

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1136

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 3-7-85
DATE FOR REVIEW 3-11-85
DATE DUE 3-21-85

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

Approved 3-20-85 (CDS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 3-20-85 Revisor approved 3/7/85 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 2.28.85 Date SR. 723.84

✓ 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 statement

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

✓ Mailing list Certificate

✓ Publication in State Register
1.28.85 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 statement

? Petition for Adoption of a Rule SONR says petition was received but it is not included in documents submitted.

N/A 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

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies). Each copy reflects amendments made in the rules since original publication.

B. Order Adopting the Rule (two copies).

C. Notice of Intent to Solicit Outside Opinion.

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

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

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

G. Mailing List Certificate (one copy).

H. Rule as Proposed (one copy).

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

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

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

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

DATE: 02/28/85

FROM: Carol Milligan, CM, Management Analyst
Planning Division

PHONE: 296-6909

SUBJECT: Review of Rule Governing Vacuum Packaging of Smoked Fish
(Minnesota Rule 1545.3350)

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The Department fulfilled the requirements of Minnesota Statutes, section 14.115, subd. 4, by notifying small businesses of the expected impact of the rule. Such notice was given in the Notice of Intent to Adopt Rules Without Public Hearing. The requirements of subd. 2 are dealt with in the Statement of Need and Reasonableness.

The Department did not receive any written comments, requests for a public hearing or requests for notification when these documents were submitted to the Attorney General.

If you have questions, please contact me.

CM:cb

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
Gerald Heil, Director, Planning Division
Tom Masso, Director, Food Inspection Division
Howard Anderson, Assistant Director, Food Inspection Division

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO JIM NICHOLS, Commissioner
Department of Agriculture

DATE: 3-20-85

ATTN: JON K. MURPHY
Special Assistant Attorney General

FROM : LARRY D. STARNS LDS
Special Assistant Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Rules of the Department of Agriculture Governing Vacuum Packaging of Smoked Fish

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.

LDS:sz

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Agriculture

Planning Division

Adopted Rule Governing Vacuum Processing of Smoked Fish

Rules as Adopted

1545.3350 VACUUM PACKAGED HOT PROCESSED SMOKED OR HOT PROCESSED SMOKE-FLAVORED SALMON.

Subpart 1. **Applicability.** Parts 1545.3180 to 1545.3260, 1545.3280, 1545.3290, and 1545.3310 do not apply to air tight or vacuum packaged hot processed smoked or hot processed smoke-flavored salmon which has been processed and packaged in a processing facility in compliance with National Marine Fisheries Service, chapter 2; Code of Federal Regulations, title 50, part 260 and which meets the requirements of this part.

Subp. 2. **Defrosting.** Defrosting of eviscerated frozen salmon must be carried out in:

A. air at 45 degrees Fahrenheit or below until the salmon is completely thawed and the internal temperature of any part of the salmon does not exceed 45 degrees Fahrenheit; or

B. a continuous water flow tank or spray system until the salmon is thawed. Salmon may not be mixed with other species during thawing. Salmon may not remain in the tank for over four hours after they are completely defrosted and the temperature in any part of the salmon may not exceed 60 degrees Fahrenheit during this period. If longer delays are encountered, the salmon must be returned to temperatures of 38 degrees Fahrenheit or below until the salmon is brined.

Subp. 3. **Washing.** Both fresh and thawed salmon must be washed thoroughly with a vigorous chlorinated water spray or in a continuous water flow system prior to brining. The chlorine concentration in the water may not exceed 50 parts per million available chlorine.

Subp. 4. **Dry-salting; brine.** Salmon must be dry-salted at a temperature not to exceed 38 degrees Fahrenheit throughout the salmon, or if brined, the salmon may not be mixed with other

species of fish in the same tank and must be brined so that the temperature of the salmon and the brine does not exceed 60 degrees Fahrenheit at the start of brining.

If the brine time exceeds four hours, the brining must take place in a refrigerated room of 42 degrees Fahrenheit or lower. The salmon may not be held above 38 degrees Fahrenheit for more than 48 hours.

Brines may not be reused unless there is an adequate process, such as ultrafiltration, to return the brine to an acceptable microbiological level. Brine tanks that have been used to brine other species of fish must be cleaned and sanitized before being used to brine salmon.

Subp. 5. **Sodium chloride, sodium nitrite content.** Hot process smoked or hot process smoke-flavored salmon must be brined so that the final sodium nitrite content of the loin muscle of the finished product is not less than 100 parts per million and is not more than 200 parts per million immediately after processing. These same products may not contain less than the minimum concentration of one of the following combinations of water phase salt and sodium nitrite in the deepest part of the loin:

A. 3.5 percent water phase salt with 100 parts per million nitrite.

B. 3.4 percent water phase salt with 120 parts per million nitrite.

C. 3.3 percent water phase salt with 140 parts per million nitrite.

D. 3.2 percent water phase salt with 160 parts per million nitrite.

E. 3.1 percent water phase salt with 180 parts per million nitrite.

Subp. 6. **Temperature monitoring.** Hot process smoked or hot process smoke-flavored salmon must be heated by a controlled heat process that provides a monitoring system, such as calibrated probes or dial thermometers, positioned in as many strategic locations in the oven as necessary to assure that all

products reach the minimum internal temperature.

The temperature monitoring devices must be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Graduations on the temperature monitoring devices may not exceed two degrees Fahrenheit within a range of ten degrees Fahrenheit of the processing temperature.

Each salmon portion must be heated to an internal temperature of 150 degrees Fahrenheit or higher and maintained at 150 degrees Fahrenheit or higher for 30 minutes or longer.

Subp. 7. **Application of smoke.** Liquid smoke, generated smoke, or a combination of liquid smoke and generated smoke must be applied to the entire product. If only liquid smoke is used in the process, it may be applied to the product prior to, at the beginning of, or during the process. Liquid smoke added during the process must be applied before the internal temperature of the product exceeds 125 degrees Fahrenheit. The liquid smoke must be prepared by the aqueous process (U.S. Patent 3,106,473) and have a minimum of the following major constituents in its compositions: ten percent titratable acidity, nine milligrams phenol per gram, 12 grams carbonyls per 100 milliliter. The constituents must be used at concentrations of 50 percent or more.

When only generated smoke is used in the process, dense smoke must be applied to the salmon for at least 90 minutes at the beginning of the process. If a drying cycle is used in the smoking process, the air temperature surrounding the salmon may not exceed 110 degrees Fahrenheit and the time period may not exceed 60 minutes at temperatures between 60 degrees Fahrenheit and 110 degrees Fahrenheit before the application of smoke. If temperatures below 60 degrees Fahrenheit are used, the time period may not exceed six hours. Generated smoke must be produced from burning hardwood. If a combination of liquid smoke and generated smoke is used, the procedures for liquid smoke must be followed and the generated smoke may be applied at

any stage of the process.

Subp. 8. **Cooling; storage and distribution.** The finished product must be cooled to a temperature of 50 degrees Fahrenheit or below within five hours after cooking and further cooled to a temperature of 38 degrees Fahrenheit or below within 12 hours after cooking. The finished product must be maintained at 38 degrees Fahrenheit or lower during all subsequent storage and distribution.

Subp. 9. **Labeling.** Primary packages and master cartons must be clearly marked with a statement to maintain the product below 38 degrees Fahrenheit.. If salmon is frozen, the label must clearly direct users to thaw the salmon at refrigerated temperatures and to store the thawed salmon below 38 degrees Fahrenheit.

Subp. 10. **Analysis.** The finished product must be analyzed chemically with sufficient frequency to assure that the required water-phase salt and sodium nitrite is obtained and the other chemical additives are present at authorized levels. To reduce the possibility of postprocessing contamination with food poisoning bacteria, the product must be vacuum-packaged only within the facility in which it was processed.

Subp. 11. **Methods.** Samples must be analyzed by the procedures described in the 14th edition of Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) (Sidney Williams (ed.), 1984), which is incorporated by reference, or by methods which have been demonstrated to be comparable to the AOAC methods. The publication incorporated in this subpart is available at the Saint Paul Public Library and is not subject to frequent change.

? non-rule

A. Water-phase salt analysis method. Determine sodium chloride (NaCl in the following equation) according to AOAC (14th ed.), sections 18.034 and 18.035.

Determine moisture (H_2O in the following equation) according to AOAC (14th ed.), section 24.003(a).

Calculate water-phase salt as follows:

g NaCl in sample x 100

$$\frac{\text{g NaCl}}{\text{g NaCl} + \text{g } H_2O \text{ in sample}} = \text{percent NaCl in water phase}$$

B. Sodium nitrite analysis method. Determine sodium nitrite content according to AOAC (14th ed.) sections 24.044 and 24.045.

Subp. 12. **Code marks; records.** Permanently legible code marks must be placed on the outer layer of every finished product package and master carton. The marks must identify at least the plant where the product was packed and the date of packing. Records must be maintained at the processing facility for a minimum of six months from the date of processing to provide positive identification of (1) the process procedures, including process time, temperature, and sodium nitrite and water-phase salt levels, used for the manufacture of hot process smoked and hot process smoke-flavored salmon, and (2) the distribution of the finished product.

Subp. 13. **Sale in other containers.** Salmon meeting the requirements of this part may also be packaged, stored, transported, sold, offered, and exposed for sale in containers which are not air-tight or vacuum-packed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 2 0 1985
Joan Anderson Growe
Secretary of State

3:00 PM

APPROVED AS TO LEGALITY
March 20, 1985
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Jerry D. Jarvis
SPECIAL ASSISTANT ATTORNEY GENERAL

Rules as Proposed (all new material)

1545.3350 VACUUM PACKAGED HOT PROCESSED SMOKED OR HOT PROCESSED SMOKE-FLAVORED SALMON.

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B. a continuous water flow tank or spray system until the salmon is thawed. Salmon may not be mixed with other species during thawing. Salmon may not remain in the tank for over four hours after they are completely defrosted and the temperature in any part of the salmon may not exceed 60 degrees Fahrenheit during this period. If longer delays are encountered, the salmon must be returned to temperatures of 38 degrees Fahrenheit or below until the salmon is brined.

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If the brine time exceeds four hours, the brining must take place in a refrigerated room of 42 degrees Fahrenheit or

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

The salmon may not be held above 38 degrees Fahrenheit for more than 48 hours.

Brines may not be reused unless there is an adequate process, such as ultrafiltration, to return the brine to an acceptable microbiological level. Brine tanks that have been used to brine other species of fish must be cleaned and sanitized before being used to brine salmon.

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The temperature monitoring devices must be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Graduations

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

on the temperature monitoring devices may not exceed two degrees Fahrenheit within a range of ten degrees Fahrenheit of the processing temperature.

Each salmon portion must be heated to an internal temperature of 150 degrees Fahrenheit or higher and maintained at 150 degrees Fahrenheit or higher for 30 minutes or longer.

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When only generated smoke is used in the process, dense smoke must be applied to the salmon for at least 90 minutes at the beginning of the process. If a drying cycle is used in the smoking process, the air temperature surrounding the salmon may not exceed 110 degrees Fahrenheit and the time period may not exceed 60 minutes at temperatures between 60 degrees Fahrenheit and 110 degrees Fahrenheit before the application of smoke. If temperatures below 60 degrees Fahrenheit are used, the time period may not exceed six hours. Generated smoke must be produced from burning hardwood. If a combination of liquid smoke and generated smoke is used, the procedures for liquid smoke must be followed and the generated smoke may be applied at any stage of the process.

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APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

after cooking. The finished product must be maintained at 38 degrees Fahrenheit or lower during all subsequent storage and distribution.

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A. Water-phase salt analysis method. Determine sodium chloride (NaCl in the following equation) according to AOAC (14th ed.), sections 18.034 and 18.035.

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Calculate water-phase salt as follows:

$$\frac{\text{g NaCl in sample} \times 100}{\text{g NaCl} + \text{g } H_2O \text{ in sample}} = \text{percent NaCl in water phase}$$

B. Sodium nitrite analysis method. Determine sodium nitrite content according to AOAC (14th ed.) sections 24.044 and 24.045.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Subp. 12. **Code marks; records.** Permanently legible code marks must be placed on the outer layer of every finished product package and master carton. The marks must identify at least the plant where the product was packed and the date of packing. Records must be maintained at the processing facility for a minimum of six months from the date of processing to provide positive identification of (1) the process procedures, including process time, temperature, and sodium nitrite and water-phase salt levels, used for the manufacture of hot process smoked and hot process smoke-flavored salmon, and (2) the distribution of the finished product.

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APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD680

Agency: Department of Agriculture

Division: Planning Division

Agency Contact: Carol Milligan 296-6906

Minnesota Rules: Part 1545.3350

Title: Proposed Rule Governing Vacuum Processing of Smoked Fish

Type of Rules: Permanent

Incorporations by Reference:

Rule Number:	Material Incorporated:
1545.3350, subp. 11	Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), 14th edition, 1984

Steven C. Cross

Revisor of Statutes

Craig E. Lindeke

Senior Assistant Revisor

Phone: 296-0946

Date: January 3, 1985

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing Vacuum Packaging of Smoked Fish
(Minnesota Rule 1545.3350)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rule without a public hearing was published in the State Register on January 28, 1985, 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 January 23, 1985. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than 25 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 rule,

NOW, THEREFORE, IT IS ORDERED that this rule identified as the Rule Governing Vacuum Packaging of Smoked Fish adopted this 28th day of February, 1985, pursuant to authority vested in me by Minnesota Statutes, section 31.11.

STATE OF MINNESOTA

Rollin M Dennistoun

JIM NICHOLS
COMMISSIONER
DEPARTMENT OF AGRICULTURE

Department of Agriculture
Planning Division

Notice of Intent to Solicit Outside Opinion Regarding Amendments to Rules Governing Processing, Labeling, Distribution and Handling of Smoked Fish (Minnesota Rules 1545.3130 - 1545.3330).

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to amend existing rules governing processing, labeling, distribution and handling of smoked fish. The promulgation of these rules is authorized by Minnesota Statutes, section 28A.10, which permits the department to adopt and enforce such rules as are necessary to carry out the provisions of Minnesota Statutes sections 28A.01 - 28A.16.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by August 13, 1984. Any written material received by the Department shall become part of the hearing record.

July 16, 1984

Jim Nichols
Commissioner

Department of Agriculture
Planning Division

Outside Opinion Sought Regarding Amendments to Rules Governing Processing, Labeling, Distribution and Handling of Smoked Fish (Minnesota Rules 1545.3130-1545.3330)

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to amend existing rules governing processing, labeling, distribution and handling of smoked fish. The promulgation of these rules is authorized by Minnesota Statutes, section 28A.10, which permits the department to adopt and enforce such rules as are necessary to carry out the provisions of Minnesota Statutes sections 28A.01-28A.16.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by August 13, 1984. Any written material received by the Department shall become part of the hearing record.

July 16, 1984

Jim Nichols
Commissioner

State Board of Education

Notice of Intent to Fill an Unclassified Managerial Staff Assistant Position by the State Board of Education

The State Board of Education is seeking a qualified individual to provide assistance as described in the statements which follow:

— To monitor and research national developments and issues in public education and prepare summaries, recommendations and possible options for State Board of Education deliberation and consideration. To review and inform the Board about legislative actions and federal developments relating to education.

— To facilitate implementation of State Board of Education resolutions, motions and policies so the Board actions are effectively and efficiently implemented in Minnesota's educational community.

— To attend legislative hearings and provide the State Board of Education with information relative to specific legislation. To follow the progress of selected legislation and report status to State Board of Education and to assist in preparation of documents required for legislative hearings.

— To develop procedural guidelines and promote the State Board of Education's professional interaction with Minnesota's educational organizations so that effective communication networks can be established and maintained for the mutual exchange of pertinent information. To prepare information for dissemination and prepare information summaries for State Board of Education.

— To assist the State Board of Education in fulfilling its legislative responsibility to the Faribault Residential Schools so that the management and education programs of the schools can be continuously reviewed and improved. To establish a procedure for the establishment of a communication network with parent and advisory groups. To continuously review the operation of the communication network to improve operational effectiveness. To review and analyze educational programs operation for programmatic changes which will improve overall operation of the schools and to prepare summaries of needed actions to be taken for State Board of Education approval.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed
Rule of the Department of Agriculture
Governing Vacuum Packaging
of Smoked Fish
(Minnesota Rules 1545.3350)

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 14th day of January, 1985, 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

Commissioner of Agriculture

Department of Agriculture

Food Inspection Division

In the Matter of the Proposed Rule Governing Vacuum Packaging of Smoked Fish (Minnesota Rule 1545.3350).

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 rule without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28 (1982).

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule, and shall have 30 days to do so. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule 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 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. 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).

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

Authority to adopt this rule is contained in Minnesota Statutes, Section 31.11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rule without a public hearing, the proposed rule, 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 rule as adopted, should submit a written statement of such request to Mr. Heil.

The Department is authorized by Minnesota Statutes, Section 31.11, to adopt rules to protect public health, and prevent fraud and deception in the manufacture, use, and sale of food. The proposed rule will allow vacuum packaging of smoked fish according to methods developed and tested by the National Marine Fisheries Service of the U.S. Department of Commerce. Adoption of the proposed rule will also bring Minnesota into conformity with the Code of Federal Regulations which does not prohibit vacuum packaging of smoked fish.

The proposed rule will have a positive impact on small business as defined in Minnesota Statutes, Section 14.115. Minnesota is one of three major fresh water fish processing states, but the current rules prohibiting vacuum packaging of smoked fish act as a trade barrier because 48 of 50 states allow vacuum packaging of smoked fish. Adoption of this rule will result in potentially new and larger markets in Minnesota, other states, and international trade.

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

STATE OF MINNESOTA

Date: January 14, 1985

Commissioner of Agriculture

In the Matter of the Proposed
Rule of the Department of Agriculture
Governing Vacuum Packaging
of Smoked Fish
(Minnesota Rules 1545.3350)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being first duly sworn, deposes and says:

That on the 23rd day of January, 1985, 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.

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

Marie Skerbitz

Subscribed and sworn to before me
this 23rd day of January, 1985.

Diane M. Windham

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Rule of the Department of
Agriculture Governing Vacuum Packaging
of Smoked Fish
(Minnesota Rules 1545.3350)

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 23rd day of January, 1985.

Carol Milligan

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture Planning Division

Proposed Rule Governing Vacuum Processing of Smoked Fish

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 rule without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.22-14.28 (1982).

Persons interested in this rule are encouraged to submit comment in support of or in opposition to the proposed rule, and shall have 30 days to do so. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rule 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 25 or more persons submit written requests for a public hearing on the proposed rule within the 30-day comment period, a public hearing will not be held. Persons requesting a public hearing should state their name and address, and are encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. 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).

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

Authority to adopt this rule is contained in Minnesota Statutes, Section 31.11. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rule without a public hearing, the proposed rule, 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 rule as adopted, should submit a written statement of such request to Mr. Heil.

The Department is authorized by Minnesota Statutes, Section 31.11, to adopt rules to protect public health, and prevent fraud and deception in the manufacture, use, and sale of food. The proposed rule will allow vacuum packaging of smoked fish according to methods developed and tested by the National Marine Fisheries Service of the U.S. Department of Commerce. Adoption of the proposed rule will also bring Minnesota into conformity with the Code of Federal Regulations which does not prohibit vacuum packaging of smoked fish.

The proposed rule will have a positive impact on small business as defined in Minnesota Statutes, Section 14.115. Minnesota is one of three major fresh water fish processing states, but the current rules prohibiting vacuum packaging of smoked fish act as a trade barrier because 48 of 50 states allow vacuum packaging of smoked fish. Adoption of this rule will result in potentially new and larger markets in Minnesota, other states, and international trade.

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

January 14, 1985

Rollin M. Dennistown
Commissioner of Agriculture

Rules as Proposed (all new material)

1545.3350 VACUUM PACKAGED HOT PROCESSED SMOKED OR HOT PROCESSED SMOKE-FLAVORED SALMON.

Subpart 1. Applicability. Parts 1545.3180 to 1545.3260, 1545.3280, 1545.3290, and 1545.3310 do not apply to air tight or vacuum packaged hot processed smoked or hot processed smoke-flavored salmon which has been processed and packaged in a processing facility in compliance with National Marine Fisheries Service, chapter 2; Code of Federal Regulations, title 50, part 260 and which meets the requirements of this part.

Subp. 2. Defrosting. Defrosting of eviscerated frozen salmon must be carried out in:

A. air at 45 degrees Fahrenheit or below until the salmon is completely thawed and the internal temperature of any part of the salmon does not exceed 45 degrees Fahrenheit; or

B. a continuous water flow tank or spray system until the salmon is thawed. Salmon may not be mixed with other species during thawing. Salmon may not remain in the tank for over four hours after they are completely defrosted and the temperature in any part of the salmon may not exceed 60 degrees Fahrenheit during this period. If longer delays are encountered, the salmon must be returned to temperatures of 38 degrees Fahrenheit or below until the salmon is brined.

Subp. 3. Washing. Both fresh and thawed salmon must be washed thoroughly with a vigorous chlorinated water spray or in a continuous water flow system prior to brining. The chlorine concentration in the water may not exceed 50 parts per million available chlorine.

Subp. 4. Dry-salting; brine. Salmon must be dry-salted at a temperature not to exceed 38 degrees Fahrenheit throughout the salmon, or if brined, the salmon may not be mixed with other species of fish in the same tank and must be brined so that the temperature of the salmon and the brine does not exceed 60 degrees Fahrenheit at the start of brining.

If the brine time exceeds four hours, the brining must take place in a refrigerated room of 42 degrees Fahrenheit or lower. The salmon may not be held above 38 degrees Fahrenheit for more than 48 hours.

Brines may not be reused unless there is an adequate process, such as ultrafiltration, to return the brine to an acceptable microbiological level. Brine tanks that have been used to brine other species of fish must be cleaned and sanitized before being used to brine salmon.

Subp. 5. Sodium chloride, sodium nitrite content. Hot process smoked or hot process smoke-flavored salmon must be brined so that the final sodium nitrite content of the loin muscle of the finished product is not less than 100 parts per million and is not more than 200 parts per million immediately after processing. These same products may not contain less than the minimum concentration of one of the following combinations of water phase salt and sodium nitrite in the deepest part of the loin:

A. 3.5 percent water phase salt with 100 parts per million nitrite.

B. 3.4 percent water phase salt with 120 parts per million nitrite.

C. 3.3 percent water phase salt with 140 parts per million nitrite.

D. 3.2 percent water phase salt with 160 parts per million nitrite.

E. 3.1 percent water phase salt with 180 parts per million nitrite.

Subp. 6. Temperature monitoring. Hot process smoked or hot process smoke-flavored salmon must be heated by a controlled heat process that provides a monitoring system, such as calibrated probes or dial thermometers, positioned in as many strategic locations in the oven as necessary to assure that all products reach the minimum internal temperature.

The temperature monitoring devices must be tested for accuracy against a known accurate standard thermometer upon installation and at least once a year thereafter, or more frequently if necessary, to ensure their accuracy. Graduations on the

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.

temperature monitoring devices may not exceed two degrees Fahrenheit within a range of ten degrees Fahrenheit of the processing temperature.

Each salmon portion must be heated to an internal temperature of 150 degrees Fahrenheit or higher and maintained at 150 degrees Fahrenheit or higher for 30 minutes or longer.

Subp. 7. Application of smoke. Liquid smoke, generated smoke, or a combination of liquid smoke and generated smoke must be applied to the entire product. If only liquid smoke is used in the process, it may be applied to the product prior to, at the beginning of, or during the process. Liquid smoke added during the process must be applied before the internal temperature of the product exceeds 125 degrees Fahrenheit. The liquid smoke must be prepared by the aqueous process (U.S. Patent 3,106,473) and have a minimum of the following major constituents in its compositions: ten percent titratable acidity, nine milligrans phenol per gram, 12 grams carbonyls per 100 milliliter. The constituents must be used at concentrations of 50 percent or more.

When only generated smoke is used in the process, dense smoke must be applied to the salmon for at least 90 minutes at the beginning of the process. If a drying cycle is used in the smoking process, the air temperature surrounding the salmon may not exceed 110 degrees Fahrenheit and the time period may not exceed 60 minutes at temperatures between 60 degrees Fahrenheit and 110 degrees Fahrenheit before the application of smoke. If temperatures below 60 degrees Fahrenheit are used, the time period may not exceed six hours. Generated smoke must be produced from burning hardwood. If a combination of liquid smoke and generated smoke is used, the procedures for liquid smoke must be followed and the generated smoke may be applied at any stage of the process.

Subp. 8. Cooling; storage and distribution. The finished product must be cooled to a temperature of 50 degrees Fahrenheit or below within five hours after cooking and further cooled to a temperature of 38 degrees Fahrenheit or below within 12 hours after cooking. The finished product must be maintained at 38 degrees Fahrenheit or lower during all subsequent storage and distribution.

Subp. 9. Labeling. Primary packages and master cartons must be clearly marked with a statement to maintain the product below 38 degrees Fahrenheit. If salmon is frozen, the label must clearly direct users to thaw the salmon at refrigerated temperatures and to store the thawed salmon below 38 degrees Fahrenheit.

Subp. 10. Analysis. The finished product must be analyzed chemically with sufficient frequency to assure that the required water-phase salt and sodium nitrite is obtained and the other chemical additives are present at authorized levels. To reduce the possibility of postprocessing contamination with food poisoning bacteria, the product must be vacuum-packaged only within the facility in which it was processed.

Subp. 11. Methods. Samples must be analyzed by the procedures described in the 14th edition of Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) (Sidney Williams (ed.), 1984), which is incorporated by reference, or by methods which have been demonstrated to be comparable to the AOAC methods. The publication incorporated in this subpart is available at the Saint Paul Public Library and is not subject to frequent change.

A. Water-phase salt analysis method. Determine sodium chloride (NaCl in the following equation) according to AOAC (14th ed.), sections 18.034 and 18.035.

Determine moisture (H_2O in the following equation) according to AOAC (14th ed.), section 24.003(a).

Calculate water-phase salt as follows:

$$\frac{\text{g NaCl in sample} \times 100}{\text{g NaCl} + \text{g } H_2O \text{ in sample}} = \text{percent NaCl in water phase}$$

B. Sodium nitrite analysis method. Determine sodium nitrite content according to AOAC (14th ed.) sections 24.044 and 24.045.

Subp. 12. Code marks; records. Permanently legible code marks must be placed on the outer layer of every finished product package and master carton. The marks must identify at least the plant where the product was packed and the date of packing. Records must be maintained at the processing facility for a minimum of six months from the date of processing to provide positive identification of (1) the process procedures, including process time, temperature, and sodium nitrite and water-phase salt levels, used for the manufacture of hot process smoked and hot process smoke-flavored salmon, and (2) the distribution of the finished product.

Subp. 13. Sale in other containers. Salmon meeting the requirements of this part may also be packaged, stored, transported, sold, offered, and exposed for sale in containers which are not air-tight or vacuum-packed.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

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

In the Matter of the Proposed
Rule of the Department of
Agriculture Governing
Vacuum Packaging of Smoked Fish
(Minnesota Rule 1545.3350)

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Jon Murphy, do hereby declare that I have examined the rule 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.

Special Assistant Attorney General

Date: 3/1/85