

Minnesota Attorney General: Administrative Rules Proceedings

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August 20, 2018

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RULE REVIEW CHECKLIST

File No. 1792
DATE RECEIVED 1-25-91
REVIEW DATE 2-3-91 2-4-91
DUE DATE 2-8-91
(DIS)APPROVED 2-6-91
WITHDRAWN _____

Docket No. 05 0009 0986
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 1-31-91
REVISOR (DIS)APPROVED ~~2-5-91~~ 2-7-91
FILED W/SEC. OF STATE _____
RETURNED TO AGENCY _____

_____ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
July 25, 1990 Date published in State Register
✓ Comments

_____ ~~Petition for Adoption of a Rule~~

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

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
17.945 Statutory Authority
✓ Small Business Statement
_____ Expenditure of public money statement
~~17.945~~ 11-15-90 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
November 28, 1990 Dated 30/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
~~December~~ 3, 1990 Date 30/25 days before adoption

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

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

✓ Findings of Fact, Conclusions & Order Adopting
January 3, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Paul Strandberg Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

Affid[illegible]

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: February 8, 1991

TO: CAROL MILLIGAN
Department of Agriculture

FROM: CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Agriculture Contracts

The above-referenced rule has been approved as to its legality by the Attorney General on February 6, 1991.

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.

CH:sc
Enclosures
cc: Paul Strandberg
William Brown, Chief Judge
MaryAnn Hruby

Department of Agriculture

Adopted Permanent Rules Relating to Agriculture Contracts

Rules as Adopted

1572.0010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1572.0010 to 1572.0050.

Subp. 2. **Arbitration.** "Arbitration" means a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision or grant an award, resolving the dispute.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of agriculture or a designee.

Subp. 4. **Contract.** "Contract" means a legally enforceable agreement between two or more parties. Contract includes a written commodity contract signed by all parties. If the parties have not signed a written commodity contract, contract includes an invoice, purchase order, memorandum, or confirmation of sale unless the terms of the document have been objected to by a party to the proposed agreement within ten days of receipt of the document by the objecting party. Contract does not include a grain scale ticket.

Subp. 5. **Mediation.** "Mediation" means a process by which parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute. The mediator has no authority to impose a settlement.

1572.0020 MEDIATION AND ARBITRATION.

Subpart 1. **Procedure.** If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the department of agriculture. Mediation and arbitration activities of the commissioner must be conducted

Approved by Revisor

according to the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, and the Minnesota Civil Mediation Act in Minnesota Statutes, sections 572.31 to 572.40.

Mediation or arbitration services provided by the commissioner under this part must be provided according to the terms of the contract between the parties. In addition, the commissioner shall require the providers of any outside mediation or arbitration services to which the commissioner refers the parties to conduct arbitration or mediation proceedings according to the terms of the contract between the parties.

Subp. 2. **Limitations.** The commissioner may not accept a request under subpart 1 if the contract governing the dispute between the parties contains an arbitration or mediation clause, and if:

A. mediation or arbitration procedures have started before a mediator or arbitrator who has been appointed in accordance with the contract or who otherwise is agreeable to the parties; or

B. whether or not mediation or arbitration has started, the arbitration or mediation clause or terms adopted under it contains a mechanism for designating a mediator or arbitrator the parties are legally obligated to use under the Uniform Arbitration Act or the Minnesota Civil Mediation Act, whichever is appropriate.

Subp. 3. **No review.** The commissioner shall not review decisions made under a mediation or arbitration proceeding between a contractor and a producer, or otherwise provide services under subpart 1 relative to a matter that was disputed in the arbitration or mediation proceedings.

Subp. 4. **Findings.** The findings and order of an arbitrator under this part are prima facie evidence of the matters contained in them.

Subp. 5. **Seed.** If arbitration is required in a contract for seed, as defined in Minnesota Statutes, section 21.81, subdivisions 3, 8, and 32, the arbitration procedure in items A

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to C applies.

A. A notice in the following form, or equivalent language must be part of a seed contract:

"Arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed for damages for the failure of seed for planting to produce or perform as represented by a seed tag or label."

B. The commissioner shall appoint an arbitration council composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following:

(1) the dean and director of the College of Agriculture, University of Minnesota;

(2) the director of the Minnesota Agricultural Experiment Station;

(3) the president of the Minnesota Crop Improvement Association;

(4) the president of a farm organization designated by the commissioner; and

(5) the commissioner.

An alternate member may serve only in the absence of the member for whom the person is an alternate.

The council shall select a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as the chair may direct.

The purpose of the council is to conduct arbitration as provided in this part. The council may be called into session by or at the direction of the commissioner or upon direction of its chair to consider matters referred to it by the commissioner or the chair in accordance with this part.

C. Procedures:

(1) A buyer may invoke arbitration by filing a sworn complaint with the commissioner. The buyer shall serve a

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copy of the complaint upon the seller by certified mail. Except in case of seed that has not been planted, the claims must be filed within a time that permits effective inspection of the plants under field conditions.

(2) Within 15 days after receipt of a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(3) The commissioner shall refer the complaint and answer to the council for investigation, findings, and recommendations.

(4) Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner within 60 days of the referral or a later date as the parties may determine.

(5) The report of the council must include findings of fact and recommendations as to costs, if any.

(6) In the course of its investigation, the council or any of its members may examine the buyer and the seller on all matters the council considers relevant; may grow to production a representative sample of the seed through the facilities of the commissioner or a designated university under the commissioner's supervision if considered necessary; and may hold informal hearings at a time and place the council chair may direct upon a reasonable notice to all parties.

(7) The council may delegate all or any part of an investigation to one or more of its members. Any delegated investigation must be summarized in writing and considered by the council in its report.

(8) After the council has made its report, the commissioner shall promptly transmit the report by certified mail to all the parties.

(9) All expenses of the arbitration, including required travel and other expenses of the council, must be borne equally by the parties, unless the council, in the award,

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assesses the expenses or any part of them against a specified party or parties.

Subp. 6. **Clause required.** Contract mediation or arbitration clauses are required in contracts signed by Minnesota producers.

Subp. 7. **Sample copies of contracts.** A contractor using a written commodity contract must submit to the commissioner a sample copy of each contract offered to producers. Schedules of prices and charges need not be included. Contract samples must be submitted to the commissioner and made available to producers at least 30 days before ~~being offered to producers for signature~~ the contract crops are planted or the contract livestock is placed in the producer's facility.

Subp. 8. **Effective date.** Minnesota Statutes, section 17.91, applies only to contracts signed after August 1, 1990.

1572.0030 RECAPTURE OF LARGE CAPITAL INVESTMENT.

Subpart 1. **Provision required; definitions.** A producer may recover damages under Minnesota Statutes, section 17.92, subdivision 1, clause (2), only if the producer has a written contractual obligation to provide a capital improvement of $100,000 or more.

If a contract states in writing that a producer must make a large capital investment in order to fulfill the contract, the contract must contain a provision allowing the producer to recover through mutual agreement, litigation, or other legal process a portion of that investment if the contract is terminated or canceled prematurely. "Termination" and "cancellation" do not include expiration of the contract. "Large capital investment" means a capital investment that costs $100,000 or more and has a useful life of five years or more. Minnesota Statutes, section 17.92, applies only to contracts that are signed after August 1, 1990.

Producers receiving notice under Minnesota Statutes, section 17.92, subdivision 2, are not eligible for recaptured damages if ~~there~~ the producer has ~~been~~ committed a material

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breach of the contract. The damages to be determined under Minnesota Statutes, section 17.92, subdivision 1, do not include payment for the reasonable useful life of an asset that extends beyond the term of the contract.

Subp. 2. **Bond or letter of credit.** A contractor may terminate a contract if the contractor secures a bond or irrevocable letter of credit in a sufficient amount to cover the probable claim if the damages the producer is entitled to under Minnesota Statutes, section 17.92, subdivision 1, clause (2) have not been received within 180 days after notice of intent to terminate has been given.

Subp. 3. **Relationship to production cycle.** If the 180- or 90-day notice periods expire before the end of a production cycle, the contract will not terminate until the end of that production cycle. A contractor may terminate a contract at the end of a production cycle that occurs before the end of the 180- or 90-day notice period has expired if the producer agrees to the termination.

1572.0040 PARENT COMPANY LIABILITY.

A corporation, partnership, sole proprietorship, or association that through ownership of capital stock, cumulative voting rights, voting trust agreements, or any other plan, agreement, or device, owns more than 50 percent of the common or preferred stock entitled to vote for directors of a subsidiary corporation or provides more than 50 percent of the management or control of a subsidiary is liable to a seller of agricultural commodities for any unpaid claim or contract performance claim of that subsidiary.

1572.0045 UNFAIR TRADE PRACTICES.

Subpart 1. **Prohibited conduct.** Unfair trade practices prohibited under parts 1572.0010 to 1572.0050 include conduct prohibited by United States Code, title 7, sections 499a to 499s, the Perishable Agricultural Commodities Act, the rules promulgated thereunder, Code of Federal Regulations, title 7, part 46, United States Code, title 7, section 181 et seq., the

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by Revisor _____

Packers and Stockyards Act and the rules promulgated thereunder, Code of Federal Regulations, title 7, part 201, et seq.

Subp. 2. **Federal preemption.** If federal and state regulation are identical, federal jurisdiction and enforcement control unless the federal authority decides not to enforce the regulation.

1572.0050 DAIRY MARKETING AGREEMENTS.

A dairy marketing agreement must contain a clause allowing either party to give the other party 30 days prior written notice of intent to terminate the agreement.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 07 1991
Secretary of State

Approved
by Revisor _____

APPROVED AS TO LEGALITY

February 6, 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene H. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB 07 1991

Jean Anderson Howe
Secretary of State

3:20 P.M.

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September 17, 1990

Mr. Herb Halvorson
Assistant Commissioner
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55107

RECEIVED
SEP 26 1990
PLANNING DIVISION

RE: Proposed Permanent Rules Relating to Mediation and Arbitration

Dear Mr. Halvorson:

We represent the Northwest Agri-Dealers Association. At Tom Cashman's request, we have reviewed proposed Minnesota Rules 1572.0010 through 1572.0050 which are proposed for adoption in connection with the new agricultural commodities legislation which will be codified as Sections 17.90 through 17.98 of Minnesota Statutes.

My comments are as follows:

1. The Commissioner should not be permitted to conduct arbitration services within the Department. Although I have not researched this issue, there are significant constitutional problems with the Commissioner's office conducting and imposing binding arbitration. There is a procedure established for administrative hearings in Minnesota when citizens have disputes with agencies. However, I think it is highly questionable whether the executive branch can be empowered to resolve private contract disputes between citizens without more careful consideration as to how this function relates to the constitutionally separated judicial function. I do not see a similar problem with mediation services because mediation is not binding. For these reasons, I would recommend that the first sentence of Section 1572.0020, Subpart 1 be revised as follows:

> "If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or may conduct mediation services (but not arbitration services) within the Department of Agriculture."

The reference to "arbitration" and to the "Uniform Arbitration Act" would then be deleted from the second sentence of Subpart 1.

2. Any services which the Commissioner provides should be consistent with the terms of the contract. This requirement must be made clear because the statute permits the parties to "make a written request to the Commissioner for mediation or arbitration services as specified in the contract." Therefore, I suggest a new sentence at the end of Subpart 1 to read as follows:

> "Any mediation services provided by the commissioner under this subpart will be provided in accordance with the provisions and procedures set forth in the contract between the parties. In addition, the commissioner will require the providers of any outside mediation or arbitration services to which the commissioner refers the parties to conduct such arbitration or mediation proceedings in accordance with the procedures and provisions set forth in the contract between the parties."

3. The Commissioner's power to accept a request for mediation or arbitration services should be limited to situations when the contract does not provide for mediation or arbitration, or when the contract mechanisms for mediation or arbitration have failed to produce a mediator or arbitrator. For these reasons, I recommend adding a new Subpart under Section 1572.0020 as follows:

> "Subp. __ Limitations. The commissioner will not accept any request under subpart 1 if the contract which governs the dispute between the parties contains an arbitration or mediation clause, and:
>
> i. Mediation or arbitration procedures have commenced before a mediator or arbitrator who has been appointed in accordance with the contract or who otherwise is agreeable to the parties; or

ii. Whether or not mediation or arbitration has commenced, such clause (or the rules and procedures adopted by such clause) contains a mechanism for designating a mediator or arbitrator whom the parties are legally obligated to use under Chapter 572, the Uniform Arbitration Act, or the Minnesota Civil Mediation Act, as the case may be."

4. It should be clear that the Commissioner will not hear any dispute which has already been the subject of mediation or arbitration. For this reason, I suggest adding the following new subpart under Section 1572.0020:

"Subp. __ No Review. The commissioner will not review the decisions rendered under any mediation or arbitration proceeding between a contractor and a producer, or otherwise provide services under subpart 1 relative to any matter which was disputed in such arbitration or mediation proceedings."

5. The following clause should be added to make clear that the arbitration and mediation provisions apply only to contracts signed after August 1. This qualifier is contained in another portion of the rules, but has been omitted from the provisions for arbitration and mediation:

"Subp. __ Effective Date. Minnesota Statutes 17.91 applies only to contracts that are signed after August 1, 1990."

Please feel free to give me a call if you have any questions or comments.

Sincerely yours,

John A. Satorius

JAS:lar
1706s

cc: Mr. Thomas E. Cashman

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE
PROPOSED RULE OF THE-
DEPARTMENT OF AGRICULTURE
GOVERNING PRODUCER
PROTECTION

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of new rules governing the protection of producers. The rule is proposed for adoption pursuant to Minnesota Statutes, section 17.945, which authorizes the MDA to adopt rules to implement the Producer Protection Act including the prohibition of specific trade practices.

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

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

II. GENERAL OVERVIEW

The 1988 Minnesota legislature established an Agricultural Contracts Task Force to study issues and problems surrounding agricultural contracting in Minnesota. The task force spent the next 15 months meeting with producer and processor groups to identify issues and study and discuss the feasibility of changing current programs or developing new programs to provide economic protection for farmers producing agricultural commodities under contract. The provisions of the Producer Protection Act of 1990 represent some of the recommendations that were made by the task force.

It is recognized that agricultural commodities are an important source of revenue to a large number of citizens of this state engaged in producing or selling such products and that such products cannot be repossessed in case of default. It is therefore important that certain financial protections be afforded those who are producers of agricultural commodities. There is a strong need to provide economic protection for producers especially those who contract out their crops and labor. The perishable nature of agricultural

commodities, vulnerable financial position of many farmers and the destabilizing factors that can affect processors such as leveraged buy-outs, mergers, bankruptcy and labor unrest all serve to create problems for producers under contract. The Producer Protection Act of 1990 and its accompanying rules were developed to increase economic protection for producers and create a level playing field.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED PRODUCER PROTECTION RULES

1572.0010. DEFINITIONS

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

1572.0020. MEDIATION AND ARBITRATION

This rule is needed to allow parties involved in contracts for agricultural commodities low-cost alternative procedures for the resolution of contract disputes. This rule is reasonable because many contract disputes are minor in nature and do not warrant the large investment of time and expense of going to court. The mediation process is desirable because it allows the parties to participate and cooperate in finding a solution to their dispute. Arbitration is beneficial because the parties can utilize a low-cost alternative to litigation. The rule requiring sample contracts is needed to determine compliance with the law and the rule. The rule requiring sample contracts is reasonable because it provides a simple way of facilitating the department's enforcement of the statute and it aids the department in providing mediation and arbitration services as authorized by the statute.

1572.0030. RECAPTURE OF LARGE CAPITAL INVESTMENT

This rule is needed because many producers of agricultural commodities are required to make a large capital investment in buildings and/or equipment when they contract with a processor. Many times such a contract is also a condition of obtaining financing for that investment. This rule provides producers with an opportunity to recapture their investment when the contractor terminates or cancels the contract. This rule is reasonable because this recapture of investment provision relates only to situations where farmers have had a contract terminated through no fault of their own. Also, provisions have been added to the rules that accommodate contractors' financial and production concerns.

1572.0040. PARENT COMPANY

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

1572.0050. DAIRY MARKETING AGREEMENTS

This rule is necessary to define and limit the type of dairy marketing agreement that is exempt from the act's lien provision. This rule is reasonable because these types of agreements are contracts for a marketing service rather than for a commodity.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED RULES

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

The 1988 legislature authorized the Agricultural Contracts Task Force to determine the extent of problems relating to the sale of agricultural commodities under contract. The recommendations of the task force inspired the submission of the Producer Protection Act of 1990 to the legislature. There were many representatives of small business on this task force. The intent of the Producer Protection Act was to provide financial protection for producers, most of whom are small business persons.

The mediation and arbitration provisions of the rule are designed to provide a low cost method of dispute resolution. Small businesses will be required to submit samples of contracts to the department and make them available to producers 30 days before they're offered for signing. Samples of each contract offered would not be required, only a representative copy. Proposed contracts need only be made available to a producer at the contractor's place of business; the contractor would not be required to send a proposed contract out to each producer that is interested in signing one.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Agriculture Contracts	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 December 3, 1990, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on November 28, 1990. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and was available to the public.

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

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

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

(10) Changing the name of the rule is necessary because the Revisor had agreed to change the name before the rule was published for comment but overlooked it in the final draft. The name "agriculture contracts" conforms with the name of the corresponding statute. Additionally, the name mediation and arbitration has been confused by some people with the farmer lender mediation rules.

1572.0020, subp. 7

This change is necessary to accurately reflect current industry practices. The rule subpart is reasonable because it still allows the producer time to look at a contract before signing it which is the intent of the rule. This change is not substantial because the producer's 30 day examination period remains intact.

1572.0030, subp. 1

This change is being made to clarify that only a producer's breach of contract makes a producer ineligible to recover damages. This change is not substantial because it clarifies the rule and makes it conform to the statute.

1572.0045, subp. 1

This is a technical change. "et seq" was overlooked in the draft. This does not change the effect or application of the rule.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule governing agriculture contracts as modified is adopted this 3rd day of January, 1991, pursuant to authority vested in me by Minnesota Statutes, section 17.945.

Jim Nichols

Jim Nichols
Commissioner

Farmers' Legal Action Group, Inc.

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November 16, 1990

Mr. Herb Halvorson
Ms. Gail Ryan
Mr. John Malmberg
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Dear Herb, Gail, and John:

I am writing in response to Herb's letter of November 1, 1990. Following are some brief comments to the proposed rules for the Producer Protection Act of 1990. If you have any questions about these comments, please feel free to call me.

I am on the road meeting with farmers in Iowa this week, and I will be in Chicago during the week of November 17-24. If you would like to speak with me, leave a message at my office and they will contact me. I will be back in the office on November 26.

My comments follow. My references to "Parts" and "Subparts" are to the sections set forth in the second draft of the proposed rules for the Producer Protection Act.

Part 1. It would be helpful to include plain language definitions for the terms "contractor" and "producer". The definitions should make it clear that the "contractor" is generally the company and that the "producer" is generally the farmer/grower.

Part 2, Subpart 1. It is possible to comply with this rule by including a contract provision which simply states that "disputes will be submitted to arbitration or mediation" but that fails to specify any procedure. This could lead to trouble. In such a contract, if and when a dispute does arise, the parties will not have an agreed-upon method for approaching mediation or arbitration.

Parties will probably have a hard time agreeing upon a mediation or arbitration method when they are in the heat of a substantive

dispute. For example, the contractor may insist upon using an in-house arbitrator, and the producer may fear that such an arbitrator will be biased in favor of the contractor.

The rules should include a detailed, specific method for resolving disputes when disputes arise and the contract does not specify a dispute resolution method. One possibility might be mediation or arbitration before a panel consisting of one producer who is a contract grower (selected by a farmers' organization), one representative of a contractor, and one neutral party (for example, a Department of Ag ombudsman or a representative of the Packers and Stockyards Administration). In each case, the panel could be selected from a predetermined pool of, for example, eight persons (four producers and four contractors). When a dispute arises, each side could choose one person for the panel, and the neutral person could be a standing third member of the panel. Other possibilities could be developed. The important thing is to have some predetermined, fair method that the parties will have to follow if they have not agreed to an alternative method.

Part 2, Subpart 6. This subpart should address what happens regarding contracts that were executed before the effective date of the act. Some contracts that were executed before the effective date of the act may last for another seven or ten years. The rule should provide that contracts executed before the effective date of the act which remain in effect after the effective date of the act contain an implied clause which says that all disputes must be submitted to mediation or arbitration.

This subpart should also address what happens to contracts that are executed after the effective date of the act which fail to include the required "alternative dispute resolution" clause. The rule should provide that:

1) Contractors who fail to include the required clause must pay a penalty to the producer.

2) Contracts that fail to include the required clause will have an implied clause which requires a specified type of arbitration or mediation. (See comments to Part 2, Subpart 1.)

An alternative might be to require that all contracts be submitted to the Commissioner prior to execution (Part 2, Subpart 7, contains this requirement for "commodity" contracts--does this include poultry?). The rule should impose a penalty for failing to submit the contract to the Commissioner.

Part 3, Subpart 1. The rule should provide that the producer has protection whether the contractor imposed the requirement in writing or orally. Most reports that we hear from growers indicate that the contractor generally tells the grower that an improvement is required in an oral conversation. Such requirements are rarely, if ever, put in writing. If this rule becomes law, it is probable that such requirements will never be put in writing in Minnesota, and the legislative intent underlying this statute will have been completely undermined.

The sentence that reads, "The terms termination and cancellation do not include expiration of the contract" should be eliminated. As a practical matter, many growers undertake a substantial investment (for example, a new Campbells' poultry house now costs approximately $178,000) but have short-term contracts. (Some poultry contracts last only one year, or only one flock cycle of eight or nine weeks). The oral agreement between the grower and the company is that the contract will be renewed "if all goes well". The grower makes the investment relying upon the company's representation that if the grower does his or her job right, the contract will be renewed. The proposed rule allows companies to undermine the intent of the law by inducing growers to make large investments that are supported by only short-term contracts. This rule allows companies to induce growers to make the investments by giving them the misleading impression that they should not worry about the short contract because it would "normally" be renewed.

The second-to-last sentence should be changed: the phrase "not eligible for recapture damages if there has been a material breach" should be changed to "not eligible for recapture if the producer committed a material breach". The present wording creates a situation in which the producer loses his or her right to recover damages if the company commits a breach.

The last sentence should be eliminated or changed. The problem is that most poultry facilities, for example, are single-purpose facilities. If a grower's contract is terminated, it is likely that he or she cannot get another company to place flocks in the facility. In that situation, even if the facility is still standing, its "useful life" has ended. If this part of the rule is not eliminated, it should at least be changed to include a clause which says that the grower's ability to put another enterprise into the facility must be considered in determining whether the "useful life" of the asset extends beyond the term of the contract.

Part 5, Subpart 1. Include references to the State Agricultural Marketing and Bargaining Act. Also, the reference to Packers and Stockyards regulations should read 7 C.F.R. § 201, et seq.

I hope that these comments are helpful.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

Randi

Randi Ilyse Roth
Attorney at Law

RIR/acp

Department of Agriculture

Commissioner's Office

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

(1) Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, section 17.945.

(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.

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

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

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

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

(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) The department has determined that this rule will have no significant negative impact on small businesses. The purpose of the rule is to protect small businesses, and although the rule requires all businesses large and small to submit samples of contracts to the department, this requirement should not be burdensome.

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

STATE OF MINNESOTA

11, 15, 90
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture

Stat Authority 17.945

The commissioner may adopt rules to implement sections 17.90 to 17.98, including the prohibition of specific trade practices.

Department : AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

Date : January 22, 1991

To : Patty Nolte
Attorney General's Office

From : Carol Milligan
Planning Division

Phone : 296-6906

Subject : **Review of Proposed Rule Governing the Agricultural Contracts**

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

Please contact me if you have any questions.

cc: Elton Redalen, Commissioner
Herb Halvorson, Assistant Commissioner
Paul Strandberg, Special Assistant Attorney General
Jerry Heil, Program Support Division
Gail Ryan, Program Support Division
Art Mason, Plant Industry
John Malmberg, Plant Industry

LIST OF ATTACHED DOCUMENTS

A. Notice of Solicitation of Opinion

B. Rule as Proposed

C. Notice of Intent

D. Statement of Need

E. Affidavit of Mailing

F. Mailing List Certificate

G. *State Register* Photocopy

H. Rule as Adopted (four copies)

I. Findings of Fact

J. Comments

K. Declaration of Counsel

Department of Agriculture

Program and Management Support Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Agricultural Contracts

Notice is hereby given that the State Department of Agriculture is seeking information or opinions from sources outside the department in preparing to propose adoption of new rules governing agricultural contracts. The adoption is authorized by Minnesota Statutes, section 17.945 which allows the department to adopt rules to implement Minnesota Statutes, sections 17.90 to 17.98 which govern agricultural contracts.

The State Department of Agriculture requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Carol Milligan, Planning Division, Minnesota Department of Agriculture, 90 West Plato Blvd., St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at (612)296-6906 and in person at the above address.

All statements of information and opinions shall be accepted until September 7, 1990. Any written material received by the department shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

7-25-90
Date

Jim Nichols
Commissioner

Official Notices

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

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

Department of Agriculture

Program and Management Support Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Agricultural Contracts

NOTICE IS HEREBY GIVEN that the State Department of Agriculture is seeking information or opinions from sources outside the department in preparing to propose adoption of new rules governing agricultural contracts. The adoption is authorized by *Minnesota Statutes*, section 17.945 which allows the department to adopt rules to implement *Minnesota Statutes*, sections 17.90 to 17.98 which govern agricultural contracts.

The State Department of Agriculture requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Carol Milligan, Planning Division, Minnesota Department of Agriculture, 90 West Plato Blvd., St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at (612) 296-6906 and in person at the above address.

All statements of information and opinions shall be accepted until September 7, 1990. Any written material received by the department shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 25 July 1990

Jim Nichols
Commissioner

Department of Agriculture

Plant Industry Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing Wholesale Produce Dealers

NOTICE IS HEREBY GIVEN that the State Department of Agriculture is seeking information or opinions from sources outside the department in preparing to repeal current rules and propose adoption of new rules governing wholesale produce dealers. The adoption is authorized by *Minnesota Statutes*, section 27.14 which requires the department to adopt rules to carry out and enforce *Minnesota Statutes* Chapter 27, governing wholesale produce dealers.

The State Department of Agriculture requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Carol Milligan, Planning Division, Minnesota Department of Agriculture, 90 West Plato Blvd., St. Paul, MN 55107. Oral statements will be received during regular business hours over the telephone at (612) 296-6906 and in person at the above address.

All statements of information and opinions shall be accepted until September 7, 1990. Any written material received by the department shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 25 July 1990

Jim Nichols
Commissioner

Minnesota State Agricultural Society—Minnesota State Fair

Meeting Notice

The first scheduled meeting of the Minnesota State Agricultural Society's board of managers during the 1990 State Fair, Aug. 23 through Sept. 3, will be at 10 a.m. Friday, Aug. 24 in the Administration Building on the State Fairgrounds.

Faribault Foods

Faribault Office
Faribault Foods, Inc
Sales and Operations
PO Box 598
Faribault, MN 55021
(507) 334-5521

Corporate Office
Baker Building
706 Second Avenue South
Minneapolis, MN 55402
(612) 333 6461

Cokato Plant
PO Box C
Cokato, MN 55321
(612) 286-2166

Mondovi Plant
457 Canal Street
Mondovi, WI 54755
(715) 926 5075

Denver Office
Kuner Empson Division
PO Box 309
Brighton, CO 80601
(303) 659 1710

Des Moines Office
Mrs. Grimes Division
PO Box 248
Grimes, IA 50111
(515) 986 3661

December 21, 1990

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

Dear Ms. Milligan:

I am writing to offer my comments regarding the proposed changes to the proposed rules of the 'Wholesale Produce Dealers Act' and the 'Producer Protection Act'.

I. Wholesale Produce Dealers Act

Part 1500.1301 Commitment to Pay
1. 1500.1301 (A)(3) Replace with: "provide some form of guaranteed compensation unless it can be shown that the crop loss is beyond the control of the parties."

This change is acceptable as written.

2. 1500.1301 (B) Replace with: "Growers must be compensated for suitable passed acreage at the same rate they would have been compensated if the crop has been harvested minus any contractual provision for green manure or feed value. For those contracts with a pool arrangement, the processor must pay a minimum of 50% of the final compensation with the remainder to be paid for by the growers."

This change is acceptable as written.

3. 1500.1301 (C) First sentence should be changed to: At the end of each season after passed acreage totals have been determined, each processor shall provide contract growers with a statement summarizing the aggregate disposition of pool funds.

This change should be clarified to read as follows:

> "At the end of each season after passed acreage totals have been determined, each processor whose contracts provide for a pool arrangement shall provide contract growers with a statement summarizing the aggregate disposition of pool funds."

Without this clarification, the rule might be interpreted to require that processors whose contracts do not provide for a

pool arrangement would still be required to furnish each grower a statement summarizing the aggregate disposition of passed acreage funds.

II. Producer Protection Act

1. 1572.0020 Mediation and Arbitration

Subpart 7. Sample Copies of Contracts

The third sentence should be changed to: Contract samples must be submitted to the commissioner and made available to producers at least 30 days before the contract crops are planted or the contract livestock is placed in the producer's facility.

This change is acceptable as written.

Except for the minor language change to the 'Wholesale Produce Dealers Act' as noted above, I feel these proposed changes should prove to be workable for the Food Processing Industry.

Sincerely,

FARIBAULT FOODS

Thomas E. Randgaard

Thomas E. Randgaard
Director of Corporate Agriculture

TER/dp

RECEIVED

DEC 24 1990

PLANNING DIVISION

Del Monte Foods
Plant No. 114
P.O. Box 407
Sleepy Eye, MN 56085-0407
(507) 794-2151

December 21, 1990

Ms. Carol Milligan
Minnesota Dept. of Agriculture
90 W. Plato Blvd.
St. Paul, MN 55107

Dear Ms. Milligan:

We concur with the latest revision to the Wholesale Produce Dealers and Producer Protection Rules as attached.

I. Wholesale Produce Dealer Rules

1500.1301 (A) (3)	Concur that guaranted compensation can only be workable if "act of God" clause are allowed to remain.
1500.1301 (B)	50% rule complies with current producer agreements and allows higher compensation when companies warrent.
1500.1301 (C)	OK

II. Producer Protection Rules

1972.0020 Mediation and Arbitration	30 days prior to planting will give sufficient time to have contracts prepared and allow maximum consideration to producer for last minute changes.

Sincerely,

DEL MONTE CORPORATION

Kerman L. Love
MN Production Manager

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 Mediation and Arbitration

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22-14.28. The statutory authority to adopt this rule is *Minnesota Statutes*, section 17.945.

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

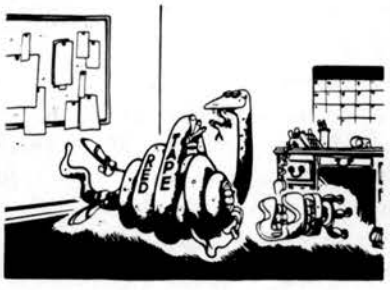
Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any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

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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.

The department has determined that this rule will have no significant negative impact on small businesses. The purpose of the rule is to protect small businesses, and although the rule requires all businesses large and small to submit samples of contracts to the department, this requirement should not be burdensome.

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

Dated: 15 November 1990

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

1572.0010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1572.0010 to 1572.0050.

Subp. 2. **Arbitration.** "Arbitration" means a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision or grant an award, resolving the dispute.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of agriculture or a designee.

Subp. 4. **Contract.** "Contract" means a legally enforceable agreement between two or more parties. Contract includes a written commodity contract signed by all parties. If the parties have not signed a written commodity contract, contract includes an invoice, purchase order, memorandum, or confirmation of sale unless the terms of the document have been objected to by a party to the proposed agreement within ten days of receipt of the document by the objecting party. Contract does not include a grain scale ticket.

Subp. 5. **Mediation.** "Mediation" means a process by which parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute. The mediator has no authority to impose a settlement.

1572.0020 MEDIATION AND ARBITRATION.

Subpart 1. **Procedure.** If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the department of agriculture. Mediation and arbitration activities of the commissioner must be conducted according to the Uniform Arbitration Act in *Minnesota Statutes*, sections 572.08 to 572.30, and the Minnesota Civil Mediation Act in *Minnesota Statutes*, sections 572.31 to 572.40.

Mediation or arbitration services provided by the commissioner under this part must be provided according to the terms of the contract between the parties. In addition, the commissioner shall require the providers of any outside mediation or arbitration services to which the commissioner refers the parties to conduct arbitration or mediation proceedings according to the terms of the contract between the parties.

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

Subp. 2. **Limitations.** The commissioner may not accept a request under subpart 1 if the contract governing the dispute between the parties contains an arbitration or mediation clause, and if:

A. mediation or arbitration procedures have started before a mediator or arbitrator who has been appointed in accordance with the contract or who otherwise is agreeable to the parties; or

B. whether or not mediation or arbitration has started, the arbitration or mediation clause or terms adopted under it contains a mechanism for designating a mediator or arbitrator the parties are legally obligated to use under the Uniform Arbitration Act or the Minnesota Civil Mediation Act, whichever is appropriate.

Subp. 3. **No review.** The commissioner shall not review decisions made under a mediation or arbitration proceeding between a contractor and a producer, or otherwise provide services under subpart 1 relative to a matter that was disputed in the arbitration or mediation proceedings.

Subp. 4. **Findings.** The findings and order of an arbitrator under this part are prima facie evidence of the matters contained in them.

Subp. 5. **Seed.** If arbitration is required in a contract for seed, as defined in *Minnesota Statutes*, section 21.81, subdivisions 3, 8, and 32, the arbitration procedure in items A to C applies.

A. A notice in the following form, or equivalent language must be part of a seed contract:

"Arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed for damages for the failure of seed for planting to produce or perform as represented by a seed tag or label."

B. The commissioner shall appoint an arbitration council composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following:

(1) the dean and director of the College of Agriculture, University of Minnesota;

(2) the director of the Minnesota Agricultural Experiment Station;

(3) the president of the Minnesota Crop Improvement Association;

(4) the president of a farm organization designated by the commissioner; and

(5) the commissioner.

An alternate member may serve only in the absence of the member for whom the person is an alternate.

The council shall select a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as the chair may direct.

The purpose of the council is to conduct arbitration as provided in this part. The council may be called into session by or at the direction of the commissioner or upon direction of its chair to consider matters referred to it by the commissioner or the chair in accordance with this part.

C. Procedures:

(1) A buyer may invoke arbitration by filing a sworn complaint with the commissioner. The buyer shall serve a copy of the complaint upon the seller by certified mail. Except in case of seed that has not been planted, the claims must be filed within a time that permits effective inspection of the plants under field conditions.

(2) Within 15 days after receipt of a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(3) The commissioner shall refer the complaint and answer to the council for investigation, findings, and recommendations.

(4) Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner within 60 days of the referral or a later date as the parties may determine.

(5) The report of the council must include findings of fact and recommendations as to costs, if any.

(6) In the course of its investigation, the council or any of its members may examine the buyer and the seller on all matters the council considers relevant; may grow to production a representative sample of the seed through the facilities of the commissioner or a designated university under the commissioner's supervision if considered necessary; and may hold informal hearings at a time and place the council chair may direct upon a reasonable notice to all parties.

(7) The council may delegate all or any part of an investigation to one or more of its members. Any delegated investigation must be summarized in writing and considered by the council in its report.

(8) After the council has made its report, the commissioner shall promptly transmit the report by certified mail to all the parties.

(9) All expenses of the arbitration, including required travel and other expenses of the council, must be borne equally by the parties, unless the council, in the award, assesses the expenses or any part of them against a specified party or parties.

Subp. 6. **Clause required.** Contract mediation or arbitration clauses are required in contracts signed by Minnesota producers.

Subp. 7. **Sample copies of contracts.** A contractor using a written commodity contract must submit to the commissioner a sample copy of each contract offered to producers. Schedules of prices and charges need not be included. Contract samples must be submitted to the commissioner and made available to producers at least 30 days before being offered to producers for signature.

Subp. 8. **Effective date.** *Minnesota Statutes*, section 17.91, applies only to contracts signed after August 1, 1990.

1572.0030 RECAPTURE OF LARGE CAPITAL INVESTMENT.

Subpart 1. **Provision required; definitions.** A producer may recover damages under *Minnesota Statutes*, section 17.92, subdivision 1, clause (2), only if the producer has a written contractual obligation to provide a capital improvement of $100,000 or more.

If a contract states in writing that a producer must make a large capital investment in order to fulfill the contract, the contract must contain a provision allowing the producer to recover through mutual agreement, litigation, or other legal process a portion of that investment if the contract is terminated or canceled prematurely. "Termination" and "cancellation" do not include expiration of the contract. "Large capital investment" means a capital investment that costs $100,000 or more and has a useful life of five years or more. *Minnesota Statutes*, section 17.92, applies only to contracts that are signed after August 1, 1990.

Producers receiving notice under *Minnesota Statutes*, section 17.92, subdivision 2, are not eligible for recaptured damages if there has been a material breach of the contract. The damages to be determined under *Minnesota Statutes*, section 17.92, subdivision 1, do not include payment for the reasonable useful life of an asset that extends beyond the term of the contract.

Subp. 2. **Bond or letter of credit.** A contractor may terminate a contract if the contractor secures a bond or irrevocable letter of credit in a sufficient amount to cover the probable claim if the damages the producer is entitled to under *Minnesota Statutes*, section 17.92, subdivision 1, clause (2) have not been received within 180 days after notice of intent to terminate has been given.

Subp. 3. **Relationship to production cycle.** If the 180- or 90-day notice periods expire before the end of a production cycle, the contract will not terminate until the end of that production cycle. A contractor may terminate a contract at the end of a production cycle that occurs before the end of the 180- or 90-day notice period has expired if the producer agrees to the termination.

1572.0040 PARENT COMPANY LIABILITY.

A corporation, partnership, sole proprietorship, or association that through ownership of capital stock, cumulative voting rights, voting trust agreements, or any other plan, agreement, or device, owns more than 50 percent of the common or preferred stock entitled to vote for directors of a subsidiary corporation or provides more than 50 percent of the management or control of a subsidiary is liable to a seller of agricultural commodities for any unpaid claim or contract performance claim of that subsidiary.

1572.0045 UNFAIR TRADE PRACTICES.

Subpart 1. **Prohibited conduct.** Unfair trade practices prohibited under parts 1572.0010 to 1572.0050 include conduct prohibited by United States Code, title 7, sections 499a to 499s, the Perishable Agricultural Commodities Act, the rules promulgated thereunder, Code of Federal Regulations, title 7, part 46, United States Code, title 7, section 181 et seq., the Packers and Stockyards Act and the rules promulgated thereunder, Code of Federal Regulations, title 7, part 201.

Subp. 2. **Federal preemption.** If federal and state regulation are identical, federal jurisdiction and enforcement control unless the federal authority decides not to enforce the regulation.

1572.0050 DAIRY MARKETING AGREEMENTS.

A dairy marketing agreement must contain a clause allowing either party to give the other party 30 days prior written notice of intent to terminate the agreement.

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

In the Matter of the Proposed Rule
of the State Department of Agriculture
Governing Producer Protection

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 28th day of November, 1990.

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

Carol Milligan
Carol Milligan
Management Analyst

Subscribed and sworn to before me
this 28th day of November, 1990.

Diane M. Windham

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

In the Matter of the Proposed Adoption of the Rule of the State Department of Agriculture Governing Producer Protection

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 28th day of November, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

DIANE M. WINDHAM
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 11-1-95

Marie Skerbitz
Mail Room Clerk

Subscribed and sworn to before me
this 28th day of November, 1990.

Diane M. Windham

Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : November 19, 1990

To : Maryanne Hruby, Director
LCRAR

From : Carol Milligan
Planning Division

Phone : 296-6906

Subject : **Rule Governing Producer Protection**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for the above-captioned rule. The Notice of Intent to Adopt and the rule will be published in the *State Register* on 12/3/90.

Attachment

In the Matter of the Adoption of the Rule of the State Department Agriculture Governing Agriculture Contracts

DECLARATION OF COUNSEL

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

Paul Strandberg
Special Assistant Attorney General

Dated: 1/22/91

12/27/90

hisex

Euribrid, Inc.
Hisex Division
P.O. Box 719
Troutman, NC
28166-0719
704-528-3337
1-800-336-6144
Fax: 1-704-528-4769

TO:
Carol Millazzo
FROM
Gil Dedrick

RECEIVED
DEC 28 1990
PLANNING DIVISION

This letter is to request a public hearing re: Rules For Produce Protection and Wholesale Produce - It is my understanding requests must be in writing prior to Jan 2 nd 1991.

Thank you
Gilman T. Dedrick
12713 Parkwood Dr.
Burnsville, Minn.
55337
612-890-3134

EURIBRID, INC.
Hisex Division

Home Address
12713 Parkwood Drive
Burnsville, MN. 55337
612-890-3134

Gilman T. Dedrick
Franchise Sales Manager

hisex

Post Office Box 719
Troutman, NC 28166-0719
704-528-3337
1-800-336-6144
Fax: 1-704-528-4769

Department of Agriculture

Proposed Permanent Rules Relating to Mediation and Arbitration

Rules as Proposed (all new material)

1572.0010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1572.0010 to 1572.0050.

Subp. 2. **Arbitration.** "Arbitration" means a process by which the parties to a dispute submit their differences to the judgment of an impartial party. The arbitrator's role is to hear the parties' arguments and issue a decision or grant an award, resolving the dispute.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of agriculture or a designee.

Subp. 4. **Contract.** "Contract" means a legally enforceable agreement between two or more parties. Contract includes a written commodity contract signed by all parties. If the parties have not signed a written commodity contract, contract includes an invoice, purchase order, memorandum, or confirmation of sale unless the terms of the document have been objected to by a party to the proposed agreement within ten days of receipt of the document by the objecting party. Contract does not include a grain scale ticket.

Subp. 5. **Mediation.** "Mediation" means a process by which parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute. The mediator has no authority to impose a settlement.

1572.0020 MEDIATION AND ARBITRATION.

Subpart 1. **Procedure.** If mediation or arbitration services are requested, the commissioner may refer the parties to outside mediation or arbitration services or conduct the services within the department of agriculture. Mediation and arbitration activities of the commissioner must be conducted

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according to the Uniform Arbitration Act in Minnesota Statutes, sections 572.08 to 572.30, and the Minnesota Civil Mediation Act in Minnesota Statutes, sections 572.31 to 572.40.

Mediation or arbitration services provided by the commissioner under this part must be provided according to the terms of the contract between the parties. In addition, the commissioner shall require the providers of any outside mediation or arbitration services to which the commissioner refers the parties to conduct arbitration or mediation proceedings according to the terms of the contract between the parties.

Subp. 2. **Limitations.** The commissioner may not accept a request under subpart 1 if the contract governing the dispute between the parties contains an arbitration or mediation clause, and if:

A. mediation or arbitration procedures have started before a mediator or arbitrator who has been appointed in accordance with the contract or who otherwise is agreeable to the parties; or

B. whether or not mediation or arbitration has started, the arbitration or mediation clause or terms adopted under it contains a mechanism for designating a mediator or arbitrator the parties are legally obligated to use under the Uniform Arbitration Act or the Minnesota Civil Mediation Act, whichever is appropriate.

Subp. 3. **No review.** The commissioner shall not review decisions made under a mediation or arbitration proceeding between a contractor and a producer, or otherwise provide services under subpart 1 relative to a matter that was disputed in the arbitration or mediation proceedings.

Subp. 4. **Findings.** The findings and order of an arbitrator under this part are prima facie evidence of the matters contained in them.

Subp. 5. **Seed.** If arbitration is required in a contract for seed, as defined in Minnesota Statutes, section 21.81, subdivisions 3, 8, and 32, the arbitration procedure in items A

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to C applies.

A. A notice in the following form, or equivalent language must be part of a seed contract:

"Arbitration is required as a precondition of maintaining certain legal actions, counterclaims, or defenses against a seller of seed for damages for the failure of seed for planting to produce or perform as represented by a seed tag or label."

B. The commissioner shall appoint an arbitration council composed of five members and five alternate members. One member and one alternate must be appointed upon the recommendation of each of the following:

(1) the dean and director of the College of Agriculture, University of Minnesota;

(2) the director of the Minnesota Agricultural Experiment Station;

(3) the president of the Minnesota Crop Improvement Association;

(4) the president of a farm organization designated by the commissioner; and

(5) the commissioner.

An alternate member may serve only in the absence of the member for whom the person is an alternate.

The council shall select a chair and a secretary from its membership. The chair shall conduct meetings and deliberations of the council and direct all of its other activities. The secretary shall keep accurate records of all meetings and deliberations and perform other duties for the council as the chair may direct.

The purpose of the council is to conduct arbitration as provided in this part. The council may be called into session by or at the direction of the commissioner or upon direction of its chair to consider matters referred to it by the commissioner or the chair in accordance with this part.

C. Procedures:

(1) A buyer may invoke arbitration by filing a sworn complaint with the commissioner. The buyer shall serve a

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copy of the complaint upon the seller by certified mail. Except in case of seed that has not been planted, the claims must be filed within a time that permits effective inspection of the plants under field conditions.

(2) Within 15 days after receipt of a copy of the complaint, the seller shall file with the commissioner an answer to the complaint and serve a copy of the answer upon the buyer by certified mail.

(3) The commissioner shall refer the complaint and answer to the council for investigation, findings, and recommendations.

(4) Upon referral of a complaint for investigation the council shall make a prompt and full investigation of the matters complained of and report its findings and recommendations to the commissioner within 60 days of the referral or a later date as the parties may determine.

(5) The report of the council must include findings of fact and recommendations as to costs, if any.

(6) In the course of its investigation, the council or any of its members may examine the buyer and the seller on all matters the council considers relevant; may grow to production a representative sample of the seed through the facilities of the commissioner or a designated university under the commissioner's supervision if considered necessary; and may hold informal hearings at a time and place the council chair may direct upon a reasonable notice to all parties.

(7) The council may delegate all or any part of an investigation to one or more of its members. Any delegated investigation must be summarized in writing and considered by the council in its report.

(8) After the council has made its report, the commissioner shall promptly transmit the report by certified mail to all the parties.

(9) All expenses of the arbitration, including required travel and other expenses of the council, must be borne equally by the parties, unless the council, in the award,

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assesses the expenses or any part of them against a specified party or parties.

Subp. 6. **Clause required.** Contract mediation or arbitration clauses are required in contracts signed by Minnesota producers.

Subp. 7. **Sample copies of contracts.** A contractor using a written commodity contract must submit to the commissioner a sample copy of each contract offered to producers. Schedules of prices and charges need not be included. Contract samples must be submitted to the commissioner and made available to producers at least 30 days before being offered to producers for signature.

Subp. 8. **Effective date.** Minnesota Statutes, section 17.91, applies only to contracts signed after August 1, 1990.

1572.0030 RECAPTURE OF LARGE CAPITAL INVESTMENT.

Subpart 1. **Provision required; definitions.** A producer may recover damages under Minnesota Statutes, section 17.92, subdivision 1, clause (2), only if the producer has a written contractual obligation to provide a capital improvement of $100,000 or more.

If a contract states in writing that a producer must make a large capital investment in order to fulfill the contract, the contract must contain a provision allowing the producer to recover through mutual agreement, litigation, or other legal process a portion of that investment if the contract is terminated or canceled prematurely. "Termination" and "cancellation" do not include expiration of the contract. "Large capital investment" means a capital investment that costs $100,000 or more and has a useful life of five years or more. Minnesota Statutes, section 17.92, applies only to contracts that are signed after August 1, 1990.

Producers receiving notice under Minnesota Statutes, section 17.92, subdivision 2, are not eligible for recaptured damages if there has been a material breach of the contract. The damages to be determined under Minnesota Statutes, section 17.92, subdivision 1, do not include payment for the reasonable

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useful life of an asset that extends beyond the term of the contract.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Mediation and Arbitration

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1572

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor