

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED	)	
RULE OF THE DEPARTMENT OF	)	
AGRICULTURE GOVERNING VACUUM	)	
PROCESSING OF SMOKED FISH.	)	STATEMENT OF NEED
MINNESOTA RULES (1545.3350)	)	AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of a new rule governing requirements for vacuum packaging of smoked fish. The amendment is proposed for adoption pursuant to Minnesota Statutes, section 31.11, which authorizes the MDA to promulgate 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 rule is noncontroversial in nature because it is supported by the industry as common practice, and will bring Minnesota's requirement for the vacuum packaging of 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 14.22 to 14.28. Accordingly, the rulemaking proceedings on the proposed rule are governed by that statute and no hearing will be conducted on the proposed rule unless, on or before February 27, 1985, 25 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 rule was published by the State Register.

II. GENERAL OVERVIEW

Minnesota Rules 1545.3130 - 1545.3330 were adopted on December 20, 1963, as Emergency Rules to provide a wholesome and nutritious food product to the State of Minnesota and other states so that producers, processors, distributors and consumers would be advised of the proper way to handle smoked fish products during processing, distribution and after purchase. On March 5, 1964, after a public hearing, these emergency rules were adopted permanently.

The department recently received a petition from a Minnesota fish processor to revise the present rules relating to fish smoking establishments. Without changing the language of the present rules the adoption of the new rule would allow fish processors to process and sell vacuum packed smoked fish in Minnesota.

The current rules prohibit vacuum packaging of smoked fish in air-tight containers because when they were adopted there was no process procedure available with the built-in safety factors which could prevent the outgrowth and production of toxin from the microorganism *Clostridium botulinum*. However, a decade of research by the National Marine Fisheries Service of the United States Department of Commerce has now provided those criterion which will provide a safe and wholesome product within a vacuum packed or air tight container.

Minnesota Statute 31.002 requires the Department to maintain uniformity with federal regulations when possible in regulating the manufacture, distribution or sale of food in Minnesota. Title 21 of the Code of Federal Regulations does not now nor has it ever prohibited the vacuum packaging of smoked fish or smoked fish products. Vacuum packed smoked fish and vacuum packed smoked fish products are acceptable in 48 of the 50 states. Minnesota's prohibition on processing and selling vacuum packed smoked fish severely limits the ability of Minnesota fish processors to compete in national and international markets.

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

The need for and reasonableness of the proposed rule governing the requirements for the vacuum packaging of smoked fish and fish products follows. (For brevity, the complete content of the rule will not appear, only the number).

#### Minnesota Rule 1545.3350 [Vacuum Packaged Hot processed Smoked or Hot Processed Smoked Flavored Salmon]

The proposed rule is reasonable because it will not change the language of the current rules but will give Minnesota fish processors an additional method to process, package and sell smoked fish. The current rules prohibit the packaging and sale of smoked fish in air-tight packages.

Extensive research has been done for more than a decade by the National Marine Fisheries Service into the process and packaging of fishery products to develop the necessary safety factors required to meet regulatory and consumer confidence in vacuum packaged fish. The method required by this rule will meet the standards developed by the National Marine Fisheries Service.

The adoption of this new rule is necessary to bring Minnesota into conformity with the Code of Federal Regulation which this department has adopted. The CFRs does not now nor has it ever prohibited the vacuum packaging of smoked fish. The department's present rules also serve as an economic trade barrier because they prevent Minnesota fish processors from competing in the markets of 48 other states which do allow the sale of vacuum packaged fish.

#### 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 rule 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 Federal requirements will result in greater competition in a potentially new and larger market both within this state and with other states as well as in international trade. 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 smoked fish regulations without this proposed new rule acts as an economic trade barrier. The proposed amendment would permit a Minnesota fish processor to compete on an equal basis with processors of other states.

The amendment would have a positive benefit to Minnesota fish processors since Minnesota is one of the three major fresh water fish processing states.