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Ms. Carol Milligan
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107-2094

Dear Ms. Milligan:

Re: Comments on the Proposed Amendments to Rules Governing Farmer-Lender Mediation

Farmers' Legal Action Group, Inc. (FLAG) submits these comments regarding the Proposed Amendments to Rules Governing the Minnesota Farmer-Lender Mediation Program (Mediation Program) on behalf of the Minnesota Family Farm Law Project (MFFLP) Task Force, and in consultation with the Minnesota Farm Advocates (MFA). MFFLP is a consortium of Minnesota legal services programs that provide assistance to financially distressed family farmers in the state. The Task Force includes a group of about 15 lawyers and paralegals who have dedicated a significant portion of their careers to assisting Minnesota's financially distressed family farmers.

In their work on behalf of Minnesota farmers, MFFLP staff have had extensive, direct experience with the Mediation Program ever since it was created by the Minnesota Legislature in 1986. Through this work, MFFLP staff have seen the importance of the Mediation Program for Minnesota farmers in financial distress.

As you know, the Minnesota Farm Advocates, through their direct work with farmers in financial distress, have also had extensive experience with the Mediation Program and offered MFFLP insights on the Proposed Amendments that are incorporated within these comments.

I. Minnesota Still Needs the Farmer-Lender Mediation Program

The Mediation Program was established by the Minnesota Legislature to address a serious need in the countryside for a forum in which farmers and their creditors can come together with the aid of a third-party neutral

to discuss options in the face of financial crisis. The cooling-off period and the forum for negotiation provided by the Mediation Program have been critical in restoring working relationships between debtors and creditors; allowing producers to resume successful farming operations; and avoiding unnecessary and expensive liquidations, bankruptcies, and litigation. The program is credited by almost all as providing a way in which extremely stressful situations can be handled constructively, peacefully, and respectfully. The program is funded by the Minnesota Legislature with a significant matching contribution from the federal government. The Minnesota Legislature has currently authorized the program through July 1, 2005.

MFFLP hopes that the Department continues to maintain its strong support for the Mediation Program and that the Proposed Amendments are another step in making the program more effective and efficient. MFFLP also believes that the coordination of the program by the University of Minnesota Extension Service has created a stronger, better run program compared to the prior administration of the program. Overall, MFFLP supports the Proposed Amendments as adding clarity to how notifications within the program will take place given the unfortunate consolidation of county extension offices.

II. Filing with the Statewide Program Office

In Subpart 1502.0010, the Proposed Amendments would alter how debtors file mediation requests. Under the current rule, farmers must either utilize certified mail to file their mediation request with the county extension agent or they can drop it off at their local county extension office, so long as there is a signed receipt by the county extension agent. Because of the consolidation of county extension offices, this second option is no longer feasible for the vast majority of farmers who are no longer located in the vicinity of an extension office. The Proposed Amendments would require farmers to file with the statewide program officer, so that farmers' only real option for filing their mediation requests would be by certified mail. Certified mail is onerous, especially for farmers challenged by financial distress.

We propose this problem be rectified in the following manner to expedite the mediation process, we request that language be added that allows farmers to file mediation requests by facsimile and electronic means so long as they meet any required deadlines. The stated purpose in the Statement of Need and Reasonableness to the Proposed Amendments "is to update filing procedures for mediation." Updating the filing procedures to allow the use of modern technology to request mediation fits within this purpose, especially given the impracticability of in-person requests following the consolidation of Extension offices.

III. Role of the Farm Advocate and Financial Analyst

In Subpart 1502.0012, the roles of the Minnesota Farm Advocate Program, financial analysts and MFFLP are set out.

We propose two specific changes to this section.

On line 10 language in the Proposed Amendment should be stricken as follows:

10 Agriculture farm advocate to assist the debtor ~~and the financial analyst.~~

The reason for this proposed change is that the farm advocates should not be responsible for assisting the financial analyst, when their responsibility is to assist financially distressed farmers. These potentially conflicting roles may create problems during mediation and confuse farmers who read the Mediation Program Rules about what the role of farm advocates is, and to whom their duty of loyalty is owed.

On line 15 of Subpart 1501.0012, we propose that additional language be added as follows:

15 Family Farm Law Project, as provided by the Minnesota Family Farm Law Project.

Under the current rule, the information about the farm advocate program is provided by that organization. Likewise, the information the statewide program coordinator sends to farmers about legal services should be provided by the Minnesota Family Farm Law Project, though it is our understanding that is the current practice of the statewide program coordinator.

Thank you for the opportunity to submit these comments. MFFLP looks forward to working with the Minnesota Department of Agriculture and the University of Minnesota Extension Service in building a better Mediation Program that helps farmers stay on the farm.

Respectfully Submitted,

FARMERS' LEGAL ACTION GROUP, INC.

s/David R. Moeller

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Enclosures

cc: MFFLP Task Force Members
Bruce Lutz and Jan Boll, *Minnesota Farm Advocates*
Mary Nell Preisler, *University of Minnesota Extension Service*