

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: April 8, 1983

FROM : Gerald Heil, Director GFH
Planning Division

PHONE: 296-1486

SUBJECT: Review of Rules Adopted Without A Public Hearing

The Department of Agriculture has adopted Rules Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR SS 1.0700-1.0706), without a public hearing pursuant to Minnesota Statutes sections 14.21-14.28 (1982).

Accompanying this memorandum you will find the documents which are required to be submitted for your review. A list of these documents is attached.

Since no person requested to be notified when these documents were submitted to the Office of the Attorney General, no Notice of Submission nor Affidavit of Mailing such Notice are part of this record. No written comments were received during the solicitation of outside opinion, but some oral comments on the proposed rules were received during the 30 day comment period following the publication of the Rules as Proposed in the State Register. These are reflected in the Rules as Adopted. Though these comments were received, no requests for a public hearing on the proposed rules were received during this 30 day period.

Reasons for the changes made between the Rules as Proposed and the Rules as Adopted are stated in the Findings of Fact and Conclusions.

A copy of the Rules as Adopted is also being submitted to the Revisor of Statutes in order to obtain approval as to form as required by Minnesota Statutes section 14.28 (1982).

If you have any questions, please call me.

GH:mg

Enclosures

cc: Craig Lindeke
Office of Revisor of Statutes
Darryl L. Anderson
Rollin M. Dennistoun, Ph.D.
Jon Murphy
Richard Haskett
Daniel Sauro
Julie Smendzuik

RECEIVED
APR 11 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

LIST OF ATTACHED DOCUMENTS

A. Rules as Adopted (Original and three copies). Each copy reflects amendments made in the rules since original publication.

B. Order Adopting the Rule (two copies).

C. Notice of Intent to Solicit Outside Opinion (one copy).

D. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

E. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

F. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

G. Affidavit of Additional Notice (one copy).

H. Mailing List Certificate (one copy).

I. Rule as Proposed (one copy).

J. Findings of Fact and Conclusions (one copy).

K. Statement of Need and Reasonableness (one copy).

L. Certificate of Compliance with Rulemaking Procedures (one copy).

Our File No. 905

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-11-83
DATE FOR REVIEW 4-20-83
DATE DUE 4-25-83

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 4/11/83
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 4.7.83 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 6.21.82.

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
12.22.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.27.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials) no comments

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

no requests Rec'd per Transmittal memo.

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO : Jim Nichols, Commissioner of Agriculture

DATE: April 26, 1983

Attn: JON MURPHY
Special Assistant
Attorney General

FROM : LARRY D. STARNS LDS
Special Assistant
Attorney General

PHONE: 296-6204

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Argicultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700 - 1.0706)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with tne Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

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

Encs.
LDS/las

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy .0700 .0701

Department of Agriculture
Marketing and International Trade Division

Adopted Rules Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR SS 1.0700-1.0706)

Rules as Adopted

3 MCAR S 1.0700 Authority and purpose.

Rules 3 MCAR SS 1.0700-1.0706 are prescribed by the commissioner pursuant to Minnesota Statutes, sections 17.54, subdivision 4, 17.58, subdivision 4, and 17.63 to provide for the organization and meetings of commodity councils, to provide general polling procedures for elections and referendums, and to provide for the administration of promotional orders.

3 MCAR S 1.0701 Definitions.

A. Scope. For the purposes of 3 MCAR SS 1.0700-1.0706, the terms defined in this rule have the meanings given them, and the terms "agricultural commodity," "commissioner," "cooperative," "council," "first handler," "first purchaser," "marketing year," "participating producer," "person," and "promotional order" have the meanings given them in Minnesota Statutes, section 17.53.

B. Check-off fee. "Check-off fee" means the amount set by the council and stated in the promotional order that each participating producer must pay to finance the activities proposed in the promotional order.

C. Chief administrative officer. "Chief administrative officer" means the individual employed by the council to perform duties prescribed by the council. "Chief administrative officer" means the same as "executive director," "executive secretary," and "manager" where they appear in promotional orders.

D. Compliance list. "Compliance list" means a list of the names of the first handlers or first purchasers of an agricultural commodity under a promotional order who have paid

check-off fees to the council within the time prescribed by the council for their payment.

E. Designated voter. "Designated voter" means a family member who has a written authorization from an individual participating producer who is a qualified voter to vote in the individual participating producer's stead at the time and in the place where the election or referendum is being held.

F. Election. "Election" means a vote of the participating producers of any commodity to create a first council, select members of subsequent councils, or decide a referendum.

G. Fiduciary. "Fiduciary" means any estate, trust, conservatorship, or guardianship organized or recognized under Minnesota law.

H. Noncompliance list. "Noncompliance list" means a compilation of the names of the first handlers or first purchasers of an agricultural commodity under a promotional order who have not paid check-off fees to the council within the time prescribed by the council for the payment.

I. Organized area. "Organized area" means the area determined in accordance with Minnesota Statutes, section 17.54, subdivision 3, or areas defined elsewhere in Minnesota law for the purposes of Minnesota Statutes, sections 17.51 to 17.69.

J. Petitioners. "Petitioners" means a group of producers who request either the creation of the first council or a referendum at any time during a promotional order by submitting a petition signed by 1,000 producers or 15 percent of the producers to be covered by a promotional order, whichever is less, in accordance with Minnesota Statutes, section 17.54, subdivision 1.

K. Producer affidavit. "Producer affidavit" means a document qualified voters must sign under oath which affirms that they are producers of the particular agricultural commodity for which a referendum is being held, that they meet the qualifications for a producer set forth in the promotional order, and that they are casting only one vote each in the election or referendum.

L. Proof of paid check-off fee. "Proof of paid check-off fee" means a check stub, a sales invoice, a photostatic copy of a check stub or sales invoice, or a statement on the first purchaser's or first handler's letterhead stationery signed by an officer or responsible representative of the first purchaser or first handler submitted as evidence of a producer's payment of a check-off fee to a first purchaser or first handler. Any proof of paid check-off fee must have a date on it.

M. Qualified voter. "Qualified voter" means a person who meets the requirements in Minnesota Statutes, section 17.53, subdivision 16, and 3 MCAR S 1.0705 A.

N. Referendum. "Referendum" means an election held to begin, continue, suspend, amend, or terminate a promotional order, or an election held to increase or decrease the amount of check-off fees under the promotional order.

3 MCAR S 1.0702 Organization of a council.

A. Creation of a council. Upon receipt of a petition to create a council developed in accordance with Minnesota Statutes, section 17.54, subdivision 1, the commissioner shall take the following actions:

1. determine the size of the council and the distribution of council membership in consultation with the petitioners;

2. appoint a nominating committee to nominate producer candidates for council positions in accordance with Minnesota Statutes, section 17.54, subdivision 3;

3. conduct an election to select the first council in accordance with 3 MCAR S 1.0704 A.; and

4. determine by lot the term of office for each of the council positions in accordance with Minnesota Statutes, section 17.54, subdivision 5.

B. Officers and executive committee. Each council shall elect from its own membership a chairman, vice-chairman, secretary, and other officers deemed appropriate by the council. An executive committee of no more than five members, including the officers, may also be elected by the council. The council officers and executive committee members shall have the

powers and fulfill the duties in C. or delegate them to a chief administrative officer.

C. Powers and duties of the council.

1. The council shall convene and conduct meetings in accordance with 3 MCAR S 1.0703.

2. The council shall participate in the formulation and administration of promotional orders in accordance with 3 MCAR S 1.0706.

3. With the approval of the commissioner, the council shall appoint, employ, discharge, fix compensation for, and prescribe the duties of the first chief administrative officer of the council. Subsequent chief administrative officers and all other personnel employed do not require the commissioner's approval. The council and commissioner shall determine the amount of bond required for all individuals on the council and all individuals employed by the council who control, handle, expend, or deposit check-off fees or other funds, including those individuals authorized to sign checks.

4. The council shall take the actions listed in a.-d.

a. The council shall prepare an annual estimated budget for the operation of the promotional order and submit it to the commissioner for approval before the marketing year begins unless the promotional order directs otherwise.

(1) Budgets may be revised during the marketing year. If they are, the commissioner must be notified within 20 days of the revision. Minutes of the council meeting, documenting the changes and the reasons for them, shall constitute notification to the commissioner.

(2) Budgets or budget revisions may be prepared on forms provided by the commissioner or on similar forms.

b. The council shall consult with banks where funds are deposited regarding check signing procedures. No more than four authorized signatures of council members, the chief administrative officer, or council employees may be provided to the bank, two of which must appear on all checks except refund checks. ~~The council may authorize any one signature for~~ Refund

checks require only one signature, which may be any one of the four authorized. F of F 1

c. The council shall apply for tax exempt status for the council on forms provided by the commissioner. Upon receipt of the completed forms, the commissioner shall handle the request with appropriate federal agencies.

d. The council shall complete a financial statement at the close of each marketing year on forms provided by the commissioner or similar forms.

5. A council may establish a petty cash account after a favorable vote by a majority of the council members, provided that the use of these funds is consistent with the purposes of Minnesota Statutes, sections 17.51 to 17.69 and 3 MCAR SS 1.0700-1.0706. The bond for the council and its staff must be sufficient to cover the amounts in any petty cash accounts created pursuant to this part.

6. The council shall keep a record of the following materials and shall make reasonable arrangements for the time and place of inspection of the records by the public:

a. the council's annual budgets and financial statements;

b. annual reports on promotional order programs of the previous marketing year required under Minnesota Statutes, section 17.57, subdivision 3;

c. minutes of all council and executive committee meetings documenting all actions;

d. noncompliance lists related to the promotional order, which must be submitted to the commissioner on a semiannual basis;

e. information and data collected for the proper administration of promotional orders in accordance with Minnesota Statutes, section 17.57, subdivision 4; and

f. any other information deemed by the commissioner or council to be reasonably related to the organization of the council or to the administration of its promotional order.

7. The council may receive any donations from public or

private sources for the purposes of Minnesota Statutes, sections 17.51 to 17.69, or 3 MCAR SS 1.0700-1.0706.

8. The council may authorize the executive committee to meet as needed to handle any matter prescribed by the council. At a regularly scheduled meeting of the council, any council member may inquire into the actions taken by the executive committee. Minutes of the executive committee meetings shall be sent to all council members, the commissioner, and the commissioner's designee in accordance with 3 MCAR S 1.0703 E.

3 MCAR S 1.0703 Council meetings.

A. Notice. The chief administrative officer shall arrange dates and physical facilities for meetings of the council and executive committee after consultation with the council chairman or vice-chairman and the commissioner. The chief administrative officer shall also send written notice of the time and place of the meeting to all council members, the commissioner, and the commissioner's designee at least seven days in advance of council meetings.

B. Agenda. An agenda for each council meeting shall be formulated by the chief administrative officer in consultation with the council chairman or vice-chairman and shall be mailed with the meeting notice. Additional items may be included by council members or the commissioner at the time of the meeting.

C. Frequency and location of council and executive committee meetings.

1. The council shall meet at least four times annually in a location which is reasonably accessible to all council members. Telephone consultations are permitted, but must not replace actual meetings.

2. The executive committee shall meet as frequently as authorized by the council in a location which is reasonably accessible to all executive committee members. Telephone consultations may be held in lieu of actual meetings.

D. Quorum. A majority of the members of a council constitutes a quorum for the transaction of all business in carrying out council duties.

E. Minutes. All actions and decisions taken at meetings of the council and the executive committee must be documented in the minutes. At least one copy of the minutes signed by the presiding officer and the secretary must be kept in the council's permanent file. Copies of minutes must be sent to all council members and submitted to the commissioner and to the commissioner's designee within 30 days of the date of each meeting.

3 MCAR S 1.0704 Elections.

A. Election of the first council. The procedures in 1.-3. must be followed in electing the first council.

1. Upon receipt of nominations for council offices, the commissioner shall promptly arrange for an election, designate polling places reasonably convenient for the producers of the particular agricultural commodity, and provide notice of the election to all media having a general circulation in the organized area.

2. The commissioner shall make available ballots which set forth the names of the nominated candidates and shall provide space for write-in candidates at all polling places. Mail balloting is permitted in accordance with 3 MCAR S 1.0705 C.

3. Only qualified voters may vote in an election of the first council.

B. Subsequent council elections. In addition to the procedures for electing the first council in A., the commissioner shall take the following actions in subsequent council elections:

1. determine the manner of selecting the nominating committee;

2. set the time limit for accepting nominations; and

3. set the times and places of subsequent elections.

C. Referendums. The procedures in 1.-7. must be followed in conducting a referendum.

1. The council, in consultation with the commissioner, shall set the time and places for the referendum when required under 3 MCAR S 1.0705 B.

2. The commissioner shall conduct a referendum in accordance with the general polling procedures outlined in 3 MCAR S 1.0705.

3. The commissioner shall publish a notice of the referendum, including time and place, in legal newspapers with general circulation in the organized area and shall provide notice to other media at least ten days in advance of the date of the referendum.

4. The commissioner shall provide a complete copy of the promotional order to be voted on to each county extension office in the organized areas.

5. Only qualified voters may vote in referendums.

6. The promotional order shall become effective, suspended, amended, or terminated if approved by a majority of the qualified voters who vote in the referendum.

7. If a referendum fails, the commissioner shall not conduct another referendum on any promotional order for the same agricultural commodity until one year has elapsed.

D. Financing elections and referendums.

1. Petitioners must deposit with the commissioner in advance an amount sufficient to defray the expenses of electing the first council, formulating the initial promotional order, conducting the first referendum, and issuing that promotional order. The funds will be deposited in accordance with 3 MCAR S 1.0706 G. Full reimbursement will be made to petitioners by the council when the promotional order is adopted and funds are available from the collection of check-off fees. Petitioners may choose to leave the funds from this reimbursement with the council. Partial reimbursement on a pro rata basis shall be made by the commissioner in cases where the referendum fails and there are funds remaining after the expenses of conducting it are paid.

2. Subsequent elections and referendums will be financed by the council.

3 MCAR S 1.0705 General polling procedures.

A. Qualified voters. Participating producers who may vote

in any election or referendum must meet all the conditions in 1. and at least one of the conditions in 2. All qualified voters or designated voters must sign the producer affidavit at the time they vote.

1. The conditions in a.-e. apply to all qualified voters.

a. Persons, firms, universities, colleges, foundations, landlords, tenants, or fiduciaries may cast one vote only if they have shared in the profits and risk of loss from producing the particular agricultural commodity during the current or preceding marketing year.

b. A voter, except a designated voter, even if the voter represents a corporation, association, cooperative, or partnership, must meet Minnesota's general election voting age requirements.

c. A voter must be a Minnesota resident or a permanent resident alien, as defined in Minnesota Statutes, section 500.221, who resides in Minnesota. FR F2

d. Absentee mail voting by individual qualified voters is not permitted. Mail balloting is permitted only in accordance with C.

e. No individual, landlord, tenant, partnership, association, cooperative, corporation, fiduciary, firm, university, college, or foundation may cast more than one vote per election or referendum even if operations are carried on in more than one organized area of the council.

2. The specific provisions in a.-e. apply to the qualified voters named.

a. Each individual production unit may cast only one vote. Either the husband or the wife may cast this vote if both operate the production unit but both may not vote.

this assumes an individual production unit is operated by a married couple?

b. Both a landlord and a tenant may vote if each meets the criteria in A.1.a.

c. A partnership, whether in two or more names or in the name of a firm, may cast only one vote. The parties to the partnership must determine which one of them will cast the vote for the partnership.

d. An association, cooperative, or corporation may cast only one vote. Any officer of an association, cooperative, or corporation may cast its vote.

e. A fiduciary may cast only one vote. Only the legal guardian of a fiduciary may cast its vote, even if a husband and wife are jointly carrying on the farming operation subject to a fiduciary arrangement.

B. Balloting at polling places. The procedures in 1. and 2. must be followed whenever the commissioner determines that an election will be held at established polling places or a council determines that a referendum will be conducted at established polling places.

1. Election and referendum judges ~~may~~ will be selected by the commissioner ~~based on criteria established by~~ in consultation with the council~~, except that~~. Judges must not indicate their opinions about the election or referendum on the day of the election or referendum. Each polling place must have at least one judge. The judges are to do the following:

a. meet at the polling place at least one-half hour before voting begins;

b. assure that at least one judge remains at the polling place at all times to oversee the polling process;

c. take an oath of election judges and sign the form provided by the commissioner before the polling begins;

d. monitor the placement of ballots into the ballot box and be responsible for the overall security of the polling process;

e. have each qualified or designated voter write the qualified voter's name, organization, title, and county of business, when appropriate, on a producer affidavit to be provided by the commissioner and have each qualified or designated voter sign the producer affidavit. The written authorization of the designated voter must be attached to the producer affidavit;

f. initial the back of the ballot and give it to each qualified or designated voter provided the qualified or

designated voter has signed the producer affidavit;

g. provide each qualified or designated voter with the voter instruction sheet provided by the commissioner;

h. collect a signed producer affidavit at the time a qualified or designated voter places a ballot in the ballot box;

i. tabulate the results of the vote and telephone the commissioner the same day with the results;

j. complete the certification of election judges form, provided by the commissioner, after the polls have closed; and

~~k. record each qualified voter's name, organization, title, and county of business, when appropriate, on a summary of voters form provided by the commissioner, using the signed producer affidavits; and~~

~~l.~~ return all the voting materials listed in 2. to the commissioner.

2. The election and referendum judges shall return the following voting materials to the commissioner by first class mail: completed ballots, signed producer affidavits, ~~completed summary of voters forms,~~ judges' oath forms, certification of election form, and any expense vouchers. The election judges handbook must be retained by the chief judge for 30 days after the election or referendum and then destroyed. Any unused ballots, or producer affidavits, ~~or summary of voters forms~~ must also be destroyed.

C. Mail balloting. For any election or referendum conducted by mail, the procedures in 1.-5. must be followed.

1. A council must have a current and complete list of its participating producers before an election or a referendum can be conducted by mail. The list must be submitted to the commissioner at least 30 days before the starting date of the election or referendum.

2. The commissioner shall mail to all participating producers on the council's list a ballot, a producer affidavit, a voter instruction sheet, a ballot envelope, and a return envelope.

3. The length of time for the mail balloting shall be

determined by the commissioner for each election or referendum, but must not be less than 14 days and must not exceed 30 days.

4. If a participating producer of the agricultural commodity for which an election or a referendum is being conducted by mail has not received the voting materials listed in 2. by the time half of the time period in 3. has elapsed, the participating producer or the council may telephone or write the commissioner to request that the voting materials be mailed directly to the participating producer.

5. In order to be counted, mail ballots must be returned to the commissioner and must be postmarked on or before the closing date of the election or referendum set by the commissioner under 3.

D. Dairy industry referendums. The procedures in 1. and 2. must be followed in dairy industry referendums.

1. Dairy cooperative associations may choose to bloc vote their producers in accordance with Minnesota Statutes, section 17.54, subdivision 12. The commissioner shall provide the dairy cooperative association with appropriate voting materials.

2. Private dairy processors must file with the commissioner a list of their participating producers marketing the bulk of their production with the private dairy processor. The commissioner shall use this list and the procedures in C. in mail balloting producers with private dairy processors during a referendum on any dairy promotional order.

E. Certification of election or referendum. The commissioner shall follow the procedures in 1.-4. in certifying an election or referendum.

1. Before certifying an election or referendum conducted in accordance with B., the commissioner shall assure that:

a. all materials required in B.2. are returned to the commissioner;

b. all completed ballots are initialed on the back by an election or referendum judge, and there is no more than one vote per question on the completed ballot;

c. the oath of election judges form is signed;

d. all producer affidavits are signed; and

e. the judges' certification of election form is signed.

2. Before certifying an election or referendum conducted in accordance with C., the commissioner shall assure that:

a. returned ballots and producer affidavits have been postmarked by the closing date set in C.3.;

b. there is no more than one vote per question on the ballot; and

c. the producer affidavits are signed.

3. If any one of the criteria in 1.b. or 2. are not met, the commissioner shall declare the individual ballots invalid and shall not count them toward the outcome of the election or referendum.

4. An impartial committee of at least three people appointed by the commissioner shall count the ballots received from the elections or referendums conducted under B. or C.

3 MCAR S 1.0706 Administration of promotional orders.

A. Formulation. The first council shall meet within 15 days of certification of its election, and subsequent councils shall meet whenever appropriate, to formulate a promotional order, including the amount of a check-off fee to be paid by producers of the agricultural commodity to finance the proposed activities.

B. Hearings and referendum. Before any referendum is conducted, the commissioner shall consult with the council and shall hold public hearings on the proposed promotional order in organized areas. Upon completion of the hearings, the commissioner and council shall determine whether the promotional order will be amended, modified, or supplemented. If a promotional order is substantially changed by this process, the commissioner shall hold further public hearings on the changed promotional order. Upon completion of these hearings, the commissioner shall conduct a referendum in accordance with the procedures in 3 MCAR SS 1.0704 C. and 1.0705. The hearings in this section are not subject to Minnesota Statutes, chapter 14.

C. Payment of check-off fees. The procedures in 1.-5. must

be used by the council in collecting the check-off fees from first purchasers or first handlers.

1. The council must determine the type of check-off fee system to be used for the particular agricultural commodity.

2. The council must determine the first handler or first purchaser for the agricultural commodity. First handlers or first purchasers are responsible for collecting from participating producers and remitting the check-off fee to the council by the date stated in the promotional order.

3. The council must provide forms for the first handler or first purchaser to use in collecting and remitting check-off fees.

4. The council must monitor the compliance of each first handler or first purchaser with the terms of the promotional order and maintain a compliance list. In instances where the first handler or the first purchaser is not complying with the terms of the promotional order for collecting and remitting check-off fees, the procedures in E. must be followed.

5. The council or chief executive officer must deposit check-off fees collected in a federally insured depository institution. ~~No more than the maximum amount insured under federal law may be deposited in any single account~~ Any deposited amount in excess of the maximum amount insured under federal law must be secured by the federally insured depository institution. Deposits may be used for either checking or investment, but not for purposes inconsistent with Minnesota Statutes, sections 17.51 to 17.69, or 3 MCAR SS 1.0700-1.0706.

D. Refund of check-off fee. The procedures in 1.-7. must be followed in refunding check-off fees.

1. Any participating producer wishing a refund of a check-off fee may telephone or write to the commissioner or request in person a refund application form to fill out.

2. The participating producer must complete the refund application form and return the original and second copy, along with a proof of paid check-off fee, to the commissioner.

3. Upon receipt of the completed refund application form

and the proof of paid check-off fee, the commissioner will verify that the information on the refund application form is valid and will forward the original copy of the refund application form to the council. Requests for refunds must be received by the commissioner within the time prescribed in the promotional order for the particular agricultural commodity in order to be valid.

4. The council may proceed to write a refund check only if the check-off fee has been sent from the first purchaser or the first handler to the council. The council will retain the original copy of the refund application form and will forward the refund check to the commissioner.

5. The commissioner shall mail the refund check and the proof of paid check-off fee to the participating producer. The commissioner shall also return the participating producer's copy of the refund application form if the participating producer did not retain it.

6. Refunds will be made by the commissioner and the council within 30 days of the date of the commissioner's receipt of the refund application form except when the check-off fee has not yet been received by the council. In those instances, the council shall write the first purchaser or first handler and request remittance of the check-off fee. ~~The 30-day period begins on the date the council receives the check-off fee from the first purchaser or the first handler~~ When the council has received the check-off fee, the council shall determine the amount of refund and send the refund check to the commissioner. Immediately upon receipt, the commissioner shall mail the refund check to the producer.

7. Requests from participating producers for refunds will not be accepted more than 12 times per calendar year.

E. Procedures for noncompliance. The procedures in 1.-5. shall be followed by the council and commissioner in determining and acting upon noncompliance by first handlers or first purchasers whose check-off fee collection is not current.

1. The council shall maintain a current noncompliance

list as noted in 3 MCAR S 1.0702 C.6.d., and shall use it to determine when a first handler or first purchaser has become delinquent in collecting and remitting check-off fees, based on the remittance period provided in the promotional order.

2. Either the council or the chief administrative officer shall investigate the reason for noncompliance and make written notation of the date and individual contacted whether by a telephone call, visit, or mail. If a second contact is by mail, the letter must be certified.

3. If no response is forthcoming after three contacts have been made, the council may request that the commissioner write to the delinquent first handler or first purchaser. The council's request must be accompanied by the noncompliance list, a summary of the steps that have already been taken, and a statement of the length of the noncompliance period. The commissioner's letter must be certified.

4. At the request of the council, the commissioner may send a second letter to delinquent first handlers or first purchasers requesting compliance.

5. If there is still no response from the delinquent first handler or first purchaser after the steps in 1.-4. have been taken, the council may engage legal counsel to pursue the matter.

F. Suspension or termination of a promotional order.

1. A promotional order for an agricultural commodity may be suspended or terminated pursuant to 2. or 3. Public hearings conducted by the commissioner prior to the suspension or termination of a promotional order will not be held pursuant to Minnesota Statutes, chapter 14. No suspension or termination of a promotional order shall take effect until the end of the current marketing year.

2. After consultation between the council and the commissioner, and after a public hearing and findings by the council that a promotional order is contrary to or does not effectuate the provisions of Minnesota Statutes, sections 17.51 to 17.69, the council may suspend or terminate a promotional

order with the approval of a majority of the qualified voters who vote in the referendum.

3. Within 60 days of receipt of a petition from the same number of producers required to initiate a promotional order, which includes a statement that the signatures are those of participating producers, the commissioner shall conduct a referendum in accordance with 3 MCAR SS 1.0704 C., and 1.0705. A majority vote of the qualified voters who vote in the referendum will suspend or terminate the promotional order.

G. Commissioner's handling of funds. Fees or income received by the commissioner in the administration of Minnesota Statutes, sections 17.51 to 17.69, shall be deposited in accordance with Minnesota Statutes, section 17.59, subdivision 5.

APPROVED AS TO LEGALITY

April 25, 1983

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF STATE
FILED
APR 27 1983
[signature]
Secretary of State

9:38 AM

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700 - 1.0706)

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 27, 1982, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.22 (1982), on December 22, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders are adopted this 7th day of April, 1983, pursuant to authority vested in me by Minnesota Statutes, sections 17.54, subd. 4; 17.58, subd. 4; and 17.63.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, Chapter 15, for the purpose of revoking, amending, or upholding this registration.

June 8, 1982

Mark W. Seetin
Commissioner

Notice of Special Local Need Registration for "GardStar Insecticide Cattle Ear Tags"

Pursuant to Minnesota Statutes § 18A.23, and 3 MCAR § 1.0338 B. the Minnesota Department of Agriculture, on June 8, 1982 issued a Special Local Need Registration for "GardStar Insecticide Cattle Ear Tags," distributed by Y-Tex Corporation, Box 1450, Cody, Wyoming 82414.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

This Special Local Need Registration permits the use of this pesticide formulated as an ear tag for control of horn flies, spinose earticks, and to aid in control of stable flies and house flies on dairy and beef cattle and calves.

The application and other data required under Minnesota Statutes §§ 18A.22, subd. 2(a-d); 18A.23; and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN #MN82-0009) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Boulevard
Saint Paul, Minnesota 55107
Telephone: (612) 296-8547

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age, have thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minnesota Statutes, Chapter 15, for the purpose of revoking, amending, or upholding this registration.

June 8, 1982

Mark W. Seetin
Commissioner

Department of Agriculture Planning Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing agricultural research and promotion councils. The promulgation of these rules is authorized by Laws 1982, ch. 582, §§ 2 and 5, which requires the agency to set requirements for the organization, conduct of elections, referenda, and meetings of the councils, and the administration of promotional orders.

The department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Gerald Heil
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by July 21, 1982. Any written material received by the department shall become part of the hearing record.

June 11, 1982

Mark W. Seetin
Commissioner

Rollin M. Dennistoun
Deputy Commissioner

Department of Agriculture
Grain Inspection Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing the Licensing of Local Grain Warehouses and Warehouses Other Than Grain or Cold Storage (Chapters Nine and Ten: PSC 240-269)

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to the rules governing the licensing of local grain warehouses and warehouses other than grain or cold storage. The promulgation of these amendments is authorized by Laws of 1979, chap. 332, art. I, §§ 67-78, which requires the agency to exercise general supervision over the grain interests of the state and of the buying, selling, handling and storing grain, and of the management of public warehouses and public grain markets; and by Laws of 1982, chap. 508, §§ 3 and 5, which requires the department to promulgate rules establishing the penal sum for grain warehouse operator's bonds, and allows the department to authorize audits of grain warehouses to be conducted by qualified nongovernmental units.

The department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Gerald Heil
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by July 21, 1982. Any written material received by the department shall become part of the hearing record.

June 11, 1982

Mark W. Seetin
Commissioner
Rollin M. Dennistoun
Deputy Commissioner
Minnesota Department of Agriculture

State Board of Education
Department of Education
Executive Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Education

Notice is hereby given that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to recommend the repeal of State Board of Education rules which are obsolete and amendments to those

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700 - 1.0706)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 13th day of December, 1982, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF AGRICULTURE

Department of Agriculture

Marketing and International Trade Division

In the Matter of the Proposed Adoption of Rules Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700 - 1.0706)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Section 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, Section 15.0412, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Sections 17.54, subd. 4; 17.58, subd. 4; and 17.63. Additionally, 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 Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. 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 final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes, Sections 17.54, subd. 4, 17.58, subd. 4, and 17.63 to adopt rules governing agricultural research and promotion councils and the administration of promotional orders. The statute requires the commissioner to establish rules for the organization of councils, conduct of meetings of the council, requirements for qualified voters and voting procedures of the councils, and for the administration of promotional orders. Thus, the rules as proposed contain provisions for the following: creation of the council; powers and duties of the council, including formulation of promotional orders, employment of personnel, and financial and other recordkeeping; notices, agendas, frequency, location,

quorum and minutes of council meetings; procedures for election of the first and subsequent council members as well as for conducting referendums; financing elections and referendums; criteria for qualified voters; procedures for voting at polling places, for mail balloting, and for bloc voting in certain instances; procedures for certifying elections and referendums; payment, collection and refund of check-off fees; procedures for noncompliance by first handlers or first purchasers; and procedures for suspending, amending or terminating promotional orders. The proposed rules also contain definitions of terms used in the rules, and a general statement of purpose and authority.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

Copies of this Notice and proposed rules are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Date: December 13, 1982

Commissioner of Agriculture

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700 - 1.0706)

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane Windham, being first duly sworn, deposes and says:

That on the 22nd day of December, 19 82, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Diane Windham

Subscribed and sworn to before me
this 22nd day of December, 19 82

Christine Canaday

Christine Canaday
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires June 25, 1986

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR SS 1.0700-1.0706)

AFFIDAVIT OF ADDITIONAL NOTICE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane Windham, being first duly sworn, deposes and says:

That on the 22nd day of December, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations named on the list also attached.

Diane Windham

Subscribed and sworn to before me this 22nd day of December, 1982

Christine Canaday

Christine Canaday
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires June 25, 1986

Mr. Reid Mason, Executive Secretary
Beef Research & Promotion Council
2950 Metro Drive, Suite 111
Minneapolis, MN 55420

Mr. Leonard Wulf, Chairman
Minnesota Beef Council
Route 3
Morris, MN 56267

Mr. Cliff Markuson, Exec. Secretary
Dairy Research & Promotion Council
2015 Rice Street
St. Paul, MN 55113

Mr. Lowell Richards, Chairman
Minnesota Dairy Council
Route 2
Buffalo Lake, MN 55314

Mr. Tim Courneya, Exec. Secretary
Dry Edible Bean Research and
Promotion Council
Route 3, Box 102
Frazee, MN 56544

Mr. Robert Mehlhouse, Chairman
Minnesota Dry Bean Council
Rural Route 1, Box 18
Olivia, MN 56277

Ms. Beth Wolter, Manager
Egg Research & Promotion Council
2950 Metro Drive, Suite 308
Minneapolis, MN 55420

Mr. Norman Nelson, Chairman
Minnesota Egg Council
Bagley, MN 56621

Mr. Arnold Amundson, Exec. Secretary
Minnesota Area One Potato Council
P. O. Box 266
Climax, MN 56523

Mr. Ardell Bucholtz, Chairman
Minnesota Area One Potato Council
1717 Seventh Avenue N.W.
East Grand Forks, MN 56721

Mr. Aleks Cerne, Exec. Secretary
Soybean Research & Prom. Council
Pierce Plaza Office Bldg.
360 Pierce Avenue, Suite 110
North Mankato, MN 56001

Mr. Sander Ludeman, Jr., Chairman
Minnesota Soybean Council
Route 2, Box 19
Tracy, MN 56175

Mr. Roy Munson, Exec. Secretary
Turkey Research & Promotion Council
786 Transfer Road
St. Paul, MN 55114

Mr. Fred Huebsch, President
Minnesota Turkey Council
Route 2, Box 47
Perham, MN 56573

Mr. Merle Hedland, Exec. Secretary
Wheat Research & Promotion Council
P. O. Box 602
Red Lake Falls, MN 56750

Mr. Ed Ross, Chairman
Minnesota Wheat Council
Route 1
Fisher, MN 56723

Mrs. Nancy Tetrick, Manager
Wild Rice Research and Promotion
Council
P. O. Box 366
Aitkin, MN 56431

Mr. Leonard O. Jacobson, Chairman
Minnesota Wild Rice Council
Box 331
Aitkin, MN 56431

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules
of the Department of Agriculture Governing
Agricultural Research and Promotion Councils
and the Administration of Promotional Orders
(3 MCAR §§ 1.0700 - 1.0706)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 8:00 a.m., this 22nd day of December, 1982.

Gerald J Heil

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, 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 seven 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 modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven 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 § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Marketing and International Trade Division

Proposed Rules Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700-1.0706)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 15.0412, subdivisions 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, sections 17.54, subd. 4; 17.58, subd. 4; and 17.63. Additionally, 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 Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. 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 final rules as adopted, should submit a written statement of such request to Mr. Heil.

The commissioner is authorized by Minnesota Statutes, sections 17.54, subd. 4, 17.58, subd. 4, and 17.63 to adopt rules governing agricultural research and promotion councils and the administration of promotional orders. The statute requires the commissioner to establish rules for the organization of councils, conduct of meetings of the council, requirements for qualified voters and voting procedures of the councils, and for the administration of promotional orders. Thus, the rules as proposed contain provisions for the following: creation of the council; powers and duties of the council, including formulation of promotional orders, employment of personnel, and financial and other recordkeeping; notices, agendas, frequency, location,

quorum and minutes of council meetings; procedures for election of the first and subsequent council members as well as for conducting referendums; financing elections and referendums; criteria for qualified voters; procedures for voting at polling places, for mail balloting, and for bloc voting in certain instances; procedures for certifying elections and referendums; payment, collection and refund of check-off fees; procedures for noncompliance by first handlers or first purchasers; and procedures for suspending, amending or terminating promotional orders. The proposed rules also contain definitions of terms used in the rules, and a general statement of purpose and authority.

Please be advised that Minnesota Statutes, chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

Copies of this notice and proposed rules are available and may be obtained by contacting Mr. Heil.

December 13, 1982

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed (all new material)

3 MCAR § 1.0700 Authority and purpose.

Rules 3 MCAR §§ 1.0700-1.0706 are prescribed by the commissioner pursuant to Minnesota Statutes, sections 17.54, subdivision 4, 17.58, subdivision 4, and 17.63 to provide for the organization and meetings of commodity councils, to provide general polling procedures for elections and referendums, and to provide for the administration of promotional orders.

3 MCAR § 1.0701 Definitions.

A. Scope. For the purposes of 3 MCAR §§ 1.0700-1.0706, the terms defined in this rule have the meanings given them, and the terms "agricultural commodity," "commissioner," "cooperative," "council," "first handler," "first purchaser," "marketing year," "participating producer," "person," and "promotional order" have the meanings given them in Minnesota Statutes, section 17.53.

B. Check-off fee. "Check-off fee" means the amount set by the council and stated in the promotional order that each participating producer must pay to finance the activities proposed in the promotional order.

C. Chief administrative officer. "Chief administrative officer" means the individual employed by the council to perform duties prescribed by the council. "Chief administrative officer" means the same as "executive director," "executive secretary," and "manager" where they appear in promotional orders.

D. Compliance list. "Compliance list" means a list of the names of the first handlers or first purchasers of an agricultural commodity under a promotional order who have paid check-off fees to the council within the time prescribed by the council for their payment.

E. Designated voter. "Designated voter" means a family member who has a written authorization from an individual participating producer who is a qualified voter to vote in the individual participating producer's stead at the time and in the place where the election or referendum is being held.

F. Election. "Election" means a vote of the participating producers of any commodity to create a first council, select members of subsequent councils, or decide a referendum.

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.

G. Fiduciary. "Fiduciary" means any estate, trust, conservatorship, or guardianship organized or recognized under Minnesota law.

H. Noncompliance list. "Noncompliance list" means a compilation of the names of the first handlers or first purchasers of an agricultural commodity under a promotional order who have not paid check-off fees to the council within the time prescribed by the council for the payment.

I. Organized area. "Organized area" means the area determined in accordance with Minnesota Statutes, section 17.54, subdivisions 3, or areas defined elsewhere in Minnesota law for the purposes of Minnesota Statutes, sections 17.51 to 17.69.

J. Petitioners. "Petitioners" means a group of producers who request either the creation of the first council or a referendum at any time during a promotional order by submitting a petition signed by 1,000 producers or 15 percent of the producers to be covered by a promotional order, whichever is less, in accordance with Minnesota Statutes, section 17.54, subdivision 1.

K. Producer affidavit. "Producer affidavit" means a document qualified voters must sign under oath which affirms that they are producers of the particular agricultural commodity for which a referendum is being held, that they meet the qualifications for a producer set forth in the promotional order, and that they are casting only one vote each in the election or referendum.

L. Proof of paid check-off fee. "Proof of paid check-off fee" means a check stub, a sales invoice, a photostatic copy of a check stub or sales invoice, or a statement on the first purchaser's or first handler's letterhead stationery signed by an officer or responsible representative of the first purchaser or first handler submitted as evidence of a producer's payment of a check-off to a first purchaser or first handler. Any proof of paid check-off fee must have a date on it.

M. Qualified voter. "Qualified voter" means a person who meets the requirements in Minnesota Statutes, section 17.53, subdivision 16, and 3 MCAR § 1.0705 A.

N. Referendum. "Referendum" means an election held to begin, continue, suspend, amend, or terminate a promotional order, or an election held to increase or decrease the amount of check-off fees under the promotional order.

3 MCAR § 1.0702 Organization of a council.

A. Creation of a council. Upon receipt of a petition to create a council developed in accordance with Minnesota Statutes, section 17.54, subdivision 1, the commissioner shall take the following actions:

1. determine the size of the council and the distribution of council membership in consultation with the petitioners;

2. appoint a nominating committee to nominate producer candidates for council positions in accordance with Minnesota Statutes, section 17.54, subdivision 3;

3. conduct an election to select the first council in accordance with 3 MCAR § 1.0704 A.; and

4. determine by lot the term of office for each of the council positions in accordance with Minnesota Statutes, section 17.54, subdivision 5.

B. Officers and executive committee. Each council shall elect from its own membership a chairman, vice-chairman, secretary, and other officers deemed appropriate by the council. An executive committee of no more than five members, including the officers, may also be elected by the council. The council officers and executive committee members shall have the powers and fulfill the duties in C. or delegate them to a chief administrative officer.

C. Powers and duties of the council.

1. The council shall convene and conduct meetings in accordance with 3 MCAR § 1.0703.

2. The council shall participate in the formulation and administration of promotional orders in accordance with 3 MCAR § 1.0706.

3. With the approval of the commissoner, the council shall appoint, employ, discharge, fix compensation for, and prescribe the duties of the first chief administrative officer of the council. Subsequent chief administrative officers and all other personnel employed do not require the commissioner's approval. The council and commissioner shall determine the amount of bond required for all individuals on the council and all individuals employed by the council who control, handle, expend, or deposit check-off fees or other funds, including those individuals authorized to sign checks.

4. The council shall take the actions listed in a.-d.

a. The council shall prepare an annual estimated budget for the operation of the promotional order and submit it to the commissioner for approval before the marketing year begins unless the promotional order directs otherwise.

(1) Budgets may be revised during the marketing year. If they are, the commissioner must be notified within 20 days of the revision. Minutes of the council meeting, documenting the changes and the reasons for them, shall constitute notification to the commissioner.

(2) Budgets or budget revisions may be prepared on forms provided by the commissioner or on similar forms.

b. The council shall consult with banks where funds are deposited regarding check signing procedures. No more than four signatures of council members, the chief administrative officer, or council employees may be provided to the bank, two of which must appear on all checks except refund checks. The council may authorize any one signature for refund checks.

c. The council shall apply for tax exempt status for the council on forms provided by the commissioner. Upon receipt of the completed forms, the commissioner shall handle the request with appropriate federal agencies.

d. The council shall complete a financial statement at the close of each marketing year on forms provided by the commissioner or similar forms.

5. A council may establish a petty cash account after a favorable vote by a majority of the council members, provided that the use of these funds is consistent with the purposes of Minnesota Statutes, sections 17.51 to 17.69 and 3 MCAR §§ 1.0700-1.0706. The bond for the council and its staff must be sufficient to cover the amounts in any petty cash accounts created pursuant to this part.

6. The council shall keep a record of the following materials and shall make reasonable arrangements for the time and place of inspection of the records by the public:

a. the council's annual budgets and financial statements;

b. annual reports on promotional order programs of the previous marketing year required under Minnesota Statutes, section 17.57, subdivision 3;

c. minutes of all council and executive committee meetings documenting all actions;

d. noncompliance lists related to the promotional order, which must be submitted to the commissioner on a semiannual basis;

e. information and data collected for the proper administration of promotional orders in accordance with Minnesota Statutes, section 17.57, subdivision 4; and

f. any other information deemed by the commissioner or council to be reasonably related to the organization of the council or to the administration of its promotional order.

7. The council may receive any donations from public or private sources for the purposes of Minnesota Statutes, sections 17.51 to 17.69, or 3 MCAR §§ 1.0700-1.0706.

8. The council may authorize the executive committee to meet as needed to handle any matter prescribed by the council. At a regularly scheduled meeting of the council, any council member may inquire into the actions taken by the executive committee. Minutes of the executive committee meetings shall be sent to all council members, the commissioner, and the commissioner's designee in accordance with 3 MCAR § 1.0703 E.

3 MCAR § 1.0703 Council meetings.

A. Notice. The chief administrative officer shall arrange dates and physical facilities for meetings of the council and executive committee after consultation with the council chairman or vice-chairman and the commissioner. The chief administrative officer shall also send written notice of the time and place of the meeting to all council members, the commissioner, and the commissioner's designee at least seven days in advance of council meetings.

B. Agenda. An agenda for each council meeting shall be formulated by the chief administrative officer in consultation with the council chairman or vice-chairman and shall be mailed with the meeting notice. Additional items may be included by council members or the commissioner at the time of the meeting.

C. Frequency and location of council and executive committee meetings.

1. The council shall meet at least four times annually in a location which is reasonably accessible to all council members. Telephone consultations are permitted, but must not replace actual meetings.

2. The executive committee shall meet as frequently as authorized by the council in a location which is reasonably accessible to all executive committee members. Telephone consultations may be held in lieu of actual meetings.

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D. Quorum. A majority of the members of a council constitutes a quorum for the transaction of all business in carrying out council duties.

E. Minutes. All actions and decisions taken at meetings of the council and the executive committee must be documented in the minutes. At least one copy of the minutes signed by the presiding officer and the secretary must be kept in the council's permanent file. Copies of minutes must be sent to all council members and submitted to the commissioner and to the commissioner's designee within 30 days of the date of each meeting.

3 MCAR § 1.0704 Elections.

A. Election of the first council. The procedures in 1.-3. must be followed in electing the first council.

1. Upon receipt of nominations for council offices, the commissioner shall promptly arrange for an election, designate polling places reasonably convenient for the producers of the particular agricultural commodity, and provide notice of the election to all media having a general circulation in the organized area.

2. The commissioner shall make available ballots which set forth the names of the nominated candidates and shall provide space for write-in candidates at all polling places. Mail balloting is permitted in accordance with 3 MCAR § 1.0705 C.

3. Only qualified voters may vote in an election of the first council.

B. Subsequent council elections. In addition to the procedures for electing the first council in A., the commissioner shall take the following actions in subsequent council elections:

1. determine the manner of selecting the nominating committee;

2. set the time limit for accepting nominations; and

3. set the times and places of subsequent elections.

C. Referendums. The procedures in 1.-7. must be followed in conducting a referendum.

1. The council, in consultation with the commissioner, shall set the time and places for the referendum when required under 3 MCAR § 1.0705 B.

2. The commissioner shall conduct a referendum in accordance with the general polling procedures outlined in 3 MCAR § 1.0705.

3. The commissioner shall publish a notice of the referendum, including time and place, in legal newspapers with general circulation in the organized area and shall provide notice to other media at least ten days in advance of the date of the referendum.

4. The commissioner shall provide a complete copy of the promotional order to be voted on to each county extension office in the organized areas.

5. Only qualified voters may vote in referendums.

6. The promotional order shall become effective, suspended, amended, or terminated if approved by a majority of the qualified voters who vote in the referendum.

7. If a referendum fails, the commissioner shall not conduct another referendum on any promotional order for the same agricultural commodity until one year has elapsed.

D. Financing elections and referendums.

1. Petitioners must deposit with the commissioner in advance an amount sufficient to defray the expenses of electing the first council, formulating the initial promotional order, conducting the first referendum, and issuing that promotional order. The funds will be deposited in accordance with 3 MCAR § 1.0706 G. Full reimbursement will be made to petitioners by the council when the promotional order is adopted and funds are available from the collection of check-off fees. Petitioners may choose to leave the funds from this reimbursement with the council. Partial reimbursement on a pro rata basis shall be made by the commissioner in cases where the referendum fails and there are funds remaining after the expenses of conducting it are paid.

2. Subsequent elections and referendums will be financed by the council.

3 MCAR § 1.0705 General polling procedures.

A. Qualified voters. Participating producers who may vote in any election or referendum must meet all the conditions in 1. and at least one of the conditions in 2. All qualified voters or designated voters must sign the producer affidavit at the time they vote.

1. The conditions in a.-e. apply to all qualified voters.

a. Persons, firms, universities, colleges, foundations, landlords, tenants, or fiduciaries may cast one vote only if they

have shared in the profits and risk of loss from producing the particular agricultural commodity during the current or preceding marketing year.

b. A voter, except a designated voter, even if the voter represents a corporation, association, cooperative, or partnership, must meet Minnesota's general election voting age requirements.

c. A voter must be a Minnesota resident or a permanent resident alien as defined in Minnesota Statutes, section 500.221.

d. Absentee mail voting by individual qualified voters is not permitted. Mail balloting is permitted only in accordance with C.

e. No individual, landlord, tenant, partnership, association, cooperative, corporation, fiduciary, firm, university, college, or foundation may cast more than one vote per election or referendum even if operations are carried on in more than one organized area of the council.

2. The specific provisions in a.-e. apply to the qualified voters named.

a. Each individual production unit may cast only one vote. Either the husband or the wife may cast this vote if both operate the production unit but both may not vote.

b. Both a landlord and a tenant may vote if each meets the criteria in A.1.a.

c. A partnership, whether in two or more names or in the name of a firm, may cast only one vote. The parties to the partnership must determine which one of them will cast the vote for the partnership.

d. An association, cooperative, or corporation may cast only one vote. Any officer of an association, cooperative, or corporation may cast its vote.

e. A fiduciary may cast only one vote. Only the legal guardian of a fiduciary may cast its vote, even if a husband and wife are jointly carrying on the farming operation subject to a fiduciary arrangement.

B. Balloting at polling places. The procedures in 1. and 2. must be followed whenever the commissioner determines that an election will be held at established polling places or a council determines that a referendum will be conducted at established polling places.

1. Election and referendum judges may be selected by the commissioner based on criteria established by the council, except that judges must not indicate their opinions about the election or referendum on the day of the election or referendum. Each polling place must have at least one judge. The judges are to do the following:

a. meet at the polling place at least one-half hour before voting begins;

b. assure that at least one judge remains at the polling place at all times to oversee the polling process;

c. take an oath of election judges and sign the form provided by the commissioner before the polling begins;

d. monitor the placement of ballots into the ballot box and be responsible for the overall security of the polling process;

e. have each qualified voter write the voter's name, organization, title, and county of business, when appropriate, on a producer affidavit to be provided by the commissioner and have each qualified voter sign the producer affidavit;

f. initial the back of the ballot and give it to each qualified voter provided the qualified voter has signed the producer affidavit;

g. provide each qualified voter with the voter instruction sheet provided by the commissioner;

h. collect a signed producer affidavit at the time a qualified voter places a ballot in the ballot box;

i. tabulate the results of the vote and telephone the commissioner the same day with the results;

j. complete the certification of election judges form, provided by the commissioner, after the polls have closed;

k. record each qualified voter's name, organization, title, and county of business, when appropriate, on a summary of voters form provided by the commissioner, using the signed producer affidavits; and

l. return all the voting materials listed in 2. to the commissioner.

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2. The election and referendum judges shall return the following voting materials to the commissioner by first class mail: completed ballots, signed producer affidavits, completed summary of voters forms, judges' oath forms, certification of election forms, and any expense vouchers. The election judges handbook must be retained by the chief judge for 30 days after the election or referendum and then destroyed. Any unused ballots, producer affidavits, or summary of voters forms must also be destroyed.

C. Mail balloting. For any election or referendum conducted by mail, the procedures in 1.-5. must be followed.

1. A council must have a current and complete list of its participating producers before an election or a referendum can be conducted by mail. The list must be submitted to the commissioner at least 30 days before the starting date of the election or referendum.

2. The commissioner shall mail to all participating producers on the council's list a ballot, a producer affidavit, a voter instruction sheet, a ballot envelope, and a return envelope.

3. The length of time for the mail balloting shall be determined by the commissioner for each election or referendum, but must not be less than 14 days and must not exceed 30 days.

4. If a participating producer of the agricultural commodity for which an election or a referendum is being conducted by mail has not received the voting materials listed in 2. by the time half of the time period in 3. has elapsed, the participating producer or the council may telephone or write the commissioner to request that the voting materials be mailed directly to the participating producer.

5. In order to be counted, mail ballots must be returned to the commissioner and must be postmarked on or before the closing date of the election or referendum set by the commissioner under 3.

D. Dairy industry referendums. The procedures in 1. and 2. must be followed in dairy industry referendums.

1. Dairy cooperative associations may choose to bloc vote their producers in accordance with Minnesota Statutes, section 17.54, subdivision 12. The commissioner shall provide the dairy cooperative association with appropriate voting materials.

2. Private dairy processors must file with the commissioner a list of their participating producers marketing the bulk of their production with the private dairy processor. The commissioner shall use this list and the procedures in C. in mail balloting producers with private dairy processors during a referendum on any dairy promotional order.

E. Certification of election or referendum. The commissioner shall follow the procedures in 1.-4. in certifying an election or referendum.

1. Before certifying an election or referendum conducted in accordance with B., the commissioner shall assure that:

a. all materials required in B.2. are returned to the commissioner;

b. all completed ballots are initialed on the back by an election or referendum judge, and there is no more than one vote per question on the completed ballot;

c. the oath of election judges form is signed;

d. all producer affidavits are signed; and

e. the judges' certification of election form is signed.

2. Before certifying an election or referendum conducted in accordance with C., the commissioner shall assure that:

a. returned ballots and producer affidavits have been postmarked by the closing date set in C.3.;

b. there is no more than one vote per question on the ballot; and

c. the producer affidavits are signed.

3. If any one of the criteria in 1.b. or 2. are not met, the commissioner shall declare the individual ballots invalid and shall not count them toward the outcome of the election or referendum.

4. An impartial committee of at least three people appointed by the commissioner shall count the ballots received from the elections or referendums conducted under B. or C.

3 MCAR § 1.0706 Administration of promotional orders.

A. Formulation. The first council shall meet within 15 days of certification of its election, and subsequent councils shall meet whenever appropriate, to formulate a promotional order, including the amount of a check-off fee to be paid by producers of the agricultural commodity to finance the proposed activities.

B. Hearings and referendum. Before any referendum is conducted, the commissioner shall consult with the council and shall

hold public hearings on the proposed promotional order in organized areas. Upon completion of the hearings, the commissioner and council shall determine whether the promotional order will be amended, modified, or supplemented. If a promotional order is substantially changed by this process, the commissoiner shall hold further public hearings on the changed promotional order. Upon completion of these hearings, the commissioner shall conduct a referendum in accordance with the procedures in 3 MCAR §§ 1.0704 C. and 1.0705. The hearings in this section are not subject to Minnesota Statutes, chapter 14.

C. Payment of check-off fees. The procedures in 1.-5. must be used by the council in collecting the check-off fees from first purchasers or first handlers.

1. The council must determine the type of check-off fee system to be used for the particular agricultural commodity.

2. The council must determine the first handler or first purchaser for the agricultural commodity. First handlers or first purchasers are responsible for collecting from participating producers and remitting the check-off fee to the council by the date stated in the promotional order.

3. The council must provide forms for the first handler or first purchaser to use in collecting and remitting check-off fees.

4. The council must monitor the compliance of each first handler or first purchaser with the terms of the promotional order and maintain a compliance list. In instances where the first handler or the first purchaser is not complying with the terms of the promotional order for collecting and remitting check-off fees, the procedures in E. must be followed.

5. The council or chief executive officer must deposit check-off fees collected in a federally insured depository institution. No more than the maximum amount insured under federal law may be deposited in any single account. Deposits may be used for either checking or investment, but not for purposes inconsistent with Minnesota Statutes, sections 17.51 to 17.69, or 3 MCAR §§ 1.0700-1.0706.

D. Refund of check-off fee. The procedures in 1.-7. must be followed in refunding check-off fees.

1. Any participating producer wishing a refund of a check-off fee may telephone or write to the commissioner or request in person a refund application form to fill out.

2. The participating producer must complete the refund application form and return the original and second copy, along with a proof of paid check-off fee, to the commissioner.

3. Upon receipt of the completed refund application form and the proof of paid check-off fee, the commissioner will verify that the information on the refund application form is valid and will forward the original copy of the refund application form to the council. Requests for refunds must be received by the commissioner within the time prescribed in the promotional order for the particular agricultural commodity in order to be valid.

4. The council may proceed to write a refund check only if the check-off fee has been sent from the first purchaser or the first handler to the council. The council will retain the original copy of the refund application form and will forward the refund check to the commissioner.

5. The commissioner shall mail the refund check and the proof of paid check-off fee to the participating producer. The commissioner shall also return the participating producer's copy of the refund application form if the participating producer did not retain it.

6. Refunds will be made within 30 days of the date of the commissioner's receipt of the refund application form except when the check-off fee has not yet been received by the council. In those instances, the council shall write the first purchaser or first handler and request remittance of the check-off fee. The 30-day period begins on the date the council receives the check-off fee from the first purchaser or the first handler.

7. Requests from participating producers for refunds will not be accepted more than 12 times per calendar year.

E. Procedures for noncompliance. The procedures in 1.-5. shall be followed by the council and commissioner in determining and acting upon noncompliance by first handlers or first purchasers whose check-off fee collection is not current.

1. The council shall maintain a current noncompliance list as noted in 3 MCAR § 1.0702 C.6.d., and shall use it to determine when a first handler or first purchaser has become delinquent in collecting and remitting check-off fees, based on the remittance period provided in the promotional order.

2. Either the council or the chief administrative officer shall investigate the reason for noncompliance and make written

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notation of the date and individual contacted whether by a telephone call, visit, or mail. If a second contact is by mail, the letter must be certified.

3. If no response is forthcoming after three contacts have been made, the council may request that the commissioner write to the delinquent first handler or first purchaser. The council's request must be accompanied by the noncompliance list, a summary of the steps that have already been taken, and a statement of the length of the noncompliance period. The commissioner's letter must be certified.

4. At the request of the council, the commissioner may send a second letter to delinquent first handlers or first purchasers requesting compliance.

5. If there is still no response from the delinquent first handler or first purchaser after the steps in 1.-4. have been taken, the council may engage legal counsel to pursue the matter.

F. Suspension or termination of a promotional order.

1. A promotional order for an agricultural commodity may be suspended or terminated pursuant to 2. or 3. Public hearings conducted by the commissioner prior to the suspension or termination of a promotional order will not be held pursuant to Minnesota Statutes, chapter 14. No suspension or termination of a promotional order shall take effect until the end of the current marketing year.

2. After consultation between the council and the commissioner, and after a public hearing and findings by the council that a promotional order is contrary to or does not effectuate the provisions of Minnesota Statutes, sections 17.51 to 17.69, the council may suspend or terminate a promotional order with the approval of a majority of the qualified voters who vote in the referendum.

3. Within 60 days of receipt of a petition from the same number of producers required to initiate a promotional order, which includes a statement that the signatures are those of participating producers, the commissioner shall conduct a referendum in accordance with 3 MCAR §§ 1.0704 C., and 1.0705. A majority vote of the qualified voters who vote in the referendum will suspend or terminate the promotional order.

G. Commissioner's handling of funds. Fees or income received by the commissioner in the administration of Minnesota Statutes, sections 17.51 to 17.69, shall be deposited in accordance with Minnesota Statutes, section 17.59, subdivision 5.

Department of Energy, Planning and Development Energy Division

Proposed Rules Governing the Home Energy Disclosure Program and the Mandatory Energy Efficiency Standards for Residential Rental Units

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Department of Energy, Planning and Development proposes to amend the above-entitled rules without a public hearing. The commissioner has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules 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 language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Greg Hubinger, Manager of Residential Programs
980 American Center Building, 150 East Kellogg Boulevard
St. Paul, Minnesota (612) 297-2117

Authority for the amendment of these rules is contained in Minnesota Statutes § 116H.129 and 116H.08(a). Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULES
OF THE DEPARTMENT OF AGRICULTURE
GOVERNING AGRICULTURAL RESEARCH AND
PROMOTION COUNCILS AND THE ADMINISTRATION
OF PROMOTIONAL ORDERS
(3 MCAR §§ 1.0700-1.0706)

FINDINGS OF FACT
AND CONCLUSIONS

The non-controversial rules promulgation procedure of Minnesota Statutes sections 14.21-14.28 (1982) has been followed in the above-entitled matter. Proper notice was served upon all persons, associations, and other interested groups registered with the Department of Agriculture and notice was also published in the State Register. All interested persons were afforded an opportunity to present written and oral data, statements and arguments, and were afforded the opportunity to call for a public hearing.

Having received and considered all comments from the public, including oral comments made by promotion council representatives during a meeting held on January 25, 1983, I hereby find it necessary to modify the Rules as Proposed in the State Register at 7 S.R. 976. The rationale for the specific modifications and the findings and conclusions which justify the changes between the Rules as Proposed and the Rules as Adopted are as follows:

FINDINGS

1. In 3 MCAR § 1.0702 C.4.b. there are two technical changes which clarify the check-signing procedures of the councils. The first change clarifies that the four signatures provided to the bank must have been previously authorized by the council, for example, through a duly recorded action at a council meeting. This change eliminates any possible confusion as to whether all four signatures must be authorized. P. 4

   The second change simply clarifies that any one of the previously authorized signatures may be used for refund checks, which in past practice have only required one signature. This change clarifies the original intent of the provision, and eliminates any possible confusion as to whether or not the person signing the checks might be a fifth person whose signature is not authorized. P. 5

   The Department found the comments of the promotion councils helpful regarding this part of the rule, and finds that the changes are not substantial.

2. In 3 MCAR § 1.0705 A.1.c., the intent of the provision as proposed was that qualified voters should be Minnesota residents. Permanent resident aliens are permitted votes in council elections and referendums in the Rule as Proposed, although it is unclear from the cross-reference to Minnesota Statutes, section 500.221 whether the permanent resident alien is required to reside in Minnesota. The change clarifies that not only U.S. residency, but also residency in Minnesota is required before permanent resident aliens can participate in council voting. p.9

   This is consistent with the requirement of residency in the state as stated in the proposed rule, and is therefore not viewed as a substantial change.

3. In 3 MCAR § 1.0705 B.1. the change clarifies the intent of the Rule as Proposed. The intent was that the commissioner would select the election and referendum judges, in accordance with Minnesota Statutes, section 17.54, subd. 4 which requires the commissioner to arrange for elections. However, the language used in the Rules as Proposed was interpreted by some councils as placing an additional requirement upon the councils to develop criteria for the selection of judges. This was not the intent. Rather, the intent of the Rule as Proposed was to provide a consultative role for promotion councils in the selection of judges. This consultative relationship is consistent with other provisions of the proposed rules, such as 3 MCAR §§ 1.0702 C.3., 1.0703 A. and 1.0704 C.1., and it was the consultative meaning that was intended in the proposed language. p.10

   The Department does not view this change as a substantial one, but rather views it as a clearer statement of original intent: that the commissioner would in fact select the judges and would also involve the councils in the selection process.

4. The changes in 3 MCAR § 1.0705 B.1.e.-h. all relate to a clarification as to how the designated voter would proceed to vote in the stead of a qualified voter if a written authorization is provided as required under 3 MCAR § 1.0701 E. In the Rule as Proposed it was not clear how designated voters should proceed in the election process with respect to producer affidavits, receipt of ballots, etc. The changes clarify that the procedures for the designated voter must be the same as for the qualified voter, provided that the written authorization is presented. p.10,11

   These changes are consistent with the original intent of the Rules as Proposed which was to permit designated voters to vote in place of qualified voters. Since the changes simply outline the procedures necessary for them to do so, they are viewed as technical rather than substantial changes.

5. The elimination of the requirement for the election and referendum judges to complete and return to the commissioner the "summary of voters" form is the nature of the change in 3 MCAR §§ 1.0705 B. 1. k.-l. and 1.0705 B. 2. between the Rules as Proposed and the Rules as Adopted. In the view of the councils and upon review by the Department, completion and submission of this document was seen to be a non-essential administrative task. The councils noted that in any dispute about the voters in an election or referendum the more significant documents would be the signed producer affidavits rather than summary of voters forms compiled by the election or referendum judges.

   The Department concurs in this assessment, as there is no particular use for this document in the Department other than for additional record-keeping. Its inclusion in the Rules as Proposed was modeled on the procedure in some general elections of keeping a running list of voters as they vote. Upon review, however, the Department agrees with the councils that the document would not be useful in resolving any dispute of the election or referendum, but simply duplicates other records.

   The Department also finds that the elimination of the requirement regarding the summary of voters form in the Rules as Adopted is not a substantial change from the Rules as Proposed because the intent is the same. The original intent of 3 MCAR § 1.0705 B. was to prevent voter fraud and to provide sufficient documentation for auditing election or referendum results, which, in the Department's view, is still the intent of the section. The provisions in 3 MCAR § 1.0705 E. regarding the certification of the election or referendum remain the ultimate point for determining election or referendum irregularities. The commissioner's certification, the work of the impartial committee, or any potential audit of the election or referendum will not be impaired because other sufficient documentation will be available.

6. The original intent of 3 MCAR § 1.0706 C.5. was that check-off fees deposited in financial institutions should be protected so as to prevent irrecoverable losses of producer monies. However, the councils objected to the provision as proposed since it would require some of them to maintain several accounts rather than a single account. For example, in the case of promotional councils whose activities require lesser amounts in their operating accounts, the amount insured under present federal law may be sufficient to cover checks written for expenditures. In the case of larger councils whose operating budgets are larger, however, amounts exceeding the federally insured maximum may be needed in individual accounts so that one check instead of several can be written for major expenditures.

The change in the Rule as Adopted requires the councils to seek security from the federally insured depository institution, pursuant to Minnesota Statutes sections 118.005-118.02, for any amounts in excess of the federally insured amounts placed on deposit by the council. This change permits the councils flexibility in making deposits or investments while remaining consistent with the intent of Minnesota Statutes section 17.59, subd. 4 and the Rules as Proposed which is to protect check-off fees collected. Thus, the change is seen as not substantial.

7. In 3 MCAR § 1.0706 D.6., the changes made between the Rules as Proposed and the Rules as Adopted more accurately reflect the relationship between the council and the commissioner in issuing refunds to producers of the commodity. As stated in the Rules as Proposed, the procedure for the normal case and the exception were seen by the councils to be somewhat vague. The additional language for the "normal" case clarifies that the refund is dependent upon actions of both the commissioner and the council.

The second language change clarifies what actually happens in the "exceptional" refund case. The deleted language was originally proposed in order to assure prompt handling of refund requests by the commissioner. But as the councils pointed out during the comment period, it could also be interpreted by first handlers or first purchasers as an extension of the time during which they could comply with the promotional order and remit the check-off fee to the respective council. The Department agrees that this interpretation is possible, and finds that this would be an unintended result if the Rules as Proposed were adopted. Another consideration is that the amount of the check-off fee remitted might be insufficient to cover the amount of refund requested. Each council has a promotional order outlining procedures for determining the amount of refund. Thus it is the council rather than the commissioner that knows the amount of check-off remitted and whether the procedures for remitting the check-off and obtaining the refund have been properly followed. Therefore, the council should determine the amount of check-off to be refunded. This consideration was inadvertently left out of the Rule as Proposed.

The changes in this part of the rule are made to recognize the procedures under the promotional order, not to alter the commissioner's responsibility to handle refunds promptly. The Rule as Adopted still requires the commissioner to immediately return the refund check to the producer upon receipt from the council.

These changes in the Rules as Adopted are only clarifications of the original intent. That intent was to insure that producers receive back what they originally paid, if it was remitted by the first handler or the first purchaser, and to receive it promptly from the commissioner. In the Department's view, these are not substantial changes from the intent of the Rules as Proposed.

CONCLUSIONS

1. There were no comments received on the proposed rules during the solicitation of outside opinion prior to the the Department's drafting the Rules as Proposed. During the thirty-day comment period subsequent to the publication of the Notice of Intent to Adopt Rules Without a Public Hearing in the State Register, only the oral comments of the promotion councils which are reflected above were forthcoming. There have been no requests for a public hearing. The Department therefore concludes that these rules are non-controversial and are acceptable to the public in their present form.

2. The Department concludes that the changes between the Rules as Proposed and the Rules as Adopted are non-substantial for the reasons noted in the Findings.

3. The Department concludes from this record that the proposed rules, along with the changes proposed herein, are necessary and reasonable and that they are in the long-term best interests of the State of Minnesota. Therefore, I order the adoption of these rules, as evidenced by the Order Adopting Rules submitted with this record.

STATE OF MINNESOTA

DATE: April 7, 1983

for the COMMISIONER OF AGRICULTURE
DEPUTY COMMISSIONER

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING AGRICULTURAL RESEARCH AND PROMOTION COUNCILS AND THE ADMINISTRATION OF PROMOTIONAL ORDERS (3 MCAR SS 1.0700-1.0706)	STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of new rules governing agricultural research and promotional councils and the administration of promotional orders. These rules are proposed for adoption pursuant to Minnesota Statutes sections 17.54, subd. 4, 17.58, subd. 4, and 17.63, which require the Department to set requirements for the organization, conduct of elections and referendums, and meetings of commodity councils, as well as for the administration of promotional orders.

Rulemaking on the proposed rules was authorized by the Department on December 13, 1982. Prior to the authorization of rulemaking, the Department determined that the proposed adoption of these rules would be noncontroversial in nature for three reasons. The first is that the procedures for organizing the council and its work are based on principles that are fundamental to any organization. The second is that for at least the last ten years the Department has worked closely with existent councils in conducting elections and referendums as well as on the more general business of the councils. During this time procedures have developed, pursuant to the authority granted to the Department under the 1969 Commodities Promotion Act, which are now being formalized into

administrative law in these rules. Lastly, officers and administrative staff of the councils have reviewed the rules as proposed and find them acceptable.

Due to these three reasons, then, the Department directed that the proceedings on the proposed rules be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 15.0412, subd. 4h. Thus, no hearing will be conducted on the proposed rules unless on or before January 26, 1983, seven or more persons submit to the Department a written request for a hearing.

In accordance with the requirements of a Minnesota Statutes, section 15.0412, subd. 4h, this Statement of Need and Reasonableness was completed prior to December 27, 1982, when the proposed rules were noticed in the State Register.

The discussion provided in this statement is divided into the following parts:

Part II. General overview

Part III. Need for and reasonableness of the proposed rules

II. GENERAL OVERVIEW

A. <u>History of Commodity Councils and Promotional Orders in Minnesota</u>: Agricultural commodity councils and promotional orders were first authorized by the Minnesota Legislature with the passage of a law for turkey promotion in 1965. This was followed in quick succession by the "Potato Industry Promotion Act of Minnesota" in 1967, the "Dairy Promotion Act of Minnesota" in 1969, and a similar law for soybeans

that same year. Also in 1969, the Legislature passed a general law entitled, the "Agricultural Commodities Promotion Act" which was to govern the creation and operation of commodity groups other than these four. The purpose of all of these commodity promotion acts was to provide a mechanism for Minnesota farmers to work with handlers, dealers, and processors of their agricultural products to promote and stimulate their use, sale and consumption, and to improve methods of producing, processing and marketing their commodity. The legislative intent is that such commodity organizations and their activities will contribute to the stabilization and improvement of the agricultural economy of the State of Minnesota.

The five different statutes governing agricultural research and promotion councils, or "commodity councils" as they are commonly known, contained many of the same features. All provided for the establishment of the governing council, its membership and powers; the formulation of a promotinal order; payment and refund of check-off fees; other powers and duties of the council and commissioner of agriculture; use of fees; and penalties. The potato and turkey promotion laws also provided for the establishment of specific "organized areas", while the other councils operated statewide. In 1982, the amendments to the general commodity promotion law, Minnesota Statutes section 17.51 to 17.69, were minor, but a major consolidation of the four specific laws and the general law occurred. Most of Minnesota Statutes chapter 21A and 32B were repealed, as were large portions of the statutory sections governing turkey and potato promotion. The unique remaining portions were

consolidated into Minnesota Statutes, sections 17.51 to 17.69. The amendments to those sections were: definitions were added, minor changes occurred in the sections governing the creation of councils, existing councils were grandfathered in, referendum procedures were amended, budgets and reports were required of councils, provisions governing council personnel and audits were included, and the penalty section was changed.

The major revision relating to the promulgation of these rules, however, were the specific directives to the Department in Laws of 1982, chapter 582, sections 2 and 5. The Department is directed to adopt rules under the Administrative Procedures Act for the following: general polling procedures for the conduct of council elections and referendums; the organization and meetings of a council; and the administration of promotional orders for particular commodities.

The rules as proposed directly address the areas outlined in the 1982 statute, and as such are required. They are necessary because they provide for uniformity in the creation, mode of operating and the organization of a council. While there are nine commodity councils at the present time, others may yet form. These rules will assist new commodity groups in their evolution to a formal "council" status as well as provide for more uniform administration and continuance of current councils. In general, the proposed rules are reasonable because they state formally what has evolved throughout the 17 years of the Department's administrative experience with the councils. The councils and the commissioners/designees have mutually developed

operating procedures pursuant to the authority granted under the commodity promotion laws. Those procedures are proposed as rules herein and are reasonable because they have been mutually developed. Some of the provisions relating to the organization of councils and conduct of council meetings are further reasonable because they are based on principles fundamental to any organization.

B. Format of the Proposed Rules:

The proposed rules are set forth in the following manner: authority and purpose; definitions; procedures for the organization of a council; procedures for the conduct of council meetings; types of elections; general polling procedures for elections and referendums; and administration of promotional orders.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

The need for and reasonableness of the provisions of the proposed rules follow.

3 MCAR § 1.0700 Authority and Purpose

This rule is necessary and reasonable to clarify for readers and users the purpose of these rules governing agricultural research and promotion councils and the administration of promotional orders. The rule also clarifies the authority by which the commissioner proposes the adoption of the rules.

3 MCAR § 1.0701 Definitions

The rule sets forth the definitions of terms used in the rules. They are necessary to clarify meanings for readers and users of the rules. Several definitions are cross-referenced to the statute. Others were developed specifically for this rule. They are necessary for the reasons stated and reasonable because all are familiar terms or concepts to commodity council members.

The definition of "check-off fee" is necessary to clarify the relationship between the payment of the fees and the provisions of the promotional order. The definition of "chief administrative officer" is necessary primarily to include the different titles given to such persons by the various commodity councils in their promotional orders. The definition of "compliance list" is necessary to inform councils, first handlers and first purchasers of the type of list to be kept by the council. The definition of "designated voter" is necessary to clarify the single instance when someone other than the person (as defined by the statute) may vote in elections or referendums. The definition of "election" is necessary to clarify the types of balloting for which these rules contain procedures. The definition of "fiduciary" is necessary to clarify these additional ways of organizing a farm enterprise so their relation to the commodity councils can be covered by these rules. The definition of "noncompliance list" is necessary so that councils will know the type of information the commissioner requires under 3 MCAR § 1.0702 C.6. and 3 MCAR § 1.0706 E.

The definition of "organized area" is necessary to determine the geographic area to be affected by a promotional order. The definition of "petitioners" is necessary to clarify the group of producers interested in the creation of a council or changes in the promotional order who may act independently of councils with respect to promotional orders. The definition of "producer affidavit" is necessary to inform producers of the type of affirmation they must make before voting in elections or referendums. The definition of "proof of paid check-off fee" is necessary both to inform producers of what is required of them when requesting refunds and to assure that the date on the proof of paid check-off fee is supplied so that a refund request might be validated. The definition of "qualified voter" is necessary to set requirements for persons who can legitimately vote in council elections or referendums. "Referendum" explains this type of election, which relates strictly to promotional orders.

3 MCAR § 1.0702 Organization of a Council

The first two parts of this rule, regarding the creation of the council and the selection of its officers and executive committee, are necessary because they provide guidelines which can be followed by any commodity group that might want to form itself into a council. The steps correspond closely to Minnesota Statutes section 17.54, subdivisions 1-6. The provisions are reasonable because they provide a uniform method for getting the council started, rather than different mechanisms under different statutes which was the case before the 1982 consolidation of the prior five laws.

The third part of this rule, regarding the powers and duties of the council, is necessary to spell out more clearly some of the powers and duties granted by law. The conduct of meetings and the formulation of promotional orders are important and necessary activities of the council and should be conducted in such a manner as to insure the maximum amount of participation by producers of the commodity. The procedures are reasonable because producers should be involved in decisions about their market promotion enterprise, as well as decisions about expenditures of their check-off fees.

The provisions governing the employment of personnel and their bonding are necessary because they permit the councils to have flexibility in employing as many people as necessary to do the work of the council while at the same time providing protection for the council through the bonding. Under Minnesota Statutes, section 17.58, subd. 2, a council is required to have a chief administrative officer and to provide bond for that individual. This rule simply extends the bonding requirement to all personnel who handle money or sign checks. The provisions are reasonable because they are standard operating procedures for any organization. The bonding provision is reasonable to protect both the producers and the council from possible financial loss through personnel.

The provisions governing financial duties of the council, such as budget preparation, check signing procedures, and completing financial statements are necessary for several reasons: to provide guidelines for council expenditures, to permit some internal monitoring of income and expenses, and to provide accountability for the council's expenditures. They are reasonable primarily for protection of the producers whose funds are involved. The requirements of the rule will assure: that budgets are formulated which connect expenditures to proposed activities, that checks issued will correspond to promotional order requirements, and that financial statements will protect the interests of all parties. As non-profit organizations, the councils are entitled to tax exempt status. Thus, it is necessary and reasonable to provide guidelines for them to acquire this status. The petty cash provision is necessary to grant the councils flexibility in having ready funds available for everyday expenditures. It is a reasonable provision because the fund would be protected by the bonding of employees, as noted.

The recordkeeping requirements are necessary in part because some records are required by the statute, as stated in the rule. Other records required will permit the council to have a history of past programs and activities from which to compare and plan future activities and will assist the councils to better administer the promotional orders. Better administration of the orders will also be assured through both the data collections and the maintenance of noncompliance lists required under 3 MCAR § 1.0702 C.6. d.-e.

The councils are permitted to receive donations, in accordance with Minnesota Statutes, section 17.57, subd. 5. This provision is necessary and reasonable as long as use of the donations is limited to purposes of Minnesota Statutes, sections 17.57 to 17.69.

The provisions in 3 MCAR § 1.0702 C.8., regarding powers and accountability of the executive committee, are necessary to provide guidelines for the actions of the executive committee and clarify the relationship between the council and the executive committee. The provisions are reasonable because they are consistent with Minnesota Statutes, section 17.54, subd. 6, and are based on principles fundamental to any organization. They are further reasonable because they provide flexibility to the councils in handling their internal affairs.

3 MCAR § 1.0703 Council Meetings

The provisions in this rule regarding meeting notices and agendas are necessary to assure that council members and the commissioner will know that a meeting is planned and will know the items to be discussed. The provisions are reasonable because they provide a uniform system of notification so that all parties may attend and all points of view be represented, and because they are consistent with the Minnesota open meeting law.

The provision regarding the frequency and location of council meetings is necessary to assure both that the councils meet often enough to monitor the progress and success of activities and programs under the promotional order and that meetings are held in places accessible to council members. It is reasonable that all council members be able to attend and represent the point of view of producers in their individual organized areas.

The quorum provision is necessary and reasonable because it is consistent with Minnesota Statutes, section 17.54, subd. 7. And the requirement of minutes for the meetings is necessary to assure that there is a record of actions taken by the council for comparative purposes. It is reasonable because it is a general procedure for all organizations.

3 MCAR § 1.0704 Elections

Three types of elections are provided for in this rule: election of the first council, election of subsequent councils and referendums. The provisions in parts A. and B. are necessary to clarify the procedures to be used in these two types of elections, held to select members of the council. They are reasonable provisions because they are consistent with Minnesota Statutes, section 17.54, subd. 4, and because they provide uniform guidelines for the first election for any commodity group wishing to form a council.

The provisions in 3 MCAR § 1.0704 C., regarding the conduct of referendums, are necessary to clarify roles and responsibilities for the council and the commissioner and to assure uniformity of procedure in this type of election. It is reasonable that the referendum be publicized and that the contents of the proposed promotional order be made available to participating producers so that they can be knowledgeable and participate fully in the decision-making regarding the proposed promotional order. The provision regarding the prohibition on another referendum for the same commodity in the same year is consistent with Minnesota Statutes, section 17.56, subd. 5.

The provisions in 3 MCAR § 1.0704 D. regarding financing of elections and referendums are necessary to clarify where the responsibility of payment for these elections lies. The provisions in 1. are consistent with Minnesota Statutes section 17.59, subd. 3. The provisions in 2. clarify that it is the council's responsibility to finance subsequent elections and referendums. It is reasonable that the commissioner reimburse petitioners if the initial referendum is unsuccessful because the

commissioner is only acting to facilitate the council elections and referendums. It is fair to return to producers any remaining monies after expenses are paid. It is also reasonable that the councils should finance subsequent elections and referendums since they represent producers and are to conduct promotional and other activities, including elections and referendums, under the promotional orders.

3 MCAR § 1.0705 General Polling Procedures

The five parts in this rule regarding general polling procedures for council elections and referendums set forth requirements for qualified voters, procedures for polling places, mail balloting, dairy industry referendums and the certification of elections.

The first part, regarding voter qualifications, is necessary to clarify who may vote in council elections and referendums to meet the requirement of Minnesota Statutes, section 17.54, subd. 4. The conditions in 1. apply to all voters. It is necessary and reasonable that entities named in 1.a. cast only one vote in elections because all of those entities have individual legal status and under other Minnesota laws are treated individually. Thus, it is reasonable that for council voting purposes they should receive similar treatment and have only one vote. The provision in 1.b. regarding the voting age requirement is necessary and reasonable because it is consistent with other Minnesota law. The exception to the age requirement for designated voters is necessary because in the Department's administrative experience, neither individual producers nor their spouses are able at times to leave the farm activities during the day of an election or referendum. Thus it is reasonable to permit a family member representing that production unit to carry the vote of the unit to the election or referendum regardless of the designated voter's age. This case is distinctly different from proxy voting which is not permitted by these rules.

The provision in A.1.c. regarding the requirement of Minnesota residency or permanent resident alien status is necessary because it is the Department's interpretation of legislative intent that the Commodities Promotion Act should benefit Minnesota's farmers. Thus, restricting voting to Minnesota residents would appear reasonable. Absentee mail voting by individual producers is not permitted under A.1.d. because of the Department's administrative experience with commodity council elections and referendums in the past. The Department expends a great deal of time and energy and the councils spend a great deal of money to set up and conduct elections and referendums at specified polling places. This time, effort, and money could be wasted if it were necessary to duplicate the voting process by also permitting individual mail balloting. The nine councils conduct one election every year for officers; referendums may be held less frequently than annually. Nonetheless, it would be a large burden on the Department to conduct individual absentee balloting for nine councils every year. It seems unnecessary and unreasonable since the Department already arranges for polling places in up to 87 counties for the elections and referendums of some councils. Additionally, the designated voter provision in 3 MCAR § 1.0701 E., which permits a production unit's vote to be cast in any case, makes an additional absentee provision unnecessary.

The provision in A.1.e. regarding multiple operations' being limited to one vote is necessary and reasonable, again, because the entities named have a single legal status and thus should have only one vote.

The specific provisions in 2.a.e. are necessary because farming enterprises may be organized legally in the different ways named: family farm, landlord-tenant, partnership, association, cooperative, corporation or fiduciary arrangement. This section is needed to clarify that all of these arrangements have equal status as far as influencing the outcome of elections or referendums. It is reasonable that the Department attempt to assure a fair representation of producers in elections and referendums.

The provisions in B. regarding procedures to be followed at polling places have evolved over the Department's many years of conducting council elections and referendums. The requirements for the duties and responsibilities of judges are necessary and reasonable to assure that the election or referendum is conducted in a fair manner and that voting frauds are avoided. The requirements governing the order of providing ballots and the producer affidavits to voters and of collecting them are necessary to assure that there will be only a one-to-one correspondence between ballots and affidavits. It is reasonable to include these provisions as additional assurance that only one vote per qualified voter will be cast. The requirements that the judges are to telephone the results to the commissioner in B.1.i. and then return all the materials in B.2. to the commissioner are necessary to assure that there will not be discrepancies between the figures at the close of the election day and the materials returned through the mail. These are reasonable provisions because their intent is to prevent fraud and assure a fair election or referendum. It is necessary and reasonable to require that election judges destroy any unused voting materials, again to assure that there will not be any voting frauds.

The provisions in C. regarding mail balloting were developed pursuant to the discretion given the commissioner in Minnesota Statutes, section 17.54, subd. 4. They are necessary provisions because the councils are not all equally large. The smaller ones represent far fewer participating producers, and it is more efficient and less costly for them to conduct elections and referendums by mail rather than to set up polling places around the state requiring election judges and the production of many more election materials. It is reasonable to provide guidelines for councils in such instances. It is also reasonable to permit the larger councils to utilize this procedure when they determine that they have addresses for all their participating producers. The method may be less costly once set up and may increase participation in elections and referendums. Assurances that qualified voters will be able to vote are provided through C.1. which requires that the councils have a complete mailing list of participating producers before the commssioner conducts a mail balloting, and by C.4. which permits the participating producer or council to get a ballot for a participating producer whose ballot did not arrive in the mail. This flexibility is reasonable.

The Minnesota Statutes, section 17.54, subd. 12 provides for dairy industry referendums; the provisions herein are necessary only to further clarify the role of the commissioner in the dairy referendums. It is reasonable for the commissioner to provide the voting materials for dairy industry referendums since this is consistent with the role of the commissioner in the referendums of other councils.

The procedures for certifying the results of elections and referendums outlined in part E. of this rule elaborate upon the provision in Minnesota Statutes, section 17.54, subd. 4. which requires the commissioner to appoint an impartial committee to tabulate the results of elections. Before this impartial committee can certify the results of an election or referendum, it is necessary that all the materials listed be returned to the Department and accounted for by the commissioner. The requirements in 1. will assure that judges have conducted the election or referendum fairly, that ballots were properly distributed and collected, and that the number of votes cast per item on the ballot does not exceed the limit set for that item. It is reasonable that the commissioner require the return of these materials so that the committee can certify that the election or referendum was conducted fairly by using the materials.

3 MCAR § 1.0706 Administration of Promotional Orders

The six major parts of this rule contain provisions for the administration of promotional orders: their formulation; hearings and referendums on them; the payment of check-off fees; the refund of check-off fees; procedures for noncompliance by a first handler or first purchaser; suspension or termination of the promotional order; and the commissioner's handling of funds.

Parts A. and B. of this rule, regarding the formulation of the order, hearings and the referendum, are consistent with Minnesota Statutes, sections 17.56, subds. 1.-3. These parts are necessary to clarify the procedures that the council must go through in formulating an order and to clarify the relationship between the council and the commissioner in this process. It is reasonable that the council should initially formulate the order, since the councils are designed to be self-governed marketing and promotional entities for producers. It is also reasonable that the order should then be reviewed by the commissioner and the participating producers in public hearings so that all points of view might be represented and producers can participate in decisions regarding the amount they are expected to pay and use of the funds.

The procedures in C., regarding the payment of check-off fees, are necessary to assure that check-off fees agreed upon under the promotional order are both collected from each participating producer and then remitted by the first handler or the first purchaser to the council itself. It is necessary that the council determine the best method for collecting the check-off fees and the ways of identifying first purchasers or first handlers because they know the marketing channels for their particular commodities and are in the best position to identify those persons. It is reasonable that the council should provide the forms for the first handlers or first purchasers to use in collecting and remitting the fees because these fees are intended to finance the council's work. The first handlers and first purchasers already have the administrative burden of transferring the amounts; it is reasonable to avoid additional expense for them by having the councils supply forms.

It is necessary and reasonable that the council monitor the collection and remittance of check-off fees to assure fairness at two levels. The

first is the level between the producer and the first handler or first purchaser. If fees are not uniformly collected, then some producers may not be paying fees while benefitting from council promotional activities, which is an unfair situation. The second level is the level between the first handler or first purchaser and the council. First handlers or first purchasers may be collecting fees, but not remitting them to the council. This results in an unfair situation because first handlers or first purchasers may be using the funds for their own purposes. Thus, it is necessary and reasonable that councils monitor this check-off fee system to assure fairness in the situation so that those duly paying check-off fees are not disadvantaged by doing so.

The provisions in C.5. regarding the deposit and use of check-off fees is necessary to clarify the deposit procedure for councils. It is reasonable to thus protect the check-off fees collected, in accordance with Minnesota Statutes, section 17.59, subd. 4.

The refund procedures in D. were developed in accordance with Minnesota Statutes, section 17.63 to provide participating producers a mechanism for receiving refunds of their money paid under the check-off program. It is necessary and reasonable that the producer request a refund in writing because verbal requests are not verifiable--one producer could request several refunds under different guises and the administrative burden on the Department to review such requests would be increased. Multiple requests would not only be unfair to other producers, they would be illegal under Minnesota Statutes, section 17.63. Provisions in parts D.4. and 6. are necessary to assure that the council has received the funds from the first handler or first purchaser before sending a refund check. It is reasonable that a producer should receive back only what the producer paid, if it was paid, in the first place. The commissioner's role in this process is to provide an avenue for producers to get refunds other than directly through the councils with which some producers may disagree. The thirty day refund period in D.6. and the time frame in D.7. are set in accordance with Minnesota Statutes, section 17.63.

The procedures for noncompliance set in E. are necessary to provide a method of recourse for councils in enforcing the check-off program. The steps are reasonable because they provide ample opportunity for first purchasers or first handlers to explain their reasons for noncompliance to both the council and the commissioner. They are reasonable provisions for first handlers and first purchasers because they provide flexibility for these groups in meeting the statute requiring remittance of the fees, Minnesota Statutes, section 17.59, subd. 2.

The provisions in F. for suspending or terminating the promotional order are necessary to provide guidelines for councils wishing to end their orders. They are reasonable because they provide for suspension or termination of the orders through familiar methods--either the voting method similar to other referendums or the petition method used to create the councils. The provisions are consistent with Minnesota Statutes, section 17.64.

The provision in G. regarding the commissioner's handling of funds is necessary to assure councils of the commissioner's intent with respect to their finances. It is reasonable to protect the funds of the council specifically allotted for council purposes. The provision is consistent with Minnesota Statutes, section 17.59, subd. 5.

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Agricultural Research and Promotion Councils and the Administration of Promotional Orders (3 MCAR §§ 1.0700 - 1.0706)

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, [Special Assistant Attorney General] Jon Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jon F. Murphy

[Special Assistant Attorney General]

Date: 4/7/83