

1 Department of Agriculture

2

3 Adopted Permanent Rules Relating to Wholesale Produce Dealers

4

5 Rules as Adopted

6 1500.0101 PURPOSE.

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

10 1500.0201 DEFINITIONS.

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

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

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

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

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

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

29 1500.0301 SIGNED INVOICE.

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

33 1500.0401 CASH.

34 Cash, as defined in Minnesota Statutes, section 27.01,

1 subdivision 8, paragraph (c), clause (3), does not include
2 personal or business account checks.

3 1500.0501 PERISHABLE PRODUCTS.

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

7 A. poultry and poultry products;

8 B. milk and milk products that have a shelf life of
9 less than 60 days; and

10 C. perishable fruits and vegetables, including all
11 fruits, vegetables, and mushrooms in fresh form whether or not
12 packed in ice or held in cold storage, but not including
13 perishable fruits and vegetables that have been manufactured
14 into articles of food of a different kind or character. The
15 effects of the following operations must not be considered as
16 changing a commodity into a food of a different kind or
17 character: water or steam blanching, chopping, color adding,
18 curing, cutting, dicing, drying for the removal of surface
19 moisture, fumigating, gassing, heating for insect control,
20 ripening, coloring, removal of seed, pits, stems, calyx, husk,
21 pods, rind, skin or peel, polishing, precooking, refrigerating,
22 shredding, slicing, trimming, washing with or without chemicals,
23 waxing or adding of sugar or other sweetening agents, adding
24 ascorbic acid or other agents used to retard oxidation, mixing
25 of several kinds of sliced, chopped, or diced fruits or
26 vegetables for packaging in any type of containers,
27 pasteurization, homogenization, and grading.

28 1500.0601 FINANCIAL STATEMENTS.

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

35 A. The financial statement must include, but is not

1 limited to:

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

6 ~~B. The financial statement must be accompanied by a~~
7 ~~compilation report of the financial statement that is prepared~~
8 ~~by a person or firm approved by the commissioner or by an~~
9 ~~independent public accountant, according to standards~~
10 ~~established by the American Institute of Certified Public~~
11 ~~Accountants.~~

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

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

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

30 1500.0701 BONDS AND IRREVOCABLE LETTER OF CREDIT.

31 In lieu of a surety bond, the commissioner may accept an
32 irrevocable letter of credit if the licensee has been licensed
33 for at least three years and there have been no complaints
34 concerning the licensee during the past three years, the
35 licensee's ratio of current assets to current liabilities is at

1 least 1.2 to 1, and the licensee's total assets exceed total
2 liabilities.

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

6 1500.0801 CLAIMS AGAINST A BOND.

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

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

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

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

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

32 1500.0901 MEDIATION AND ARBITRATION.

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

35 A. "Mediation" is a process by which the parties to a

1 dispute jointly explore and resolve all or a part of their
2 differences with the assistance of a neutral person. The
3 mediator's role is to assist the parties in resolving the
4 dispute themselves. The mediator has no authority to impose a
5 settlement.

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

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

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

20 1500.1001 PARENT COMPANY.

21 Subpart 1. **Voting power.** A corporation, partnership, or
22 association that directly, or indirectly through related
23 entities, owns more than 50 percent of the voting power of the
24 shares entitled to vote for directors of a subsidiary
25 corporation is liable to a seller of agricultural commodities
26 for any unpaid claim or contract performance claim of that
27 subsidiary corporation.

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

34 1500.1101 WHOLESALE PRODUCE DEALERS TRUST.

35 Subpart 1. **Scope.** The requirements of this part cover all

1 transactions existing as of and entered into on or after the
2 effective date of this part that have been issued under
3 Minnesota Statutes, section 27.137.

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

6 A. "Calendar days" means every day of the week,
7 including Saturdays, Sundays, and holidays except that if the
8 40th calendar day falls on a Saturday, Sunday, or holiday, the
9 final day with respect to the time for filing a beneficiaries'
10 notice is the next day upon which there is a postal delivery
11 service.

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

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

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

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

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

35 Subp. 3. Beneficiaries' notice. Wholesale produce dealers
36 acting on the behalf of others have the duty to preserve their

1 principals' rights to trust benefits by filing a timely
2 beneficiaries' notice provided by the commissioner with their
3 principal, the produce buyer, the commissioner, and the
4 Secretary of State, 180 State Office Building, 100 Constitution
5 Avenue, Saint Paul, Minnesota 55155.

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

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

17 1500.1201 NOTICE OF PAYMENT PROTECTION.

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

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

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

34 1500.1301 COMMITMENT TO PAY.

35 Subpart 1. **Terms of commitment.** A processor may use a

1 pooling arrangement to partially or fully meet the statutory
2 obligation to pay the full contract price for produce committed
3 for.

4 Subp. 2. **Contracts with pool arrangements.** If contracts
5 contain pool arrangements, the processor shall pay a minimum of
6 50 percent, with the remainder of the pool to be paid for by the
7 growers or others.

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

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

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

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

26 A. the total amount of acreage left unharvested by
27 the processor;

28 B. the amount of unsuitable acreage abandoned by the
29 processor and the aggregate compensation paid for that acreage;

30 C. the amount of suitable acreage passed by the
31 processor and the total passed acreage compensation paid for
32 that acreage;

33 D. total grower contributions to the passed acreage
34 pool;

35 E. total processor contributions for passed acreage
36 compensation; and

1 F. total payment to growers, broken down into number
2 of growers being paid, amount of acreage paid for, and total
3 payment to all growers for passed acreage.

4 1500.1401 UNFAIR TRADE PRACTICES.

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

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

11 B. for a wholesale produce dealer to misrepresent by
12 word, act, mark, stencil, label, statement, or deed, the
13 character, kind, grade, quality, quantity, size, pack, weight,
14 condition, degree of maturity, or origin of any produce
15 received, shipped, sold, or offered to be sold;

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

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

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

35 F. for a processor to commit to pay an amount less

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

12 1500.1501 FEDERAL PREEMPTION.

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

16 REPEALER. Minnesota Rules, parts 1500.0100; 1500.0200;
17 1500.0300; 1500.0400; 1500.0500; 1500.0600; 1500.0700;
18 1500.0800; 1500.0900; 1500.1000; 1500.1100; 1500.1200;
19 1500.1300; 1500.1400; 1500.1500; 1500.1600; 1500.1700;
20 1500.2200; 1500.2300; 1500.2400; 1500.2500; 1500.2600;
21 1500.2700; 1500.2800; 1500.2900; 1500.3000; 1500.3100; and
22 1500.3200 are repealed.