

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1639 | Docket No. 05-0009-0986

DATE RECEIVED 11-3-89 | ADOPTED W/O HEARING _____

REVIEW DATE 11-13-89 | EMERGENCY RULE _____

DUE DATE 11-17-89 | To Revisor 11-7-89

REVISOR APPROVED _____

APPROVED 11-17-89 mjc | REVISOR DISAPPROVED _____

DISAPPROVED _____ | FILED W/SEC. OF STATE _____

WITHDRAWN _____ | RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

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

NA ~~Petition for Adoption of a Rule~~ (if applicable)

_____ ~~Board's Authorizing Resolution~~
- _____ ~~Date adopted~~

✓ Proposed Rule
- ✓ Revisor's Certificate

_____ Notice of Intent to Adopt Rule
- 583.285 Statutory Authority
- ✓ Small Business Statement
- NA Expenditure of public money statement
- Aug 10, 1985 Signature 1985?

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Aug 30, 1989 Date 30/25 days before adoption
- ✓ Notice attached indicates it is attached
- NA Copy of rule or summary attached

✓ Publication in State Register
- Sept 5, 1989 Date 30/25 days before adoption

✓ 180-day deadline from:
- _____ Effective date of law requiring rule (14.12) (both rules) ? Aug 1 – Aug 30
- ✓ end of comment period (§ 14.26) (rules without hearing) Oct 5 – Nov 3
- _____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~
- _____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
- Oct 30, 1989 Date

✓ Written requests, submissions or comments

✓ Declaration of attorney
- Paul Strandberg Name of SAAG representing agency

_____ ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

FILE COPY

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : November 20, 1989

TO : Carol Milligan, Management Analyst
Planning Div., Dept. of Agriculture
90 West Plato Boulevard

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 404 (55103)

PHONE : 296-6839

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

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on November 17, 1989.

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

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

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

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

MJC:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Paul Strandberg, S.A.A.G. " "

Department of Agriculture

Adopted Permanent Rules Relating to Farmer-Lender Mediation

Rules as Adopted

1502.0001 SCOPE.

Parts 1502.0001 to 1502.0026 are adopted by the Department of Agriculture under Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation begun or concluded before the adoption of parts 1502.0001 to 1502.0026 is not void for lack of compliance with those parts.

1502.0002 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0026.

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. **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 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

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purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

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

1502.0003 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 1502.0026 and for purposes of service, filing, and other purposes specified by the director.

1502.0004 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 1502.0026 and the Farmer-Lender Mediation Act, clerical support, postage, and other necessary supplies.

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

D. The director shall set the compensation of mediators and 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.

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1502.0005 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.

1502.0006 SUBSTANTIVE RIGHTS.

The fact that the director or county extension agent has in any way acted upon a request for mediation does not determine the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0026.

1502.0007 FILING AND WITHDRAWAL OF MEDIATION REQUEST.

A debtor must file a mediation request form with the county extension agent within 14 days after receiving a mediation notice. A debtor may withdraw a mediation request at any time before 14 days after receiving a mediation 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.

1502.0008 FAILURE TO REQUEST MEDIATION.

The creditor must serve the mediation notice on the county extension agent within three days of service of the notice on the debtor. If a debtor fails to file a timely mediation request or withdraws a mediation request, the county extension agent shall send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who served the mediation notice. The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days after service of the mediation notice on the debtor or within three days after the creditor's filing with the county extension agent proof of the date of service of the mediation notice, whichever is later.

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1502.0009 CANCELLATION OF MEDIATION PROCEEDING.

Subpart 1. **Cure of default.** If the ~~farmer~~ debtor cures the default of the debt specified in the mediation notice before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the debtor and creditor indicating that the default has been cured.

Subp. 2. **Agreement reached before the first mediation meeting.** If the debtor and the creditor who served the mediation notice have reached an agreement before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the creditor and debtor indicating that an agreement has been reached.

1502.0010 PROOF OF FILING MEDIATION REQUEST.

When a debtor files a mediation request with the county extension agent, the mediation request must be filed by certified mail using return receipt or by actual delivery of the mediation request with a signed receipt of the county extension agent.

1502.0011 CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor owed a debt 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

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

(2) a copy of the mediation proceeding notice;

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

(4) 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 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) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 45 days after the debtor failed to make a timely request;

D. for 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;

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and

(2) a copy of the signed agreement reached in mediation that is a separate 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. **Notification of debt not subject to mediation.** If a creditor returns a claim form with the documents required under subpart 1, items A to E, the county extension agent shall determine from the documents whether the debt is subject to the Farmer-Lender Mediation Act. The county extension agent shall notify the debtor, creditor, and mediator of the determination.

1502.0012 FINANCIAL ANALYST AND FARM ADVOCATE.

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. 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. <u>This information must include a list of farm advocates and an explanation of the farm advocates services, as provided by the Minnesota Farm Advocate Program. The county extension agent shall provide the debtor with information on the availability of legal assistance to financially eligible debtors through the Minnesota Family Farm Law Project.</u>

1502.0013 COMPUTATION OF TIME PERIODS.

In computing any period by parts 1502.0001 to 1502.0026, by court order, or 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,

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intermediate Saturdays, Sundays, and legal holidays must be excluded in the computation.

1502.0014 ORIENTATION SESSION.

At the orientation session, the mediator must inform the 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 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 agent shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if an unstricken 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 county extension agent, more than one mediator may be assigned to a mediation proceeding.

1502.0016 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 debtor's and creditors' rights and obligations in the mediation process;

C. explain the rules of conduct for mediation

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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 MEDIATION PROCESS.

Subpart 1. **Combined proceeding for more than one debtor.** The 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. **Combined proceeding for more than one mediation notice.** The county extension agent 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 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 mediator, 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. The mediator may establish procedures to facilitate an orderly exchange of information or views, but the mediator must allow a designated representative of a creditor or debtor to speak on behalf of

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that creditor or debtor. A financial analyst, farm advocate, or attorney may not attend in place of a debtor or a creditor unless 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 must be kept by the county extension agent in a secure place and are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

1502.0018 REMOVAL OF MEDIATOR.

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

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0026 are not affected by the removal of a mediator.

1502.0019 MEDIATION AGREEMENT.

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

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determines that a final meeting is necessary to conclude the mediation within the mediation period.

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 agreement by the debtor and creditors.

1502.0020 ~~OBLIGATION OF GOOD FAITH~~ REJECTION OF DEBT RESTRUCTURING ALTERNATIVES.

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.

1502.0021 ABUSIVE BEHAVIOR.

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

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that 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 debtor, and the creditors.

1502.0023 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. serving a copy of the request with each creditor; 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

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by the debtor or within 90 days after the debtor filed the mediation request with the county extension agent, whichever is later.

1502.0024 ~~DEBTOR'S LACK OF GOOD FAITH~~ DOCUMENTS NECESSARY FOR MEDIATION.

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; and~~

~~B.~~ failure of the debtor or creditor to provide the following records and documents if the mediator determines that they are necessary:

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

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

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

~~(4)~~ D. projected farm budget for the current 12 months;

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

~~(6)~~ F. copies of ~~FINPAC~~ FINPACK printout analysis for the farm operation where applicable~~.~~;

G. appraisals, including in-house appraisals, of the debtor's property; and

H. worksheets on foreclosure cost analysis, if any have been done by the lender.

1502.0025 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 are suspended during court-supervised mediation.

1502.0026 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. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of the Farmer-Lender Mediation Act.

Subp. 3. **Written objection.** To object to the provisions of a mediation agreement, a creditor who files a claim form in lieu of attending mediation meetings 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. 4. **New mediation.** Upon 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.** A creditor who files an objection shall attend and participate in any meeting held under subpart 4, unless the mediator determines there is a good reason why the creditor is unable to attend.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

NOV 20 1989

Joan Anderson Growe

Secretary of State

3:17 PM

APPROVED AS TO FORM AND LEGALITY

November 17 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Casserly

SPECIAL ASSISTANT ATTORNEY GENERAL

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : OF AGRICULTURE

DATE : November 1, 1989

Rec'd Nov 3 1989

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 Rule Governing Farmer–Lender Mediation

The Department of Agriculture adopted the above–mentioned rule pursuant to Minnesota Statutes, sections 14.22–14.28 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
Pat Jensen, Deputy Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Planning Division
Ruth Grunke, Extension Service

Stat Authority 583.285

The commissioner of agriculture, in consultation with the commissioner of the bureau of mediation services and the director of the University of Minnesota agricultural extension service, shall make rules under chapter 14, to implement the farmer lender mediation act.

Findings of Fact

missing - K (7) statement that if the agency recieved no requests for a hearing .. or recieved no requests for notice of submission of the adopted rule to the attorney general, an applicable statement

Changes or Modifications

1502.0024 B including creditor to provide documents is a substantial change because it includes a new group of people that were unable to comment on 1502.0024 because they were not originally included in this.

LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed

B. Notice of Intent to Adopt a Rule Without Public Hearing

C. Statement of Need and Reasonableness

D. Affidavit of Mailing

E. Certificate of Mailing List

F. State Register Photocopy of Notice of Intent

G. Rule as Adopted (four copies)

H. Findings of Fact, Conclusions and Order Adopting

I. Comments Received

J. Declaration of Counsel

Department of Agriculture
Commissioner's Office

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

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22-14.28. The statutory authority to adopt these rules is Minnesota Statutes, section 583.285.

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

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

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

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

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

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

(14) Many of the businesses participating in or potentially affected by farmer-lender mediation may be small businesses as defined by Minnesota Statutes, section 14.115. However, because each mediation proceeding is tailored to individual circumstances, it is not possible to gauge the effect that this rule will have on small business as a whole.

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

STATE OF MINNESOTA

Aug 10 1985
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture

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 INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Linda Bougie, being sworn, says:

That on the 30th day of August, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, persuant to Minnesota Statutes, sections 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Linda Bougie
Linda Bougie
Secretary

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

Subscribed and sworn to before me this 30th day of August, 1989.

Diane M. Windham

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

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. Statutes, sections 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 30th day of August, 1989.

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 30th day of August, 1989.

Diane M. Windham

Proposed Rules

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

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

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

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

Department of Agriculture

Proposed Permanent Rules Relating to Farmer-Lender Mediation

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt these rules is *Minnesota Statutes*, section 583.285.

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

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

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

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

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

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

Many of the businesses participating in or potentially affected by farmer-lender mediation may be small businesses as defined by *Minnesota Statutes*, section 14.115. However, because each mediation proceeding is tailored to individual circumstances, it is not possible to gauge the effect that this rule will have on small business as a whole.

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

Dated: 10 August 1985

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

1502.0001 SCOPE.

Parts 1502.0001 to 1502.0026 are adopted by the Department of Agriculture under *Minnesota Statutes*, section 583.285, and govern

the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation begun or concluded before the adoption of parts 1502.0001 to 1502.0026 is not void for lack of compliance with those parts.

1502.0002 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and *Minnesota Statutes*, section 583.22, apply to parts 1502.0001 to 1502.0026.

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. **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 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. 7. **Send.** "Send" means to mail by first class mail.

1502.0003 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 1502.0026 and for purposes of service, filing, and other purposes specified by the director.

1502.0004 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 1502.0026 and the Farmer-Lender Mediation Act, clerical support, postage, and other necessary supplies.

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

D. The director shall set the compensation of mediators and 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.

1502.0005 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.

1502.0006 SUBSTANTIVE RIGHTS.

The fact that the director or county extension agent has in any way acted upon a request for mediation does not determine the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0026.

1502.0007 FILING AND WITHDRAWAL OF MEDIATION REQUEST.

A debtor must file a mediation request form with the county extension agent within 14 days after receiving a mediation notice. A debtor may withdraw a mediation request at any time before 14 days after receiving a mediation 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

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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.

1502.0008 FAILURE TO REQUEST MEDIATION.

The creditor must serve the mediation notice on the county extension agent within three days of service of the notice on the debtor. If a debtor fails to file a timely mediation request or withdraws a mediation request, the county extension agent shall send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who served the mediation notice. The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days after service of the mediation notice on the debtor or within three days after the creditor's filing with the county extension agent proof of the date of service of the mediation notice, whichever is later.

1502.0009 CANCELLATION OF MEDIATION PROCEEDING.

Subpart 1. **Cure of default.** If the farmer cures the default of the debt specified in the mediation notice before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the debtor and creditor indicating that the default has been cured.

Subp. 2. **Agreement reached before the first mediation meeting.** If the debtor and the creditor who served the mediation notice have reached an agreement before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the creditor and debtor indicating that an agreement has been reached.

1502.0010 PROOF OF FILING MEDIATION REQUEST.

When a debtor files a mediation request with the county extension agent, the mediation request must be filed by certified mail using return receipt or by actual delivery of the mediation request with a signed receipt of the county extension agent.

1502.0011 CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor owed a debt 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 the debt was in default when the creditor received a mediation proceeding notice under the Farmer-Lender Mediation Act, and that a claim form was filed, the debt was mediated during the mediation period, and (i) the mediation was unresolved; or (ii) a mediation agreement with respect to that debt was signed;

(2) a copy of the mediation proceeding notice;

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

(4) 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 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) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 45 days after the debtor failed to make a timely request;

D. for 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 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. **Notification of debt not subject to mediation.** If a creditor returns a claim form with the documents required under

subpart 1, items A to E, the county extension agent shall determine from the documents whether the debt is subject to the Farmer-Lender Mediation Act. The county extension agent shall notify the debtor, creditor, and mediator of the determination.

1502.0012 FINANCIAL ANALYST AND FARM ADVOCATE.

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. 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 COMPUTATION OF TIME PERIODS.

In computing any period by parts 1502.0001 to 1502.0026, by court order, or 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 ORIENTATION SESSION.

At the orientation session, the mediator must inform the 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 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 agent shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if an unstricken 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 county extension agent, more than one mediator may be assigned to a mediation proceeding.

1502.0016 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 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 MEDIATION PROCESS.

Subpart 1. **Combined proceeding for more than one debtor.** The 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. **Combined proceeding for more than one mediation notice.** The county extension agent 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

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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 mediator, 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 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 must be kept by the county extension agent in a secure place and are subject to the confidentiality provisions of *Minnesota Statutes*, section 13.02, subdivisions 9 and 12.

1502.0018 REMOVAL OF MEDIATOR.

Subpart 1. **Procedure.** The mediator may be removed at any time during the mediation period upon the written agreement of 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 an available replacement mediator not previously stricken from the mediator list by the debtor or initiating creditor to 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 debtor and creditors may remove only one mediator during a mediation proceeding.

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0026 are not affected by the removal of a mediator.

1502.0019 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 agreement by the debtor and creditors.

1502.0020 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.

1502.0021 ABUSIVE BEHAVIOR.

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

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that 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 debtor, and the creditors.

1502.0023 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. serving a copy of the request with each creditor; 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 county extension agent, whichever is later.

1502.0024 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; 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) projected farm budget for the current 12 months;

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

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

1502.0025 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 are suspended during court-supervised mediation.

1502.0026 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. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of the Farmer-Lender Mediation Act.

Subp. 3. **Written objection.** To object to the provisions of a mediation agreement, a creditor who files a claim form in lieu of attending mediation meetings 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. 4. **New mediation.** Upon 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.** A creditor who files an objection shall attend and participate in any meeting held under subpart 4, unless the mediator determines there is a good reason why the creditor is unable to attend.

State Board of Vocational Technical Education

Proposed Permanent Rules Relating to Project Discover License

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Board of Vocational Technical Education intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, Section 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 136C.04, Subdivision 9.

All persons have 30 days until 4:30 p.m., Tuesday, October 3, 1989, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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

Comments or written requests for a public hearing must be submitted to either:

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STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

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

Statement of Need
and Reasonableness

Introduction

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of a rule governing farmer–lender mediation as required by Minnesota Statutes, section 583.285. In accordance with Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was completed prior to publication of the rule and the Notice of Intent to Adopt Rules Without a Public Hearing in the State Register.

Small Business Impact

Many of the businesses potentially affected by the farmer–lender mediation program are small businesses as defined by Minnesota Statutes, section 14.115.

The methods for reducing impact listed in Minnesota Statutes, section 14.115, subdivision 2, deal primarily with compliance standards and reporting requirements that are not applicable to these rules. Item (e), exempting small business from the requirements of the rule, would undermine the mediation program and be contrary to the statutory objectives of the rule.

Need for and Reasonableness of the Proposed Rule

1502.0001
This part is necessary to define the application of the rules.

1502.0002
The definitions are necessary to clarify the intent of the rules and to enable the rules to be applied consistently.

1502.0003
The statement of administration is necessary so that mediation participants are notified of who the director has designated under the delegation power in Minnesota Statutes, section 583.22, subdivision 5. The designation of the county extension agent in the county in which the debtor resides is reasonable because this person is in most cases geographically closest to the mediation participants.

1502.0004
This part is necessary because it clearly lists a set of tasks that must be accomplished for the mediation program to function and assigns those tasks to the position with the authority to carry them out.

1502.0005
This part is necessary because Minnesota Statutes, section 583.30 requires the director to provide mediation forms. Since Minnesota Statutes, section 583.26, subdivision 2, requires mediation request forms to be available at the county recorder and county extension offices, it is reasonable to make all mediation forms available at those offices.

1502.0006
A statement about the substantive rights of the debtor or creditors under the Farmer–Lender Mediation Act is necessary so that mediaition participants will understand the consequences of Extension's action on a mediation request. Extension's nondetermination of substantive rights is reasonable because Extension does not have the legal authority or expertise to determine the substantive rights of mediaiton participants.

1502.0007
Specifying conditions for withdrawl of a mediation request is necessary to provide this option for debtors in a uniform manner. The 14 day time limit is reasonable because it is consistent with the time frame established by Minnesota Statutes, section 583.26, subdivision 2.

1502.0008
Notification to creditors of the debtor's failure to request mediation is necessary so that creditors know that they may proceed to enforce the debt. The deadline for sending the notice is reasonable given the creditor's 45 day deadline for beginning a proceeding against the agriculture property.

1502.0009
A statement of the circumstances under which a mediation proceeding will be cancelled is necessary to assure consistency and predictability. It is reasonable to cancel a mediation proceeding upon a cure of default or agreement reached because if these occur there is no longer a dispute to mediate.

1502.0010
Proof of filing the mediation request is necessary to assure compliance with the 14–day deadline for requesting mediation. Requiring certified mail using return receipt or a signed receipt of the county extension agent is reasonable because it provides adequate proof and is the least burdensome to those affected.

1502.0011
Subpart 1. It is necessary to require the provision of supporting documents if a creditor is claiming that a debt is not subject to mediation so that extension can make a determination on whether to include the debt in the mediation process. It is reasonable to require the creditor to provide the specified documents because the creditor is making the claim and has easiest access to the supporting documents. The requirement of the documents specified is reasonable because the documents support each requirement of Minnesota Statutes, section 583.24, subdivision 4.

Subpart 2. It is necessary and reasonable to notify the mediation participants that a creditor will not be included in the mediation process so that they will be able to plan accordingly.

1502.0012

This part is reasonable because it is consistent with Minnesota Statutes, section 583.26, subdivision 3.

1502.0013
It is necessary to stipulate how time periods should be computed so that there is consistent application of the Farmer-Lender Mediation Act and the rules. The computations stipulated are reasonable because they allow for Saturdays, Sundays, and legal holidays.

1502.0014
It is necessary that the debtor and creditors be informed of their right to seek counsel regarding the legal and tax consequences of documents and agreements because the consequences are often difficult to ascertain. It is reasonable for the mediator to do this at the orientation session because this is the first meeting in the mediation process. It is necessary to assure the confidentiality of the debtor's financial information because without this most farmers would not participate in mediation. It is reasonable to meet in private upon the debtor's request because the farmer is the person most concerned with confidentiality. It is reasonable to meet at intervals because portions of the orientation session do not involve discussion of any specific debtor financial information.

1502.0015
Subpart 1. It is necessary to require a procedure for the initiating creditor and debtor's objection to a mediator list for uniform application of Minnesota Statutes, section 583.26, subdivision 4(6). It is reasonable to require the mailing of a notice within three days because a notice documents the objection and the three days allows enough time for the creditor's and debtor's decision and extension's acting upon any objection.

Subpart 2. It is necessary to specify guidelines for replacing a mediator so that the procedure is consistent throughout the state. The rule is reasonable because it quickly provides an impartial mediator.

Subpart 3. It is necessary to provide for co-mediators because the difficulty of some mediation cases requires more than one mediator. It is reasonable to give the county extension agent discretion in the matter because the agent knows the most about the mediation cases at the time the mediator is selected.

1502.0016
The duties of the mediator listed are necessary to assure that certain basic tasks are performed in every mediation. The duties listed are reasonable because they deal primarily with informing the parties of their rights in the process and reaching a successful agreement.

1502.0017
Subpart 1. A combined proceeding for debtors liable for the same or a portion of the same debt is necessary because the issues for the debtors are so intertwined that they are best dealt with in one mediation proceeding. It is reasonable for the county extension agent to combine the notices because the county extension agent sets up the mediation cases.

Subpart 2. It is necessary to allow the mediation notices served on the debtor after the first mediation meeting to be combined into one mediation proceeding because in most cases the creditor is already participating in the ongoing mediation. It is reasonable to give the county extension agent discretion in this matter because the county extension agent received a copy of this notice and knows whether or not the creditor is involved in the ongoing mediation.

Subpart 3. It is necessary to state guidelines for scheduling meetings so that consistency is maintained throughout the state. It is reasonable that the meetings be held at convenient and neutral places and times so that mediation principles and the interests of all persons involved are accommodated.

Subpart 4. A statement of the extent of advisor participation in mediation is necessary to maintain consistency of mediations throughout the state. Attendance of the principals in a dispute is essential for an effective mediation. It is therefore reasonable to require the mediator to determine whether the attendance of an advisor in place of a debtor or creditor is allowable.

Subpart 5. A rule on handling case documents upon completion of the mediation case is necessary for assuring confidentiality of the process. It is reasonable to turn the documents over to the county extension agent because the agent has locked facilities.

1502.0018

Subpart 1. It is necessary to allow for the removal of a mediator in case the mediation participants believe the mediator is not effective. It is reasonable to require the agreement of the debtor and creditors to assure that the belief is justified. It is reasonable to assign an unstricken mediator or an available mediator because this allows for the speedy assignment of an impartial mediator.

Subpart 2. It is reasonable to allow for the removal of only one mediator during a mediation proceeding because a mediator's becoming familiar with a case requires a significant amount of time and the mediation meeting period is statutorily limited to 60 days.

Subpart 3. It is necessary to state that time periods are not affected by the removal of a mediator to assure compliance. Having the time periods unaffected is reasonable because to do otherwise would break the statutorily required time periods.

1502.0019

Subpart 1. This part is necessary to facilitate signing and witnessing the mediation agreement as required by Minnesota States, section 583.26, subdivision 9 (a).

Subpart 2. Since creditors who have filed claim forms are bound by the terms of the medaition agreement, it is reasonable that they receive a copy of the signed agreement as soon as possible.

1502.0020

It is necessary to require a statement of particular items and specific reasons so that the other mediation parties may plan a response based on complete information. The requirement is reasonable because an effective mediation depends on accurate and complete information.

1502.0021
It is necessary to include a rule on abusive behavior because it may occur during the mediation proceeding. It is reasonable to penalize abusive behavior because it is extremely detrimental to the mediation process.

1502.0022
This part is reasonable because it is consistent with Minnesota Statutes, section 583.27, subdivision 2. It is included in the rules to assure that all parties are aware of the statutory requirement.

1502.0023
It is necessary to provide a procedure for the debtor's request for court-supervised mediation to ensure consistency and predictability throughout the state. The time period for filing the request with the court is reasonable because it allows the debtor time to prepare the necessary papers yet does not unreasonably delay the court-supervised mediation.

1502.0024
It is necessary to state what constitutes a debtor's lack of good faith to assure compliance. It is reasonable to require the listing of all creditors because this is required by statute (sec. 583.26, subd. 2) and is essential for a productive mediation. It is reasonable to require the specified records and documents because this information is essential for reaching agreement on the farmer's debts.

1502.0025
Subpart 1. This part is necessary to assure that the county extension agent provides the court with access to a list of qualified mediators.

Subpart 2. This part is reasonable because it is required in Minnesota Statutes, section 583.27, subdivision 3.

1502.0026
Subpart 1. It is reasonable to expect the creditor who initiates the mediation process to participate in the process. This part is necessary to insure that creditors are not allowed to force a debtor into mediation unless the creditor intends to participate.

Subpart 2. Creditors who file claim forms have an impact on the mediation process and are bound by the agreement, so it is reasonable that they be obligated to the same good faith requirements as creditors who attend mediation.

Subpart 3. It is necessary for the written objection to identify particular items and state specific reasons so the parties may form an adequate plan for the subsequent mediation meetings. The requirement is reasonable because an effective mediation depends on accurate and complete information.

Subpart 4. This subpart is necessary to inform parties that the process may be extended to accommodate the objections of creditors who file claim forms. The 10 day extension is reasonable because it is required by Minnesota Statutes, section 583.28, subdivision 2.

Subpart 5. The presence of the objecting creditor is necessary because a new agreement can only be reached if all concerned parties are present to discuss specific items of contention.

Department of Agriculture

Proposed Permanent Rules Relating to Farmer-Lender Mediation

Rules as Proposed (all new material)

1502.0001 SCOPE.

Parts 1502.0001 to 1502.0026 are adopted by the Department of Agriculture under Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation begun or concluded before the adoption of parts 1502.0001 to 1502.0026 is not void for lack of compliance with those parts.

1502.0002 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0026.

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. **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 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

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purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

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

1502.0003 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 1502.0026 and for purposes of service, filing, and other purposes specified by the director.

1502.0004 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 1502.0026 and the Farmer-Lender Mediation Act, clerical support, postage, and other necessary supplies.

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

D. The director shall set the compensation of mediators and 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.

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1502.0005 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.

1502.0006 SUBSTANTIVE RIGHTS.

The fact that the director or county extension agent has in any way acted upon a request for mediation does not determine the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0026.

1502.0007 FILING AND WITHDRAWAL OF MEDIATION REQUEST.

A debtor must file a mediation request form with the county extension agent within 14 days after receiving a mediation notice. A debtor may withdraw a mediation request at any time before 14 days after receiving a mediation 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.

1502.0008 FAILURE TO REQUEST MEDIATION.

The creditor must serve the mediation notice on the county extension agent within three days of service of the notice on the debtor. If a debtor fails to file a timely mediation request or withdraws a mediation request, the county extension agent shall send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who served the mediation notice. The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days after service of the mediation notice on the debtor or within three days after the creditor's filing with the county extension agent proof of the date of service of the mediation notice, whichever is later.

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1502.0009 CANCELLATION OF MEDIATION PROCEEDING.

Subpart 1. **Cure of default.** If the farmer cures the default of the debt specified in the mediation notice before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the debtor and creditor indicating that the default has been cured.

Subp. 2. **Agreement reached before the first mediation meeting.** If the debtor and the creditor who served the mediation notice have reached an agreement before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the creditor and debtor indicating that an agreement has been reached.

1502.0010 PROOF OF FILING MEDIATION REQUEST.

When a debtor files a mediation request with the county extension agent, the mediation request must be filed by certified mail using return receipt or by actual delivery of the mediation request with a signed receipt of the county extension agent.

1502.0011 CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor owed a debt 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

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

(2) a copy of the mediation proceeding notice;

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

(4) 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 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) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 45 days after the debtor failed to make a timely request;

D. for 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;

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and

(2) a copy of the signed agreement reached in mediation that is a separate 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. **Notification of debt not subject to mediation.** If a creditor returns a claim form with the documents required under subpart 1, items A to E, the county extension agent shall determine from the documents whether the debt is subject to the Farmer-Lender Mediation Act. The county extension agent shall notify the debtor, creditor, and mediator of the determination.

1502.0012 FINANCIAL ANALYST AND FARM ADVOCATE.

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. 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 COMPUTATION OF TIME PERIODS.

In computing any period by parts 1502.0001 to 1502.0026, by court order, or 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 ORIENTATION SESSION.

At the orientation session, the mediator must inform the debtor and creditors of their right to seek counsel regarding

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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 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 agent shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if an unstricken 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 county extension agent, more than one mediator may be assigned to a mediation proceeding.

1502.0016 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 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

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expenses; and

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

1502.0017 MEDIATION PROCESS.

Subpart 1. **Combined proceeding for more than one debtor.** The 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. **Combined proceeding for more than one mediation notice.** The county extension agent 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 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 mediator, 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 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 must be kept by the county extension agent in a secure

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place and are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

1502.0018 REMOVAL OF MEDIATOR.

Subpart 1. **Procedure.** The mediator may be removed at any time during the mediation period upon the written agreement of 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 an available replacement mediator not previously stricken from the mediator list by the debtor or initiating creditor to 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 debtor and creditors may remove only one mediator during a mediation proceeding.

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0026 are not affected by the removal of a mediator.

1502.0019 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 agreement by the debtor and creditors.

1502.0020 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.

1502.0021 ABUSIVE BEHAVIOR.

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

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that 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 debtor, and the creditors.

1502.0023 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. serving a copy of the request with each creditor; 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 county extension agent, whichever is later.

1502.0024 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; 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;

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

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

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

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

1502.0025 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 are suspended during court-supervised mediation.

1502.0026 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. **Good faith.** Creditors who file claim forms are bound by the good faith requirements of the Farmer-Lender Mediation Act.

Subp. 3. **Written objection.** To object to the provisions of a mediation agreement, a creditor who files a claim form in lieu of attending mediation meetings 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. 4. **New mediation.** Upon 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

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terms of the agreement.

Subp. 5. **Required attendance.** A creditor who files an objection shall attend and participate in any meeting held under subpart 4, unless the mediator determines there is a good reason why the creditor is unable to attend.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent 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

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 RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on September 5, 1989, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.14, subd. 1a and 14.22 on August 30, 1989.

(2) The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the department.

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

Based on the comments and evidence in the record before the department, I find the following:

1502.0012

(6)

The information required on the farm advocate program was added to clarify what information the extension agent must provide. Requiring information on the Family Farm Law Project was added to ensure that the debtor has access to as many services and as much information as possible. The additional notification will not be burdensome to extension and does not alter the functioning of the program.

1502.0017, subp. 4

This provision was added to establish greater consistency in mediation and encourage full participation while maintaining an orderly procedure. The level of participation in the mediation process by various parties is currently determined by the mediator. This can lead to inconsistency and perceived unfairness. The change does not alter the parties allowed to attend mediation but consistently insures equal participation. Therefore, the change is not substantial.

1502.0018, subps. 1 & 2

This change allows the debtor or creditor to remove a mediator unilaterally instead of by agreement only. Since the interests of the parties may be at odds, it's possible for the parties not to agree that a mediator is not serving the interests of both parties equally. This change does mean that an additional mediator may be replaced, but this change is not substantial since subp. 2 continues to limit removal.

1502.0019

This change allows the mediator to call a final meeting only if it is necessary. It is pointless to require the parties to come together for a final meeting if it is only a formality. The rule still fulfills the intended purpose of getting the agreement signed during the mediation period and so the change is not substantial.

1502.0020

The name of this part was changed to more accurately reflect its content.

1502.0024

The name of this part was changed to more accurately reflect its content.

Letter A. was deleted because it is stated in statute.

Letter B. was changed because some of the documents are more easily accessible to the creditor than the debtor. Not all mediations require the same documents. In some cases the inclusion of irrelevant documents can be burdensome or even detrimental to certain parties in mediation. Therefore, the mediator was given the authority to determine which of the documents listed in the rule are necessary for a particular mediation.

All of the documents listed, including G. and H., are commonly used in mediation and so the changes do not substantially alter the rule.

The above-captioned rule is needed and reasonable.

(8) NOW, THEREFORE, IT IS ORDERED that the rule identified as the Rule Governing Farm-Lender Mediation is adopted this 30th day of October 1989, pursuant to authority vested in me by Minnesota Statutes, section 583.285.

STATE OF MINNESOTA (9)

no (7)

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

10745 Highway Eight
Floodwood, Minnesota 55736
(218) 476-2424

September 30, 1989

RECEIVED
OCT 03 1989
PLANNING DIVISION

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

Dear Ms. Milligan,

I have reviewed the proposed rules for farmer-lender mediation. What follows are my comments, supported by observations I have made during five years of service as a Minnesota Farm Advocate.

First, on page 6, at number 1502.0012, it should be made clear that farmers have the option of naming their farm advocate as financial analyst. To do so is common practice in many areas, and advocates are qualified by comprehensive financial training, including FINPACK training.

Also, on page 6, also at number 1502.0012, in line 18, the last part of the sentence, beginning at the phrase "information on obtaining" (a farm advocate) should be clarified to specify that extension agents will provide farmers with "a list of Minnesota farm advocates and an explanation of the farm advocates' services, which will be provided by the Minnesota Farm Advocate Program." This change will ensure that the information is accurate and will eliminate discrepancies in the way various county offices inform farmers about the advocate program. We discussed this proposed change at the last farm advocate training session, and appropriate materials have already been prepared and distributed.

On page 8, Subpart 4, line 25, after "permitted to attend," it is important to add the phrase "and participate in." This change will ensure that advocates and other advisers may not be automatically silenced by mediators. I have participated in mediations with about a dozen different mediators, and only one insisted at the outset that the advocate was not going to be allowed to talk. This one mediator did change his mind when I asserted that I had the right to talk, but I have heard of other cases where mediators have enforced the silence provision. I understand that they are trying to get debtors and lenders to talk to each other without interference, but to assume that an adviser will interfere with the mediation process is misguided. It can also be unfair to farmers, who are often less educated than the lenders. And to silence any participants' advisers sets up a

ludicrous situation in which the adviser must whisper in the participant's ear *a la* the Oliver North hearings. It is not good for the mediation process, and the small word change that I have suggested would eliminate the problem.

On page 9, beginning at Line 4, "Removal of mediator," I cannot find any basis in the farmer-lender mediation law for this provision. It appears that the rule-writers have created this provision out of a necessity recognized in the practice of administering the mediation program. That is good, but it also means, I think, that this section is particularly subject to change.

It has been my experience--rarely--that a mediator sometimes proves unacceptable to one or more parties once the mediation has begun. When that happens the mediation can only self-destruct. One mediator that I work with announces at the first meeting that if any party finds him unacceptable, he will immediately step down and find another mediator to handle the mediation. However, many mediators are not willing to be so fair and self-effacing. I feel that removal of a mediator should be automatic upon the request of any one participant, not all participants. It is quite possible to have an unfair mediation and have only one party recognizing the situation. I don't believe that participants would abuse this privilege. Quite the contrary, in my experience, people have bent over backwards to get along with all participants in mediation. And as far as I know, the mediator who offers to step down upon request has never received such a request.

Additionally, I don't understand why either subparts 2 or 3 to "Removal of mediator" are necessary. Subpart 2 seems concerned with the logistics of administering mediation rather than with the success or fairness of the mediation process. It also seems distrustful of participants to suggest that they will try to replace mediators without limit.

Subpart 3 seems preoccupied with protecting lenders' options rather than recognizing that replacement of a mediator is certain to set back the mediation process. As a practical matter, I believe replacement of a mediator would require at least two weeks additional time to hold a meeting to bring the mediator up to speed. I suppose that on this issue, the rule-writers felt that the time limits set forth in the law superseded the rules. If so, then why include Subpart 3 at all? In the situation of replacement of a mediator, Subpart 3 may preclude debtors and lenders from agreeing to extend mediation, which they presently may do. Why not just eliminate Subpart 3?

There is a large discrepancy in the way the proposed rules treat creditors' and debtors' lack of good faith. On page 10, number 1502.0023 creditors' lack of good faith is not defined at all. Yet, beginning on that same page, number 1502.0024, debtors' lack of good faith is defined extensively, including a long list of documents that the debtor is required to provide.

In this area, it looks like the rule-writers have taken great liberty with the law, particularly in the detailed listing of records and documents that the farmer is to bring to mediation. Among these, the most objectionable is (2) the copy of the most recent depreciation schedule. This depreciation schedule is not needed for preparation of the financial statement nor of the cash flows, it is simply a "fishing" document in which lenders may find collateral not listed elsewhere. Its requirement would be more appropriate for a legal proceeding than it is for mediation. It should not be required.

Also, requiring "(3) farm record books for the past three years or evidence of crop and livestock production" is not completely unreasonable, but it is certainly not common practice. These documents are not even brought to first meetings of creditors in bankruptcy proceedings. Rather than requiring these records as *prima facie* evidence of good faith, let them be supporting documents for a farmer's cash flow projections, which is how they are presently used.

In that same section, "(5) copies of any other legal documents that are necessary for the mediation and pertain to the farm business" is vague and unwieldy. You're going to have the whole farm office at the table if you don't get rid of this requirement. Also, in (6) why specify "FINPACK printout analysis" when what is really needed are cash flows? Cash flows don't have to be prepared by computer. They can be prepared by hand. FmHA Farm and Home Plans are an example of hand-written cash flows, and many FmHA offices require Farm and Home Plans rather than FINPACK.

So, on pages 10 and 11, I suggest changing the list of documents and records by eliminating numbers 2, 3 and 5. In number 6, I suggest replacing the word "FINPAC" (which the Center for Farm Financial Management spells "FINPACK") with the phrase "cash flows."

I cannot overemphasize how unfair it seems to single out the debtors with a long list of required documentation when, to arrive at debt restructuring proposals, debtors also need documentation from lenders. In my experience, the information that the lenders' possess often has been withheld. The rules need to define creditor's lack of good faith, and the

definition should include failure to supply the following records and documents: 1) loan documents, including loan agreements, security agreements, and any other agreements affecting the lender's security position. 2) appraisals, including in-house appraisals, of the debtor's property. 3) worksheets on foreclosure cost analysis, if any have been done by the lender, and 4) a list of debt restructuring alternatives that the lender would be willing to consider.

I know your job is long and virtually thankless, so please be assured that I am grateful for your consideration of my comments. I tried to make them as concise as possible, and I hope that you can give them serious attention.

Sincerely,

Dianna Hunter

Dianna Hunter

FARMERS' LEGAL ACTION GROUP, INC.

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October 4, 1989

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

Dear Ms. Milligan:

Please accept this comment on § 1502.0017, subp. 4 (on page 8, line 23) of the proposed rule governing farmer-lender mediation published in the Minnesota State Register on Monday, September 4, 1989. I am a staff attorney with Farmers' Legal Action Group, and I provide legal support to the Minnesota Department of Agriculture farm advocates. I am making this comment because an attorney from our office, Lynn Hayes, was prohibited from speaking on behalf of a client she was representing in a mediation session. I am asking the Commissioner of Agriculture to consider revising the mediation rules to assure that any creditor or debtor is allowed to let a representative speak on his or her behalf in a mediation session.

I propose the following change in this rule (emphasis added to identify the proposed additional language):

> 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, the creditor, or the mediator. The mediator may establish procedures to facilitate an orderly exchange of information or views, but the mediator must allow a designated representative of a creditor or borrower to speak on behalf of that creditor or borrower. A financial analyst, farm advocate, or attorney may not attend in place of a debtor or creditor

unless the mediator determines the 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.

Thank you for your consideration.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

Timothy J. Sullivan
Attorney at Law

TJS/tr

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(507) 372-7368

September 26, 1989

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SEP 27 1989

PLANNING DIVISION

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

RE: Proposal Adoption of the Rule of the Department of Agriculture Governing Farmer-Lender Mediation

Dear Ms. Milligan:

Our office, the Minnesota Family Farm Law Project (MFFLP), Mankato office, has represented over 300 farm debtors in farmer lender mediations. (A description of our services is attached for your information.) The following are comments regarding the proposed mediation rules based on our experience with representing farmers under the present rules.

Section 1502.0012 financial analyst and farm advocate. This section requires, in part, the county extension agent provide information about the Department of Agriculture farm advocate program. The rule should be expanded to require notice of the availability of legal assistance to financially eligible farmers through the Minnesota Family Farm Law Project. The Farm Law Project performs the specific function of advising farmers of their legal rights and obligations, as well as available options. Further, MFFLP is specifically funded to assist financially distressed farmers with the matters generally dealt with in mediation. Notification of the services will not be costly or burdensome and will further the legislature's goal of making legal services' available to the specific farmers who are having farm debt problems. It is especially beneficial to notify farmers of the service early in the process so that farmers and the financial analysts many be assisted by a legal analysis immediately.

Sections 1502.0020 through 1502.0024 dealing with lack of good faith. The proposed rules fail to clearly state the obligation to mediate in good faith, and fail to identify the acts that may be considered lack of good faith on the part of creditors. Secondly, the rules add unnecessarily to the burdens of farm debtors. The combination of these two changes work to destroy the balance of burden to act in good faith between debtors and creditors.

1. The law states an affirmative requirement that parties mediate in good faith.

> The parties must engage in mediation in good faith.

Minn. Stat. §583.27 (a). The rules never clearly state that mediation in good faith is a requirement, but only outline the consequences of failing to mediate in good faith. Section 1502.0020 of the proposed rules is entitled "Obligation of Good Faith" and should include this statement.

The proposed rules do not identify the acts which might constitute lack of good faith. The law clearly identifies a number of acts and includes a blanket clause entailing other like behavior.

> Not participating in good faith includes: (1) a failure on a regular or continuing basis to attend and participate in mediation sessions without cause; (2) failure to provide full information regarding the financial obligations of the parties and other creditors including the obligation of the creditor to provide information under section 583.26, subdivision 5, paragraph (d); (3) failure of the creditor to designate a representative to participate in the mediation with authority to make binding commitments within one business day to fully settle, compromise, or otherwise mediate the matter; (4) lack of a written statement of debt restructuring alternatives and a statement of reasons why alternatives are unacceptable to one of the parties; (5) failure of a creditor to release funds from the sale of farm products to the debtor for necessary living and farm operating expenses; or (6) other similar behavior which evidences lack of good faith by the party.

Minn. Stat. §583.27 (a) (1)-(6). The regulations fail to list the above examples but merely bind creditors to the requirements of the law. §1502.0026, subpart 2. We have found that some mediators use the rules as a mediation manual. Mediators having a copy of the rules, but not a copy of the statute, will not know the specific examples included in the statute. Some may also be led to believe that the creditors' obligations have been dropped since they were specifically identified in the earlier rules, but have been deleted in the proposed rules. The mediation rules should list the statutory criteria as specific acts of lack of good faith for the sake of clarity and uniformity for parties using the rules as a mediation guide.

2. Section 1502.0026, subpart 1, identifies the requirement that creditors attend. This section appears to parallel the statutory requirement of regular and continued attendance found in Minn. Stat §583.27 (a) (1). The clarification that initiating creditors may not file a proof of claim in lieu of attendance is good. However, it should be noted that failure regularly or on a continuing basis to attend and participate may be a grounds for calling lack of good faith.

3. The burden on debtors to act in good faith has been unnecessarily increased in §1502.0024. The law places a burden on parties to "provide full information regarding the financial obligations of the parties." Minn. Stat. §583.27 (a) (2). The proposed rules require the farmer debtor to gather, copy, process (by completing a FINPAC analysis), and disclose much information that may not be necessary to the particular mediation. This is excessively burdensome, expensive, and time-consuming. It may also provide a means for creditors to obtain embarrassing or incriminating information about a farmer's circumstances which is not relevant or necessary to the issues involved in the mediation.

Further, not only is section §1502.0024 excessively burdensome, but it is unnecessary. It is appropriate to require creditors provide financial information, such as the amount of the debt, on threat of calling lack of good faith. Creditors must mediate in good faith as a prerequisite to enforcing the debt. Debtors, on the other hand, do not need the threat of bad faith as an incentive to disclose information. The farmer's incentive to disclose information is the threat that a creditor will not agree to any proposal unless adequate disclosure has been made. The addition of this rule invites creditors to use the mediation process as a fishing process on threat of "bad faith" to gain knowledge about the farmer's circumstances. The rules should restate the statutory requirement to provide full information regarding the debtor's allegations rather than add excessively and unnecessarily to the requirements found in the statute.

4. Finally, the proposed rules appear to slant the responsibilities of the parties, with regard to acting in good faith, to increase the duties of the debtor and decrease the duties of the creditor. The combination of not listing all the creditors' good faith requirements and increasing the debtors' requirements lessens the utility of the mediation process by destroying the balance between burdens. Creditors necessarily have a greater burden to act in good faith since they must mediate before enforcing a debt. Persons not having access to the Minnesota Statute will be especially misled by the changes made as they will not be able to review the specific acts constituting bad faith.

Other changes made in the mediation rules appear to improve on and clarify the existing rules and we will not comment on them at this time.

Respectfully submitted,

Janine Steinke

Janine M. Steinke
Attorney at Law

JMS/CJD
Encls.

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PLANNING DIVISION

Department of Agriculture
Commissioner's Office

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

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22-14.28. The statutory authority to adopt these rules is Minnesota Statutes, section 583.285.

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

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

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

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

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

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

Many of the businesses participating in or potentially affected by farmer-lender mediation may be small businesses as defined by Minnesota Statutes, section 14.115. However, because each mediation proceeding is tailored to individual circumstances, it is not possible to gauge the effect that this rule will have on small business as a whole.

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

STATE OF MINNESOTA

Aug 10 1985
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture

Department of Agriculture

Proposed Permanent Rules Relating to Farmer-Lender Mediation

Rules as Proposed (all new material)

1502.0001 SCOPE.

Parts 1502.0001 to 1502.0026 are adopted by the Department of Agriculture under Minnesota Statutes, section 583.285, and govern the procedures to be followed in farmer-lender mediation held under the Farmer-Lender Mediation Act. Mediation begun or concluded before the adoption of parts 1502.0001 to 1502.0026 is not void for lack of compliance with those parts.

1502.0002 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part and Minnesota Statutes, section 583.22, apply to parts 1502.0001 to 1502.0026.

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. **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 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

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purchase agricultural property under Minnesota Statutes, section 559.21, or garnishing, levying on, executing on, seizing, or attaching agricultural property.

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

1502.0003 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 1502.0026 and for purposes of service, filing, and other purposes specified by the director.

1502.0004 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 1502.0026 and the Farmer-Lender Mediation Act, clerical support, postage, and other necessary supplies.

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

D. The director shall set the compensation of mediators and 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.

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1502.0005 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.

1502.0006 SUBSTANTIVE RIGHTS.

The fact that the director or county extension agent has in any way acted upon a request for mediation does not determine the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act or parts 1502.0001 to 1502.0026.

1502.0007 FILING AND WITHDRAWAL OF MEDIATION REQUEST.

A debtor must file a mediation request form with the county extension agent within 14 days after receiving a mediation notice. A debtor may withdraw a mediation request at any time before 14 days after receiving a mediation 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.

1502.0008 FAILURE TO REQUEST MEDIATION.

The creditor must serve the mediation notice on the county extension agent within three days of service of the notice on the debtor. If a debtor fails to file a timely mediation request or withdraws a mediation request, the county extension agent shall send a copy of the Extension Notice of Debtor(s) Failure to Request Mediation (Form 3) to the debtor and the creditor who served the mediation notice. The extension Notice of Debtor(s) Failure to Request Mediation (Form 3) must be sent within 20 days after service of the mediation notice on the debtor or within three days after the creditor's filing with the county extension agent proof of the date of service of the mediation notice, whichever is later.

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1502.0009 CANCELLATION OF MEDIATION PROCEEDING.

Subpart 1. **Cure of default.** If the farmer cures the default of the debt specified in the mediation notice before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the debtor and creditor indicating that the default has been cured.

Subp. 2. **Agreement reached before the first mediation meeting.** If the debtor and the creditor who served the mediation notice have reached an agreement before the first mediation meeting, the county extension agent shall cancel the mediation proceeding upon receipt of a written statement from the creditor and debtor indicating that an agreement has been reached.

1502.0010 PROOF OF FILING MEDIATION REQUEST.

When a debtor files a mediation request with the county extension agent, the mediation request must be filed by certified mail using return receipt or by actual delivery of the mediation request with a signed receipt of the county extension agent.

1502.0011 CREDITOR CLAIM FORMS FOR DEBTS NOT SUBJECT TO MEDIATION.

Subpart 1. **Supporting documents.** A creditor owed a debt 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

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

(2) a copy of the mediation proceeding notice;

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

(4) 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 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) Failure to Request Mediation (Form 3); and

(3) an affidavit stating that the creditor began a proceeding to enforce the debt within 45 days after the debtor failed to make a timely request;

D. for 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;

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and

(2) a copy of the signed agreement reached in mediation that is a separate 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. Notification of debt not subject to mediation. If a creditor returns a claim form with the documents required under subpart 1, items A to E, the county extension agent shall determine from the documents whether the debt is subject to the Farmer-Lender Mediation Act. The county extension agent shall notify the debtor, creditor, and mediator of the determination.

1502.0012 FINANCIAL ANALYST AND FARM ADVOCATE.

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. The county extension agent shall provide the debtor with ~~information~~ a list on obtaining, without charge, a Department of Agriculture farm advocate to assist the debtor and the financial analyst. With an explanation of what a farm Advocate is.

Most people do not know what an advocate is or what they do.

1502.0013 COMPUTATION OF TIME PERIODS.

In computing any period by parts 1502.0001 to 1502.0026, by court order, or 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 ORIENTATION SESSION.

At the orientation session, the mediator must inform the debtor and creditors of their right to seek counsel regarding

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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 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 agent shall appoint a replacement mediator not previously stricken from the mediator list by the debtor or the initiating creditor, or if an unstricken 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 county extension agent, more than one mediator may be assigned to a mediation proceeding.

1502.0016 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 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

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expenses; and

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

1502.0017 MEDIATION PROCESS.

Subpart 1. **Combined proceeding for more than one debtor.** The 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. **Combined proceeding for more than one mediation notice.** The county extension agent 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 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 mediator, 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 And participate in 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 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 must be kept by the county extension agent in a secure

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place and are subject to the confidentiality provisions of Minnesota Statutes, section 13.02, subdivisions 9 and 12.

1502.0018 REMOVAL OF MEDIATOR.

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

Subp. 3. **Time periods unaffected.** Time periods in the Farmer-Lender Mediation Act and parts 1502.0001 to 1502.0026 are not affected by the removal of a mediator.

1502.0019 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 agreement by the debtor and creditors.

1502.0020 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.

1502.0021 ABUSIVE BEHAVIOR.

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

1502.0022 LACK OF GOOD FAITH AFFIDAVIT.

If the mediator determines that 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 debtor, and the creditors.

1502.0023 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. serving a copy of the request with each creditor; 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 county extension agent, whichever is later.

1502.0024 DEBTOR'S LACK OF GOOD FAITH.

Not participating in good faith may include: & Judges

A. failure of the debtor to list all creditors as defined in Minnesota Statutes, section 583.22, subdivision 4; and

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

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

Not Mandatory (2) a copy of the most recent depreciation schedule;

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

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

Not mandatory (5) copies of any other legal documents that are necessary for the mediation and pertain to the farm business; and

Not Mandatory (6) copies of FINPAC printout analysis for the farm operation where applicable.

This is information that the creditor has in their file

Creditor Responsibil

1502.0025 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 are suspended during court-supervised mediation.

1502.0026 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. Good faith. Creditors who file claim forms are bound by the good faith requirements of the Farmer-Lender Mediation Act.

Subp. 3. Written objection. To object to the provisions of a mediation agreement, a creditor who files a claim form in lieu of attending mediation meetings 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. 4. New mediation. Upon 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

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terms of the agreement.

Subp. 5. **Required attendance.** A creditor who files an objection shall attend and participate in any meeting held under subpart 4, unless the mediator determines there is a good reason why the creditor is unable to attend.

Mr State Farm Educator
Marcus Powers
RR - Box 152
Barrett MN 56311
218-685-5125

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

DECLARATION OF COUNSEL

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

Paul Strandberg
Special Assistant Attorney General

Date: 11/1/85