

✓ 12/3/90

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

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 REASONABILITY

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 is 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.