

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

3/31/92
MJM

RULE REVIEW CHECKLIST

File No. 1910
DATE RECEIVED 3-30-92
REVIEW DATE 4-8-92
DUE DATE 4-13-92
(DIS)APPROVED 4/13/92
WITHDRAWN

Docket No. 05 0009.0986
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 3/31/92
REVISOR (DIS)APPROVED 3/31/92
FILED W/SEC. OF STATE 4/13/92
RETURNED TO AGENCY 3-13-92

✓ Rule as adopted (4 copies)

Notice to Solicit Outside Information/Opinion (if applicable)
Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
27.14 ✓ Statutory Authority
Small Business Statement
Expenditure of public money statement
1-4-92 Signature

Statement of Need and Reasonableness (if applicable)
Small Business Statement
Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
January 22, 1992 Dated (30/25 days before adoption
attached Notice attached indicates it is

✓ Copy of rule or summary attached

✓ Publication in State Register
January 27, 1992 Date (30/25 days before adoption

✓ 180-day deadline from:
Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

even though it states it as new material there is already a 1300. for wholesale Produce Dealers

Resolution Adopting
Date adopted

Findings of Fact, Conclusions & Order Adopting
March 20, 1992 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Paul Shanteau Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if applicable)

Rules ac1

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: April 13, 1992

TO: CAROL MILLIGAN
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Wholesale Produce Dealers

The above-referenced rule has been approved as to its legality by the Attorney General on April 13, 1992.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJM:jj
Enclosures
cc: Paul Strandberg
William Brown, Chief Judge
MaryAnn Hruby

Department of Agriculture

Adopted Permanent Rules Relating to Wholesale Produce Dealers

Rules as Adopted

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.

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.

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.

1500.0401 CASH.

Cash, as defined in Minnesota Statutes, section 27.01,

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

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.

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

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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 compilation report of the financial statement that is prepared by a person or firm approved by the commissioner or by an independent public accountant, according to standards established by the American Institute of Certified Public Accountants.~~

~~C.~~ 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.

~~D.~~ 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.

~~E.~~ 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.

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 concerning the licensee during the past three years, the licensee's ratio of current assets to current liabilities is at

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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.

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.

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

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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.

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 agricultural 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.

1500.1101 WHOLESALE PRODUCE DEALERS TRUST.

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

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transactions existing as of and entered into on or after the effective date of this part 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

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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.

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.

1500.1301 COMMITMENT TO PAY.

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

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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

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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.

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, condition, 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

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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.

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.

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

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by Revisor _____

APPROVED AS TO FORM AND LEGALITY

April 13 92

HUBE
ATT

BY_____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 13 1992

Joan Anderson Growe
Secretary of State

2:47 pm CAT

Stat Authority 27.14

In the manner provided by law, the commissioner, from time to time, shall make and publish uniform rules, not inconsistant with law

Rules

1500.0601 D. Commissioner may - they do explain under what circumstances

1500.701 Commissioner may - why not shall if it meets the criteria when wouldn't he accept a letter of credit if it met all the criteria

14.12 - don't consider it now since there is already a 1500. section relative to Wholesale Produce Dealer

Department of Agriculture

Proposed Permanent Rules Relating to Wholesale Produce Dealers

Rules as Proposed (all new material)

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.

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

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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.

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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

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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 compilation report of the financial statement that is prepared by a person or firm approved by the commissioner or by an independent public accountant, according to standards established by the American Institute of Certified Public Accountants.

C. 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.

D. 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.

E. 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.

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 concerning the licensee during the past three years, the licensee's ratio of current assets to current liabilities is at

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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.

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.

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

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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.

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 agricultural 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.

1500.1101 WHOLESALE PRODUCE DEALERS TRUST.

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

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transactions existing as of and entered into on or after the effective date of this part 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.

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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.

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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:

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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.

1500.1301 COMMITMENT TO PAY.

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

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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

Approved
by Revisor _____

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.

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, condition, 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

Approved
by Revisor _____

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.

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.

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

Approved
by Revisor _____

Department : AGRICULTURE

STATE OF MINNESOTA
Office Memorandum

Date : March 27, 1992

To : Patty Nolte
Attorney General's Office

From : Carol Milligan
Program Support Division

Phone : 296-6906

Subject : **Review of Proposed Rule Governing Wholesale Produce Rulers**

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memo are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

Please contact me if you have any questions.

cc: Elton Redalen, Commissioner
Newell Searle, Deputy Commissioner
Paul Strandberg, Special Assistant Attorney General
Jerry Heil, Program Support Division
Art Mason, Plant Industry
John Malmberg, Plant Industry

LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed

B. Notice of Intent

C. Statement of Need

D. Affidavit of Mailing

E. Mailing List Certificate

F. *State Register* Photocopy of Notice of Intent

G. Rule as Adopted (four copies)

H. Findings of Fact

I. Submissions and Comments

J. Declaration of Counsel

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE
PROPOSED RULE OF THE
DEPARTMENT OF AGRICULTURE
GOVERNING WHOLESALE
PRODUCE DEALERS

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of new rules governing the requirements for wholesale produce dealers. The rule is proposed for adoption pursuant to Minnesota Statutes, section 27.14, which authorizes the MDA to adopt rules for the regulation of wholesale producers, dealers, and purchasers.

The Department has determined that the proposed rule is noncontroversial in nature because two proposed drafts of the rules have been sent to the industry for comment and most of their suggested changes have been incorporated into the present proposed rules. The department has also met on several occasions with interested members of the industry to discuss the proposed rules. Because of the noncontroversial nature of this rule, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 14.21 to 14.28. Accordingly, the rulemaking proceedings on the proposed rule are governed by that statute and no hearing will be conducted on the proposed rule unless, twenty-five or more persons submit to the Department a written request for such hearing during the 30 day comment period required by Minnesota Statutes, chapter 14.

In accordance with the requirement of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed rule was published by the State Register.

II. GENERAL OVERVIEW

The legislature recognizes that perishable agricultural products are important sources of revenue to a large number of citizens of this state engaged in producing, processing, manufacturing, or selling such products and that such products cannot be repossessed in case of default. It is therefore declared to be the policy of the legislature that certain financial protection be afforded those who are producers on the farm; farmer cooperatives which are not wholesale produce dealers as described in Minnesota Statutes, section 27.01, subdivision 8; and licensed wholesale produce dealers, including the retail merchant purchasing produce directly from farmers. The 1990 legislature

passed a bill that made major changes to the existing statute. The department decided to rewrite the rules to eliminate obsolete provisions in the existing rules and to promulgate rules to implement the new legislation.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED WHOLESALE PRODUCE DEALERS RULES

The need for and reasonableness of the proposed wholesale producer dealer rules are as follows:

1500.0201. DEFINITIONS

This rule is needed to define words used in the following rules which determine how the purchasing and selling process are to be conducted. Definitions are a reasonable part of any set of rules and help to eliminated misinterpretation of the rule's intent.

1500.0301. SIGNED INVOICE

This rule is needed to accommodate the business practices of certain segments of the produce industry. Some members of the industry do not utilize formal written contracts but use sale documents to complete their transactions. It is reasonable because the rule provides a simple method for extending the protections of the act to the segments of the industry that utilize sale documents to complete transactions.

1500.0401. CASH

This rule is needed to define the concept of payment by cash. When a person pays for produce with cash, bonding is not required. However, when payments are made by personal or business checks, bonding is required to protect the producer. This rule is reasonable because personal and business checks do not eliminate the payment problems that make bonding a necessity.

1500.0501. PERISHABLE PRODUCTS

This rule is needed because it clarifies what products are perishable. After certain procedures or processes, products can change in form. This change in a products nature mandates a change in treatment of the particular product under the Wholesale Produce Dealers Act. This rule is reasonable because only perishable items are protected by this Act. Thus, clear definition of what products are perishable or nonperishable is essential for compliance with and enforcement of this Act.

1500.0601. FINANCIAL STATEMENTS

There is a need for a financial statement in the application process in order to assure the purchaser's ability to pay for produce or services obtained. The accounting principles that are required allow for an accurate determination of an entity's financial status. This rule is reasonable because parties are able to contract with others with some assurance of the other parties ability to pay for or to produce the items contracted for.

1500.0701. BONDS

Bonds are needed to provide financial security for sellers of wholesale produce. This rule is also reasonable because it allows for irrevocable letters of credit which are easier to obtain and less expensive than bonds.

1500.0801. CLAIMS AGAINST A BOND

This rule is needed to inform an injured party what information is necessary in order to file a proper claim. This rule is reasonable because it sets minimal standards for filing such a claim.

1500.0901. MEDIATION AND ARBITRATION

This rule is needed to allow parties involved in contracts for produce low-cost alternative procedures for the resolution of contract disputes. This rule is reasonable because many contract disputes are minor in nature and do not warrant the large investment of time and expense of going to court. The mediation process is desirable because it allows the parties to participate and cooperate in finding a solution to their dispute. Arbitration is beneficial because the parties can utilize a low-cost alternative to litigation.

1500.1001. PARENT COMPANY

This rule is needed to guarantee payments owed to producers and wholesale produce dealers who deal with wholesale produce dealers owned or controlled by another company. Business buyouts and consolidation activities have created a concern that shell, spin-off and subsidiary corporations might be unable to fulfill contracts with producers and wholesale produce dealers because of bankruptcy or insufficient assets. This rule is reasonable because it allows the producer and wholesale produce dealer recourse against a third party who substantially owns or controls the corporation that has contracted with the producer or wholesale produce dealer.

1500.1101. WHOLESALE PRODUCE DEALERS TRUST

This rule is needed to provide the same payment protection to produce sellers engaged in intra-state commerce that produce sellers engaged in interstate commerce are afforded through the federal trust provisions of the Perishable Agricultural Protection Act (P.A C.A.) and the Packers and Stockyards Act (P & S). This rule is reasonable because it requires little effort and no cost on the part of the seller to preserve the right to payment.

1500.1201. NOTICE OF PAYMENT PROTECTION

This rule is needed to inform producers and wholesale produce dealers that a buyer is a licensed and bonded wholesale produce dealer. The rule is also needed to inform producers of their bond and wholesale produce dealers trust protection and how to file a claim. This rule is reasonable because the notice to each seller need only be given once and therefore does not create an undue burden on the buyer.

1500.1301. COMMITMENT TO PAY

This rule is needed to provide a method for calculating reimbursement for passed acreage. Passed acreage is acreage contracted for but not harvested. The rule is also needed to provide a procedure for reporting why acreage is passed and how reimbursement for that passed acreage is conducted. The rule is reasonable because it recognizes a difference between a suitable and unsuitable crop, differences in grade and yield, and payment systems already in existence.

1500.1401. UNFAIR TRADE PRACTICES

This rule is needed to promote and insure fair trade practices between producers and wholesale produce dealers. This rule is reasonable because it incorporates into state law trade practice prohibitions that already exist and are prohibited on the federal level. Industry members that are involved in interstate commerce are already subject to the federal trade practice prohibitions.

1500.1501. FEDERAL PREEMPTION.

This rule is needed to avoid duplication of federal and state enforcement activities. This rule is reasonable because it recognizes the priority of federal jurisdiction and enforcement, and avoids duplication of effort by the state.

REPEALER

Minnesota Rules parts 1500.0100 to 1500.3200 need to be repealed because some of the present rules have been incorporated into the statute, are inconsistent with the statute or directly contradict the present statute. The present statute reflects major revisions that were made during the 1990 legislative session.

IV SMALL BUSINESS IMPACT OF THE PROPOSED RULES

As prescribed by Minnesota Statutes, section 14.115, subdivisions (1) and (2), the department has considered the degree of impact the proposed rules will have on small businesses and the alternative methods for lessening their impact.

The 1988 legislature authorized an Agricultural Contracts Task Force to determine the extent of problems relating to the sale of agricultural commodities under contract. The recommendations of the task force resulted in changes in the Minnesota Wholesale Produce Dealers Act and the promulgation of these rules. There were many representatives of small business on this task force. The major impact of these rules is to provide financial protection for producers and wholesale produce dealers, most of whom are small business persons.

For the small businesses that need to be licensed and bonded as Minnesota wholesale produce dealers, these rules will have the following impact. There are no new reporting requirements, however, in order to make certain a business is financially sound, the requirements for an acceptable financial statement will be more stringent; financial statements must be prepared in

accordance with standards established by the American Institute of Certified Public Accountants. If a small business is involved in contracting, a copy of the contract must be submitted to the department.

In lieu of a surety bond a small business which meets certain financial criteria may submit an irrevocable letter of credit. An irrevocable letter of credit has not been accepted by the commissioner in the past and is a less costly process for small businesses. The mediation and arbitration requirement will help small businesses because many disputes are minor in nature and do not warrant the large investment of time and expense of going to court. The rules governing the Wholesale Produce Dealers trust will not add any recordkeeping or reporting requirements but they will require that wholesale produce dealers not encumber any assets they have not paid for in order to satisfy outstanding obligations to sellers of produce. Since most small produce businesses are already under a federal trust provision (either the Perishable Agricultural Commodities Act or the Packers and Stockyards Act) this provision should have relatively little impact on small businesses.

These rules require wholesale produce dealers to notify sellers that they are licensed and bonded. The burden of this rule was lessened by requiring one-time notification rather than annually or at each transaction. The commitment to pay for a crop has no impact on small businesses.

Department of Agriculture

Plant Industry Division

In the Matter of the Proposed Rule of the State Department of Agriculture Governing Wholesale Produce Dealers	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, section 27.14.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

(4) Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. (7) If a public hearing is required, the department will proceed according to Minnesota Statutes, sections 14.131-14.20.

(5) Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

(8) The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The major impact of the proposed rule is financial protection for producers and wholesale produce dealers, most of which are small businesses. The rule will not add any recordkeeping or reporting requirements, but it will require that wholesale produce dealers not encumber any assets they have not paid for in order to satisfy outstanding obligations to sellers of produce.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

1-4-92
Date

STATE OF MINNESOTA

Elton Redalen
Elton Redalen, Commissioner
Department of Agriculture

Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : January 9, 1992

To : Maryanne Hruby, Director
LCRAR

From : Carol Milligan
Program Support Division

Phone : 296-6906

Subject : **Rule Governing Wholesale Produce Dealers**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for the above-captioned rule. The Notice of Intent to Adopt and the rule will be published in the *State Register* on 1/27/92.

Attachment

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Wholesale Produce Dealers

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 22nd day of January, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-96

Marie Skerbitz
Marie Skerbitz
Mail Room Manager

Subscribed and sworn to before me
this 22nd day of January, 1992.

Diane M. Windham

In the Matter of the Proposed Rule
of the State Department of Agriculture
Governing Wholesale Produce Dealers

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 22nd day of January, 1992.

Carol Milligan
Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-96

Subscribed and sworn to before me
this 22nd day of January, 1992.

Diane M. Windham

.5810 s.3 and 4; .6100; .6200; .6300; .6400; .6500; .6700; .9900; .9910; .9920; .9930; .9940 (proposed repealer) 1750
8830.0100 s.8 renumber as 8830.0100 s.19; 8830.5600 renumber as 8830.5250 (proposed renumbering) 1750

Veterans Home Board

9050.0020; .0070; .0080; .0100; .0150; .0200; .0220; .0300; .0500; .0550; .0700 (adopted) 1801

Veterans Affairs Department

9055.0010; .0015; .0020; .0025; .0030; .0035; .0040; .0050; .0055; .0060; .0070; .0075; .0080; .0085; .0090; .0095; .0100; .0105; .0110; .0115; .0120; .0125; .0130 (adopted) 1709

Office of Waste Management

9210.0620; .0630; .0635; .0640 (adopted) 1647

Human Services Department

9515.1200; .1300; .1400; .1500; .1900; .2200; .2300; .2400; .2500; .2600 (adopted) 1797
9515.1200 s.10,13,14,15, and 19a (repealed) 1797

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Wholesale Produce Dealers

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 27.14.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The major impact of the proposed rule is financial protection for producers and wholesale produce dealers, most of which are small businesses. The rule will not add any recordkeeping or reporting requirements, but it will require that wholesale produce dealers not encumber any assets they have not paid for in order to satisfy outstanding obligations to sellers of produce.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

Dated: 4 January 1992

Elton Redalen, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

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.

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.

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.

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.

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.

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 compilation report of the financial statement that is prepared by a person or firm approved by the commissioner or by an independent public accountant, according to standards established by the American Institute of Certified Public Accountants.

C. 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.

D. 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.

E. 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.

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 concerning 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.

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.

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.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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

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 agricultural 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.

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 the effective date of this part 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.

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.

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.

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, condition, 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.

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.

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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Department of Public Safety

Office of Pipeline Safety

Proposed Permanent Rules Relating to Pipeline Safety Funding

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Safety intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, sections 299F.631 and 299J.04.

All persons have 30 days, until 4:30 p.m., February 26, 1992, in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. Any requests or comments must be received by the Department of Public Safety no later than 4:30 p.m. on the final day of the comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Rose Keller, Office of Pipeline Safety, 175 Aurora Avenue, St. Paul, Minnesota 55103, (612) 296-0649.

The proposed rules may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rules as noticed.

A free copy of the rules is available upon request from Rose Keller at the address and telephone number listed above.

The rules are in response to a legislative mandate that the Office of Pipeline Safety be supported by fees from the pipeline operators who are regulated by the Office. The rules set out how these fees will be assessed against the pipeline operators.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Rose Keller at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will affect small businesses which are engaged in the sale, distribution, or transmission of natural gas or of liquefied petroleum gas. The department has evaluated the effect of the proposed rules on small businesses and has determined that the legislature, in drafting the applicable statutes, appropriately considered and drafted the legislation to reduce the impact on small businesses. The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement of Need and Reasonableness.

These rules will result in additional spending by municipal utilities. Arguably, these municipal utilities could be considered local public bodies under *Minnesota Statutes*, section 14.11, subdivision 1. The Office has identified 19 companies as municipal utilities. Based on the current costs of running the Office, the current charges for inspections, and the time spent this year in inspecting these utilities, the Office estimates that charges to these municipal utilities will total only about $25,000 per year for the next two years. These charges could be increased substantially, however, if one of these utilities committed serious safety violations or had a pipeline accident that required special inspections or investigations by the Office.

In accordance with *Minnesota Statutes*, section 16A.128, subdivision 1a, pertaining to fees, the Department has notified the Commissioner of Finance of the Department's intent to adopt rules related to the above-entitled matter. A copy of the Department's notice and the Commissioner of Finance's reply are attached to the Statement of Need and Reasonableness.

In accordance with *Minnesota Statutes*, section 16A.128, subdivision 2a, the Department has sent a copy of this notice and of the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee prior to submitting this notice to the *State Register*.

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Wholesale Produce Dealers

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the *State Register* on January 27,1992, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on January 22, 1992. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after the notice of proposed rulemaking. (5) The agency received one request for a public hearing. Therefore, the agency did not receive request for a public hearing from 25 or more persons which were not withdrawn.

(7) No requests for notice of submission to the attorney general were received by the department.

(6) Based on the comments and evidence in the record before the agency, I find the following:

1500.0601 B.

This part was changed because of the financial burden it would cause some wholesale produce dealers who do not have their business audited by an outside auditor. Section C. of this part, which requires certification by the chief executive officer of the business, offers sufficient assurance that the financial statement is accurate.

The above-captioned rule is needed and reasonable. (8)

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing wholesale produce dealers is adopted this 20th day of March, 1992, pursuant to authority vested in me by Minnesota Statutes, section 27.14.

(9) Elton Redalen

Elton Redalen
Commissioner

RECEIVED

FEB 03 1992

PLANNING DIVISION

BAER BROS., INC.
Amon Baer

Route 1, Box 75A
Lake Park, MN. 56554

Phone: (218) 937-5350
Fax: (218) 937-5533

1-30-92

Carol Milligan
Management Analyst
Minnesota Department of Agriculture
90 West Plato Boulevard
Saint Paul, Minnesota 55107

re: proposed rule governing wholesale produce dealers.

Dear Carol:

My name is Amon Baer, I am an independent egg producer in Northwestern Minnesota. I reiceved a copy of the Proposed Rules relating to Wholesale Produce Dealers. I have only one question in regards to the proposed rule. On page 2 line 7 in reference to products protected by the Produce Dealers Act it refers to poultry and poultry products. Are eggs included in the definition of poultry products? If they are not, I would like to see the proposed rule ammended to specifically include eggs to avoid any confusion on interpretation.

The line 7 now reads

7 poultry and poultry products;

The change I would recommend would be as follows.

7 eggs, poultry and poultry products;

Thank you for your consideration on this matter. It is a very important issue for the independent egg producer.

If you have any questions, please call.

Sincerely,

Amon Baer

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FEB 07 1992

PLANNING DIVISION

STEPHEN HUBERS - PARTNER
PEASE PRODUCE CO.
P.O. BOX 36
PEASE, MN 56363

FEBRUARY 5, 1992

DEAR MS. MILLIGAN,

AS DISCUSSED ON THE PHONE LAST WEEK, I HAVE A CONCERN RELATING TO THE "PROPOSED PERMANENT RULES RELATING TO WHOLESALE PRODUCE DEALERS." MY CONCERN RELATES TO SECTION 1500.0601 - FINANCIAL STATEMENTS. AS I UNDERSTAND IT, THIS SECTION WOULD REQUIRE ALL WHOLESALE PRODUCE DEALERS TO SUBMIT A FINANCIAL STATEMENT THAT IS EITHER PREPARED BY OR AUDITED BY AN INDEPENDENT ACCOUNTING FIRM. MY PREVIOUS PROFESSION WAS WORKING FOR AN ACCOUNTING FIRM AS A CPA. BASED ON THAT EXPERIENCE, I KNOW THAT FOR US TO OBTAIN AN AUDIT WOULD COST IN EXCESS OF $10,000. SINCE OUR COMPANY IS VERY SMALL, ALL OF OUR ACCOUNTING WORK IS DONE BY OURSELVES AND SUCH A FEE WOULD BE COST PROHIBITIVE.

I REQUEST THAT YOU CHANGE THESE PROPOSED RULES SO THAT SMALL COMPANIES (SALES OF LESS THAN $5 MILLION) DO NOT HAVE TO PROVIDE A REPORT FROM AN INDEPENDENT AUDITOR. IF THIS WOULD NOT BE FEASIBLE, I ASK THAT YOU WOULD ALLOW SMALLER COMPANIES TO SUBMIT COPIES OF THEIR INCOME TAX RETURNS INSTEAD OF AN ACCOUNTANTS REPORT. THIS LATTER METHOD WOULD GIVE YOU THE SATISFACTION OF KNOWING THAT THE FINANCIAL STATEMENTS ARE ACCURATE

(OVER)

BECAUSE NO ONE WOULD BE WILLING TO INFLATE PROFIT FIGURES AND PAY TAXES ON SUCH INFLATED PROFITS.

PLEASE CONTACT ME IF YOU HAVE ANY QUESTIONS REGARDING THIS CONCERN. THANK YOU.

SINCERELY,

Stephen Hulbert

Beckman Produce, Inc.
Finest Quality Fruits and Vegetables

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FEB 21 1992
PLANNING DIVISION

February 18, 1992

Ms. Carol Milligan
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107

Ms. Milligan:

We at Beckman Produce, Inc. are requesting a public hearing regarding the proposed Wholesale Produce Dealer Rules. Generally speaking, we feel the rules over-regulate situations and decisions that are part of the everyday business environment, while portions of the other rules are vague and subject to the discretion of individuals. Our interpretation of the rules also lead us to believe that lending institutions would not have a first secured position in trust assets that they might loan money against. It appears trust assets could be interpreted to mean all assets of an organization.

We feel credit decisions, whether to extend credit and for how long, are part of the everyday business decision making process. This is a risk-reward decision, the type of decision that gets made everyday in business. Credit is part of the relationship developed between a buyer and seller, and should not be subject to regulation, but be a part of the buy-sell negotiation process.

The financial statement section of the rules is of concern to us. "The commissioner may determine the licensee is not financially able to properly perform the services and operate the business for which the license is issued." This paragraph is extremely vague and thus becomes subject to the discretion of the commissioner. How do you determine who can and who can't "financially perform"?

The rules in and of themselves can create situations that make it more difficult to "financially perform". Because of the definition of trust assets, it will be much more difficult to obtain financing for a business because of the collateral position this rule puts a lending institution in. This rule could have the opposite impact of its intention. An organization may need to borrow

415 Grove Street • St. Paul, Minnesota 55101-2418 • 612-222-1212

money from time to time to pay its vendors timely, but it may not be able to borrow, because the lender can't get a first secured position in collateral, thus creating the problems that these rules are trying to solve.

Should you wish to discuss this further, please call me at 612-222-1212.

Sincerely,

George Zurbey

George Zurbey,
Secretary
Beckman Produce, Inc.

GZ:bj

RECEIVED

FEB 21 1992

PLANNING DIVISION

Route 3, Box 144
Aitkin, MN 56431

February 18, 1992

Ms Carol Milligan
Minnesota Department of Agriculture
90 West Plato Boulevard
Saint Paul, MN 55107

Dear Ms Milligan:

I am writing you regarding the **Proposed Permanent Rules Relating to Wholesale Produce Dealers.**

The section 1500.0601 Financial Statements is particularly disturbing to me, since it will require the services of an accountant to prepare a report and a statement of financial position, and a statement of operations. In order for him or her to do this, they would need to do a complete audit. This would be a financial burden for most small family farms such as ours. I, therefore, feel there should be some provision made whereby we could submit a financial statement without the services of an accountant.

I appreciate your effort to make dealers more financially responsible, but please don't make it impossible for small businesses to comply to the laws. Larger corporations usually have need for accountants, so would not find this a problem.

Thank you for your concern.

Sincerely,

Mrs. Robert N. Rom

Mrs. Robert N. Rom
Rte. 3, Box 144
Aitkin, MN 56431

M.A. Gedney Company
CHASKA, MINNESOTA 55318 / (612) 448-2612

February 26, 1992

Carol Milligan
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, Mn. 55107

Dear Ms. Milligan:

This is in reference to your Office Memorandum of Jan. 24, 1992, accompanying Proposed Wholesale Produce Rules dated 12/16/91 and identified by the desinator "[REVISOR] CEL/MN RD1869".

Pursuant to this reference, we wish to submit the following comments and proposed changes:

1500.1001 PARENT COMPANY

The language is unclear as to what constitutes a subsidiary corporation. As written, it could be interpreted that a group of related (family) individuals who together own 51% of the stock of a corporation are an "association" or "partnership" and are, therefore, exposed to liability for unpaid claims against the corporation, while all other stockholders would not be so liable, nor would a single stockholder owning 51% of the stock be considered a partnership or association and thus would also not be liable.

An additional subpart should be inserted which says:

> Subp. 3. The meaning of "Partnership" or "Association" does not include individual shareholders in a family relationship.

1500.1401 UNFAIR TRADE PRACTICES

Paragraph D.

There are two problems with this paragraph. One is that it assumes that only the Wholesale Produce Dealer has the power to use coercion, intimidation, etc. It may well be the other way around in some cases where the producer is economically large and the dealer is small. The other problem is that the prohibited actions are described in such broad terms as to possibly be interpreted to justify legal action in almost any situation where producer and dealer are unable to reach agreement through normal, accepted negotiation procedures.

The following additional language is proposed as part of this paragraph:

> Nothing in this paragraph may be interpreted to place liability on either party for normal, reasonable, and legal consequences to the other party which might result from the inability of these two parties to reach agreement on a contract, or on the renewal of one which has already expired or is about to expire.

This letter is being Faxed to you on this date and will follow by mail.

Sincerely yours,

Gedney Tuttle
President
M. A. Gedney Co.

ng

In the Matter of the Adoption of the Rule of the State Department Agriculture Governing Wholesale Produce Dealers

DECLARATION OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.

Paul Strandberg
Special Assistant Attorney General

Dated: 3/23/92