove, alter, or tamper with a card, stencil, stamp, tag, or notice placed upon a container or railroad car containing produce, if the card, stencil, stamp, tag, or notice contains a certificate or statement under authority of a federal or state inspector or in compliance with a federal or state law or regulation as to the grade or quality of the produce contained in the container or railroad car;

D. for a wholesale produce dealer to use coercion, intimidation, the threat of retaliation, or the threat of contract termination to impose, demand, compel, or dictate the terms, payment or manner of payment, or the signing of a contract by a producer;

E. for a wholesale produce dealer, without the consent of an inspector, to make, cause, or permit to be made any change by way of substitution or otherwise in the contents of a load or lot of produce after it has been officially inspected for grading and certification. This does not prohibit resorting and discarding inferior produce; or

F. for a processor to commit to pay an amount less than the full contract price if the crop produced is satisfactory for processing and is not harvested for reasons within the processor's control. If the processor sets the date for planting, bunching, unusual yields, or a processor's inability or unwillingness to harvest are considered to be within the processor's control. Under this item, growers must be compensated for passed acreage at the same rate they would have received had the crop been harvested minus any contractual provision for green manure or feed value. Both parties are excused from payment or performance for crop conditions that are beyond the control of the parties.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1500 [Repealed, 16 SR 2441]

1500.1501 FEDERAL PREEMPTION.

If federal and state regulation are identical, federal jurisdiction and enforcement control unless the federal authority decides not to enforce the regulation.

Statutory Authority: *MS s 27.14*

History: *16 SR 2441*

1500.1600 [Repealed, 16 SR 2441]

1500.1700 [Repealed, 16 SR 2441]

1500.1800 CONFIRMATION OF PRODUCE SALES CONTRACT.

Whenever a contract is entered into between the purchaser and the seller or the seller's agent for the purchase of farm produce and a confirmation is submitted by either the seller or agent, unless the purchaser refuses to accept the confirmation by promptly notifying the seller or agent to the effect that the confirmation is not in accordance with the contract, by personal notification or wire, the said confirmation shall be considered binding.

Statutory Authority: *MS s 27.14*

History: *17 SR 1279*

1500.1900 CONFISCATION.

Whenever any person doing business or attempting to do business as a dealer at wholesale in farm produce without a license and bond, shall cause others to ship or deliver produce to that person as therein defined, the commissioner shall have power to seize such produce, whether delivered or enroute for delivery, and hold the same under seal of the Department of Agriculture, in behalf of and subject to the orders of the shipper, except that the said commissioner shall not release on order of the shipper or otherwise, any produce whatsoever to the unlicensed consignee until the consignee's status under the law shall have been determined.

Statutory Authority: *MS s 27.14*

History: *17 SR 1279*

1500.2000 INSPECTION.

When the conditions of any shipment so seized shall be deemed to be such as to demand immediate disposal in order to prevent material loss to the shipper, and the shipper cannot be

MINNESOTA RULES 1997

7

WHOLESALE PRODUCE DEALERS 1500.3400

located or does not reply promptly to notification of the commissioner, the commissioner shall order an inspection to be made as to the amount, quality, and condition of produce so shipped, and a copy of such inspection shall be held for the information of the shipper.

Statutory Authority: *MS s 27.14*

1500.2100 ESCROW IN BEHALF OF SHIPPER.

The produce shall then be delivered by order of the commissioner to a licensed dealer at wholesale who shall sell the same for the account of the shipper, returning the proceeds of said sale, less the expense incurred thereof, to the commissioner to be held in escrow in behalf of the shipper. Said moneys so received and accounted for shall be delivered to the shipper upon demand and proof of ownership.

Statutory Authority: *MS s 27.14*

History: *17 SR 1279*

1500.2200 [Repealed, 16 SR 2441]

1500.2300 [Repealed, 16 SR 2441]

1500.2400 [Repealed, 16 SR 2441]

1500.2500 [Repealed, 16 SR 2441]

1500.2600 [Repealed, 16 SR 2441]

1500.2700 [Repealed, 16 SR 2441]

1500.2800 [Repealed, 16 SR 2441]

1500.2900 [Repealed, 16 SR 2441]

1500.3000 [Repealed, 16 SR 2441]

1500.3100 [Repealed, 16 SR 2441]

1500.3200 [Repealed, 16 SR 2441]

MARKETING AND BARGAINING

1500.3300 DEFINITIONS.

Subpart 1. **Scope.** The following terms have the meaning given to them.

Subp. 2. **Agricultural commodity.** "Agricultural commodity" includes all agricultural goods produced by associations for marketing individually or collectively under contract with handlers, and consists of any materials produced for but not limited to use in or as food, feed, seed, or fiber, and includes but is not limited to crops for fiber, food, oil seeds, seeds, livestock, livestock products, poultry, poultry products, and other products or by-products of the farm produced for the same or similar use.

Subp. 3. **Board.** "Board" means the body consisting of three Department of Agriculture employees designated by the commissioner to assist the commissioner in administering Minnesota Statutes, sections 17.691 to 17.701 and rules adopted thereunder.

Subp. 4. **Marketing year.** "Marketing year" means, generally, any time between the second day of February of the previous calendar year and the first day of February of the subsequent year, unless the commissioner, pursuant to part 1500.3600, determines an alternative time period for a specific agricultural commodity to be designated as its marketing year.

Statutory Authority: *MS s 17.701*

1500.3400 VALUE LIMITS FOR PRODUCER ACTING AS HANDLER.

A producer who markets agricultural commodities produced by other producers shall be classed as a handler only when the value of the agricultural commodity obtained from other producers exceeds \$25,000 in any marketing year.

Statutory Authority: *MS s 17.701*

History: *17 SR 1279*

1500.3500 WHOLESALE PRODUCE DEALERS

8

1500.3500 PROCESSING FEES FOR ACCREDITATION.

At the time an association requests accreditation by the commissioner for bargaining purposes such request shall be accompanied by a fee of \$100. The commissioner shall determine actual costs connected with such accreditation including hourly wage, travel, and subsistence, search for information, correspondence, and any other expense incurred during the accreditation, and shall deduct the total from the accreditation fee. If there is a residue, it shall be returned to the association, and if the fee fails to cover the expense of the commissioner for accreditation, the commissioner shall bill the association, which shall pay said additional fee as billed before final accreditation.

Statutory Authority: *MS s 17.701*

History: *17 SR 1279*

1500.3600 ALTERNATE MARKETING YEAR.

If either the association or the handler requests that an alternative time period for a specific agricultural commodity be designated as its marketing year, the commissioner shall call for a hearing on ten days written notice to both the handler and the association, shall hear all the testimony, and on determining that an alternate marketing year is justified, shall so notify both the association and the handler. However, any requests for an alternative marketing year must be presented to the commissioner at least 90 days before the presently existing start of the marketing year in question.

Statutory Authority: *MS s 17.701*

History: *17 SR 1279*

1500.3700 DISPUTE SUPERVISION.

Upon being petitioned to assume supervision of a dispute under Minnesota Statutes, section 17.697, subdivision 3, the commissioner shall either turn the matter over to state mediation service or shall personally act as mediator. When acting as a mediator, the commissioner shall call a conference to take testimony and shall consider all evidence presented. Within ten days of the completion of the conference on said dispute, the commissioner shall issue to each party in writing a suggested settlement of the dispute.

Statutory Authority: *MS s 17.701*

History: *17 SR 1279*

1500.3800 LATE APPLICATION FOR PETITION FOR SUPERVISION.

When a petition requesting the commissioner to assume supervision over a dispute between an association and a handler is presented 15 days or less before the marketing year in dispute, the commissioner may refuse to provide supervision. In determining whether to provide supervision over the dispute the commissioner may consider any factors the commissioner deems relevant, including, but not limited to: the wishes of the disputing parties; the nature of the dispute; the availability of state mediation services.

Statutory Authority: *MS s 17.701*

History: *17 SR 1279*