

STATE OF MINNESOTA  
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rule  
of the Department of Agriculture  
Governing Farmer-Lender Mediation

Statement of Need  
and Reasonableness

Introduction

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of a rule governing farmer-lender mediation as required by Minnesota Statutes, section 583.285. In accordance with Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was completed prior to publication of the rule and the Notice of Intent to Adopt Rules Without a Public Hearing in the State Register.

Small Business Impact

Many of the businesses potentially affected by the farmer-lender mediation program are small businesses as defined by Minnesota Statutes, section 14.115.

The methods for reducing impact listed in Minnesota Statutes, section 14.115, subdivision 2, deal primarily with compliance standards and reporting requirements that are not applicable to these rules. Item (e), exempting small business from the requirements of the rule, would undermine the mediation program and be contrary to the statutory objectives of the rule.

Need for and Reasonableness of the Proposed Rule

1502.0001

This part is necessary to define the application of the rules.

1502.0002

The definitions are necessary to clarify the intent of the rules and to enable the rules to be applied consistently.

1502.0003

The statement of administration is necessary so that mediation participants are notified of who the director has designated under the delegation power in Minnesota Statutes, section 583.22, subdivision 5. The designation of the county extension agent in the county in which the debtor resides is reasonable because this person is in most cases geographically closest to the mediation participants.

1502.0004

This part is necessary because it clearly lists a set of tasks that must be accomplished for the mediation program to function and assigns those tasks to the position with the authority to carry them out.

**1502.0005**

This part is necessary because Minnesota Statutes, section 583.30 requires the director to provide mediation forms. Since Minnesota Statutes, section 583.26, subdivision 2, requires mediation request forms to be available at the county recorder and county extension offices, it is reasonable to make all mediation forms available at those offices.

**1502.0006**

A statement about the substantive rights of the debtor or creditors under the Farmer-Lender Mediation Act is necessary so that mediation participants will understand the consequences of Extension's action on a mediation request. Extension's nondetermination of substantive rights is reasonable because Extension does not have the legal authority or expertise to determine the substantive rights of mediation participants.

**1502.0007**

Specifying conditions for withdrawal of a mediation request is necessary to provide this option for debtors in a uniform manner. The 14 day time limit is reasonable because it is consistent with the time frame established by Minnesota Statutes, section 583.26, subdivision 2.

**1502.0008**

Notification to creditors of the debtor's failure to request mediation is necessary so that creditors know that they may proceed to enforce the debt. The deadline for sending the notice is reasonable given the creditor's 45 day deadline for beginning a proceeding against the agriculture property.

**1502.0009**

A statement of the circumstances under which a mediation proceeding will be cancelled is necessary to assure consistency and predictability. It is reasonable to cancel a mediation proceeding upon a cure of default or agreement reached because if these occur there is no longer a dispute to mediate.

**1502.0010**

Proof of filing the mediation request is necessary to assure compliance with the 14-day deadline for requesting mediation. Requiring certified mail using return receipt or a signed receipt of the county extension agent is reasonable because it provides adequate proof and is the least burdensome to those affected.

**1502.0011**

**Subpart 1.** It is necessary to require the provision of supporting documents if a creditor is claiming that a debt is not subject to mediation so that extension can make a determination on whether to include the debt in the mediation process. It is reasonable to require the creditor to provide the specified documents because the creditor is making the claim and has easiest access to the supporting documents. The requirement of the documents specified is reasonable because the documents support each requirement of Minnesota Statutes, section 583.24, subdivision 4.

**Subpart 2.** It is necessary and reasonable to notify the mediation participants that a creditor will not be included in the mediation process so that they will be able to plan accordingly.

#### 1502.0012

This part is reasonable because it is consistent with Minnesota Statutes, section 583.26, subdivision 3.

#### 1502.0013

It is necessary to stipulate how time periods should be computed so that there is consistent application of the Farmer-Lender Mediation Act and the rules. The computations stipulated are reasonable because they allow for Saturdays, Sundays, and legal holidays.

#### 1502.0014

It is necessary that the debtor and creditors be informed of their right to seek counsel regarding the legal and tax consequences of documents and agreements because the consequences are often difficult to ascertain. It is reasonable for the mediator to do this at the orientation session because this is the first meeting in the mediation process. It is necessary to assure the confidentiality of the debtor's financial information because without this most farmers would not participate in mediation. It is reasonable to meet in private upon the debtor's request because the farmer is the person most concerned with confidentiality. It is reasonable to meet at intervals because portions of the orientation session do not involve discussion of any specific debtor financial information.

#### 1502.0015

**Subpart 1.** It is necessary to require a procedure for the initiating creditor and debtor's objection to a mediator list for uniform application of Minnesota Statutes, section 583.26, subdivision 4(6). It is reasonable to require the mailing of a notice within three days because a notice documents the objection and the three days allows enough time for the creditor's and debtor's decision and extension's acting upon any objection.

**Subpart 2.** It is necessary to specify guidelines for replacing a mediator so that the procedure is consistent throughout the state. The rule is reasonable because it quickly provides an impartial mediator.

**Subpart 3.** It is necessary to provide for co-mediators because the difficulty of some mediation cases requires more than one mediator. It is reasonable to give the county extension agent discretion in the matter because the agent knows the most about the mediation cases at the time the mediator is selected.

#### 1502.0016

The duties of the mediator listed are necessary to assure that certain basic tasks are performed in every mediation. The duties listed are reasonable because they deal primarily with informing the parties of their rights in the process and reaching a successful agreement.

#### 1502.0017

**Subpart 1.** A combined proceeding for debtors liable for the same or a portion of the same debt is necessary because the issues for the debtors are so intertwined that they are best dealt with in one mediation proceeding. It is reasonable for the county extension agent to combine the notices because the county extension agent sets up the mediation cases.

**Subpart 2.** It is necessary to allow the mediation notices served on the debtor after the first mediation meeting to be combined into one mediation proceeding because in most cases the creditor is already participating in the ongoing mediation. It is reasonable to give the county extension agent discretion in this matter because the county extension agent received a copy of this notice and knows whether or not the creditor is involved in the ongoing mediation.

**Subpart 3.** It is necessary to state guidelines for scheduling meetings so that consistency is maintained throughout the state. It is reasonable that the meetings be held at convenient and neutral places and times so that mediation principles and the interests of all persons involved are accommodated.

**Subpart 4.** A statement of the extent of advisor participation in mediation is necessary to maintain consistency of mediations throughout the state. Attendance of the principals in a dispute is essential for an effective mediation. It is therefore reasonable to require the mediator to determine whether the attendance of an advisor in place of a debtor or creditor is allowable.

**Subpart 5.** A rule on handling case documents upon completion of the mediation case is necessary for assuring confidentiality of the process. It is reasonable to turn the documents over to the county extension agent because the agent has locked facilities.

#### **1502.0018**

**Subpart 1.** It is necessary to allow for the removal of a mediator in case the mediation participants believe the mediator is not effective. It is reasonable to require the agreement of the debtor and creditors to assure that the belief is justified. It is reasonable to assign an unstricken mediator or an available mediator because this allows for the speedy assignment of an impartial mediator.

**Subpart 2.** It is reasonable to allow for the removal of only one mediator during a mediation proceeding because a mediator's becoming familiar with a case requires a significant amount of time and the mediation meeting period is statutorily limited to 60 days.

**Subpart 3.** It is necessary to state that time periods are not affected by the removal of a mediator to assure compliance. Having the time periods unaffected is reasonable because to do otherwise would break the statutorily required time periods.

#### **1502.0019**

**Subpart 1.** This part is necessary to facilitate signing and witnessing the mediation agreement as required by Minnesota Statutes, section 583.26, subdivision 9 (a).

**Subpart 2.** Since creditors who have filed claim forms are bound by the terms of the mediation agreement, it is reasonable that they receive a copy of the signed agreement as soon as possible.

#### **1502.0020**

It is necessary to require a statement of particular items and specific reasons so that the other mediation parties may plan a response based on complete information. The requirement is reasonable because an effective mediation depends on accurate and complete information.

**1502.0021**

It is necessary to include a rule on abusive behavior because it may occur during the mediation proceeding. It is reasonable to penalize abusive behavior because it is extremely detrimental to the mediation process.

**1502.0022**

This part is reasonable because it is consistent with Minnesota Statutes, section 583.27, subdivision 2. It is included in the rules to assure that all parties are aware of the statutory requirement.

**1502.0023**

It is necessary to provide a procedure for the debtor's request for court-supervised mediation to ensure consistency and predictability throughout the state. The time period for filing the request with the court is reasonable because it allows the debtor time to prepare the necessary papers yet does not unreasonably delay the court-supervised mediation.

**1502.0024**

It is necessary to state what constitutes a debtor's lack of good faith to assure compliance. It is reasonable to require the listing of all creditors because this is required by statute (sec. 583.26, subd. 2) and is essential for a productive mediation. It is reasonable to require the specified records and documents because this information is essential for reaching agreement on the farmer's debts.

**1502.0025**

**Subpart 1.** This part is necessary to assure that the county extension agent provides the court with access to a list of qualified mediators.

**Subpart 2.** This part is reasonable because it is required in Minnesota Statutes, section 583.27, subdivision 3.

**1502.0026**

**Subpart 1.** It is reasonable to expect the creditor who initiates the mediation process to participate in the process. This part is necessary to insure that creditors are not allowed to force a debtor into mediation unless the creditor intends to participate.

**Subpart 2.** Creditors who file claim forms have an impact on the mediation process and are bound by the agreement, so it is reasonable that they be obligated to the same good faith requirements as creditors who attend mediation.

**Subpart 3.** It is necessary for the written objection to identify particular items and state specific reasons so the parties may form an adequate plan for the subsequent mediation meetings. The requirement is reasonable because an effective mediation depends on accurate and complete information.

**Subpart 4.** This subpart is necessary to inform parties that the process may be extended to accommodate the objections of creditors who file claim forms. The 10 day extension is reasonable because it is required by Minnesota Statutes, section 583.28, subdivision 2.

**Subpart 5.** The presence of the objecting creditor is necessary because a new agreement can only be reached if all concerned parties are present to discuss specific items of contention.