

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

comment due by Dec 21

File No. 1422 — Docket No. 05.0009.0986

DATE RECEIVED 12/10/87 — ADOPTED W/O HEARING ____

REVIEW DATE [redacted] — EMERGENCY RULE X

DUE DATE 12/24/87

REVISOR APPROVED ____

APPROVED 12.24.87 mjc — REVISOR DISAPPROVED ____

DISAPPROVED ____ — FIELD W/SEC.STATE ____

WITHDRAWN ____ — RETURNED TO AGENCY ____

✓ Rule as adopted (4 copies)

___ ~~Notice to Solicit Outside Information/Opinion~~

___ ~~Date published in State Register~~

___ ~~Comments~~

___ ~~Petition for Adoption of a~~ Rule

___ ~~Board's Authorizing Resolution~~

✓ Proposed rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

583.285 Statutory Authority

No Small Business Statement

N/A Expenditure of public money statement

yes Signature

___ ~~Statement of Need and Reasonableness~~

___ ~~Small Business Statement~~

___ ~~Fees - § 16A.128~~

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

Sept 16, 1987 Date 30/(25) days before adoption

✓ Publication in State Register

Sept 21, 1987 Date 30/(25) days before adoption

___ ~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting

Dec 3, 1987 Date

✓ ~~Written~~ requests, submissions or comments

✓ Declaration of attorney

Kevin Staunton Name of SAAG representing agency

✓ Notice of Submission to Attorney General

✓ Affidavit of Mailing Notice to Attorney General

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : January 4, 1988

TO : CAROL MILLIGAN
Department of Agriculture

FROM : MARTHA CASSERLY
Special Assistant
Attorney General

PHONE : 6-6204

SUBJECT : In the Matter of the Adopted Rule Relating to Farmer-Lender Mediation

The above-referenced rule has been approved as to its legality by the Attorney General on December 24, 1987.

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

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:nah
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

AL

Department of Agriculture

Adopted Emergency Rules Relating to Farmer-Lender Mediation

Rules as Adopted

1502.0001 [Emergency] SCOPE.

Parts 1502.0001 to 1502.0025 [Emergency] are adopted by the Department of Agriculture pursuant to Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation concluded or commenced before the adoption of parts 1502.0001 to 1502.0025 [Emergency] is not void for lack of compliance with these rules.

~~1502.0002 [Emergency] APPLICABILITY.~~

~~Parts 1502.0001 to 1502.0025 [Emergency] apply to creditors and debtors as defined in Minnesota Statutes, section 583.24.~~

~~1502.0003~~ 1502.0002 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0025 [Emergency].

Subp. 2. **County extension agent.** "County extension agent" means the county agricultural extension agent for the county in which the debtor resides.

Subp. 3. **Farmer-Lender Mediation Act.** "Farmer-Lender Mediation Act" means Minnesota Statutes, sections 583.20 to 583.32.

Subp. 4. ~~**Parties.** "Parties" means the debtor and all creditors who are actively participating in the mediation process, excluding those who have completed claim forms in lieu of attending mediation meetings~~ **Mediation notice.** "Mediation notice" means the mediation notice served by an initiating creditor under Minnesota Statutes, section 336.9-501, 505.365, 559.209, or 581.015.

Subp. 5. **Mediation proceeding notice.** "Mediation

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proceeding notice" means the mediation proceeding notice sent by the county extension agent under Minnesota Statutes, section 583.24, subdivision 4.

Subp. 6. **Proceeding.** "Proceeding" means the process required by law, security agreement, lease agreement, or contract for enforcing a debt against agricultural property under Minnesota Statutes, chapter 580 or 581, or sections 336.9-501 to 336.9-508, terminating a contract for deed to purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

Subp. ~~6.~~ 7. **Send.** "Send" means to mail by first class mail.

~~1502.0004~~ 1502.0003 [Emergency] ADMINISTRATION.

The director of Minnesota extension services shall administer the Farmer-Lender Mediation Act subject to the delegation power prescribed in Minnesota Statutes, sections 583.22, subdivision 5, and 583.23, subdivision 3. Under the delegation power in Minnesota Statutes, section 583.22, subdivision 5, the county extension agent in the county in which the debtor resides is the director's designee as provided in parts 1502.0001 to 1502.0025 [Emergency] and for purposes of service, filing, and other purposes specified by the director.

~~1502.0005~~ 1502.0004 [Emergency] RESPONSIBILITIES.

The director's responsibilities under the Farmer-Lender Mediation Act include, but are not limited to, the following:

A. The director shall provide training in mediation techniques to mediators. The training must include training on mediation process, skills, and farm finance issues in mediation.

B. The director shall provide support to mediators, including, but not limited to, technical assistance in complying with parts 1502.0001 to 1502.0025 [Emergency] and ~~applicable statutes~~ the Farmer-Lender Mediation Act, clerical support, postage, and other necessary supplies.

C. The director shall provide training in farm

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financial analysis (FINPAC) computer software to ~~credit~~ financial analysts.

D. The director shall set the compensation of mediators and ~~credit~~ financial analysts and shall reimburse them upon submission of expense claims.

E. The director shall coordinate community legal education programs for farmers.

F. The director shall collect and maintain accurate statistical data on the program.

~~1502.0006~~ 1502.0005 [Emergency] FORMS.

The director shall make forms for mediation under the Farmer-Lender Mediation Act available through each county extension agent and county recorder for use by debtors, creditors, and mediators ~~under parts 1502.0001 to 1502.0025 [Emergency] and applicable statutes~~.

~~1502.0007~~ 1502.0006 [Emergency] SUBSTANTIVE RIGHTS.

The fact that the director or ~~a designee~~ county extension agent has in any way acted upon a request for mediation does not determine the substantive rights of the ~~parties~~ debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0025 [Emergency].

~~1502.0008~~ 1502.0007 [Emergency] WITHDRAWAL OF MEDIATION REQUEST.

A debtor may withdraw a mediation request at any time before ~~the first~~ 14 days after receiving a mediation ~~meeting~~ notice. The debtor's withdrawal must be in writing. Withdrawal of the mediation request constitutes a waiver of the debtor's right to mediate the debt that initiated the service of the mediation notice under the Farmer-Lender Mediation Act unless the debtor refiles the mediation request within the 14 days permitted to file the original mediation request. ~~In case of a waiver, the county extension agent shall notify the creditor who started the proceedings, in writing, that the creditor may proceed against the agricultural property because the debtor has~~

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withdrawn-the-mediation-request.--The-county-extension-agent shall-also-notify,-in-writing,-creditors-who-received-a mediation-proceeding-notice-that-the-debtor-has-withdrawn-the mediation-request-and-therefore-the-mediation-is-canceled.

~~1502.0009~~ 1502.0008 [Emergency] FAILURE TO FILE TIMELY REQUEST.

If a debtor fails to file a timely mediation request the county extension agent shall ~~notify~~ send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who ~~started-the-proceedings,-in-writing,~~ ~~that-the-creditor-may-proceed-against-the-agricultural-property because-the-debtor-has-failed-to-file-a-mediation-request~~ served the mediation notice. ~~This-notice~~ The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days ~~of-the~~ after service of the mediation notice. ~~The-county-extension-agent-shall-send-a-copy-of-the-notice-to~~ on the debtor.

~~1502.0010~~ 1502.0009 [Emergency] ~~RETURN.~~

~~Subpart-1.--Proof-of-service.--Service-of-a-mediation notice-must-be-proved-by-the-certificate-of-the-sheriff-making it,-by-the-affidavit-of-another-person-making-it,-by-the-written admission-of-the-party-served,-or-by-the-certified-mail receipts.--A-creditor-proving-service-by-a-certificate-of mailing-must-provide-the-county-extension-agent-with-a-copy-of the-certificate-of-mailing-and-an-affidavit-stating-that-the creditor-has-made-an-unsuccessful-attempt-to-serve-the-debtor personally-as-in-a-district-court-civil-action-or-by-certified mail-using-return-receipt-signed-by-addressee-only.--Proof-of service-must-state-the-date,-place,-and-manner-of-service. Failure-to-make-proof-of-service-does-not-affect-the-validity-of the-service.~~

~~Subp.-2.~~ PROOF OF FILING MEDIATION REQUEST.

~~Filing-of~~ When a debtor files a mediation request with the county extension agent, the mediation request must be ~~proved~~ filed by ~~the~~ certified mail using return receipt or by ~~the written-acknowledgment~~ actual delivery of the mediation request

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with a signed receipt of the county extension agent.

~~1502.0011~~ 1502.0010 [Emergency] CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor ~~returning a claim form when~~ owed a debt ~~is~~ not subject to the Farmer-Lender Mediation Act under Minnesota Statutes, section 583.26, subdivision 4, paragraph (f), must return a claim form specifying why the debt is not subject to the Farmer-Lender Mediation Act to the county extension agent and attach the documents indicated for the debts listed in items A to E.

A. for a debt that has been in bankruptcy under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (1), either a copy of the proof of claim form filed in bankruptcy, a copy of the bankruptcy petition in which the debt is listed as a scheduled debt, or a notice of petition for bankruptcy in which the debt is listed as a scheduled debt;

B. for a debt in default and mediated under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (2):

(1) an affidavit stating that debt was in default when the creditor received a mediation proceeding notice under the Farmer-Lender Mediation Act, a claim form was filed, the debt was mediated during the mediation period, and the mediation was unresolved or a mediation agreement with respect to that debt was signed;

(2) a copy of the creditor's claim form; and

(3) a copy of the Memorandum of Agreement (Form 8) or Mediation Conclusion With No Agreement (Form 12), or other evidence that the debt was mediated during the mediation period;

C. for a debt, if the debtor did not request mediation ~~was not requested~~ and the creditor proceeded to enforce the debt under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (3):

(1) a copy of the mediation notice;

(2) a copy of Extension Notice of Debtor(s)

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Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 30 days after the debtor failed to make a timely request, or, if the creditor began the proceeding by providing a copy of a forbearance policy, an affidavit stating that the board of the institution has adopted a forbearance policy as described in Minnesota Statutes, section 583.24, subdivision 4, paragraph (b);

D. for ~~liens filed because of~~ a debt that is not subject to mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (5), because there is a lien under Minnesota Statutes, section 514.661 or 559.2091, a copy of the lien statement under Minnesota Statutes, section 514.661 or 559.2091, indicating that the filing officer has received and filed the lien statement; and

E. for a debt restructured in mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (4):

(1) a copy of the Mediation Proceeding Notice; and

(2) a copy of the signed agreement reached in mediation that is a separate ~~contract~~ agreement between the debtor and the creditor with respect to that debt. The agreement may be an attachment to the Memorandum of Agreement (Form 8).

Subp. 2. **~~County extension agent procedure~~ Notification of debt not subject to mediation.** If ~~it appears from~~ a creditor returns a claim form with the ~~face of~~ documents ~~submitted~~ required under subpart 1, items A to E, ~~that~~ the county extension agent shall determine from the documents whether the debt is ~~not~~ subject to the Farmer-Lender Mediation Act ~~and that therefore the creditor need not participate in the mediation proceeding~~. The county extension agent shall ~~so~~ notify the debtor, creditor, and mediator of the determination.

~~1502.0012~~ 1502.0011 [Emergency] FINANCIAL ANALYST AND FARM

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ADVOCATE.

~~Upon receipt of~~ Within three business days of receiving a mediation request, the county extension agent shall provide a financial analyst to meet with the debtor at the orientation session and as necessary to prepare the debtor's records before the initial mediation meeting~~, and~~. The county extension agent shall provide the debtor with information on obtaining, without charge, a Department of Agriculture farm advocate to assist the debtor and the financial analyst.

~~1502.0013~~ 1502.0012 [Emergency] COMPUTATION OF TIME PERIODS.

In computing any period by parts 1502.0001 to 1502.0025 [Emergency], by court order, or ~~by an applicable statute~~ under the Farmer-Lender Mediation Act, the day of the last act, event, or default from which the designated period begins to run must not be included. The last day of the computed period must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation.

~~1502.0014~~ 1502.0013 [Emergency] ORIENTATION SESSION.

At the orientation session, the mediator must inform the ~~parties~~ debtor and creditors of their right to seek counsel regarding the legal and tax consequences of documents and agreements. At the debtor's request, the financial analyst shall meet in private with the debtor at intervals during the orientation session.

~~1502.0015~~ 1502.0014 [Emergency] SELECTION OF MEDIATOR.

Subpart 1. **Procedure.** The initiating creditor and the debtor may strike one name from the mediator list by sending the county extension agent a notice to that effect. The notice must be mailed within three days of the date the debtor or creditor received the mediation proceeding notice.

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Subp. 2. **Replacement mediator.** If the appointed mediator withdraws from the case, the county extension ~~director~~ agent shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if a mediator is not available, the county extension agent shall appoint an available mediator, subject to the disapproval of either the debtor or creditor, upon a showing of conflict of interest.

Subp. 3. **Co-mediators.** At the discretion of the ~~director~~ county extension agent, more than one mediator may be assigned to a mediation proceeding.

~~1502.0016~~ 1502.0015 [Emergency] DUTIES OF MEDIATOR.

At the initial mediation meeting and subsequent meetings, the mediator shall:

A. perform the duties prescribed in Minnesota Statutes, section 583.26, subdivision 6, paragraph (b);

B. review the ~~parties'~~ debtor's and creditors' rights and obligations in the mediation process;

C. explain the rules of conduct for mediation meetings;

D. explain the confidentiality of mediation; and

E. facilitate written agreement on:

(1) money to be released for necessary farm operating expenses;

(2) money to be released for necessary living expenses; and

(3) the creditors, if any, responsible for releasing the money.

~~1502.0017~~ 1502.0016 [Emergency] MEDIATION PROCESS.

Subpart 1. **Combined proceeding.** The ~~director~~ county extension agent shall combine all mediation notices for more than one debtor into one mediation proceeding if the debtors are liable for the same debt or a portion of the same debt on a single piece of agricultural property.

Subp. 2. **Late notice.** The ~~director~~ county extension agent

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shall combine all mediation notices for the same debtor that are received before the initial mediation meeting into one mediation proceeding. It shall be at the ~~director's~~ county extension agent's discretion as to how to proceed if a mediation notice is served on a debtor between the time of the initial mediation meeting and the end of the mediation period.

Subp. 3. **Meeting place and time.** The mediator shall call mediation meetings during the mediation period. The meetings must be held at a convenient and neutral place and at times as convenient as possible for the ~~parties~~ debtor and creditors attending and participating in mediation meetings, including nights and weekends.

Subp. 4. **Attendance by financial analyst, farm advocate, or attorney.** A financial analyst, farm advocate, or attorney must be permitted to attend mediation meetings at the invitation of the debtor, a creditor, or the mediator. A financial analyst, farm advocate, or attorney may not attend in place of a debtor or a creditor unless ~~good cause is shown for the debtor's or creditor's inability~~ the mediator determines a debtor or creditor is unable to attend and the attendance of a financial analyst, farm advocate, or attorney in place of the debtor or a creditor is beneficial to the mediation.

Subp. 5. **Record.** Upon completion of mediation, the mediator shall forward all documents made or used in the course of or because of mediation to the county extension agent. The documents are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

~~1502.0018~~ 1502.0017 [Emergency] REMOVAL OF MEDIATOR.

Subpart 1. **Procedure.** The mediator may be removed at any time during the mediation period upon the written agreement of ~~all parties~~ the debtor and creditors attending mediation meetings. This agreement must be sent to the county extension agent who, upon receipt of the agreement, shall assign ~~a~~ an available replacement mediator not previously stricken from the mediator list by the debtor or initiating creditor to

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participate in the mediation or if an unstricken mediator from the list is not available, the county extension agent must assign an available mediator subject to the disapproval of either the debtor or creditor upon a showing of conflict of interest.

Subp. 2. **Limitation.** The ~~parties~~ debtor and creditors may remove only one mediator during ~~the~~ a mediation ~~period~~ proceeding.

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0025 [Emergency] are not affected by the removal of a mediator.

~~1502.0019~~ 1502.0018 [Emergency] MEDIATION AGREEMENT.

Subpart 1. **Final meeting.** The mediator shall hold one final meeting by the end of the time allowed for mediation for the purpose of signing the mediation agreement.

Subp. 2. **Copies to other creditors.** Copies of the signed agreement must be sent to all creditors who have filed claim forms within three days of the signing of the ~~parties'~~ agreement by the debtor and creditors.

~~Subp. 3. Legal effect of agreement. The debtor and creditors who are parties to the approved mediation agreement and creditors who have filed claim forms and have not objected to the mediation agreement are bound by the terms of the agreement, may enforce the mediation agreement as a legal contract, and may use the mediation agreement as a defense against an action contrary to the mediation agreement. Creditors who are notified of the initial mediation meeting and who neither attend mediation meetings nor file a claim form are also subject to and bound by a mediation agreement.~~

~~1502.0020~~ 1502.0019 [Emergency] OBLIGATION OF GOOD FAITH.

A written statement of why alternatives are unacceptable under Minnesota Statutes, section 583.27, subdivision 1, clause (4), must identify the particular items in each proposal that are unacceptable and state the specific reason for rejection of each item.

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1502.0020 [Emergency] ABUSIVE BEHAVIOR.

Lack of good faith may include abusive behavior on the part of ~~any of~~ the ~~participating parties~~ debtor or a creditor or a person assisting the debtor or a creditor.

1502.0021 [Emergency] LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that ~~one of the parties~~ a debtor or a creditor is not participating in good faith, the mediator shall file an affidavit indicating the reasons for the finding with the county extension agent, ~~the parties participating in the mediation, and creditors who did not participate in mediation but are bound by it under part 1502.0025 [Emergency]~~ the debtor, and the creditors.

1502.0022 [Emergency] CREDITOR'S LACK OF GOOD FAITH.

If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court-supervised mediation by:

A. filing the mediator's affidavit with the district court of the county of the debtor's residence with a request for court supervision of mediation;

B. ~~filing~~ serving a copy of the request with each creditor ~~participating in mediation~~; and

C. sending a copy of the affidavit to the county extension agent. The request must be filed with the court within ten days of receipt of the lack of good faith affidavit by the debtor or within 90 days after the debtor filed the mediation request with the ~~director~~ county extension agent, whichever is later.

1502.0023 [Emergency] DEBTOR'S LACK OF GOOD FAITH.

Not participating in good faith may include:

A. failure of the debtor to list all creditors as defined in Minnesota Statutes, section 583.22, subdivision 4, ~~regardless of which county the property is located in, and all unsecured creditors necessary for the farm operation on the debtor mediation request~~; and

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B. failure of the debtor to provide the following records and documents:

(1) a current, signed financial statement of assets and liabilities;

(2) a copy of the most recent depreciation schedule;

(3) farm record books for the past three years or evidence of crop and livestock production;

~~(4) completed state and federal income tax records for the past three years;~~

~~(5)~~ projected farm budget for the current 12 months;

~~(6) copies of all real estate mortgages, contracts for deed, land and machinery leases;~~

~~(7) copies of promissory notes and security agreements;~~

~~(8)~~ (5) copies of any other legal documents that are necessary for the mediation and pertain to the farm business; and

~~(9)~~ (6) copies of FINPAC ~~programs~~ printout analysis for the farm operation where applicable.

1502.0024 [Emergency] COURT-SUPERVISED MEDIATION.

Subpart 1. **List of mediators.** If requested to do so by the court, the county extension agent shall provide the court with a list of mediators to be used in the selection of the mediator for court-supervised mediation.

Subp. 2. **Suspension of remedies.** The remedies of all creditors~~, including those who are parties to the mediation and those who are bound by mediation under Minnesota Statutes, section 583.28, subdivision 1,~~ are suspended during court-supervised mediation.

1502.0025 [Emergency] CREDITOR NOT ATTENDING MEDIATION MEETING.

Subpart 1. **Initiating creditor.** The initiating creditor shall not file a proof of claim form in lieu of attending meetings.

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Subp. 2. **Written objection.** To object to the provisions of a mediation agreement, a creditor who files a claim form in lieu of attending mediation meetings ~~may~~ shall serve a written objection to the terms of the agreement on the mediator and the debtor within ten days after receiving the mediation agreement. The written objection must identify the particular items in the agreement that are unacceptable and state the specific reason for rejection of each item.

Subp. 3. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of ~~Minnesota Statutes, chapter 583~~ the Farmer-Lender Mediation Act.

Subp. 4. **New mediation.** Upon ~~the service of~~ receiving the objection, the mediator shall meet again with the debtor and creditors to mediate a new agreement. Mediation meetings must take place within ten days of the receipt of the written objections to the terms of the agreement.

Subp. 5. **Required attendance.** ~~Creditors~~ A creditor who ~~file objections~~ files an objection shall attend and participate in any meeting held under ~~this part~~ subpart 4, unless ~~good cause is shown for their inability~~ the mediator determines there is a good reason why the creditor is unable to attend.

Subp. 6. **Extension of period.** The 60-day mediation period must be extended for up to ten days if necessary to meet the requirements of subpart 4.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

December 24 1987

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 30 1987

Joan Anderson Growe
Secretary of State

Department of Agriculture

Proposed Emergency Rules Relating to Farmer-Lender Mediation

Rules as Proposed (all new material)

1502.0001 [Emergency] SCOPE.

Parts 1502.0001 to 1502.0025 [Emergency] are adopted by the Department of Agriculture pursuant to Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation concluded or commenced before the adoption of parts 1502.0001 to 1502.0025 [Emergency] is not void for lack of compliance.

1502.0002 [Emergency] APPLICABILITY.

Parts 1502.0001 to 1502.0025 [Emergency] apply to creditors and debtors as defined in Minnesota Statutes, section 583.24.

1502.0003 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0025 [Emergency].

Subp. 2. **County extension agent.** "County extension agent" means the county agricultural extension agent for the county in which the debtor resides.

Subp. 3. **Farmer-Lender Mediation Act.** "Farmer-Lender Mediation Act" means Minnesota Statutes, sections 583.20 to 583.32.

Subp. 4. **Parties.** "Parties" means the debtor and all creditors who are actively participating in the mediation process, excluding those who have completed claim forms in lieu of attending mediation meetings.

Subp. 5. **Proceeding.** "Proceeding" means the process required by law, security agreement, lease agreement, or contract for enforcing a debt against agricultural property under Minnesota Statutes, chapter 580 or 581, or sections

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336.9-501 to 336.9-508, terminating a contract for deed to purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

Subp. 6. **Send.** "Send" means to mail by first class mail.

1502.0004 [Emergency] ADMINISTRATION.

The director of Minnesota extension services shall administer the Farmer-Lender Mediation Act subject to the delegation power prescribed in Minnesota Statutes, sections 583.22, subdivision 5, and 583.23, subdivision 3. Under the delegation power in Minnesota Statutes, section 583.22, subdivision 5, the county extension agent in the county in which the debtor resides is the director's designee for purposes of service and other purposes specified by the director.

1502.0005 [Emergency] RESPONSIBILITIES.

The director's responsibilities under the Farmer-Lender Mediation Act include, but are not limited to, the following:

A. The director shall provide training in mediation techniques to mediators. The training must include training on mediation process, skills, and farm finance issues in mediation.

B. The director shall provide support to mediators, including, but not limited to, technical assistance in complying with parts 1502.0001 to 1502.0025 [Emergency] and applicable statutes, clerical support, postage, and other necessary supplies.

C. The director shall provide training in farm financial analysis (FINPAC) computer software to credit analysts.

D. The director shall set the compensation of mediators and credit analysts and shall reimburse them upon submission of expense claims.

E. The director shall coordinate community legal education programs for farmers.

F. The director shall collect and maintain accurate statistical data on the program.

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1502.0006 [Emergency] FORMS.

The director shall make forms available through each county extension agent and county recorder for use by debtors, creditors, and mediators under parts 1502.0001 to 1502.0025 [Emergency] and applicable statutes.

1502.0007 [Emergency] SUBSTANTIVE RIGHTS.

The fact that the director or a designee has in any way acted upon a request for mediation does not determine the substantive rights of the parties under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0025 [Emergency].

1502.0008 [Emergency] WITHDRAWAL OF MEDIATION REQUEST.

A debtor may withdraw a mediation request at any time before the first mediation meeting. The debtor's withdrawal must be in writing. Withdrawal of the mediation request constitutes a waiver of the debtor's right to mediate the debt that initiated the service of the mediation notice under the Farmer-Lender Mediation Act unless the debtor refiles the mediation request within the 14 days permitted to file the original mediation request. In case of a waiver, the county extension agent shall notify the creditor who started the proceedings, in writing, that the creditor may proceed against the agricultural property because the debtor has withdrawn the mediation request. The county extension agent shall also notify, in writing, creditors who received a mediation proceeding notice that the debtor has withdrawn the mediation request and therefore the mediation is canceled.

1502.0009 [Emergency] FAILURE TO FILE TIMELY REQUEST.

If a debtor fails to file a timely mediation request the county extension agent shall notify the creditor who started the proceedings, in writing, that the creditor may proceed against the agricultural property because the debtor has failed to file a mediation request. This notice must be sent within 20 days of the service of the mediation notice. The county extension agent shall send a copy of the notice to the debtor.

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1502.0010 [Emergency] RETURN.

Subpart 1. **Proof of service.** Service of a mediation notice must be proved by the certificate of the sheriff making it, by the affidavit of another person making it, by the written admission of the party served, or by the certified mail receipts. A creditor proving service by a certificate of mailing must provide the county extension agent with a copy of the certificate of mailing and an affidavit stating that the creditor has made an unsuccessful attempt to serve the debtor personally as in a district court civil action or by certified mail using return receipt signed by addressee only. Proof of service must state the date, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

Subp. 2. **Proof of filing.** Filing of a mediation request must be proved by the certified mail receipt or by the written acknowledgment of the county extension agent.

1502.0011 [Emergency] CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor returning a claim form when a debt is not subject to the Farmer-Lender Mediation Act under Minnesota Statutes, section 583.26, subdivision 4, paragraph (f), must attach the documents indicated for the debts listed in items A to E.

A. for debt that has been in bankruptcy under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (1), either a copy of the proof of claim form filed in bankruptcy, a copy of the bankruptcy petition in which the debt is listed as a scheduled debt, or a notice of petition for bankruptcy in which the debt is listed as a scheduled debt;

B. for debt in default and mediated under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (2):

(1) an affidavit stating that debt was in default when the creditor received a mediation proceeding notice under

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the Farmer-Lender Mediation Act;

(2) a copy of the creditor's claim form; and

(3) a copy of the Memorandum of Agreement (Form 8) or Mediation Conclusion With No Agreement (Form 12), or other evidence that the debt was mediated during the mediation period;

C. if mediation was not requested and the creditor proceeded under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (3):

(1) a copy of the mediation notice;

(2) a copy of Extension Notice of Debtor(s) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 30 days after the debtor failed to make a timely request, or, if the creditor began the proceeding by providing a copy of a forbearance policy, an affidavit stating that the board of the institution has adopted a forbearance policy as described in Minnesota Statutes, section 583.24, subdivision 4, paragraph (b);

D. for liens filed because of mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (5), a copy of the lien statement under Minnesota Statutes, section 514.661 or 559.2091, indicating that the filing officer has received and filed the statement; and

E. for debt restructured in mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (4):

(1) a copy of the Mediation Proceeding Notice; and

(2) a copy of the agreement reached in mediation that is a separate contract between the debtor and the creditor. The agreement may be an attachment to the Memorandum of Agreement (Form 8).

Subp. 2. **County extension agent procedure.** If it appears from the face of documents submitted under subpart 1, items A to E, that the debt is not subject to the Farmer-Lender Mediation Act and that therefore the creditor need not participate in the

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mediation proceeding, the county extension agent shall so notify the debtor, creditor, and mediator.

1502.0012 [Emergency] FINANCIAL ANALYST AND FARM ADVOCATE.

Upon receipt of a mediation request, the county extension agent shall provide a financial analyst to meet with the debtor at the orientation session and as necessary to prepare the debtor's records before the initial mediation meeting, and shall provide the debtor with information on obtaining, without charge, a Department of Agriculture farm advocate to assist the debtor and the financial analyst.

1502.0013 [Emergency] TIME.

In computing any period by parts 1502.0001 to 1502.0025 [Emergency], by court order, or by an applicable statute, the day of the last act, event, or default from which the designated period begins to run must not be included. The last day of the computed period must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation.

1502.0014 [Emergency] ORIENTATION SESSION.

At the orientation session, the mediator must inform the parties of their right to seek counsel regarding the legal and tax consequences of documents and agreements. At the debtor's request, the financial analyst shall meet in private with the debtor at intervals during the orientation session.

1502.0015 [Emergency] SELECTION OF MEDIATOR.

Subpart 1. **Procedure.** The initiating creditor and the debtor may strike one name from the mediator list by sending the county extension agent a notice to that effect. The notice must be mailed within three days of the date the debtor or creditor received the mediation proceeding notice.

Subp. 2. **Replacement mediator.** If the appointed mediator

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withdraws from the case, the county extension director shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor.

Subp. 3. **Co-mediators.** At the discretion of the director, more than one mediator may be assigned to a mediation proceeding.

1502.0016 [Emergency] DUTIES OF MEDIATOR.

At the initial mediation meeting and subsequent meetings, the mediator shall:

A. perform the duties prescribed in Minnesota Statutes, section 583.26, subdivision 6;

B. review the parties' rights and obligations in the mediation process;

C. explain the rules of conduct for mediation meetings;

D. explain the confidentiality of mediation; and

E. facilitate written agreement on:

(1) money to be released for necessary farm operating expenses;

(2) money to be released for necessary living expenses; and

(3) the creditors, if any, responsible for releasing the money.

1502.0017 [Emergency] MEDIATION PROCESS.

Subpart 1. **Combined proceeding.** The director shall combine all mediation notices for more than one debtor into one mediation proceeding if the debtors are liable for the debt or a portion of the debt on a single piece of agricultural property.

Subp. 2. **Late notice.** The director shall combine all mediation notices for the same debtor that are received before the initial mediation meeting into one mediation proceeding. It shall be at the director's discretion as to how to proceed if a mediation notice is served on a debtor between the time of the initial mediation meeting and the end of the mediation period.

Subp. 3. **Meeting place and time.** The mediator shall call mediation meetings during the mediation period. The meetings

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must be held at a convenient and neutral place and at times as convenient as possible for the parties, including nights and weekends.

Subp. 4. **Financial analyst, farm advocate, or attorney.** A financial analyst, farm advocate, or attorney must be permitted to attend mediation meetings at the invitation of the debtor, a creditor, or the mediator. A financial analyst, farm advocate, or attorney may not attend in place of a debtor or a creditor unless good cause is shown for the debtor's or creditor's inability to attend.

Subp. 5. **Record.** Upon completion of mediation, the mediator shall forward all documents made or used in the course of or because of mediation to the county extension agent. The documents are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

1502.0018 [Emergency] REMOVAL OF MEDIATOR.

Subpart 1. **Procedure.** The mediator may be removed at any time during the mediation period upon the written agreement of all parties. This agreement must be sent to the county extension agent who, upon receipt of the agreement, shall assign a replacement mediator not previously stricken from the mediator list by the debtor or initiating creditor to participate in the mediation.

Subp. 2. **Limitation.** The parties may remove only one mediator during the mediation period.

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0025 [Emergency] are not affected by the removal of a mediator.

1502.0019 [Emergency] MEDIATION AGREEMENT.

Subpart 1. **Final meeting.** The mediator shall hold one final meeting for the purpose of signing the mediation agreement.

Subp. 2. **Copies to other creditors.** Copies of the signed agreement must be sent to all creditors who have filed claim forms within three days of the signing of the parties' agreement.

Subp. 3. **Legal effect of agreement.** The debtor and

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creditors who are parties to the approved mediation agreement and creditors who have filed claim forms and have not objected to the mediation agreement are bound by the terms of the agreement, may enforce the mediation agreement as a legal contract, and may use the mediation agreement as a defense against an action contrary to the mediation agreement. Creditors who are notified of the initial mediation meeting and who neither attend mediation meetings nor file a claim form are also subject to and bound by a mediation agreement.

1502.0020 [Emergency] OBLIGATION OF GOOD FAITH.

A written statement of why alternatives are unacceptable under Minnesota Statutes, section 583.27, subdivision 1, clause (4), must identify the particular items in each proposal that are unacceptable and state the specific reason for rejection of each item. Lack of good faith may include abusive behavior on the part of any of the participating parties.

1502.0021 [Emergency] LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that one of the parties is not participating in good faith, the mediator shall file an affidavit indicating the reasons for the finding with the county extension agent, the parties participating in the mediation, and creditors who did not participate in mediation but are bound by it under part 1502.0025 [Emergency].

1502.0022 [Emergency] CREDITOR'S LACK OF GOOD FAITH.

If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court-supervised mediation by:

A. filing the mediator's affidavit with the district court of the county of the debtor's residence with a request for court supervision of mediation;

B. filing a copy of the request with each creditor participating in mediation; and

C. sending a copy of the affidavit to the county extension agent. The request must be filed with the court

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within ten days of receipt of the lack of good faith affidavit by the debtor or within 90 days after the debtor filed the mediation request with the director, whichever is later.

1502.0023 [Emergency] DEBTOR'S LACK OF GOOD FAITH.

Not participating in good faith may include:

A. failure of the debtor to list all creditors as defined in Minnesota Statutes, section 583.22, subdivision 4, regardless of which county the property is located in, and all unsecured creditors necessary for the farm operation on the debtor mediation request; and

B. failure of the debtor to provide the following records and documents:

(1) a current, signed financial statement of assets and liabilities;

(2) a copy of the most recent depreciation schedule;

(3) farm record books for the past three years or evidence of crop and livestock production;

(4) completed state and federal income tax records for the past three years;

(5) projected farm budget for the current 12 months;

(6) copies of all real estate mortgages, contracts for deed, land and machinery leases;

(7) copies of promissory notes and security agreements;

(8) copies of any other legal documents that pertain to the farm business; and

(9) copies of FINPAC programs where applicable.

1502.0024 [Emergency] COURT-SUPERVISED MEDIATION.

Subpart 1. **List of mediators.** If requested to do so by the court, the county extension agent shall provide the court with a list of mediators to be used in the selection of the mediator for court-supervised mediation.

Subp. 2. **Suspension of remedies.** The remedies of all

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creditors, including those who are parties to the mediation and those who are bound by mediation under Minnesota Statutes, section 583.28, subdivision 1, are suspended during court-supervised mediation.

1502.0025 [Emergency] CREDITOR NOT ATTENDING MEDIATION MEETING.

Subpart 1. **Initiating creditor.** The initiating creditor shall not file a proof of claim form in lieu of attending meetings.

Subp. 2. **Written objection.** A creditor who files a claim form in lieu of attending mediation meetings may serve a written objection to the terms of the agreement on the mediator and the debtor within ten days after receiving the mediation agreement. The written objection must identify the particular items in the agreement that are unacceptable and state the specific reason for rejection of each item.

Subp. 3. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of Minnesota Statutes, chapter 583.

Subp. 4. **New mediation.** Upon the service of the objection, the mediator shall meet again with the debtor and creditors to mediate a new agreement. Mediation meetings must take place within ten days of the receipt of the written objections to the terms of the agreement.

Subp. 5. **Required attendance.** Creditors who file objections shall attend and participate in any meeting held under this part, unless good cause is shown for their inability to attend.

Subp. 6. **Extension of period.** The 60-day mediation period must be extended for up to ten days if necessary to meet the requirements of subpart 4.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to Farmer-Lender Mediation

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1502

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture

In the Matter of the Proposed Adoption of Emergency Rules of the Department of Agriculture Governing Farmer-Lender Mediation

NOTICE OF INTENT TO ADOPT EMERGENCY RULES

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above entitled emergency rules. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, section 583.285. The department, in adopting the rule, is following the procedures set forth in the Administrative Procedures Act for adopting emergency rules in Minnesota Statutes, sections 14.29-14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rules or any part or subpart of the rule in writing. Any comments must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-6906.

A copy of the proposed rule is attached to this notice. A free copy of the proposed emergency rule is available by contacting Ms. Milligan.

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 emergency rule as noticed.

Upon adoption of the emergency rule by the department, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any persons may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rules, must submit a written request to Ms. Milligan.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the department gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

STATE OF MINNESOTA

Date: Aug 17, 1987

Jim Nichols
Commissioner of Agriculture

In the Matter of the Proposed
Adoption of Rules of the Department
of Agriculture Governing
Farmer-Lender Mediation

AFFIDAVIT OF MAILING
THE NOTICE OF INTENT
TO ADOPT AN EMERGENCY
RULE AND CERTIFICATE
OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. State § 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 16th day of September, 1987.

That on the 16th day of September, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol Milligan
Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 16th day of September, 1987.

Diane M. Windham

D. sitings of elk in the area; and

E. any other circumstances considered pertinent by the federal crop adjuster or the county extension agent. The absence of affirmative evidence may be grounds for denial of a claim.

The federal crop adjuster or the county extension agent shall make a written finding on the claim form of the extent of damage or the amount of crop destroyed. For purposes of completing the claim form, "normal yield" means the payment yield established for commodities covered by programs of the Agricultural Stabilization and Conservation Service. For commodities not covered by programs of the Agricultural Stabilization and Conservation Service, "normal yield" means the proven yield established by the Federal Crop Insurance Corporation.

1506.0030 [Emergency] COMPLETION AND SIGNING OF CLAIM FORM.

A completed claim form must be signed by the owner and county extension agent or the federal crop adjuster and submitted by the crop owner to the commissioner for review and payment. The commissioner shall return an incomplete claim form to the crop owner, indicating the information necessary for proper completion.

1506.0035 [Emergency] INSURANCE COVERAGE.

If insurance coverage exists on the crop, the commissioner shall withhold payment under parts 1506.0010 to 1506.0040 [Emergency] until the insurance claim has been paid and evidence of payment has been submitted to the commissioner, at which time that insurance payment must be deducted from the determined value. Payment must not be made for claims of less than $100 per claim or more than $20,000 in a calendar year.

1506.0040 [Emergency] PAYMENT.

After procedures in parts 1506.0020 to 1506.0035 [Emergency] are completed, the commissioner shall make payment to the crop owners.

Department of Agriculture

Proposed Emergency Rules Relating to Farmer-Lender Mediation

Notice of Intent to Adopt Emergency Rules

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above entitled emergency rules. The statutory authority to adopt the emergency rule is contained in *Minnesota Statutes*, section 583.285. The department, in adopting the rule, is following the procedures set forth in the Administrative Procedures Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29-14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rules or any part or subpart of the rule in writing. Any comments must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-6906.

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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 emergency rule as noticed.

Upon adoption of the emergency rule by the department, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent form relates to legality. Any persons may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the adopted rules, must submit a written request to Ms. Milligan.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the department gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.

Dated: 17 August 1987

Jim Nichols
Commissioner of Agriculture

Rules as Proposed (all new material)

1502.0001 [Emergency] SCOPE.

Parts 1502.0001 to 1502.0025 [Emergency] are adopted by the Department of Agriculture pursuant to Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation concluded or commenced before the adoption of parts 1502.0001 to 1502.0025 [Emergency] is not void for lack of compliance.

1502.0002 [Emergency] APPLICABILITY.

Parts 1502.0001 to 1502.0025 [Emergency] apply to creditors and debtors as defined in Minnesota Statutes, section 583.24.

1502.0003 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0025 [Emergency].

Subp. 2. **County extension agent.** "County extension agent" means the county agricultural extension agent for the county in which the debtor resides.

Subp. 3. **Farmer-Lender Mediation Act.** "Farmer-Lender Mediation Act" means Minnesota Statutes, sections 583.20 to 583.32.

Subp. 4. **Parties.** "Parties" means the debtor and all creditors who are actively participating in the mediation process, excluding those who have completed claim forms in lieu of attending mediation meetings.

Subp. 5. **Proceeding.** "Proceeding" means the process required by law, security agreement, lease agreement, or contract for enforcing a debt against agricultural property under Minnesota Statutes, chapter 580 or 581, or sections 336.9-501 to 336.9-508, terminating a contract for deed to purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

Subp. 6. **Send.** "Send" means to mail by first class mail.

1502.0004 [Emergency] ADMINISTRATION.

The director of Minnesota extension services shall administer the Farmer-Lender Mediation Act subject to the delegation power prescribed in Minnesota Statutes, sections 583.22, subdivision 5, and 583.23, subdivision 3. Under the delegation power in Minnesota Statutes, section 583.22, subdivision 5, the county extension agent in the county in which the debtor resides is the director's designee for purposes of service and other purposes specified by the director.

1502.0005 [Emergency] RESPONSIBILITIES.

The director's responsibilities under the Farmer-Lender Mediation Act include, but are not limited to, the following:

A. The director shall provide training in mediation techniques to mediators. The training must include training on mediation process, skills, and farm finance issues in mediation.

B. The director shall provide support to mediators, including, but not limited to, technical assistance in complying with parts 1502.0001 to 1502.0025 [Emergency] and applicable statutes, clerical support, postage, and other necessary supplies.

C. The director shall provide training in farm financial analysis (FINPAC) computer software to credit analysts.

D. The director shall set the compensation of mediators and credit analysts and shall reimburse them upon submission of expense claims.

E. The director shall coordinate community legal education programs for farmers.

F. The director shall collect and maintain accurate statistical data on the program.

1502.0006 [Emergency] FORMS.

The director shall make forms available through each county extension agent and county recorder for use by debtors, creditors, and mediators under parts 1502.0001 to 1502.0025 [Emergency] and applicable statutes.

1502.0007 [Emergency] SUBSTANTIVE RIGHTS.

The fact that the director or a designee has in any way acted upon a request for mediation does not determine the substantive rights of the parties under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0025 [Emergency].

1502.0008 [Emergency] WITHDRAWAL OF MEDIATION REQUEST.

A debtor may withdraw a mediation request at any time before the first mediation meeting. The debtor's withdrawal must be in writing. Withdrawal of the mediation request constitutes a waiver of the debtor's right to mediate the debt that initiated the service of the mediation notice under the Farmer-Lender Mediation Act unless the debtor refiles the mediation request within the 14 days permitted to file the original mediation request. In case of a waiver, the county extension agent shall notify the creditor who started

the proceedings, in writing, that the creditor may proceed against the agricultural property because the debtor has withdrawn the mediation request. The county extension agent shall also notify, in writing, creditors who received a mediation proceeding notice that the debtor has withdrawn the mediation request and therefore the mediation is canceled.

1502.0009 [Emergency] FAILURE TO FILE TIMELY REQUEST.

If a debtor fails to file a timely mediation request the county extension agent shall notify the creditor who started the proceedings, in writing, that the creditor may proceed against the agricultural property because the debtor has failed to file a mediation request. This notice must be sent within 20 days of the service of the mediation notice. The county extension agent shall send a copy of the notice to the debtor.

1502.0010 [Emergency] RETURN.

Subpart 1. **Proof of service.** Service of a mediation notice must be proved by the certificate of the sheriff making it, by the affidavit of another person making it, by the written admission of the party served, or by the certified mail receipts. A creditor proving service by a certificate of mailing must provide the county extension agent with a copy of the certificate of mailing and an affidavit stating that the creditor has made an unsuccessful attempt to serve the debtor personally as in a district court civil action or by certified mail using return receipt signed by addressee only. Proof of service must state the date, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

Subp. 2. **Proof of filing.** Filing of a mediation request must be proved by the certified mail receipt or by the written acknowledgment of the county extension agent.

1502.0011 [Emergency] CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor returning a claim form when a debt is not subject to the Farmer-Lender Mediation Act under Minnesota Statutes, section 583.26, subdivision 4, paragraph (f), must attach the documents indicated for the debts listed in items A to E.

A. for debt that has been in bankruptcy under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (1), either a copy of the proof of claim form filed in bankruptcy, a copy of the bankruptcy petition in which the debt is listed as a scheduled debt, or a notice of petition for bankruptcy in which the debt is listed as a scheduled debt;

B. for debt in default and mediated under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (2):

(1) an affidavit stating that debt was in default when the creditor received a mediation proceeding notice under the Farmer-Lender Mediation Act;

(2) a copy of the creditor's claim form; and

(3) a copy of the Memorandum of Agreement (Form 8) or Mediation Conclusion With No Agreement (Form 12), or other evidence that the debt was mediated during the mediation period;

C. if mediation was not requested and the creditor proceeded under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (3):

(1) a copy of the mediation notice;

(2) a copy of Extension Notice of Debtor(s) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 30 days after the debtor failed to make a timely request, or, if the creditor began the proceeding by providing a copy of a forbearance policy, an affidavit stating that the board of the institution has adopted a forbearance policy as described in Minnesota Statutes, section 583.24, subdivision 4, paragraph (b);

D. for liens filed because of mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (5), a copy of the lien statement under Minnesota Statutes, section 514.661 or 559.2091, indicating that the filing officer has received and filed the statement; and

E. for debt restructured in mediation under Minnesota Statutes, section 583.24, subdivision 4, paragraph (a), clause (4):

(1) a copy of the Mediation Proceeding Notice; and

(2) a copy of the agreement reached in mediation that is a separate contract between the debtor and the creditor. The agreement may be an attachment to the Memorandum of Agreement (Form 8).

Subp. 2. **County extension agent procedure.** If it appears from the face of documents submitted under subpart 1, items A to E, that the debt is not subject to the Farmer-Lender Mediation Act and that therefore the creditor need not participate in the mediation proceeding, the county extension agent shall so notify the debtor, creditor, and mediator.

1502.0012 [Emergency] FINANCIAL ANALYST AND FARM ADVOCATE.

Upon receipt of a mediation request, the county extension agent shall provide a financial analyst to meet with the debtor at the orientation session and as necessary to prepare the debtor's records before the initial mediation meeting, and shall provide the debtor with information on obtaining, without charge, a Department of Agriculture farm advocate to assist the debtor and the financial analyst.

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In computing any period by parts 1502.0001 to 1502.0025 [Emergency], by court order, or by an applicable statute, the day of the last act, event, or default from which the designated period begins to run must not be included. The last day of the computed period must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation.

1502.0014 [Emergency] ORIENTATION SESSION.

At the orientation session, the mediator must inform the parties of their right to seek counsel regarding the legal and tax consequences of documents and agreements. At the debtor's request, the financial analyst shall meet in private with the debtor at intervals during the orientation session.

1502.0015 [Emergency] SELECTION OF MEDIATOR.

Subpart 1. **Procedure.** The initiating creditor and the debtor may strike one name from the mediator list by sending the county extension agent a notice to that effect. The notice must be mailed within three days of the date the debtor or creditor received the mediation proceeding notice.

Subp. 2. **Replacement mediator.** If the appointed mediator withdraws from the case, the county extension director shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor.

Subp. 3. **Co-mediators.** At the discretion of the director, more than one mediator may be assigned to a mediation proceeding.

1502.0016 [Emergency] DUTIES OF MEDIATOR.

At the initial mediation meeting and subsequent meetings, the mediator shall:

A. perform the duties prescribed in Minnesota Statutes, section 583.26, subdivision 6;

B. review the parties' rights and obligations in the mediation process;

C. explain the rules of conduct for mediation meetings;

D. explain the confidentiality of mediation; and

E. facilitate written agreement on:

(1) money to be released for necessary farm operating expenses;

(2) money to be released for necessary living expenses; and

(3) the creditors, if any, responsible for releasing the money.

1502.0017 [Emergency] MEDIATION PROCESS.

Subpart 1. **Combined proceeding.** The director shall combine all mediation notices for more than one debtor into one mediation proceeding if the debtors are liable for the debt or a portion of the debt on a single piece of agricultural property.

Subp. 2. **Late notice.** The director shall combine all mediation notices for the same debtor that are received before the initial mediation meeting into one mediation proceeding. It shall be at the director's discretion as to how to proceed if a mediation notice is served on a debtor between the time of the initial mediation meeting and the end of the mediation period.

Subp. 3. **Meeting place and time.** The mediator shall call mediation meetings during the mediation period. The meetings must be held at a convenient and neutral place and at times as convenient as possible for the parties, including nights and weekends.

Subp. 4. **Financial analyst, farm advocate, or attorney.** A financial analyst, farm advocate, or attorney must be permitted to attend mediation meetings at the invitation of the debtor, a creditor, or the mediator. A financial analyst, farm advocate, or attorney may not attend in place of a debtor or a creditor unless good cause is shown for the debtor's or creditor's inability to attend.

Subp. 5. **Record.** Upon completion of mediation, the mediator shall forward all documents made or used in the course of or because of mediation to the county extension agent. The documents are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

1502.0018 [Emergency] REMOVAL OF MEDIATOR.

Subpart 1. **Procedure.** The mediator may be removed at any time during the mediation period upon the written agreement of all parties. This agreement must be sent to the county extension agent who, upon receipt of the agreement, shall assign a replacement mediator not previously stricken from the mediator list by the debtor or initiating creditor to participate in the mediation.

Subp. 2. **Limitation.** The parties may remove only one mediator during the mediation period.

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0025 [Emergency] are not affected by the removal of a mediator.

1502.0019 [Emergency] MEDIATION AGREEMENT.

Subpart 1. **Final meeting.** The mediator shall hold one final meeting for the purpose of signing the mediation agreement.

Subp. 2. **Copies to other creditors.** Copies of the signed agreement must be sent to all creditors who have filed claim forms within three days of the signing of the parties' agreement.

Subp. 3. **Legal effect of agreement.** The debtor and creditors who are parties to the approved mediation agreement and creditors who have filed claim forms and have not objected to the mediation agreement are bound by the terms of the agreement, may enforce the mediation agreement as a legal contract, and may use the mediation agreement as a defense against an action contrary to the mediation agreement. Creditors who are notified of the initial mediation meeting and who neither attend mediation meetings nor file a claim form are also subject to and bound by a mediation agreement.

1502.0020 [Emergency] OBLIGATION OF GOOD FAITH.

A written statement of why alternatives are unacceptable under Minnesota Statutes, section 583.27, subdivision 1, clause (4), must identify the particular items in each proposal that are unacceptable and state the specific reason for rejection of each item. Lack of good faith may include abusive behavior on the part of any of the participating parties.

1502.0021 [Emergency] LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that one of the parties is not participating in good faith, the mediator shall file an affidavit indicating the reasons for the finding with the county extension agent, the parties participating in the mediation, and creditors who did not participate in mediation but are bound by it under part 1502.0025 [Emergency].

1502.0022 [Emergency] CREDITOR'S LACK OF GOOD FAITH.

If the mediator finds the creditor has not participated in mediation in good faith, the debtor may require court-supervised mediation by:

A. filing the mediator's affidavit with the district court of the county of the debtor's residence with a request for court supervision of mediation;

B. filing a copy of the request with each creditor participating in mediation; and

C. sending a copy of the affidavit to the county extension agent. The request must be filed with the court within ten days of receipt of the lack of good faith affidavit by the debtor or within 90 days after the debtor filed the mediation request with the director, whichever is later.

1502.0023 [Emergency] DEBTOR'S LACK OF GOOD FAITH.

Not participating in good faith may include:

A. failure of the debtor to list all creditors as defined in Minnesota Statutes, section 583.22, subdivision 4, regardless of which county the property is located in, and all unsecured creditors necessary for the farm operation on the debtor mediation request; and

B. failure of the debtor to provide the following records and documents:

(1) a current, signed financial statement of assets and liabilities;

(2) a copy of the most recent depreciation schedule;

(3) farm record books for the past three years or evidence of crop and livestock production;

(4) completed state and federal income tax records for the past three years;

(5) projected farm budget for the current 12 months;

(6) copies of all real estate mortgages, contracts for deed, land and machinery leases;

(7) copies of promissory notes and security agreements;

(8) copies of any other legal documents that pertain to the farm business; and

(9) copies of FINPAC programs where applicable.

1502.0024 [Emergency] COURT-SUPERVISED MEDIATION.

Subpart 1. **List of mediators.** If requested to do so by the court, the county extension agent shall provide the court with a list of mediators to be used in the selection of the mediator for court-supervised mediation.

Subp. 2. **Suspension of remedies.** The remedies of all creditors, including those who are parties to the mediation and those who are bound by mediation under Minnesota Statutes, section 583.28, subdivision 1, are suspended during court-supervised mediation.

1502.0025 [Emergency] CREDITOR NOT ATTENDING MEDIATION MEETING.

Subpart 1. **Initiating creditor.** The initiating creditor shall not file a proof of claim form in lieu of attending meetings.

Subp. 2. **Written objection.** A creditor who files a claim form in lieu of attending mediation meetings may serve a written objection to the terms of the agreement on the mediator and the debtor within ten days after receiving the mediation agreement. The written objection must identify the particular items in the agreement that are unacceptable and state the specific reason for rejection of each item.

Subp. 3. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of Minnesota Statutes, chapter 583.

Subp. 4. **New mediation.** Upon the service of the objection, the mediator shall meet again with the debtor and creditors to mediate a new agreement. Mediation meetings must take place within ten days of the receipt of the written objections to the terms of the agreement.

Subp. 5. **Required attendance.** Creditors who file objections shall attend and participate in any meeting held under this part, unless good cause is shown for their inability to attend.

Subp. 6. **Extension of period.** The 60-day mediation period must be extended for up to ten days if necessary to meet the requirements of subpart 4.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce

Notice of Activation of the Minnesota Joint Underwriting Association to Insure Specified Classes of Business and Public Hearing

Notice is hereby given that, pursuant to *Minnesota Statutes*, section 62I.21, the Minnesota Joint Underwriting Association (MJUA) and the Market Assistance Plan (MAP) are activated to provide assistance to the following classes of business unable to obtain insurance from private insurers:

Grain cleaning and bagging

The MJUA and MAP are activated to provide assistance to the above classes of business for a period of 180 days following publication of this notice. A public hearing will be held, for the purpose of determining whether activation should continue beyond 180 days, at the Office of Administrative Hearings, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, Minnesota 55415 on November 17, 1987 at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard. The hearing shall be governed by *Minnesota Statutes* Sections 14.57-14.69 and by *Minnesota Rules* Parts 1400.5100-1400.8400, (1985). Questions regarding procedure may be directed to Administrative Law Judge, Peter Erickson, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, Minnesota 55415, telephone (612) 341-7606. The authority for this proceeding is found in Chapter 62I of *Minnesota Statutes*, specifically sections 62I.21 and 62I.22. (A copy of those sections follows this notice.)

Prior to the hearing a pre-hearing conference will be held at 1:30 p.m. on October 29, 1987, at the Office of Administrative Hearings, 310 4th Avenue South, 4th Floor Summit Bank Building, Minneapolis, Minnesota 55415.

Minnesota Statutes, Chapter 62I, which governs the Minnesota Joint Underwriting Association provides for temporary activation for 180 days by the Commissioner of Commerce. To extend the Minnesota Joint Underwriting Association's authority beyond the

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Adoption of the Rule of the
Minnesota Department of Agriculture
Governing Farmer-Lender Mediation

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING
EMERGENCY RULES

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on September 21, 1987, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.30 on September 16, 1987.

All persons were given the oportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking.

The proposed changes in the adopted rule are based on comments received by the department and a review of the rule by the department's counsel to the commissioner.

1502.0001

The addition to this part completes the sentence and clarifies the intent of this part.

1502.0002

This part was deleted because part 1502.0001 covers the scope and applicability of the rule. Part 1502.0002 is, therefore, unnecessary.

1502.0003

Subpart 4. The definition for "parties," was deleted because the term "parties" was not used consistently throughout the rule. The term "parties" has been replaced throughout the rule with the names of the specific groups or individuals referred to. This will make the rule more clear. The department agrees with the comments made by the Family Farm Law Project but feels that any definition of "parties" would not be accurate for this rule.

Subparts 4 and 5. The definitions for "mediation notice" and "mediation proceeding notice" were added because definitions were not given in statute and clear definitions of these terms are necessary for easy understanding of the rule.

1502.0004

The addition to this part is a technical amendment to make it clear that the county extension agent is the director's designee for all purposes specified in the rule not just service and filing. The term file was added because the statute refers to both serving and filing.

1502.0005

Paragraph B. The term "farmer-lender mediation act" is more specific and, therefore, more clear than "applicable statutes."

Paragraphs C and D. In the 1987 amendments to the statute, the term "credit analyst" was changed to "financial analyst." The rule should be consistent with statute.

1502.0006

The forms are required by statute, not rule. The change reflects this more accurately.

1502.0007

Several places in the rule refer to the director's designee. In all cases, the designee is the county extension agent. Using "county extension agent" is more accurate.

"Parties" has been striken and "debtors and creditors" inserted because it is more specific. (See reason for change, 1502.0003, subp. 4.)

1502.0008

The changes to this part more accurately reflect the requirements of Minnesota Statutes, section 583.26, subd. 2. Extending the right to withdraw the mediation request until the first meeting, contradicts the statute. The last two sentences of this part were deleted because they are unnecessary. Minnesota Statutes, sec. 583.26, subd. 2, paragraph b, specifies that the creditor who served the mediation notice must be notified if the debtor waives the right to mediate. Since withdrawal of a mediation request must take place within 14 days of receiving a mediation notice, no other creditors would have received a mediation proceeding notice, and, therefore, would not need to be notified of the withdrawal. Since withdrawal can only take place during the 14-day period, the comment by the Family Farm Law Project (FFLP) is no longer pertinent.

1502.0009

The changes to this part make it more specific and clear. Specifying that the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) be used, guarantees consistency in this area. The terms "served the mediation notice" are consistant with termonology in the statute.

1502.0010

Subpart 1 was deleted because it conflicts with Minnesota Statutes, sec. 583.22, subd. 8. This section of the statute clearly defines "serve," and allowing this part of the rule to remain would cause confusion.

Subpart 2. The amendments to this subpart explain the filing procedure in greater detail to help those who must follow this rule understand exactly what is required.

1502.0011

Subp. 1. Claim forms are returned to the county extension agent. This was not previously specified by rule as it should have been.

Paragraph B(1), now requires the affidavit to attest to all of the requirements of M.S. sec. 583.24, subd. 4(a), clause (2). The rule was incomplete before this change.

Paragraph E(2), was changed because M.S. sec. 583.24, subd. 4(a), clause (4), requires a signed agreement. Contract is also an improper term to be used here.

Subpart 2. The title was changed to more accurately reflect the substance of subp. 2, which is clarified, but not changed, by the amendments.

1502.0012

M.S. sec. 583.26, subd. 3, specifically states the "three business day" time limit.

1502.0013

Specifying the Farmer-Lender Mediation Act is more accurate than "applicable statute."

1502.0014

The term "parties" is no longer defined so the term must be deleted and replaced with terms defining who is affected. (See findings for part 1502.0003.)

1502.0015

Subparts 2 and 3. The county extension agent, not the director, actually appoints replacement mediators or co-mediators. The statute says the director or director's designee, which, in practice, is always the county extension agent. The new language concerning appointment of an available mediator is meant to deal with this possible situation in a practical manner.

1502.0016

The term "parties" is no longer defined by rule. (See findings for part 1502.0003.)

1502.0017

Subparts 1 and 2. The county extension agent is the director's designee. (See findings for part 1502.0015.)

Subpart 3. "Parties" is no longer defined. (See findings for part 1502.0003.)

Subpart 4. This amendment specifies what is meant by "good cause," and requires the mediator to make decisions based on what is best for the mediation process. This direction given to the mediator should lead to a more uniform process.

1502.0018

Subpart 1. The new language is necessary to deal with the possibility of no unstriken mediators from the list being available. Without this change, the county extension agents would not have a consistent method for dealing with this situation.

Subpart 2. Proceeding is the proper term used in statute.

1502.0019

Subpart 1. To conform with statute, the final meeting must be held within the time allowed for mediation.

Subpart 3 was deleted because the first sentence is exactly the same as M.S. sec. 583.26, subd. 9, paragrpah G, and it is used as a lead-in to the second sentence which illegally deprives creditors of the right to enforce a debt.

New 1502.0020 and 1502.0021

The amendments redefine parties. (See findings for part 1502.0003.) The department agrees with the intent of the comment concerning 1502.0020

submitted by the Extension Service on October 6, 1987. The suggested language was changed to avoid using the term "parties." The department also feels that the rule as adopted makes it clear that lack of good faith includes abusive behavior on the part of anyone involved in a mediation meeting.

1502.0022

The term "serving" is used in statute and, therefore, is more correct. Since the term "participating" is not clear, serving a copy of the request with all creditors is more accurate. In practice, requests are filed with the county extension agent, not the director. (See findings for part 1502.0015.)

1502.0023

A. The language was deleted because is conflicts with statue. As the comments from the FFLP state, M.S. sec. 583.26, subd. 2, allows the debtor to discern which unsecured creditors are necessary for the farm operation. A debtor can't be found in bad faith for not listing unsecured creditors since the debtor has the right to choose which unsecured creditors will be listed.

B(4). Income tax records. Comments submitted by the Family Farm Law Project point out that income tax returns are private records. The department agrees with this comment.

B(6) and (7). Comments submitted by the Family Farm Raw Project state that M.S. sec. 583.26, subd. 4(b), requires the creditor, not the debtor, to provide the documents listed in (6) and (7). The department agrees that this requirement of the creditor is found in statute, but M.S. sec. 583.26, subd. 5(d) is a more accurate cite.

B(8). The language was added because it is only reasonable to require a debtor to provide documents "necessary for the mediation."

B(9). The amendment was made because "program" usually means the computer software. The new language should help avoid confusion.

1502.0024

Subpart 2. This language was deleted because it is unnecessary and adds nothing to the rule.

1502.0025

Subpart 2 was amended because as previously written it could have been confusing. Stating that a creditor "must" serve a written objection in order to object to provisions of a mediation clearly indicates that this is the only way to object to an agreement.

Subpart 3. Chapter 583 contains much more than just the Farmer-Lender Mediation Act, and the rule should not refer to all good faith requirements that may be in this chapter.

Subpart 5 specifies that the mediator determines if the creditor has a good reasons for not attending the mediation meetings. As the comments of the FFLP point out, without this addition, the rule is meaningless because it offers no provision for determining "good cause."

Miscellaneous Comments

The FFLP wants procedures concerning court review of lack of good faith included in the rule. The department feels that what they are asking for is outside the scope of this rule and should be addressed by statute.

The FFLP also wants a deadline set by rule for creditors filing a claim form. The department feels that the statute is very clear on this point and allows creditors to file a claim form any time "before the scheduled meeting."

The comments submitted by the Minnesota Extension Service on October 16, 1987, raise questions about secured versus unsecured creditors. In the statute, the definition and use of the term creditor seems inconsistent or ambiguous at times, however, it is outside the scope of this rule to interpret the intent of the statute on this point.

Concerning the specific issues raised, the department does wish to make the following comments.

1. It is unclear if an unsecured creditor involved in mediation can obtain a judgement against a debtor during mediation, but if it is not prohibited by statute, it seems unlikely that a creditor could be found in bad faith for doing so.

2. The department feels the M.S. sec. 583.26, subd. 4, states clearly that only secured creditors receive a claim form, and so, only secured creditors may file a claim form.

NOW THEREFORE, IT IS ORDERED that the rule identified as the Emergency Rule Governing Farmer-Lender Mediation as modified is adopted this 3rd day of December, 1987, pursuant to authority vested in me by Minnesota Statutes, section 583.285.

STATE OF MINNESOTA

Jim Nichols

Jim Nichols
Commissioner of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Adoption of the Rule of the
Minnesota Department of Agriculture
Governing Farmer-Lender Mediation

FINDINGS OF FACT,
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NOW THEREFORE, IT IS ORDERED that the rule identified as the Emergency Rule Governing Farmer-Lender Mediation as modified is adopted this 3rd day of December, 1987, pursuant to authority vested in me by Minnesota Statutes, section 583.285.

STATE OF MINNESOTA

Jim Nichols

Jim Nichols
Commissioner of Agriculture

MINNESOTA EXTENSION SERVICE

UNIVERSITY OF MINNESOTA

Farm Credit Mediation
405 Coffey Hall
1420 Eckles Avenue
St. Paul, Minnesota 55108
(612) 625-1279

RECEIVED

OCT 06 1987

PLANNING DIVISION

October 6, 1987

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

Dear Ms. Milligan:

Please change the second sentence of rule 1502.0020 of the Proposed Emergency Rules Relating to Farmer-Lender Mediation. The sentence should read "Lack of good faith may include abusive behavior on the part of any party or a party's representative including but not limited to a financial analyst, farm advocate, or attorney."

Add this sentence to the rule: "A mediator may file a lack of good faith affidavit against a debtor or a creditor if a financial analyst, farm advocate, attorney or other representative of the debtor or creditor acts abusively."

As written, the proposed rule does not make it clear that the mediator may file an affidavit against the debtor or creditor if their advisor is acting abusively. My language should clarify this point.

Sincerely,

Ruth Grunke

Ruth Grunke
Assistant Mediation Program Coordinator

RG/bmn

MINNESOTA EXTENSION SERVICE

UNIVERSITY OF MINNESOTA

Farm Credit Mediation
405 Coffey Hall
1420 Eckles Avenue
St. Paul, Minnesota 55108
(612) 625-1279

RECEIVED
OCT 20 1987
PLANNING DIVISION

October 16, 1987

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

Dear Ms. Milligan:

Since my last letter of comments on the proposed emergency rules relating to farmer-lender mediation, questions have arisen about the role of unsecured creditors in mediation. We have developed some policies that we would like to see included in the rules.

If an unsecured creditor is listed on the debtor's mediation request and comes to the mediation meetings, the creditor should be obligated to mediate in good faith. Please add a rule stating as follows: A mediator may file a lack of good faith affidavit against an unsecured creditor.

During mediation, an unsecured creditor may want to attain the status of a secured creditor by obtaining a judgment against the debtor for the amount of the debt owed. Obtaining a judgment does not take away any land, machinery, or other resources a farmer needs to maintain the farm operation. We therefore do not think that an unsecured creditor's obtaining a judgment should be evidence of lack of good faith and suggest the following rule: An unsecured creditor's obtaining a judgment during a mediation proceeding against the debtor for the amount of the debt owed does not, in itself, evidence lack of good faith by the unsecured creditor.

An area that the rules should address is whether an unsecured creditor may file a claim form. The claim form has three distinct purposes. One is for informing Extension that the creditor is choosing not to attend mediation meetings but wants notice of any mediation agreement reached. Another is for enabling the creditor to avoid mediating the debt more than once. [See Minn. Stat. 583.24 Subd. 4(2).] The third purpose is for informing Extension that the debt is not subject to mediation. The law does not address whether an unsecured creditor may file a claim form for any or all of the purposes described above.

We think that an unsecured creditor should be allowed to file a claim form in lieu of attending meetings. Please include this rule: An unsecured creditor may file a claim form in lieu of attending mediation meetings. We recognize that the statute is ambiguous on this point. We would appreciate it if a rule clarified the issue, even if the rule stated that an unsecured creditor

may not file a claim form in lieu of attending meetings.

A debtor should be able to mediate a debt after a judgment has been obtained on it even if the debtor previously mediated the debt when the creditor was not secured and the mediation ended in impasse. An unsecured creditor, then should not be able to file a claim form for the second purpose described above. Please add this rule: An unsecured creditor shall not file a claim form for the purpose of later claiming that the debt is not subject to mediation under Minn. Stat. 583.24 Subd. 4(2).

An unsecured creditor should be able to submit a claim form for the purpose of informing Extension that a debt is not subject to mediation. Please include this rule: An unsecured creditor may return a claim form if the debt is not subject to the Farmer-Lender Mediation Act and specify why the debt is not subject to the Act.

Thank you for considering these comments. If you have any questions, please call.

Sincerely,

Ruth Grunke

Ruth Grunke
Assistant Mediation Program Coordinator

RG/bmn

MINNESOTA FAMILY FARM LAW PROJECT

1301 MINNESOTA BUILDING
46 EAST FOURTH STREET
ST. PAUL, MINNESOTA 55101
(612) 223-5333

INFORMATION AND REFERRAL
1-800-233-4534

RECEIVED
OCT 16 1987
PLANNING DIVISION

October 16, 1987

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

Re: Proposed Emergency Rules Relating to
Farmer-Lender Mediation

Dear Ms. Milligan:

The following comments regarding the above-referenced proposed rules are submitted for your consideration.

Part 1501.003 Definitions, Subp. 4 Parties.
This part proposes that the term "parties" include the debtor and all creditors who are "actively participating" in mediation and excludes from the term "parties" those creditors who completed claim forms in lieu of attending mediation meetings.

The definition of the term "parties" is critical to the functioning of the mediation process. Minn. Stat. § 583.27 requires the parties to mediate in good faith. By narrowing the definition to "active" participants and excluding from it creditors who file claim forms, you are relieving certain creditors of the good faith obligation. The good faith obligation requires a creditor to provide information, respond to proposals, offer alternatives, and release farm proceeds for family living and farm operating expenses.

Under the proposed definition a creditor can file a claim form, which ensures it of an opportunity to review any mediation agreement, and be relieved of all the good faith obligations. Or, the creditor could intentionally not respond to the mediation proceeding notice, nor attend the scheduled mediation meetings. It could monitor the mediation by contact with one of the other creditors who is attending mediation. Since neither the statute nor the rules requires that a creditor must file a claim form before the initial mediation meeting, the creditor could file a

claim form before the end of the 60-day mediation period, thereby ensuring an opportunity to review any mediation agreement. Under the proposed definition, filing of the claim form relieves the creditor of the good faith obligation.

We believe that the statute and the legislative history subject all creditors to the good faith requirement. For example, all "creditors" must provide copies of notes, contracts and other information specified by Minn. Stat. § 583.26, Subd. 5(d). The term "creditors" is defined by Minn. Stat. § 583.22, Subd. 4, to include all secured creditors. The obligation of good faith, with which all "parties" must comply, includes the obligation contained in Minn. Stat. § 583.26, Subd. 5(d), to provide documents. This statutory linkage clearly demonstrates that the Legislature intended the term "parties" to be at least as broad as the term "creditor".

The rules must follow the statute. We are concerned that the proposed rule relieves some creditors of their duty of good faith.

We propose the following definition:

> Parties. "Parties" means the debtor, the initiating creditor and any other creditor who is listed by the debtor on the mediation request form and sent a mediation proceeding notice.

1502.008 Withdrawal of Mediation Request.
The proposed rule allows a debtor to withdraw the mediation request at any time up to the first mediation meeting. Mediation can be reinstated by the debtor if the 14-day period for requesting mediation has not run. If the debtor decided to withdraw his request for mediation after the 14-day period is over, we suggest that a short rescission period should be allowed such as the five-day rescission period allowed under Minn. Stat. § 583.26 Subd. 9(c).

1502.0010 Return.
Subp. 1. The last sentence of this section should be deleted. This section sets out how service of the mediation notice "must" be proved. The last sentence negates the entire section since it states "[f]ailure to make proof of service does not affect the validity of the service."

1501.0011 Creditor Claim Forms For Debts Not Subject to Mediation.
We believe that the amendments made to the act by the 1987 legislature should be applied to mediation proceedings which occur only after the effective date of the 1987 amendments. Several of the exceptions created by Minn. Stat.§ 583.24 Subd. 4 apply only if the creditor received on some prior occasion a "mediation proceeding notice". The "mediation proceeding notice" is a creation of the 1987 legislation and did not exist prior to July 1, 1987. Therefore, we suggest that the following changes be made to the proposed rules:

1) Subp. 1.B. for debts in default and mediated after July 1, 1987, under . . . clause (2):

   (1) . . . .

   (2) a copy of the creditor's claim form filed for the mediation proceeding after July 1, 1987; and

2) Subp. 1.E. for debt restructured in mediation after July 1, 1987 under . . .

1502.0015 Selection of Mediator.
Subp. 2 of the proposed rules provides that if the appointed mediator withdraws from the case, extension shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or creditor. The obvious question here is what happens if mediator 1 has been stricken by the creditor, mediator 2 has been stricken by the debtor and mediator 3 has withdrawn? We suggest that the procedure followed by the extension in selecting a mediator as set out in the mediation proceeding notice should be followed in the event a mediator withdraws.

1502.0022 Creditor's Lack of Good Faith.
The use of the word "participating" in paragraph B of this section must be clarified. Does "participating creditor" include only those creditors who fall into the definition of "parties", or does it also include creditors who filed claim forms?

1502.0023 Debtor's Lack of Good Faith.
1. Subp. A. The proposed rule requires that a debtor can be found to lack good faith for failing to list all unsecured creditors necessary for the farm operation on the mediation request form. The statute clearly states that it is "the

debtor's discretion as to which unsecured creditors are necessary for the farm operation." Minn. Stat. § 583.26 Subd. 2. We do not understand how a farmer can be found to lack bad faith for failing to include creditors when it is at the farmer's discretion that they are included. We request that you delete the words "and all unsecured creditors necessary for the farm operation" from this proposed rule.

2. Subp. B(6) and (7). The proposed rules suggest that a farmer can be found to lack good faith if copies of all real estate mortgages, contracts for deeds, land and machinery leases are not provided. It is clear from the statute and the mediation proceeding notice that it is the duty of the creditor to provide copies of these documents to the farmer by the initial mediation meeting. Minn. Stat. § 583.26 Subd. 4(b). We request that this language be deleted.

3. Subp. B(4). The proposed rules suggest that a farmer can be found to lack good faith for failing to provide copies of state and federal income tax returns. Income tax returns are private records which are afforded protection by statute. The federal government is prohibited from releasing income tax returns except in certain cases as set out in statute. 26 U.S.C.A. § 6103. Mediation is not one of the listed exceptions. The Minnesota Government Data Practices Act does not prohibit the revenue department from releasing tax returns. However, the Government Data Practices Act does require that an individual who is asked to supply certain information by the state must be given information as set out in Minn. Stat. § 13.04 Subd. 2. The proposed rules do not address this section of the statutes. People can be compelled to release their income tax returns in the course of litigation. The question of whether the tax returns must be produced is one that is made by the court at its discretion.

Mediation, however, is not an adversarial process like litigation. The farmer can be asked questions regarding his income which can be answered by the financial statement, cash flow projections or the FIN-PAC analysis. The farmer should not be required to produce copies of his income tax returns without a court proceeding.

<u>1502.0025 Creditors Not Attending Mediation Meeting</u>.
Subp. 3. Creditors who file claim forms are bound by this proposed rule to follow the good faith requirements. This section creates confusion with proposed rule 1502.0003 where

creditors who file claim forms are excluded from the definition of parties (who must follow the good faith request). Again, we recommend the definition of parties be amended since all creditors, including those that file claim forms, must follow the good faith requirements.

Subp. 5. Good cause should be defined in this section.

Miscellaneous.
1. The statute provides that a court may review a mediator's issuance of, or failure to issue, an affidavit of lack of good faith. Minn. Stat. § 583.27 Subd. 6 No rules were promulgated in this section of the statute. The rules should address the procedure to be followed by either the debtor or the creditor in seeking review, the effect court review has on delaying or temporarily staying the mediation process, and other issues raised by this section of the statute.

2. As indicated above, we feel it is necessary for the rules to address the issue of setting a deadline as to when creditors can file a claim form. The statute is broad on this point, requiring only that the claim form be filed with the mediator "before the scheduled meeting." Minn. Stat. § 583.28. The rules should address this issue in order to clarify the mediation process.

This completes our comments in response to the proposed Emergency Rules. We request notification of the date the proposed rule is submitted to the Attorney General.

Respectfully submitted,

MINNESOTA FAMILY FARM LAW PROJECT

Barbara Hoekstra BJH
Barbara J. Hoekstra, Paralegal

Berry Friesen
Berry Friesen, Attorney at Law

Juliet M. Tomkins
Juliet M. Tomkins, Attorney at Law

UNIVERSITY OF MINNESOTA
TWIN CITIES

Office of the University Attorney
330 Morrill Hall
100 Church Street S.E.
Minneapolis, Minnesota 55455
(612) 624-4100

RECEIVED
ATTORNEY GENERAL'S OFFICE
DEC 18 1987
204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

December 17, 1987

Martha Casserly
Special Assistant Attorney General
204 Administration Bldg.
50 Sherburne Avenue
St. Paul, Minnesota 55155

RE: Emergency Rules Relating to Farmer-Lender Mediation Act

Dear Ms. Casserly:

I am writing on behalf of the Minnesota Extension Service to comment on the November 25, 1987 emergency rules relating to the Farmer-Lender Mediation Act which were submitted to your office on December 10, 1987. Specifically, it is our view that Rule 1502.0004D, which concerns compensation and expenses for mediators and financial analysts, should not be approved because it exceeds the statutory authority conferred and conflicts with the Farmer-Lender Mediation Act, Minn. Stat. § 583.20 et seq. (1987).

In its current version Rule 1502.0004D provides: "The director shall set the compensation of mediators and financial analysts and shall reimburse them upon submission of expense claims." On the subject of compensation and expense reimbursement for mediators and financial analysts the Farmer-Lender Mediation Act provides: "The director shall set the compensation of mediators and credit analysts." Minn. Stat. § 583.30, Subd. 1 (1987). Nowhere in the Act is reimbursement for expenses of mediators and financial analysts required.[1]

On its face, Rule 1502.0004D mandates the director to reimburse mediators and financial analysts for expenses, thus exceeding the authority conferred on the director by the statute and conflicting

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[1]Although the Act provides that "The director must provide training and support for mediators" (Minn. Stat. § 583.23, Subd. 1 (1987)), we do not read this to necessarily require reimbursement for expenses of mediators. By its terms, this provision is inapplicable to financial analysts.

with the Act. While it is currently and has always been the policy of the Minnesota Extension Service to provide compensation and reimbursement for expenses to mediators and financial analysts, and while there are no immediate plans to alter this policy, we believe that the rule as written should be disapproved. We suggest that the rule be eliminated or, alternatively, that it be revised to read "The director shall set the compensation of mediators and financial analysts and shall reimburse them upon submission of expense claims to the extent determined to be appropriate by the director."

If you have any questions or need additional information, please contact me at the telephone number or address above.

Sincerely,

Karen Schanfield

Karen G. Schanfield
Associate University Attorney

KGS:nls

cc: Carol Milligan
Dr. Patrick Borich
Kathy Mangum
Ruth Grunke

MINNESOTA FAMILY FARM LAW PROJECT

1301 MINNESOTA BUILDING
46 EAST FOURTH STREET
ST. PAUL, MINNESOTA 55101
(612) 223-5333

INFORMATION AND REFERRAL
1-800-233-4534

December 14, 1987

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: Proposed Adoption of Rules Governing Farmer-Lender Mediation

Gentlemen:

Please advise me of your decision regarding the above rules.

Sincerely,

MINNESOTA FAMILY FARM LAW PROJECT

Barbara Hoekstra

Barbara Hoekstra
Legal Assistant

BH/tr

RECEIVED
ATTORNEY GENERAL'S OFFICE

DEC 15 1987

204 ADMINISTRATION BLDG
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

In the Matter of the Adoption of the Emergency
Rule of the Minnesota Department of Agriculture
Governing Farmer-Lender Mediation

DECLARATION
OF COUNSEL

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

Kevin Staunton
Special Assistant Attorney General

Date: Dec. 7, 1987

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Adoption of the Rule of the
State Department of Agriculture
Governing Farmer-Lender Mediation

NOTICE OF SUBMISSION
OF EMERGENCY RULE
TO THE ATTORNEY
GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted has been submitted to the Office of the Attorney General on the date of this notice, December 9, 1987, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the attorney general.

The proposed emergency rule which was published in the State Register and made available to the public on September 21, 1987, has been modified. A copy of the rule as modified is enclosed with this notice.

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted within seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The attorney general standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the attorney general decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone: (612) 296-1288

Any written comments submitted to the Attorney General must be submitted simultaneously to:

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

Carol Milligan
Carol Milligan
Management Analyst

Dated: 12/9/87

In the Matter of the Proposed
Adoption of the Rule of the
Department of Agriculture Governing
Farmer-Lender Mediation

AFFIDAVIT OF MAILING
THE NOTICE OF SUBMISSION
OF EMERGENCY RULE TO THE
ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane Windham, being sworn, says:

That on the 9th day of December, 1987, in the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Submission to the Attorney General by depositing in the United States mail, a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

Diane Windham

Diane Windham
Secretary

Subscribed and sworn to before me
this 9th day of December, 19 87.

Linda H. Fried

LINDA H. FRIED
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES JULY 28, 1993

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ENCLOSED DOCUMENTS

A. Emergency Rule as Proposed.

B. Notice of Intent to Adopt Emergency Rules.

C. Affidavit of Mailing Notice of Intent to Adopt Emergency Rules.

D. State Register Photo Copy of Notice of Intent to Adopt.

E. Emergency Rules as Adopted. (4 copies).

F. Findings of Fact and Conclusions, and Order Adopting Rule.

G. Written Request, Comments and Submissions.

H. Declaration of Counsel.

I. Notice of Submission of Rule to the Attorney General.

J. Affidavit of Mailing Notice of Submission.

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : OF AGRICULTURE

DATE : December 3, 1987

TO : Rita Desmond
Administration - Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6906

SUBJECT : Review of Proposed Emergency Rule Governing Farmer-Lender Mediation

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota Statutes, sections 14.29-14.36. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Pat Jensen, Counsel to the Commissioner

RECEIVED
ATTORNEY GENERAL'S OFFICE

DEC 10 1987

204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

Response to U of M Comment to AG:

MS §§ 583.30, subd1 provides broad authority to Dir to ~~[illegible]~~ "set the compensation of mediators & credit analysts" → term compensation includes compensating for expenses. → mj decision

Rule

I Did not Read the Rule
Changes in Adopted Rule.

Authority

583.285.

It specifically states that the State Court Administrator may adopt emergency rules. Does this mean, under this Statute, can only the S.C.A. adopt emergency rules + the bureau of mediation svc + Ag. adopt nonemergency Rules? — amended in 1987 to Dept of Ag - See appx.

Notice of Intent

No sm. business stmt. - not rqd for emergency rules