

1 Department of Agriculture

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3 Adopted Permanent Rules Relating to Agriculture Contracts

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5 Rules as Adopted

6 1572.0010 DEFINITIONS.

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

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

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

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

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

30 1572.0020 MEDIATION AND ARBITRATION.

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

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

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

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

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

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

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

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

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

1 to C applies.

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

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

8 B. The commissioner shall appoint an arbitration
9 council composed of five members and five alternate members.

10 One member and one alternate must be appointed upon the
11 recommendation of each of the following:

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

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

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

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

20 (5) the commissioner.

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

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

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

34 C. Procedures:

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Subp. 8. **Effective date.** Minnesota Statutes, section
15 17.91, applies only to contracts signed after August 1, 1990.

16 1572.0030 RECAPTURE OF LARGE CAPITAL INVESTMENT.

17 Subpart 1. **Provision required; definitions.** A producer
18 may recover damages under Minnesota Statutes, section 17.92,
19 subdivision 1, clause (2), only if the producer has a written
20 contractual obligation to provide a capital improvement of
21 \$100,000 or more.

22 If a contract states in writing that a producer must make a
23 large capital investment in order to fulfill the contract, the
24 contract must contain a provision allowing the producer to
25 recover through mutual agreement, litigation, or other legal
26 process a portion of that investment if the contract is
27 terminated or canceled prematurely. "Termination" and
28 "cancellation" do not include expiration of the contract.
29 "Large capital investment" means a capital investment that costs
30 \$100,000 or more and has a useful life of five years or more.
31 Minnesota Statutes, section 17.92, applies only to contracts
32 that are signed after August 1, 1990.

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

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

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

12 Subp. 3. **Relationship to production cycle.** If the 180- or
13 90-day notice periods expire before the end of a production
14 cycle, the contract will not terminate until the end of that
15 production cycle. A contractor may terminate a contract at the
16 end of a production cycle that occurs before the end of the 180-
17 or 90-day notice period has expired if the producer agrees to
18 the termination.

19 1572.0040 PARENT COMPANY LIABILITY.

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

29 1572.0045 UNFAIR TRADE PRACTICES.

30 Subpart 1. **Prohibited conduct.** Unfair trade practices
31 prohibited under parts 1572.0010 to 1572.0050 include conduct
32 prohibited by United States Code, title 7, sections 499a to
33 499s, the Perishable Agricultural Commodities Act, the rules
34 promulgated thereunder, Code of Federal Regulations, title 7,
35 part 46, United States Code, title 7, section 181 et seq., the

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

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

7 1572.0050 DAIRY MARKETING AGREEMENTS.

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