

Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : September 30, 1993

To : Maryanne Hruby, Director
LCRAR

From : Carol Milligan *cm*
Agriculture Planning Division

Phone : 296-6906

Subject : **Rule Governing Tom and Jerry Base, Batter and Mix**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for the above-captioned rule. The Notice of Intent to Adopt and the rule will be published in the *State Register* on 10/18/93.

Attachment

**STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE**

IN THE MATTER OF THE)	
PROPOSED RULES OF THE)	
DEPARTMENT OF AGRICULTURE)	
GOVERNING TOM AND JERRY)	STATEMENT OF NEED
BASE, TOM AND JERRY BATTER)	AND REASONABLENESS
AND TOM AND JERRY MIX)	
MINNESOTA RULE PART)	
1555.7411 - 1555.7461)	

I. INTRODUCTION

The subject of this rulemaking is the repeal of the current rule and the adoption by the Minnesota Department of Agriculture (MDA) of a new rule governing Tom and Jerry Base, Tom and Jerry Batter and Tom and Jerry Mix. This rule 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 must conform with those promulgated under federal law. This rule will require no expenditures of public funds.

The Department has determined that the proposed rule is providing a statewide requirement for Tom and Jerry Base, Tom and Jerry Batter and Tom and Jerry Mix. The rule will also maintain Minnesota's requirements in conformity with the Code of Federal Regulations, (CFR's). The Department has determined that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of non-controversial rules, Minnesota Statutes, section 14.21 - 14.28. Accordingly, the rulemaking proceeding on the proposed rule is governed by that statute and no hearing will be conducted unless twenty-five (25) or more persons submit to the Department a written request for such a hearing.

II GENERAL OVERVIEW

The current rule when adopted was considered the safest process at that time to prevent the potential for Salmonella food poisoning from egg products. A food handler could at that time purchase pasteurized eggs but pasteurization controls for destroying Salmonella were not effective. The United States Department of Agriculture decided in 1974 to assume direct control of both the pasteurization and egg surveillance which then made pasteurized eggs a safe ingredient in food. In 1990, the Minnesota Legislature amended the Minnesota

Egg Law to require the use of pasteurized eggs in uncooked or under-cooked foods to assure freedom from Salmonella.

This proposed rule will allow any process including pasteurization of the entire Tom and Jerry Base, Batter and Mix provided the process controls are effective to produce a safe wholesome product when properly refrigerated or maintained frozen. The current rule is restrictive because it allows only for the one process and, therefore is a trade barrier to other safe processes.

In accordance with the requirements found in Minnesota Statute, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date of the proposed rule being published by the State Register.

**III NEED FOR AND REASONABLENESS OF THE PROPOSED RULE
1555.7411 TOM AND JERRY BASE, TOM AND JERRY BATTER, TOM
AND JERRY MIX**

This rule is needed to define a standard for the Tom and Jerry products and the ingredients used to make the food. It is reasonable because it allows a wide assortment of ingredients and is not restrictive.

1555.7421 LABELING

This rule is needed to require labels to be proper and informative to the consumer and is reasonable in that the labels are uniform with federal requirements.

1555.7431 PROCESS

This rule is needed to define the processes necessary to produce a safe and wholesome product and is reasonable because the processes are uniform with federal requirements.

1555.7441 PASTEURIZATION

This rule is needed to allow for pasteurization of the entire base, batter or mix when shell eggs are used in lieu of pasteurized eggs. The rule is reasonable because controls set by the rule will produce a safe wholesome product.

1555.7451 RECORDS

Records are a needed and necessary part of all the processes but especially pasteurization to show that proper time and temperature has been met to assure

destruction of any foodborne pathogens which may have been introduced through use of raw shell eggs.

1555.7461 REFRIGERATION

This rule is needed to require proper refrigeration temperatures for potentially hazardous food products. The rule is reasonable in that it has put safe temperature parameters on Tom and Jerry products to ensure a safe wholesome food for consumers.

IV SMALL BUSINESS IMPACT OF THE REPEAL OF THE CURRENT RULE AND THE ADOPTION OF THE PROPOSED RULES

As prescribed by Minnesota Statute, section 14.115, and 2, the Department has considered the degree of impact the proposed rules will have on small businesses and the alternative methods for lessening that impact.

The Department has determined that small business will not be affected by this rule since these proposed rules allow any safe and suitable process. The proposed rule will provide for process requirements which will be uniform with other states and with federal and will remove any potential trade barriers to products which are now using pasteurized milk and pasteurized eggs in their process.

Since the requirements set by this rule are minimal to the protection of the public health, any alternative method to reduce further impact would be contrary to the objectives set by Minnesota Statute, section 31.11 which requires the Department to publish uniform rules, not inconsistent with law, to protect and preserve the public interest.

9-28-93
Date

Elton R. Redalen
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Commissioner