

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULES)	STATEMENT OF NEED
OF THE DEPARTMENT OF AGRICULTURE)	AND REASONABLENESS
GOVERNING AGRICULTURAL RESEARCH AND)	
PROMOTION COUNCILS AND THE ADMINISTRATION)	
OF PROMOTIONAL ORDERS (3 MCAR SS 1.0700-1.0706))	

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of new rules governing agricultural research and promotional councils and the administration of promotional orders. These rules are proposed for adoption pursuant to Minnesota Statutes sections 17.54, subd. 4, 17.58, subd. 4, and 17.63, which require the Department to set requirements for the organization, conduct of elections and referendums, and meetings of commodity councils, as well as for the administration of promotional orders.

Rulemaking on the proposed rules was authorized by the Department on December 13, 1982. Prior to the authorization of rulemaking, the Department determined that the proposed adoption of these rules would be noncontroversial in nature for three reasons. The first is that the procedures for organizing the council and its work are based on principles that are fundamental to any organization. The second is that for at least the last ten years the Department has worked closely with existent councils in conducting elections and referendums as well as on the more general business of the councils. During this time procedures have developed, pursuant to the authority granted to the Department under the 1969 Commodities Promotion Act, which are now being formalized into

administrative law in these rules. Lastly, officers and administrative staff of the councils have reviewed the rules as proposed and find them acceptable.

Due to these three reasons, then, the Department directed that the proceedings on the proposed rules be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 15.0412, subd. 4h. Thus, no hearing will be conducted on the proposed rules unless on or before January 26, 1983, seven or more persons submit to the Department a written request for a hearing.

In accordance with the requirements of a Minnesota Statutes, section 15.0412, subd. 4h, this Statement of Need and Reasonableness was completed prior to December 27, 1982, when the proposed rules were noticed in the State Register.

The discussion provided in this statement is divided into the following parts:

Part II. General overview

Part III. Need for and reasonableness of the proposed rules

II. GENERAL OVERVIEW

A. History of Commodity Councils and Promotional Orders in Minnesota:

Agricultural commodity councils and promotional orders were first authorized by the Minnesota Legislature with the passage of a law for turkey promotion in 1965. This was followed in quick succession by the "Potato Industry Promotion Act of Minnesota" in 1967, the "Dairy Promotion Act of Minnesota" in 1969, and a similar law for soybeans

that same year. Also in 1969, the Legislature passed a general law entitled, the "Agricultural Commodities Promotion Act" which was to govern the creation and operation of commodity groups other than these four. The purpose of all of these commodity promotion acts was to provide a mechanism for Minnesota farmers to work with handlers, dealers, and processors of their agricultural products to promote and stimulate their use, sale and consumption, and to improve methods of producing, processing and marketing their commodity. The legislative intent is that such commodity organizations and their activities will contribute to the stabilization and improvement of the agricultural economy of the State of Minnesota.

The five different statutes governing agricultural research and promotion councils, or "commodity councils" as they are commonly known, contained many of the same features. All provided for the establishment of the governing council, its membership and powers; the formulation of a promotinal order; payment and refund of check-off fees; other powers and duties of the council and commissioner of agriculture; use of fees; and penalties. The potato and turkey promotion laws also provided for the establishment of specific "organized areas", while the other councils operated statewide. In 1982, the amendments to the general commodity promotion law, Minnesota Statutes section 17.51 to 17.69, were minor, but a major consolidation of the four specific laws and the general law occurred. Most of Minnesota Statutes chapter 21A and 32B were repealed, as were large portions of the statutory sections governing turkey and potato promotion. The unique remaining portions were

consolidated into Minnesota Statutes, sections 17.51 to 17.69. The amendments to those sections were: definitions were added, minor changes occurred in the sections governing the creation of councils, existing councils were grandfathered in, referendum procedures were amended, budgets and reports were required of councils, provisions governing council personnel and audits were included, and the penalty section was changed.

The major revision relating to the promulgation of these rules, however, were the specific directives to the Department in Laws of 1982, chapter 582, sections 2 and 5. The Department is directed to adopt rules under the Administrative Procedures Act for the following: general polling procedures for the conduct of council elections and referendums; the organization and meetings of a council; and the administration of promotional orders for particular commodities.

The rules as proposed directly address the areas outlined in the 1982 statute, and as such are required. They are necessary because they provide for uniformity in the creation, mode of operating and the organization of a council. While there are nine commodity councils at the present time, others may yet form. These rules will assist new commodity groups in their evolution to a formal "council" status as well as provide for more uniform administration and continuance of current councils. In general, the proposed rules are reasonable because they state formally what has evolved throughout the 17 years of the Department's administrative experience with the councils. The councils and the commissioners/designees have mutually developed

operating procedures pursuant to the authority granted under the commodity promotion laws. Those procedures are proposed as rules herein and are reasonable because they have been mutually developed. Some of the provisions relating to the organization of councils and conduct of council meetings are further reasonable because they are based on principles fundamental to any organization.

B. Format of the Proposed Rules:

The proposed rules are set forth in the following manner: authority and purpose; definitions; procedures for the organization of a council; procedures for the conduct of council meetings; types of elections; general polling procedures for elections and referendums; and administration of promotional orders.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

The need for and reasonableness of the provisions of the proposed rules follow.

3 MCAR § 1.0700 Authority and Purpose

This rule is necessary and reasonable to clarify for readers and users the purpose of these rules governing agricultural research and promotion councils and the administration of promotional orders. The rule also clarifies the authority by which the commissioner proposes the adoption of the rules.

3 MCAR § 1.0701 Definitions

The rule sets forth the definitions of terms used in the rules. They are necessary to clarify meanings for readers and users of the rules. Several definitions are cross-referenced to the statute. Others were developed specifically for this rule. They are necessary for the reasons stated and reasonable because all are familiar terms or concepts to commodity council members.

The definition of "check-off fee" is necessary to clarify the relationship between the payment of the fees and the provisions of the promotional order. The definition of "chief administrative officer" is necessary primarily to include the different titles given to such persons by the various commodity councils in their promotional orders. The definition of "compliance list" is necessary to inform councils, first handlers and first purchasers of the type of list to be kept by the council. The definition of "designated voter" is necessary to clarify the single instance when someone other than the person (as defined by the statute) may vote in elections or referendums. The definition of "election" is necessary to clarify the types of balloting for which these rules contain procedures. The definition of "fiduciary" is necessary to clarify these additional ways of organizing a farm enterprise so their relation to the commodity councils can be covered by these rules. The definition of "noncompliance list" is necessary so that councils will know the type of information the commissioner requires under 3 MCAR § 1.0702 C.6. and 3 MCAR § 1.0706 E.

The definition of "organized area" is necessary to determine the geographic area to be affected by a promotional order. The definition of "petitioners" is necessary to clarify the group of producers interested in the creation of a council or changes in the promotional order who may act independently of councils with respect to promotional orders. The definition of "producer affidavit" is necessary to inform producers of the type of affirmation they must make before voting in elections or referendums. The definition of "proof of paid check-off fee" is necessary both to inform producers of what is required of them when requesting refunds and to assure that the date on the proof of paid check-off fee is supplied so that a refund request might be validated. The definition of "qualified voter" is necessary to set requirements for persons who can legitimately vote in council elections or referendums. "Referendum" explains this type of election, which relates strictly to promotional orders.

3 MCAR § 1.0702 Organization of a Council

The first two parts of this rule, regarding the creation of the council and the selection of its officers and executive committee, are necessary because they provide guidelines which can be followed by any commodity group that might want to form itself into a council. The steps correspond closely to Minnesota Statutes section 17.54, subdivisions 1-6. The provisions are reasonable because they provide a uniform method for getting the council started, rather than different mechanisms under different statutes which was the case before the 1982 consolidation of the prior five laws.

The third part of this rule, regarding the powers and duties of the council, is necessary to spell out more clearly some of the powers and duties granted by law. The conduct of meetings and the formulation of promotional orders are important and necessary activities of the council and should be conducted in such a manner as to insure the maximum amount of participation by producers of the commodity. The procedures are reasonable because producers should be involved in decisions about their market promotion enterprise, as well as decisions about expenditures of their check-off fees.

The provisions governing the employment of personnel and their bonding are necessary because they permit the councils to have flexibility in employing as many people as necessary to do the work of the council while at the same time providing protection for the council through the bonding. Under Minnesota Statutes, section 17.58, subd. 2, a council is required to have a chief administrative officer and to provide bond for that individual. This rule simply extends the bonding requirement to all personnel who handle money or sign checks. The provisions are reasonable because they are standard operating procedures for any organization. The bonding provision is reasonable to protect both the producers and the council from possible financial loss through personnel.

The provisions governing financial duties of the council, such as budget preparation, check signing procedures, and completing financial statements are necessary for several reasons: to provide guidelines for council expenditures, to permit some internal monitoring of income and expenses, and to provide accountability for the council's expenditures. They are reasonable primarily for protection of the producers whose funds are involved. The requirements of the rule will assure: that budgets are formulated which connect expenditures to proposed activities, that checks issued will correspond to promotional order requirements, and that financial statements will protect the interests of all parties. As non-profit organizations, the councils are entitled to tax exempt status. Thus, it is necessary and reasonable to provide guidelines for them to acquire this status. The petty cash provision is necessary to grant the councils flexibility in having ready funds available for everyday expenditures. It is a reasonable provision because the fund would be protected by the bonding of employees, as noted.

The recordkeeping requirements are necessary in part because some records are required by the statute, as stated in the rule. Other records required will permit the council to have a history of past programs and activities from which to compare and plan future activities and will assist the councils to better administer the promotional orders. Better administration of the orders will also be assured through both the data collections and the maintenance of noncompliance lists required under 3 MCAR § 1.0702 C.6. d.-e.

The councils are permitted to receive donations, in accordance with Minnesota Statutes, section 17.57, subd. 5. This provision is necessary and reasonable as long as use of the donations is limited to purposes of Minnesota Statutes, sections 17.57 to 17.69.

The provisions in 3 MCAR § 1.0702 C.8., regarding powers and accountability of the executive committee, are necessary to provide guidelines for the actions of the executive committee and clarify the relationship between the council and the executive committee. The provisions are reasonable because they are consistent with Minnesota Statutes, section 17.54, subd. 6, and are based on principles fundamental to any organization. They are further reasonable because they provide flexibility to the councils in handling their internal affairs.

3 MCAR § 1.0703 Council Meetings

The provisions in this rule regarding meeting notices and agendas are necessary to assure that council members and the commissioner will know that a meeting is planned and will know the items to be discussed. The provisions are reasonable because they provide a uniform system of notification so that all parties may attend and all points of view be represented, and because they are consistent with the Minnesota open meeting law.

The provision regarding the frequency and location of council meetings is necessary to assure both that the councils meet often enough to monitor the progress and success of activities and programs under the promotional order and that meetings are held in places accessible to council members. It is reasonable that all council members be able to attend and represent the point of view of producers in their individual organized areas.

The quorum provision is necessary and reasonable because it is consistent with Minnesota Statutes, section 17.54, subd. 7. And the requirement of minutes for the meetings is necessary to assure that there is a record of actions taken by the council for comparative purposes. It is reasonable because it is a general procedure for all organizations.

3 MCAR § 1.0704 Elections

Three types of elections are provided for in this rule: election of the first council, election of subsequent councils and referendums. The provisions in parts A. and B. are necessary to clarify the procedures to be used in these two types of elections, held to select members of the council. They are reasonable provisions because they are consistent with Minnesota Statutes, section 17.54, subd. 4, and because they provide uniform guidelines for the first election for any commodity group wishing to form a council.

The provisions in 3 MCAR § 1.0704 C., regarding the conduct of referendums, are necessary to clarify roles and responsibilities for the council and the commissioner and to assure uniformity of procedure in this type of election. It is reasonable that the referendum be publicized and that the contents of the proposed promotional order be made available to participating producers so that they can be knowledgeable and participate fully in the decision-making regarding the proposed promotional order. The provision regarding the prohibition on another referendum for the same commodity in the same year is consistent with Minnesota Statutes, section 17.56, subd. 5.

The provisions in 3 MCAR § 1.0704 D. regarding financing of elections and referendums are necessary to clarify where the responsibility of payment for these elections lies. The provisions in 1. are consistent with Minnesota Statutes section 17.59, subd. 3. The provisions in 2. clarify that it is the council's responsibility to finance subsequent elections and referendums. It is reasonable that the commissioner reimburse petitioners if the initial referendum is unsuccessful because the

commissioner is only acting to facilitate the council elections and referendums. It is fair to return to producers any remaining monies after expenses are paid. It is also reasonable that the councils should finance subsequent elections and referendums since they represent producers and are to conduct promotional and other activities, including elections and referendums, under the promotional orders.

3 MCAR § 1.0705 General Polling Procedures

The five parts in this rule regarding general polling procedures for council elections and referendums set forth requirements for qualified voters, procedures for polling places, mail balloting, dairy industry referendums and the certification of elections.

The first part, regarding voter qualifications, is necessary to clarify who may vote in council elections and referendums to meet the requirement of Minnesota Statutes, section 17.54, subd. 4. The conditions in 1. apply to all voters. It is necessary and reasonable that entities named in 1.a. cast only one vote in elections because all of those entities have individual legal status and under other Minnesota laws are treated individually. Thus, it is reasonable that for council voting purposes they should receive similar treatment and have only one vote. The provision in 1.b. regarding the voting age requirement is necessary and reasonable because it is consistent with other Minnesota law. The exception to the age requirement for designated voters is necessary because in the Department's administrative experience, neither individual producers nor their spouses are able at times to leave the farm activities during the day of an election or referendum. Thus it is reasonable to permit a family member representing that production unit to carry the vote of the unit to the election or referendum regardless of the designated voter's age. This case is distinctly different from proxy voting which is not permitted by these rules.

The provision in A.1.c. regarding the requirement of Minnesota residency or permanent resident alien status is necessary because it is the Department's interpretation of legislative intent that the Commodities Promotion Act should benefit Minnesota's farmers. Thus, restricting voting to Minnesota residents would appear reasonable. Absentee mail voting by individual producers is not permitted under A.1.d. because of the Department's administrative experience with commodity council elections and referendums in the past. The Department expends a great deal of time and energy and the councils spend a great deal of money to set up and conduct elections and referendums at specified polling places. This time, effort, and money could be wasted if it were necessary to duplicate the voting process by also permitting individual mail balloting. The nine councils conduct one election every year for officers; referendums may be held less frequently than annually. Nonetheless, it would be a large burden on the Department to conduct individual absentee balloting for nine councils every year. It seems unnecessary and unreasonable since the Department already arranges for polling places in up to 87 counties for the elections and referendums of some councils. Additionally, the designated voter provision in 3 MCAR § 1.0701 E., which permits a production unit's vote to be cast in any case, makes an additional absentee provision unnecessary.

The provision in A.1.e. regarding multiple operations' being limited to one vote is necessary and reasonable, again, because the entities named have a single legal status and thus should have only one vote.

The specific provisions in 2.a.e. are necessary because farming enterprises may be organized legally in the different ways named: family farm, landlord-tenant, partnership, association, cooperative, corporation or fiduciary arrangement. This section is needed to clarify that all of these arrangements have equal status as far as influencing the outcome of elections or referendums. It is reasonable that the Department attempt to assure a fair representation of producers in elections and referendums.

The provisions in B. regarding procedures to be followed at polling places have evolved over the Department's many years of conducting council elections and referendums. The requirements for the duties and responsibilities of judges are necessary and reasonable to assure that the election or referendum is conducted in a fair manner and that voting frauds are avoided. The requirements governing the order of providing ballots and the producer affidavits to voters and of collecting them are necessary to assure that there will be only a one-to-one correspondence between ballots and affidavits. It is reasonable to include these provisions as additional assurance that only one vote per qualified voter will be cast. The requirements that the judges are to telephone the results to the commissioner in B.1.i. and then return all the materials in B.2. to the commissioner are necessary to assure that there will not be discrepancies between the figures at the close of the election day and the materials returned through the mail. These are reasonable provisions because their intent is to prevent fraud and assure a fair election or referendum. It is necessary and reasonable to require that election judges destroy any unused voting materials, again to assure that there will not be any voting frauds.

The provisions in C. regarding mail balloting were developed pursuant to the discretion given the commissioner in Minnesota Statutes, section 17.54, subd. 4. They are necessary provisions because the councils are not all equally large. The smaller ones represent far fewer participating producers, and it is more efficient and less costly for them to conduct elections and referendums by mail rather than to set up polling places around the state requiring election judges and the production of many more election materials. It is reasonable to provide guidelines for councils in such instances. It is also reasonable to permit the larger councils to utilize this procedure when they determine that they have addresses for all their participating producers. The method may be less costly once set up and may increase participation in elections and referendums. Assurances that qualified voters will be able to vote are provided through C.1. which requires that the councils have a complete mailing list of participating producers before the commissioner conducts a mail balloting, and by C.4. which permits the participating producer or council to get a ballot for a participating producer whose ballot did not arrive in the mail. This flexibility is reasonable.

The Minnesota Statutes, section 17.54, subd. 12 provides for dairy industry referendums; the provisions herein are necessary only to further clarify the role of the commissioner in the dairy referendums. It is reasonable for the commissioner to provide the voting materials for dairy industry referendums since this is consistent with the role of the commissioner in the referendums of other councils.

The procedures for certifying the results of elections and referendums outlined in part E. of this rule elaborate upon the provision in Minnesota Statutes, section 17.54, subd. 4. which requires the commissioner to appoint an impartial committee to tabulate the results of elections. Before this impartial committee can certify the results of an election or referendum, it is necessary that all the materials listed be returned to the Department and accounted for by the commissioner. The requirements in 1. will assure that judges have conducted the election or referendum fairly, that ballots were properly distributed and collected, and that the number of votes cast per item on the ballot does not exceed the limit set for that item. It is reasonable that the commissioner require the return of these materials so that the committee can certify that the election or referendum was conducted fairly by using the materials.

3 MCAR § 1.0706 Administration of Promotional Orders

The six major parts of this rule contain provisions for the administration of promotional orders: their formulation; hearings and referendums on them; the payment of check-off fees; the refund of check-off fees; procedures for noncompliance by a first handler or first purchaser; suspension or termination of the promotional order; and the commissioner's handling of funds.

Parts A. and B. of this rule, regarding the formulation of the order, hearings and the referendum, are consistent with Minnesota Statutes, sections 17.56, subds. 1.-3. These parts are necessary to clarify the procedures that the council must go through in formulating an order and to clarify the relationship between the council and the commissioner in this process. It is reasonable that the council should initially formulate the order, since the councils are designed to be self-governed marketing and promotional entities for producers. It is also reasonable that the order should then be reviewed by the commissioner and the participating producers in public hearings so that all points of view might be represented and producers can participate in decisions regarding the amount they are expected to pay and use of the funds.

The procedures in C., regarding the payment of check-off fees, are necessary to assure that check-off fees agreed upon under the promotional order are both collected from each participating producer and then remitted by the first handler or the first purchaser to the council itself. It is necessary that the council determine the best method for collecting the check-off fees and the ways of identifying first purchasers or first handlers because they know the marketing channels for their particular commodities and are in the best position to identify those persons. It is reasonable that the council should provide the forms for the first handlers or first purchasers to use in collecting and remitting the fees because these fees are intended to finance the council's work. The first handlers and first purchasers already have the administrative burden of transferring the amounts; it is reasonable to avoid additional expense for them by having the councils supply forms.

It is necessary and reasonable that the council monitor the collection and remittance of check-off fees to assure fairness at two levels. The

first is the level between the producer and the first handler or first purchaser. If fees are not uniformly collected, then some producers may not be paying fees while benefitting from council promotional activities, which is an unfair situation. The second level is the level between the first handler or first purchaser and the council. First handlers or first purchasers may be collecting fees, but not remitting them to the council. This results in an unfair situation because first handlers or first purchasers may be using the funds for their own purposes. Thus, it is necessary and reasonable that councils monitor this check-off fee system to assure fairness in the situation so that those duly paying check-off fees are not disadvantaged by doing so.

The provisions in C.5. regarding the deposit and use of check-off fees is necessary to clarify the deposit procedure for councils. It is reasonable to thus protect the check-off fees collected, in accordance with Minnesota Statutes, section 17.59, subd. 4.

The refund procedures in D. were developed in accordance with Minnesota Statutes, section 17.63 to provide participating producers a mechanism for receiving refunds of their money paid under the check-off program. It is necessary and reasonable that the producer request a refund in writing because verbal requests are not verifiable--one producer could request several refunds under different guises and the administrative burden on the Department to review such requests would be increased. Multiple requests would not only be unfair to other producers, they would be illegal under Minnesota Statutes, section 17.63. Provisions in parts D.4. and 6. are necessary to assure that the council has received the funds from the first handler or first purchaser before sending a refund check. It is reasonable that a producer should receive back only what the producer paid, if it was paid, in the first place. The commissioner's role in this process is to provide an avenue for producers to get refunds other than directly through the councils with which some producers may disagree. The thirty day refund period in D.6. and the time frame in D.7. are set in accordance with Minnesota Statutes, section 17.63.

The procedures for noncompliance set in E. are necessary to provide a method of recourse for councils in enforcing the check-off program. The steps are reasonable because they provide ample opportunity for first purchasers or first handlers to explain their reasons for noncompliance to both the council and the commissioner. They are reasonable provisions for first handlers and first purchasers because they provide flexibility for these groups in meeting the statute requiring remittance of the fees, Minnesota Statutes, section 17.59, subd. 2.

The provisions in F. for suspending or terminating the promotional order are necessary to provide guidelines for councils wishing to end their orders. They are reasonable because they provide for suspension or termination of the orders through familiar methods--either the voting method similar to other referendums or the petition method used to create the councils. The provisions are consistent with Minnesota Statutes, section 17.64.

The provision in G. regarding the commissioner's handling of funds is necessary to assure councils of the commissioner's intent with respect to their finances. It is reasonable to protect the funds of the council specifically allotted for council purposes. The provision is consistent with Minnesota Statutes, section 17.59, subd. 5.