

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 Rev. Dr. Martin Luther King Jr. Blvd., 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*

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