



COMMISSIONER SID MILLER

## **PRODUCE RECOVERY FUND - FACT SHEET**

The Produce Recovery Fund Law provides a means of recovery for producers and other produce dealers who do not receive payment for Texas grown perishable commodities sold on consignment or credit. The produce recovery fund is a special trust fund with the comptroller administered by the department, for the payment of claims against license holders and produce dealers who are required to be licensed with TDA.

The law requires any person/business purchasing perishable commodities on credit to obtain a General HMPC license from TDA. The cost of the General License is \$400.00 (\$150.00 license fee and a \$250 Produce Recovery Fund fee).

### **HOW TO FILE A PRODUCE RECOVERY CLAIM**

- The complainant must complete, sign, notarize and submit a Verified Complainant form (RPC-405).
- A filing fee of \$50.00 must be remitted to TDA.
- The complainant must complete and submit a Produce Recovery Claim Questionnaire/Investigation Report (RPC-404).
- The complaint and fee must be filed on or before the second anniversary of the date payment was due.

### **INVESTIGATION**

After a claim is initiated, TDA will investigate the claim for compliance with state law and to collect evidence referring to the claim. The following documents will be collected from both parties and will be used in determining if the complainant is entitled to payment from the Produce Recovery Fund.

- Produce Recovery Claim Questionnaire/Investigation Report of both parties.
- Written agreement/contract, if applicable.
- Copy of Inspection Report, if applicable.
- Documents to support the claim or defense, (invoices, weight tickets, correspondence/letters, etc.).

If a dispute cannot be settled after TDA has conducted an investigation of a claim, a legal hearing will be scheduled.

### **PAYMENT OF CLAIMS**

In order to protect the solvency of the Fund, all payments are made subject to the following limitations:

- The total payment of all claims arising from the same contract with a licensee will not exceed \$50,000.
- Payment of a claim filed against a person who is not licensed, but who is required to be licensed under Chapter 101 of the Agriculture Code, shall be limited to 80% of the recovery prescribed by this payment.

- The maximum amount payable in any one calendar year on behalf of any one licensee is \$85,000.
- Payments from the fund during a fiscal year may not exceed two times the average amount of money deposited into the fund during the previous three fiscal years, except that surplus funds remaining at the end of each fiscal year are available for the payment of claims during any succeeding year. In no case shall payment of claims cause the balance of the fund to fall below \$100,000.

### **CONTESTING A DECISION**

Either party may contest a decision made by an Administrative Law Judge. A five-member Produce Recovery Fund Board (appointed by the Commissioner of Agriculture) will hear all contested claims.

### **THE ROLE OF THE PRODUCE RECOVERY BOARD**

The Produce Recovery Board conducts adjudicative hearings on disputed claims presented for payment from the fund. The Board also provides the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board. The Board advises TDA on all matters relating to the fund, including the fund's budget and the revenues necessary to accomplish the purposes of the fund.

### **REIMBURSEMENTS TO THE FUND**

If a ruling is in favor of the complainant, the licensee or person required to be licensed shall repay or agree to repay (enter into reimbursement agreement) the fund the actual amount paid and also pay or agree to repay the aggrieved party (complainant) the remainder not covered by the Fund. If not paid immediately, the reimbursement is to be repaid with interest at the rate of 8%.

### **DEFAULT**

If a licensee or a person required to be licensed is ordered by a decision of the Board to make payment but fails to do so, compensation will be provided to the complaining party from the Produce Recovery Fund within the allowable legal limits. If the licensee fails to reimburse the Fund and/or the complaining party, TDA will revoke or deny the issuance of a license and refer the licensee or a person required to be licensed to the Texas Office of the Attorney General for collections.