

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Agriculture
(Agency or Board)

Regulation No. Agr 4403 (amended)

Subject: Fresh Vegetables and Related Products Definitions Standards of Identity; Labeling

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

APR 25 1975 4:00 pm

BY Eda Standenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 4-25-75

Rev. 9-72

ADMIN 1000A

STATE OF MINNESOTA

DEPARTMENT Agriculture

Office Memorandum

TO : Michael Miller
Special Assistant
Attorney General

DATE: May 9, 1975

FROM : Paul Strandberg
Special Assistant
Attorney General

SUBJECT: AGR 4403(c)

Enclosed please find the Order to Amend Typographical Error in AGR 4403 (c).

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

IN THE MATTER OF: the adoption of Rules and Regulations of the Department of Agriculture Relating to Standards of Identity of Pickles, Agr 4403.

ORDER TO AMEND TYPOGRAPHICAL ERROR IN AGR 4403(c)

The above entitled matter came on for hearing before the Agriculture Commissioner of the State of Minnesota on the fourth day of December, 1974, at 10 a.m., in room 83, ground floor, State Office Building, St. Paul, Minnesota. Pursuant to proper statutory authority, this rule, identified as Rules and Regulations of the Department of Agriculture Relating to Standards of Identity of Pickles, Agr 4403, was adopted finally and filed with the Secretary of State and the Commissioner of Administration on April 25, 1975. It has since been brought to my attention that this rule Agr 4403, paragraph (c) contains a typographical error.

NOW THEREFORE, IT IS ORDERED that the typographical error in Agr 4403 (c) be amended to read as was originally intended:

Paragraph (c), second line, after "regulation,", insert "shall".

DATED 5-8-75

JON WEFALD
COMMISSIONER OF AGRICULTURE

Paul Strandberg
Special Assistant Attorney General
Department of Agriculture

April 28, 1975

- AGR 4403

ADMIN. 1000
3

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT OF AGRICULTURE

TO : Michael B. Miller G-19K
Special Assistant Attorney General

DATE: April 7, 1975

FROM : Paul Strandberg PS
Special Assistant Attorney General

SUBJECT: DEPARTMENT OF AGRICULTURE REGULATIONS AGR 4403

Submitted for your approval please find the above regulation and accompanying documents.

PS:jw

RULES AND REGULATIONS RELATING TO
FRESH VEGETABLES AND RELATED PRODUCTS
DEFINITIONS STANDARDS OF IDENTITY AND LABELING
CHAPTER 133: AGR 4403

"Agr 4403 Pickles and Pickled Vegetables; Standards of Identity; Labeling."

(a) Pickles. Pickles are the clean, sound, properly prepared cucumbers which may or may not have been subjected to fermentation and curing in salt brine, and which are safely and suitably preserved in an acetic or lactic acid solution to which may have been added other vegetables, spices, flavorings, salt, turmeric, natural sweeteners, or other food additives or natural or artificial color additives for food as provided for by the Federal Food, Drug and Cosmetic Act, as amended, and as specified in Title 21, Code of Federal Regulations, Part 121 and Part 8 as revised, and in accordance with ~~the Administrative Procedure Act~~ state law. This definition does not include salt pickles as described in Regulations AGR 4404.

(b) Pickled Vegetables. Pickled vegetables are vegetables other than cucumbers prepared as described under paragraph (a) above, and conform in name to the vegetable used.

(c) Labeling. The labels for such pickles and pickled vegetables, in addition to all other information required by Minnesota food law and regulation, bear a list of ingredients in the descending order of predominance; provided, that spices, ~~and~~ flavorings and colorings may be designated as spices, ~~and~~ flavorings and colorings without naming each, and preservatives, if used, shall be listed by their common or usual names in one of the following qualifying statements: "_____ added as a preservative", or "_____, a preservative", or "preserved with _____", the blank to contain the name of the preservative used."

Changes or additions indicated by underline, deletions by ~~strikeout~~.

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

APR 25 1975 4:00 pm

BY Eda Staudenmaier
AUTH. SIGNATURE

EJ

APPROVED AS TO FORM AND LEGALITY

APR 25 1975 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Michael B Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 25 1975 - 3:45 pm

Joan Anderson Growe
Secretary of State

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Standards of Identity for Pickles, AGR 4403.

ORDER FOR HEARING

The Minnesota Commissioner of Agriculture, in response to petitions from interested parties, and pursuant to the authority vested in me by Minn. Stat. Section 31.10 (1971), deems it necessary to consider amendments to the existing rules captioned above to determine the appropriateness of permitting artificial coloring in pickles.

NOW, THEREFORE, IT IS ORDERED this 21st day of October, 1974, that a public hearing on the proposed amendments captioned above be held in Room 83, ground floor, State Office Building, Saint Paul, Minnesota, on Wednesday, December 4, 1974, commencing at 10:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

Jon Wefald

JON WEFALD
COMMISSIONER OF AGRICULTURE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Standards of Identity for Pickles, AGR 4403.

NOTICE OF HEARING

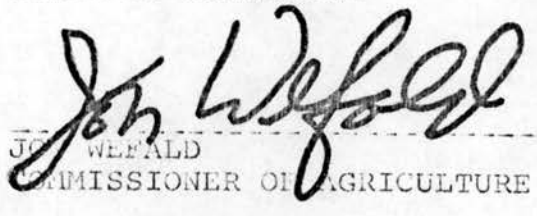
Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. Section 15.0412, subdivision 4, (1971), in the above entitled matter in Room 83 ground floor, State Office Building, Saint Paul, Minnesota, December 4, 1974, commencing at 10:00 a.m., and continuing until all persons have had an opportunity to be heard concerning adoption of the proposed amendments to existing rules captioned above by submitting either oral or written data, statements or arguments. Statements may be submitted without appearing in person at the hearing.

The Commissioner proposes to adopt rules amending Regulation AGR 4403, relating to the standard of identity for pickles as authorized by Minn. Stat. Section 31.10 by including in the standard of identity color additives for food permitted by the federal government in Title 21, Code of Federal Regulations, Part 8.

A copy of the proposed amendment is enclosed. Additional copies may be obtained by writing to the office of the Commissioner, 420 State Office Building, Saint Paul, Minnesota, 55155, and copies will be available at the door on the date of the hearing.

Dated: October 22, 1974

STATE OF MINNESOTA



JON WEFALD
COMMISSIONER OF AGRICULTURE

PROPOSED
AMENDMENT TO RULES AND REGULATIONS RELATING TO
FRESH VEGETABLES AND RELATED PRODUCTS
DEFINITIONS STANDARDS OF IDENTITY AND LABELING
CHAPTER 133: AGR 4403

"Agr 4403 Pickles and Pickled Vegetables: Standards of Identity; Labeling."

(a) Pickles. Pickles are the clean, sound, properly prepared cucumbers which may or may not have been subjected to fermentation and curing in salt brine, and which are safely and suitably preserved in an acetic or lactic acid solution to which may have been added other vegetables, spices, flavorings, salt turmeric, natural sweeteners, or other food additives or color additives for food as provided for by the Federal Food, Drug and Cosmetic Act, as amended, and as specified in Title 21, Code of Federal Regulations, Part 121 and Part 8 as revised in accordance with the Administrative Procedure Act. This definition does not include salt pickles as described in Regulation AGR 4404.

(b) Pickled Vegetables. Pickled vegetables are vegetables other than cucumbers prepared as described under paragraph (a) above, and conform in name to the vegetable used.

(c) Labeling. The labels for such pickles and pickled vegetables, in addition to all other information required by Minnesota food law and regulation, shall bear a list of ingredients in the descending order of predominance; provided, that spices, ~~and~~ flavorings and colorings may be designated as spices, ~~and~~ flavorings and colorings without naming each, and preservatives, if used, shall be listed by their common or usual names in one of the following qualifying statements: "_____ added as a preservative", or "_____, a preservative", or "preserved with _____", the blank to contain the name of the preservative used".

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Standards of Identity for Pickles, AGR 4403.

CERTIFICATE

I hereby certify that the attached 395 Labels & two sheets constitute the complete lists of persons, associations, and other interested groups who as of 3:45 o'clock P.M., this 30th day of October, 1974 have requested pursuant to M.S. 1971, Sec. 15.0421 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Arlen I. Erdahl

By Neil Dorr

AFFIDAVIT

Patricia Mike, being duly sworn on oath deposes and says:

1) That she is an employee of the Agriculture Department of the State of Minnesota.

2) That on the 30th day of October, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations and other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 30th day of October, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Patricia Mike

Subscribed and sworn to before me
this 31st day of Oct 1974.
Emma Copeland

Notary Public,
Ramsey County, Minnesota
My commission expires 3-17-77.

EMMA COPELAND
Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
MARCH 17, 1977

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Standards of Identity for Pickles, AGR 4403.

AFFIDAVIT OF MAILING

Patricia Mike, being first duly sworn, deposes and says:

That on the 31st day of Oct., 1974, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United State mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons listed on the attached certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Patricia Mike

Subscribed and sworn to before me this 31st day of October, 1973. 1974

Emma Copeland

Notary Public

Ramsey County, Minnesota

My commission expires 3-17-77.

EMMA COPELAND
NOTARY PUBLIC, RAMSEY CO., MINN.
MY COMMISSION EXPIRES
MARCH 17, 1977

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Standards of Identity for Pickles, AGR 4403.

STATEMENT OF NEED

The need to consider amending the above captioned rules arises because the Minnesota Department of Agriculture has been advised through petitions pursuant to Minn. Stat. Section 15.0415 (1971), that the standard of identity for pickles adopted by the Department on April 9, 1974, does not allow for color additives although a majority of the pickle manufacturers in the country use federally approved artificial color. Since the appropriateness of color additives in pickles was not specifically considered by the Department at the April 9 hearing, it is necessary to hold a hearing to consider this issue.

COMMISSIONER OF AGRICULTURE

Jon Wefald

JON WEFALD

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of Proposed Amendments of the Rules and Regulations of the Department of Agriculture Relating to Standards of Identity of Pickles, Agr 4403.

FINDINGS OF FACT

The above entitled matter came on for hearing before the Agriculture Commissioner of the State of Minnesota on Wednesday, the 4th day of December 1974, at 10:00 a.m., in Room 83, ground floor, State Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes 1974, Section 15.0412 was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose and to all members of the Minnesota Legislature.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

1. That the regulation captioned above and as adopted on April 9, 1974, does not provide for the addition of color to pickles.
2. That such color addition is practiced nationwide in a large variety of foods including pickles.
3. That colors presently used in foods including pickles have been approved and certified as safe for use in food by the Federal Food and Drug Administration, and that said agency lists the names of these approved colors in the Code of Federal Regulations, Title 21, Part 8.
4. That the Commissioner of Agriculture by legislative directive has adopted the Color Additive Regulation as noted above.
5. That these colors may be used in any nonstandardized food if properly designated on the label, and in any standardized food whose standard of identity provides for the addition of color.

6. That members of the pickle packing industry use color in pickles and desire to market such pickles in Minnesota.

7. That to forbid the orderly marketing of properly labeled pickles containing added color, absent of a valid exercise of state police power, may be in restraint of interstate commerce.

8. That the question of the safety of Food, Drug and Cosmetic (F, D & C) Yellow 5, a color commonly used in pickles as well as in a variety of other foods, was discussed at the hearing.

9. That it was suggested that use of F, D & C yellow 5 be banned from pickles because of its alleged deleterious effect on th health of the consumer.

10. That F, D & C yellow 5 is listed under the Code of Federal Regulations, Title 21, Part 8, Subject B, "Straight Colors and Specifications for their certification for use in Food, Drugs and Cosmetics," Part 9.40.

11. That Pickle Processors are not required by the proposed regulation to use color in their pickles.

12. That the consuming public will be warned by presently required as well as proposed labeling if color has been added to the pickles offered for sale.

13. That insufficient evidence was presented to the department of agriculture to warrant a finding that either all colors or specifically F, D & C yellow 5 are unsafe and should be prohibited in pickles.

14. That Minnesota consumers will benefit by having a larger variety of pickles from which to choose and that permitting the sale of pickles containing added color will allow the free movement of this added variety in the channels of trade.

15. That amendments offered at the hearing to the proposed regulation in paragraph (a) are acceptable and that they add clarity to its meaning.

STATE OF MINNESOTA

Jon Wefald

JON WEFALD
COMMISSIONER OF AGRICULTURE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendment to the Rules and Regulations of the Department of Agriculture Relating to Standards of Identity of Pickles, Agr. 4403

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Agriculture Commissioner of the State of Minnesota on Wednesday, the 4th day of December, 1974, at 10:00 a.m., in Room 83, ground floor, State Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes 1974, Section 15.0412 was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose, and to all members of the Minnesota Legislature.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above captioned rules,

NOW, THEREFORE, IT IS ORDERED that the amendments to the rule identified as Rules of the State Department of Agriculture Relating to Standards of Identity for Pickles and Pickled Vegetables, Agr. 4403 are adopted this _____ day of _____ 1975, pursuant to authority vested in me by Minnesota Statutes 1974, Section 15.0412 and 31.10.

STATE OF MINNESOTA

JON WEFALD
COMMISSIONER OF AGRICULTURE

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Paul Strandberg do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Paul Strandberg

Special Assistant Attorney General

Dated: April 7, 1975

Pages 10-24 of hearing transcript contained errors in transcription. Therefore, both versions are in transcript