

1.1 **Department of Agriculture**

1.2 **Proposed Permanent Rules Relating to Promotional Councils**

1.3 **1570.0100 AUTHORITY AND PURPOSE.**

1.4 This chapter is prescribed by the commissioner pursuant to Minnesota Statutes,  
1.5 sections 17.54, subdivision 4, 17.58, subdivision 4, and 17.63<sub>2</sub> to provide for the  
1.6 organization and meetings of commodity councils, to provide general ~~polling~~ voting  
1.7 procedures for elections ~~and referendums~~, and to provide for the administration of  
1.8 promotional orders.

1.9 **1570.0200 DEFINITIONS.**

1.10 Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this chapter  
1.11 have the meanings given them, and the terms "agricultural commodity," "~~commissioner~~,"  
1.12 "cooperative," "council," "first handler," "first purchaser," "marketing year," "participating  
1.13 producer," "~~person~~," and "promotional order" have the meanings given them in Minnesota  
1.14 Statutes, section 17.53.

1.15 [For text of subps 2 and 3, see M.R.]

1.16 Subp. 3a. **Commissioner.** "Commissioner" means the commissioner of agriculture  
1.17 or the commissioner's designee.

1.18 [For text of subps 4 to 10, see M.R.]

1.19 Subp. 11. **Producer certification.** "Producer certification" means a document  
1.20 qualified voters must sign which affirms that they are producers of the particular  
1.21 agricultural commodity for which a ~~referendum~~ an election is being held, that they meet  
1.22 the qualifications for a producer set forth in the promotional order, and that they are  
1.23 casting only one vote each in the election ~~or referendum~~.

1.24 Subp. 12. [See repealer.]

1.25 [For text of subps 13 and 14, see M.R.]

2.1 **1570.0500 POWERS AND DUTIES OF THE COUNCIL.**2.2 [For text of subps 1 to 3, see M.R.]2.3 Subp. 4. **Other actions.** The council shall take the actions listed in items A to ~~D~~  
2.4 and B:2.5 A. The council shall prepare an annual estimated budget for the operation of the  
2.6 promotional order and submit it to the commissioner within 30 days of the first day of  
2.7 the fiscal year unless the promotional order directs otherwise. Budgets may be revised  
2.8 during the fiscal year. If they are, the commissioner must be notified within 20 days of the  
2.9 revision. Minutes of the council meeting, documenting the changes and the reasons for  
2.10 them, shall constitute notification to the commissioner. Budgets or budget revisions may  
2.11 be prepared on forms provided by the commissioner or on similar forms.2.12 B. The council shall consult with banks where funds are deposited regarding  
2.13 check signing procedures. No more than four authorized signatures of council members,  
2.14 the chief administrative officer, or council employees may be provided to the bank, two of  
2.15 which must appear on all checks except refund checks. Refund checks require only one  
2.16 signature, which may be any one of the four authorized.2.17 ~~C. The council shall apply for tax exempt status for the council on forms  
2.18 provided by the commissioner. Upon receipt of the completed forms, the commissioner  
2.19 shall handle the request with appropriate federal agencies.~~2.20 ~~D. The council shall complete a financial statement at the close of each fiscal  
2.21 year on forms provided by the commissioner or similar forms.~~2.22 Subp. 5. **Petty cash.** A council may establish a petty cash account after a favorable  
2.23 vote by a majority of the council members, provided that the use of these funds is  
2.24 consistent with the purposes of Minnesota Statutes, sections 17.51 to 17.69<sub>2</sub>, and this

3.1 chapter. The bond for the council and its staff must be sufficient to cover the amounts in  
3.2 any petty cash accounts created pursuant to this subpart.

3.3 [For text of subps 6 to 8, see M.R.]

3.4 Subp. 9. Audits.

3.5 A. For councils that gross less than \$150,000 annually, every third audit must be  
3.6 an audit of financial statements and a compliance audit.

3.7 B. For the other two years, a financial review must be conducted as prescribed  
3.8 by the most current edition of the Financial Accounting Standards Board's Current Text,  
3.9 which is incorporated by reference, subject to frequent change, and located at the State  
3.10 Law Library and on the Internet at <http://www.fasb.org/st/>.

3.11 **1570.0600 COUNCIL MEETINGS.**

3.12 [For text of subps 1 and 2, see M.R.]

3.13 **Subp. 3. Frequency and location of council and executive committee meetings.**

3.14 The council shall meet at least four times annually in a location ~~which~~ that is reasonably  
3.15 accessible to all council members. Telephone and video conferencing ~~consultations~~ are  
3.16 permitted and may replace actual meetings. The executive committee shall meet as  
3.17 frequently as authorized by the council in a location ~~which~~ that is reasonably accessible to  
3.18 all executive committee members. Telephone ~~consultations~~ and video conferencing may  
3.19 be held in lieu of actual meetings.

3.20 [For text of subps 4 and 5, see M.R.]

3.21 **1570.0700 ELECTIONS.**

3.22 **Subpart 1. Election of the first council.** The procedures in items A to C must be  
3.23 followed in electing the first council:

4.1 A. Upon receipt of nominations for council offices, the commissioner shall  
4.2 promptly arrange for an election, designate polling places reasonably convenient for the  
4.3 producers of the particular agricultural commodity, and provide notice via press release of  
4.4 the election to all media having a general circulation in the organized area.

4.5 [For text of items B and C, see M.R.]

4.6 [For text of subps 2 to 4, see M.R.]

4.7 **1570.0800 GENERAL POLLING PROCEDURES.**

4.8 Subpart 1. **Qualified voters.** Participating producers who may vote in any election  
4.9 ~~or referendum~~ must meet all the conditions in subpart 2 and at least one of the conditions  
4.10 in subpart 3. All qualified voters or designated voters must sign the producer certification  
4.11 at the time they vote.

4.12 Subp. 2. **Conditions for all qualified voters.** The conditions in items A to ~~E~~ D  
4.13 apply to all qualified voters:

4.14 A. Persons, firms, universities, colleges, foundations, landlords, tenants, or  
4.15 fiduciaries may cast one vote only if they are eligible to file an Internal Revenue Service  
4.16 Form 1040 Schedule F and if they have shared in the profits and risk of loss from producing  
4.17 the particular agricultural commodity during the current or preceding marketing year.

4.18 [For text of item B, see M.R.]

4.19 C. Absentee mail voting by ~~individual~~ qualified voters is ~~not~~ permitted. To  
4.20 receive an absentee ballot, a qualified voter must submit a ballot request card to the  
4.21 commissioner. The completed ballot and signed producer certification must be returned to  
4.22 the commissioner by United States mail and postmarked no later than midnight 20 days  
4.23 prior to the official election date. The commissioner must maintain a list of voters from  
4.24 whom absentee ballots have been received and shall provide a copy of the list to all voting

5.1 sites prior to the start of the election. Mail balloting is permitted only in accordance  
5.2 with subpart 5.

5.3 D. No individual, landlord, tenant, partnership, association, cooperative,  
5.4 corporation, fiduciary, firm, university, college, or foundation may cast more than one vote  
5.5 per election ~~or referendum~~ even if operations are carried on in more than one organized  
5.6 area of the council.

5.7 [For text of subp 3, see M.R.]

5.8 Subp. 4. **Balloting at polling places.** The procedures in items A and B must  
5.9 be followed whenever ~~the commissioner determines that~~ an election will be held at  
5.10 established polling places ~~or a council determines that a referendum will be conducted at~~  
5.11 ~~established polling places.~~

5.12 A. Election ~~and referendum~~ judges will be selected by the commissioner in  
5.13 consultation with the council. Judges must not indicate their opinions about the election  
5.14 ~~or referendum~~ on the day of the election ~~or referendum~~. Each polling place must have at  
5.15 least one judge. The judges are to do the following:

5.16 [For text of subitems (1) to (8), see M.R.]

5.17 (9) ~~tabulate the results of the vote and telephone the commissioner the~~  
5.18 ~~same day with the results~~ contact the commissioner with the total number of completed  
5.19 ballots and assure that the proper chain of custody of the ballots is taken;

5.20 [For text of subitems (10) and (11), see M.R.]

5.21 B. The election ~~and referendum~~ judges shall return the following voting  
5.22 materials to the commissioner by first class mail: completed ballots, signed producer  
5.23 certifications, judges' oath forms, certification of election form, and any expense vouchers.  
5.24 The election judges handbook must be retained by the chief judge for 30 days after the

6.1 election ~~or referendum~~ and then destroyed. Any unused ballots or producer certifications  
6.2 must also be destroyed.

6.3 Subp. 5. **Mail balloting.** For any election ~~or referendum~~ conducted by mail, the  
6.4 procedures in items A to E must be followed:

6.5 A. A council must make available ballot request cards and advertise the  
6.6 forthcoming board elections or referenda ~~starting no later than its annual meeting and~~  
6.7 ~~continuing up to 40 days prior to the election or referendum~~ at least 90 days prior to the  
6.8 election. A list of eligible voters must be submitted by the council to the commissioner  
6.9 at least 45 days before the starting date of the election ~~or referendum~~. Ballot request  
6.10 cards and eligible voter lists submitted to the commissioner less than 45 days before the  
6.11 starting date of an election ~~or referendum~~ must not be included in the list of eligible  
6.12 voters for that election ~~or referendum~~, but those names must be added to the list for future  
6.13 elections ~~and referenda~~.

6.14 [For text of item B, see M.R.]

6.15 C. The length of time for the mail balloting shall be determined by the  
6.16 commissioner for each election ~~or referendum~~, but must not be less than 14 days and  
6.17 must not exceed 30 days.

6.18 D. If a participating producer of the agricultural commodity for which an  
6.19 election ~~or a referendum~~ is being conducted by mail has not received the voting materials  
6.20 listed in item B by the time half of the time period in item C has elapsed, the participating  
6.21 producer or the council may telephone, e-mail, or write the commissioner to request that  
6.22 the voting materials be mailed directly to the participating producer.

6.23 E. In order to be counted, mail ballots must be returned to the commissioner  
6.24 and must be postmarked on or before the closing date of the election ~~or referendum~~ set by  
6.25 the commissioner under item C.

7.1 [For text of subp 6, see M.R.]

7.2 Subp. 7. **Certification of election ~~or referendum~~.** The commissioner shall follow  
7.3 the procedures in items A to D in certifying an election ~~or referendum~~:

7.4 A. Before certifying an election ~~or referendum~~ conducted in accordance with  
7.5 subpart 4, the commissioner shall assure that:

7.6 (1) all materials required in subpart 4, item B<sub>2</sub> are returned to the  
7.7 commissioner;

7.8 (2) all completed ballots are initialed on the back by an election ~~or~~  
7.9 ~~referendum~~ judge, and there is no more than one vote per question on the completed ballot;

7.10 [For text of subitems (3) to (5), see M.R.]

7.11 B. Before certifying an election ~~or referendum~~ conducted in accordance with  
7.12 subpart 5, the commissioner shall assure that:

7.13 (1) returned ballots and producer certifications have been postmarked by  
7.14 the closing date set in subpart 5, item C;

7.15 (2) there is no more than one vote per question on the ballot; and

7.16 (3) the producer certifications are signed.

7.17 C. If any one of the criteria in item A, subitem (2), or ~~item B are~~ is not met, the  
7.18 commissioner shall declare the individual ballots invalid and shall not count them toward  
7.19 the outcome of the election ~~or referendum~~.

7.20 D. Ballots received may be counted mechanically or an impartial committee of  
7.21 at least three people appointed by the commissioner shall count the ballots received from  
7.22 the elections ~~or referendums~~ conducted under subpart 4 or 5.

7.23 **1570.0900 ADMINISTRATION OF PROMOTIONAL ORDERS.**

7.24 [For text of subp 1, see M.R.]

8.1 Subp. 2. **Hearings and referendum.** Before any referendum is conducted, the  
8.2 commissioner shall consult with the council and shall hold public hearings on the proposed  
8.3 promotional order in organized areas. Upon completion of the hearings, the commissioner  
8.4 and council shall determine whether the promotional order will be amended, modified,  
8.5 or supplemented. If a promotional order is substantially changed by this process, the  
8.6 commissioner shall hold further public hearings on the changed promotional order. Upon  
8.7 completion of these hearings, the commissioner shall conduct a referendum ~~in accordance~~  
8.8 ~~with the procedures in part~~ according to parts 1570.0700, subpart 3, and part 1570.0800.  
8.9 The hearings in this section part are not subject to Minnesota Statutes, chapter 14.

8.10 Subp. 3. **Payment of check-off fees.** The procedures in items A to E must be used  
8.11 by the council in collecting the check-off fees from first purchasers or first handlers:

8.12 [For text of item A, see M.R.]

8.13 B. The council must determine the first handler or first purchaser for the  
8.14 agricultural commodity. First handlers or first purchasers are responsible for collecting  
8.15 from participating producers and remitting the check-off fee with the name and address of  
8.16 the producer, amount and date the check-off was deducted, and the processor or elevator  
8.17 ID number if applicable to the council by the date stated in the promotional order.

8.18 [For text of items C to E, see M.R.]

8.19 Subp. 4. **Refund of check-off fee.** The procedures in items A to ~~G~~ F must be  
8.20 followed ~~in refunding~~ for those councils whose check-off fees are refundable:

8.21 A. Any participating producer wishing a refund of a check-off fee ~~may~~  
8.22 ~~telephone or write to the commissioner or request in person a refund application form to~~  
8.23 ~~fill out~~ must submit a refund application form.



9.1 ~~B. The participating producer must complete the refund application form~~  
9.2 ~~and return the original and second copy, along with a proof of paid check-off fee, to~~  
9.3 ~~the commissioner.~~

9.4 ~~C B.~~ Upon receipt of the completed refund application form ~~and the proof~~  
9.5 ~~of paid check-off fee, the commissioner will verify that the information on the refund~~  
9.6 ~~application form is valid and will forward the original copy of the refund application~~  
9.7 ~~form to the council.~~ Requests for refunds must be received by the commissioner within  
9.8 the time prescribed in the promotional order for the particular agricultural commodity  
9.9 in order to be valid.

9.10 ~~D C.~~ The council may proceed to write a refund check only if the refund  
9.11 application has been approved by the commissioner and if the check-off fee has been  
9.12 sent from the first purchaser or the first handler to the council. ~~The council will retain~~  
9.13 ~~the original copy of the refund application form and will forward the refund check to~~  
9.14 ~~the commissioner.~~

9.15 ~~E D.~~ The ~~commissioner~~ council shall mail the refund check ~~and the proof of~~  
9.16 ~~paid check-off fee to the participating producer. The commissioner shall also return the~~  
9.17 ~~participating producer's copy of the refund application form if the participating producer~~  
9.18 ~~did not retain it.~~

9.19 ~~F E.~~ Refunds will be made by the commissioner and the council within 30 days  
9.20 of the date of the commissioner's receipt of the refund application form except when the  
9.21 check-off fee or the list of producers electing check-off has not yet been received by the  
9.22 council. In those instances, the council shall write the first purchaser or first handler and  
9.23 request remittance of the check-off fee. When the council has received the check-off fee  
9.24 and list of producers electing check-off, the council shall determine the amount of refund  
9.25 and send the refund check to the ~~commissioner~~ producer. ~~Immediately upon receipt, the~~  
9.26 ~~commissioner shall mail the refund check to the producer.~~

10.1 ~~G~~F. Requests from participating producers for refunds will not be accepted  
10.2 more than 12 times per calendar year.

10.3 Subp. 5. **Procedures for noncompliance.** The procedures in items A to ~~E~~D shall be  
10.4 followed by the council and commissioner in determining and acting upon noncompliance  
10.5 by first handlers or first purchasers whose check-off fee collection or other information  
10.6 required under subpart 3, item B, is not current:

10.7 A. The council shall maintain a current noncompliance list as noted in part  
10.8 1570.0500, subpart 6, item D, and shall use it to determine when a first handler or first  
10.9 purchaser has become delinquent in collecting and remitting check-off fees and the list of  
10.10 producers, based on the remittance period provided in the promotional order.

10.11 [For text of item B, see M.R.]

10.12 C. If no response is forthcoming after ~~three~~two contacts have been made, the  
10.13 council may request that the commissioner write to the delinquent first handler or first  
10.14 purchaser and to the producer whose check-off fee is delayed. The council's request must  
10.15 be accompanied by the noncompliance list, a summary of the steps that have already been  
10.16 taken, and a statement of the length of the noncompliance period. The commissioner's  
10.17 letter must be certified.

10.18 ~~D. At the request of the council, the commissioner may send a second letter to~~  
10.19 ~~delinquent first handlers or first purchasers requesting compliance.~~

10.20 ~~E~~D. If there is still no response from the delinquent first handler or first  
10.21 purchaser after the steps in items A to ~~D~~C have been taken, the council may engage  
10.22 legal counsel to pursue the matter.

10.23 Subp. 6. **Suspension or termination of a promotional order.** A promotional order  
10.24 for an agricultural commodity may be suspended or terminated pursuant to this subpart.  
10.25 Public hearings conducted by the commissioner prior to the suspension or termination

11.1 of a promotional order will not be held pursuant to Minnesota Statutes, chapter 14. No  
11.2 suspension or termination of a promotional order shall take effect until the end of the  
11.3 current marketing year.

11.4 After consultation between the council and the commissioner, and after a public  
11.5 hearing and findings by the council that a promotional order is contrary to or does not  
11.6 effectuate the provisions of Minnesota Statutes, sections 17.51 to 17.69, or a finding that it  
11.7 is economically unfeasible to continue operating, the council may suspend or terminate  
11.8 a promotional order with the approval of a majority of the qualified voters who vote  
11.9 in the referendum.

11.10 Within 60 days of receipt of a petition from the same number of producers required to  
11.11 initiate a promotional order, which includes a statement that the signatures are those of  
11.12 participating producers, the commissioner shall conduct a referendum ~~in accordance with~~  
11.13 ~~part~~ according to parts 1570.0700, subpart 3<sub>2</sub>, and ~~part~~ 1570.0800. A majority vote of the  
11.14 qualified voters who vote in the referendum will suspend or terminate the promotional  
11.15 order.

11.16 "Suspension" means discontinuing the collection of check-off fees from first  
11.17 purchasers as required under Minnesota Statutes, section 17.59, and the meeting  
11.18 requirements under part 1570.0600 for one year. During the suspension, a commodity  
11.19 council must continue to honor all legal and contractual obligations, submit to the  
11.20 audit requirements under Minnesota Statutes, section 17.58, subdivision 5, and the  
11.21 corresponding rules, and meet no later than six months before the end of the marketing  
11.22 year to decide whether to terminate. If the council decides not to terminate pursuant  
11.23 to Minnesota Statutes, section 17.64, the council must hold elections for those council  
11.24 members whose terms expire during the suspension before the beginning of the next  
11.25 marketing year. All council duties and activities will resume beginning the next marketing  
11.26 year. The council is responsible for notifying first purchasers of the suspension,  
11.27 termination, or resuming of collecting of check-off fees. A commodity council shall only

- 12.1 suspend for one year and must either terminate or resume activities within the following  
12.2 12 months.

12.3 [For text of subp 7, see M.R.]

- 12.4 **REPEALER.** Minnesota Rules, part 1570.0200, subpart 12, is repealed.