

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1020

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-13-84
DATE FOR REVIEW 4-20-84
DATE DUE 4-26-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 4-25-84 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 4/13/84 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 4.9.84 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains "small biz" section

✓ Affidavit of Mailing Notice or rulemaking
2.29.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
3.5.84 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

Agency's Findings of Fact

LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains "small biz" section

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO: Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: 04/12/84

FROM: Gerald Heil, Director GH
Planning Division

PHONE: 296-1486

SUBJECT: Review of Amendments to the Rules Governing the Candling and Grading of Eggs (3 MCAR SS 1.0389-1.0400)

The Department of Agriculture adopted the above-mentioned amendments without a public hearing pursuant to Minnesota Statutes, Sections 14.21-14.28 (1982). Enclosed with this memorandum are the documents which are required by 1 MCAR SS 1.203 to be submitted to the Attorney General for review prior to final approval of the rules. A list of the documents is attached for your convenience.

The Department fulfilled the requirements of Laws of Minnesota 1983, Chapter 188, Subdivision 4, by notifying small businesses of the expected impact of the rules. Such notice was given in the Notice of Intent to Adopt Rules Without Public Hearing. The requirements of Subdivision 2 are dealt with in the Statement of Need and Reasonableness.

No written comments were received following the publication of the Rules as Proposed in the State Register. The Department did not receive any requests for a public hearing, nor did any person request to be notified when these documents were submitted to the Attorney General. The Rules as Adopted do not differ from the Rules as Proposed.

If you have questions, please contact me.

GH:cf

Attachment

cc: Jim Nichols, Commissioner
Rollin Dennistoun, Ph.D., Deputy Commissioner
Anne Kanten, Assistant Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes

RECEIVED
APR 12 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

ATTACHMENT A.

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies).

B. Order Adopting the Rule (two copies).

C. Order for Notice of Intent to Adopt Rule Without Public Hearing (one copy).

D. Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

E. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing (one copy).

F. Mailing List Certificate (one copy).

G. Rule as Proposed (one copy).

H. Statement of Need and Reasonableness (one copy).

I. Certificate of Compliance with Rulemaking Procedures (one copy).

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO Jim Nichols, Commissioner
Department of Agriculture

DATE: April 25, 1984

ATTN: Jon Murphy
Special Asst. Attorney General

FROM : Martha J. Casserly
Special Assistant
Attorney General MJC

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Amendments To The Rules of the Department of Agriculture Governing the Candling and Grading of Eggs (MCAR §§ 1.0389 and 1.0400)

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

MJC:cb

AG copy

Department of Agriculture

Adopted Rules Governing Candling and Grading of Eggs

Rules as Adopted

3 MCAR S 1.0389 Definitions.

A.-F. [Unchanged.]

G. Dirty. "Dirty" means an egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

H.-M. [Unchanged.]

3 MCAR S 1.0400 Labeling.

Any dealer exposing or offering eggs for sale to a consumer must give notice of the grade of eggs in the manner set out in this rule.

If eggs are exposed or offered for sale in cartons, bags, or other containers, the cartons, bags, or containers must be plainly and conspicuously printed in letters not smaller than one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there must be a placard among or adjacent to the eggs which states the grade and size of the eggs and is in letters not smaller than one-half inch in height. Grade designations may not be abbreviated. All containers must also include the name and address of the producer, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing must be used.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 25 1984
Joan Anderson Growe
Secretary of State
12:00 PM

APPROVED AS TO FORM AND LEGALITY
April 25 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassely
SPECIAL ASSISTANT ATTORNEY GENERAL

Rules as Proposed

3 MCAR S 1.0389 Definitions.

A.-F. [Unchanged.]

G. ~~Dirties.--"Dirties~~ Dirty. "Dirty" means ~~eggs~~ an egg that has an unbroken shell with adhering dirt or foreign material ~~or~~, prominent stains, or moderate stains covering more than ~~one-fourth~~ 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

H.-M. [Unchanged.]

3 MCAR S 1.0400 Labeling.

Any dealer exposing or offering eggs for sale to a consumer must give notice of the grade of eggs in the manner set out in this rule.

If eggs are exposed or offered for sale in cartons, bags, or other containers, the cartons, bags, or containers must be plainly and conspicuously printed in letters not smaller than one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there must be a placard among or adjacent to the eggs which states the grade and size of the eggs and is in letters not smaller than one-half inch in height. Grade designations may not be abbreviated. All containers must also include the name and address of the producer, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing ~~should~~ must be used.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD431

Agency: Department of Agriculture

Division: Planning Division

Agency Contact: Julie Smendzuik-O'Brien

Rule Numbers: 3 MCAR SS 1.0389; 1.0400

Title: Proposed Rules Governing Grading and Labeling of Eggs

Type of Rules: Permanent

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Craig E. Lindeke
Assistant Revisor
Phone: 296-0946
Date: September 20, 1983

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments To
The Rules of the Department of Agriculture
Governing the Candling and Grading of Eggs
(3 MCAR §§ 1.0389 and 1.0400)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled amendments without a public hearing was published in the State Register on March 5, 1984, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, Section 14.22 on February 29, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these amendments identified as the Amendments Governing the Candling and Grading of Eggs are adopted this 9th day of April, 1984, pursuant to authority vested in me by Minnesota Statutes, Section 29.23 and 29.27.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER
DEPARTMENT OF AGRICULTURE

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Candling and Grading of Eggs (3 MCAR §§ 1.0389 and 1.0400)

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 17th day of February, 1984, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Jim Nichols

COMMISSIONER OF AGRICULTURE

Department of Agriculture

Food Inspection Division

In the Matter of the Proposed Amendments to the Rules Governing Candling and Grading of Eggs (3 MCAR §§ 1.0389 and 1.0400)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Sections 29.23 and 29.27. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes Sections 29.23 and 29.27 (1980) to adopt federal standards for quality, grades and weight for Minnesota eggs moving in interstate commerce, as well as to establish requirements for candling, grading, cleaning, purchasing, and selling eggs for the purpose of preserving and protecting the public health. The proposed amendments to these rules, the adoption of the federal definition of dirty, will finalize and put in place the federal standards adopted by the department's promulgation of 3 MCAR §§ 1.0388 - 1.0404.

The proposed amendments are intended to achieve total consistency with the federal standards as adopted by Minnesota.

The proposed amendments, if adopted, would effectuate these federal standards.

The proposed rules will impact and benefit small business as defined in Laws of Minnesota 1983, chapter 188, section 1, because the enforcement of the federal standard for "dirty" will result in a greater number of eggs being rejected, but at the same time will expand the available market for producers and processors by enabling interstate shipments.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Date: February 17, 1984

Jim Nichols

Commissioner of Agriculture

In the Matter of the Proposed
Amendments to the Rules of the
Department of Agriculture
Governing Candling and Grading of Eggs
(3 MCAR §§ 1.0389 and 1.0400)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joyce Walkosz, being first duly sworn, deposes and says:

That on the 29th day of February, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Joyce Walkosz

Subscribed and sworn to before me
this 29th day of February, 1984.

Diane M. Windham

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Amendments
to the Rules of the Department of Agriculture
Governing Candling and Grading of Eggs
(3 MCAR §§ 1.0389 and 1.0400)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 10:00 a.m., this 29th day of February, 1984.

Gerald F. Hall

the citizens of Polk and Renville Counties, shall be effective retroactive to February 4, 1984, and shall remain in force until such date as the emergency conditions are relieved.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 9th day of February, 1984.



PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.13-14.20 which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 14.29, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture
Food Inspection Division

Notice of Withdrawal of Proposed Rules Governing Grading and Candling of Eggs

Notice is hereby given that the rules proposed and published at *State Register*, Volume 8, Number 27, pages 1561 and 1562 are withdrawn.

Department of Agriculture
Food Inspection Division

Proposed Rules Governing Grading and Candling of Eggs

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Sections 29.23 and 29.27. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes Sections 29.23 and 29.27 (1980) to adopt federal standards for quality, grades and weight for Minnesota eggs moving in interstate commerce, as well as to establish requirements for candling, grading, cleaning, purchasing, and selling eggs for the purpose of preserving and protecting the public health. The proposed amendments to these rules, the adoption of the federal definition of dirty, will finalize and put in place the federal standards adopted by the department's promulgation of 3 MCAR §§ 1.0388-1.0404.

The proposed amendments are intended to achieve total consistency with the federal standards as adopted by Minnesota.

The proposed amendments, if adopted, would effectuate these federal standards.

The proposed rules will impact and benefit small business as defined in Laws of Minnesota 1983, chapter 188, section 1, because the enforcement of the federal standard for "dirty" will result in a greater number of eggs being rejected, but at the same time will expand the available market for producers and processors by enabling interstate shipments.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

February 17, 1984

Jim Nichols
Commissioner of Agriculture

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

Rules as Proposed

3 MCAR § 1.0389 Definitions.

A.-F. [Unchanged.]

G. ~~Dirties.~~ ~~"Dirties~~ Dirty. "Dirty means ~~eggs~~ an egg that has an unbroken shell with adhering dirt or foreign material ~~or~~, prominent stains, or moderate stains covering more than ~~one-fourth~~ 1/32 of the shell surface if localized or 1/16 of the shell surface if scattered.

H.-M. [Unchanged.]

3 MCAR § 1.0400 Labeling.

Any dealer exposing or offering eggs for sale to a consumer must give notice of the grade of eggs in the manner set out in this rule.

If eggs are exposed or offered for sale in cartons, bags, or other containers, the cartons, bags, or containers must be plainly and conspicuously printed in letters not smaller than one-quarter inch in height, or plainly and conspicuously stamped or marked in letters not smaller than one-half inch in height with the exact grade and size. If eggs are offered or exposed for sale in bulk, there must be a placard among or adjacent to the eggs which states the grade and size of the eggs and is in letters not smaller than one-half inch in height. Grade designations may not be abbreviated. All containers must also include the name and address of the producer, processor, or distributor. In the case of the processor or distributor, the words "packed for" or "distributed by" or some equivalent phrasing ~~should~~ must be used.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Agriculture
Dairy Industry Division

Adoption of a Rule Governing Dairy Inspection Fees

The rule proposed and published at *State Register*, Volume 8, Number 20, pages 1185-1186, November 14, 1983 (8 S.R. 1185) is adopted as proposed.

Department of Commerce

Adoption of Rules Relating to Variable Life Insurance

The rules proposed and published at *State Register*, Volume 8, Number 24, pages 1374-1387, December 12, 1983 (8 S.R. 1374) are adopted as proposed.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED	)	
AMENDMENTS TO THE RULES OF THE	)	
DEPARTMENT OF AGRICULTURE GOVERN-	)	STATEMENT OF NEED
ING THE CANDLING AND GRADING OF	)	AND REASONABLENESS
EGGS (3 MCAR SS 1.0389 - 1.0400)	)	

This statement of need and reasonableness addresses the proposed amendments and the impact that these amendments will have on small businesses.

A. Change in the Definition of "Dirty".

3 MCAR S 1.0389 G.

Rules 3 MCAR SS 1.0389 - 1.0400, for which this amendment is proposed, were adopted with the purpose of preserving and protecting the public's health by regulating the grading, candling, cleaning, breaking, buying and selling of eggs and egg products. Before the promulgation of the rules in September, 1982, particularly rule 3 MCAR S 1.0389 entitled, "Definitions," the Department lacked clear definitions for its egg rules. The 1982 amendments created the current regulatory definitions stated in 3 MCAR S 1.0389, A through L, except G. (See Attachment A, Section 2(a).)

The Commissioner, having authority to promulgate rules governing the candling and grading of eggs pursuant to Minnesota Statutes Sections 29.23 and 29.27, elected to adopt the federal standards, effective October, 1981, to meet Minnesota's needs. The federal standards must be adopted by Minnesota, because Minnesota is in the position of being a net exporter of eggs. Thus, in order for Minnesota producers to be able to sell their eggs in other states, the eggs must meet quality standards set by the federal agency which is empowered to establish egg standards for interstate commerce. The federal standards were adopted, in whole, in September, 1982, with the exception of the federal definition for "dirty". That definition for "dirty" was inadvertently omitted from the rules as adopted at that time.

The federal definition of "dirty" is necessary to the implementation of a complete set of rules consistent with current federal standards for the candling and grading of eggs. Furthermore, without rules governing the candling and grading of eggs consistent with, or more stringent than the federal regulations, the U. S. Department of Agriculture inspectors will not inspect the eggs of producers desiring to participate in the interstate market. The result of this would be a substantial reduction in the available markets for eggs produced in excess of Minnesota's consumption capacity.

The amendment is reasonable because without it, or a more restrictive definition of "dirty", rules 3 MCAR SS 1.0389 - 1.0400 are useless. The protection and expectations of consumers will not be fully met and the market availability for processors and producers will shrink considerably. The amendment is further reasonable because it is consistent with the statutory objectives outlined in Minnesota Statutes Section 17.03, Subdivisions 1 and 3, which charge the Commissioner of Agriculture with the duty to develop agricultural industries and cooperate with federal agencies in the development

of agricultural resources in Minnesota.

B. Change "Should" to "Must"

3 MCAR S 1.0400.

This proposed amendment is one of style and form designed to bring these rules (3 MCAR SS 1.0389 - 1.0400) in conformance with Minnesota Statutes Section 14.07 et. seq.

C. Small Business Impact of the Proposed Amendment

As prescribed by Laws of Minnesota 1983, chapter 188, section 1, Subdivisions 1 and 2, the Department has considered the degree of impact the proposed amendments will have on small egg processors and producers, and alternative methods for lessening the impact on these small businesses.

The Department has determined that all small processors and producers will be affected, because implementation of the federal definition of "dirty" will result in additional eggs being rejected. Whether the amount of eggs rejected will be significant in terms of income loss is not known at this time.

In considering the alternative methods of enforcement and compliance required under chapter 188, subd. 2, the Department has concluded that these alternatives are either inapplicable or contrary to the objectives sought by 3 MCAR SS 1.0389 - 1.0400. The Department cannot provide for less stringent compliance or simplification of compliance, as called for in subd. 2(a) and

(c), because before USDA will inspect farms and plants wishing to participate in the federal program, Minnesota must have standards equal to, or more stringent than, the federal regulations. By the same rationale, the exemption of small processors and producers is not a viable alternative under 2(e). The alternative methods called for in 2(b) and (d) are inapplicable, and therefore, were not considered.

The egg production industry as a whole has recognized the need for the adoption of the federal standards and is currently in belief that these standards are in effect as a result of the Department's recent amendment 3 MCAR SS 1.0389 - 1.0400, in September of 1982. Though the full extent of income lost as a result of the proposed amendment cannot be gauged, it is clear that in the absence of the market created by adopting the federal standards, the only market available to Minnesota processors and producers would be within the state. With the current level of production, or an increase therein, the Minnesota market would soon become congested, thereby spawning fierce competition among processors and producers. This occurence would ultimately eliminate many small egg processors and producers. Therefore, upon a careful consideration of the negative and positive effects, the Department has concluded that in the long term small businesses will be benefited by the change proposed.

In the Matter of the Proposed
Amendments to the Rules of the
Department of Agriculture
Governing the Candling and Grading of Eggs
(3 MCAR §§ 1.0389 and 1.0400)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Jon Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jon T Murphy

Special Assistant Attorney General

Date: 4/12/84