

CHAPTER 1572

DEPARTMENT OF AGRICULTURE

AGRICULTURAL CONTRACTS

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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.

Statutory Authority: *MS s 17.945*

History: *15 SR 1924*

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.

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 design-

nating 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 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.

Statutory Authority: *MS s 17.945*

History: *15 SR 1924*

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 the producer has committed 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.

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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.

Statutory Authority: *MS s 17.945*

History: *15 SR 1924*

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.

Statutory Authority: *MS s 17.945*

History: *15 SR 1924*

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, 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.

Statutory Authority: *MS s 17.945*

History: *15 SR 1924*

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.

Statutory Authority: *MS s 17.945*

History: *15 SR 1924*