

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
AMENDMENTS TO THE RULES OF THE)
DEPARTMENT OF AGRICULTURE)
GOVERNING COLORED FISH AND FISH)
PRODUCTS. (MINNESOTA RULES PART)
1545.2050-1545.2070)

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of an amendment to rules governing the requirements for denaturing fish unfit for human consumption, and the repeal of a rule prohibiting coloring of fish and fish products. The amendment is proposed for adoption pursuant to Minnesota Statutes, section 31.11, which authorizes the MDA to promulgate and amend rules for the efficient administration and enforcement of the Minnesota Food Law. As provided in Minnesota Statute, section 31.002, when practicable and consistent with state law, these rules shall conform with those promulgated under Federal law.

The department has determined that the proposed amendment to the rule is non-controversial in nature because they are supported by the industry as common practice, and will bring Minnesota's requirement for colored fish and fish products into conformity with federal regulations. Because of the noncontroversial nature of this rule, the department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 14.21 to 14.28. Accordingly, the rulemaking proceedings on the proposed amendment to the rule are governed by that statute and no hearing will be conducted on the proposed amendment unless, on or before August 14, 1984, twenty-five or more persons submit to the department a written request for such hearing.

In accordance with the requirement of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed amendment to the rule was published by the State Register.

II. GENERAL OVERVIEW

Minnesota Rules, Parts 1545.2050 and 1545.2070 were adopted in 1945 and revised in 1954. No revisions have since occurred.

The department recently received a petition from a Minnesota fish processor to review and revise these rules so that they would conform with the Federal Code and other states. The current rules are a trade barrier and, therefore, serve no useful function since Federal Regulations have already been adopted as our regulations.

There has developed over the past thirty years a practice of artificially coloring fish to achieve the desirable color for palatability to fish and fish products. Colored fish has become preferred by certain ethnic groups and consumers to the point whereby they demand color in the fish they purchase.

Title 21, Parts 74 and 101.22 of the Code of Federal Regulations has never prohibited the use of artificial food color in fish and fish products. The Federal Code has prohibited the use of certain dyes to be used in food products. The Minnesota Food Law, section 31.002 requires this state to conform when practicable with Federal Regulations.

The coloring and sale of fish and fish products is acceptable in 48 of the 50 states.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENT TO THE RULE

The need for and reasonableness of the proposed amendment to the rule governing the requirements for colored fish and fish products follows.

A. Minnesota Rules, part 1545.2050

Fish unfit for human food, whether parastic or not, which are offered for sale for animal food ~~shall~~ must be denatured or identified ~~in-such~~

~~a-manner~~ so as to prohibit their use for human food. ~~Such~~ Denaturing ~~is-to~~ must be accomplished either by cutting the fish in two immediately behind the abdominal cavity or by dyeing the fish with methyl violet ~~or any-similar-harmless-dye.~~ The strength of the dye solution ~~shall~~ may not be less than one part of dye to 5,000 parts of water.

The proposed amendments made to this rule is one of style and form designed to bring the rule into conformance with Minnesota Statutes, section 14.07 et. seq.

Methyl violet is the dye of general use for denaturing. The wording "or any other similar harmless dye" was deleted to disallow a food coloring which would make "fish unfit for human food" appear to be wholesome.

B. Minnesota Rules, part 1545.2070

~~Fish and fish products shall be free from added yellow; red; or orange color; either of coal tar or vegetable origin. The use of yellow; orange; or red coloring in or on these products is prohibited even when declared.~~

The department recently received a petition from a Minnesota fish processor to rescind this rule because the rule no longer serves a purpose and does serve to act as a economic trade barrier by preventing Minnesota fish processors from competing in the markets of other states.

The Code of Federal Regulations has permitted the use of color additives to fish and fish products since the code was first published in 1947. This Department has adopted the code in order to achieve and maintain uniformity with the Federal and with other states. The repeal of this rule would bring this state into uniformity with the code and with 48 other states.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED AMENDMENT

As prescribed by Minnesota Statutes, section 14.115, subdivisions 1 and 2, the Department has considered the degree of impact the proposed amendments will have on fish processors and the alternative methods for lessening that impact.

The Department has determined that all fish processors will be affected because implementation of the Federal Color Regulations will result in greater competition in a potentially new and larger market both within this state and with other states. The degree of competition for market sales cannot be known at this time.

Alternative methods for lessening the impact would be contrary to the objectives sought by Minnesota Statute, section 31.002 which requires conformity with Federal Regulations. The present rule serves no general purpose and acts as an economic trade barrier. Repeal of Minnesota Rule, part 1545.2070 would permit a Minnesota fish processor to compete equally with processors of other states. These amendments would have a positive benefit to Minnesota fish processors since Minnesota is one of the three major fresh water fish processing states.