



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: February 9, 2017

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *B. Brancel* for
Steve Ingham, Administrator, Division of Food and Recreational Safety *Steve Ingham*

SUBJECT: **ATCP 70/87 Maple Syrup Grading Standards and Processing; Emergency Rule Rulemaking Scope Statement**

PRESENTED BY: Steve Ingham, Division of Food and Recreational Safety

REQUESTED ACTION:

At the February 16, 2017, Board meeting, the Department of Agriculture, Trade and Consumer Protection (“Department”) will ask the Department Board (“Board”) to approve a “scope statement” (copy attached) for an emergency rule to implement changes to current Department rules related to maple syrup grading and processing. The Department is currently in the final stages of promulgating the permanent rule, however the permanent rule will not be finalized in time for the 2017 maple syrup season. The Department proposes adopting the proposed permanent rule, with one modification, as an emergency rule so that it may become effective immediately, allowing Wisconsin’s maple syrup producers to take advantage this season of modernized maple syrup grading and other provisions that will benefit the industry.

BACKGROUND:

At the November 17, 2016, Board meeting, the Board approved a Final Draft of a permanent rule related to maple syrup grading and processing. The final proposed rule is currently under legislative review and, if approved by the legislature, will not go into effect in time for the 2017 maple syrup season. If the Board approves this scope statement, the Department anticipates adopting the proposed permanent rule as an emergency rule, including provisions to modernize Wisconsin’s outdated maple syrup grade standards, revising and modernizing requirements for maple syrup facilities, establishing requirements that will allow the production and sale of a range of new products related to maple syrup, and make other changes included in the permanent rule to modernize Wisconsin’s maple syrup regulations.

Wisconsin ranks fourth in the nation for maple syrup production, producing approximately 200,000 gallons of maple syrup valued at \$7,000,000 each year. This emergency rule will bring Wisconsin’s maple syrup grading regulations into alignment with the 2015 United States Standards for Grades of Maple Syrup. The federal standards replace the previous federal grading standards with new color and flavor descriptors, consistent with international maple syrup grading standards. Under the federal standards, certain dark maple syrup that

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previously could only be sold as manufacturing grade may now be sold directly to consumers as Grade A syrup, if the syrup is free from damage and is sold in specified-size containers.

The Department also anticipates adopting provisions included in the proposed permanent rule that will differentiate stringent general requirements for food processing facilities from specific requirements for those facilities in which the only activity is the concentration of sap, reducing the need for maple syrup producers to meet potentially burdensome requirements that are unnecessary for ensuring the safe production of maple syrup and maple syrup products.

Finally, the Department plans to incorporate new terminology and processing requirements for a range of new products related to maple syrup, such as non- or partially-concentrated maple sap, and water removed from maple sap by reverse osmosis.

Adopting the standards as part of an emergency rule will allow Wisconsin's maple syrup producers to benefit from proposed rule changes this season, improving their ability to sell maple syrup in interstate and international commerce and to enhance their ability to develop new maple syrup products. Wisconsin's maple syrup producers' financial success is highly concentrated in a short tapping, processing, and packaging season—often only three or four weeks long—which will begin soon. This emergency rule is essential for protecting the financial welfare of Wisconsin's maple syrup producers.

NEXT STEPS:

A scope statement spells out the general purpose and scope of a proposed rule. The Department may not begin drafting a proposed rule (including an emergency rule) until the Governor approves a scope statement for that rule as required under Wis. Stats. § 227.135(2). This scope statement was approved by the Governor on February 2, 2017. Wisconsin statutes also require the Board to approve a scope statement before the Department can begin to draft an emergency rule. The Department is required to publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. The Department has filed the attached scope statement with the Legislative Reference Bureau for publication and with DOA as required.

STATEMENT OF SCOPE

Department of Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Chs. ATCP 70 and 87, Wis. Adm. Code (Existing)

Relating to: Maple Syrup Processing and Grading Standards

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

The Department is currently in the final stages of promulgating a permanent rule that will harmonize Wisconsin's outdated maple syrup grade standards with new standards recently adopted by the federal government and several other leading maple syrup states. The proposed permanent rule will clarify food processing plant requirements for maple syrup production facilities and allow Wisconsin maple syrup producers to develop new maple syrup products. The rule revision was developed in consultation with Wisconsin's maple syrup industry and is strongly supported by Wisconsin maple syrup producers. The permanent rule will not be finalized in time for the 2017 maple syrup season.

Failing to implement the standards, even for one season, will negatively impact Wisconsin's \$7,000,000 maple syrup industry. Failure to implement the new standards for the 2017 season will prevent Wisconsin producers from competing under the same rules recently adopted by their competition in other states and internationally.

Failing to adopt this emergency rule will also mean that Wisconsin's producers will operate under standards that classify what has recently become a popular maple syrup product as "manufacturing grade," diminishing its value, and reducing the potential income of Wisconsin's maple syrup producers. Consumer tastes for new and different flavors are reflected in the growing popularity of darker-colored, stronger flavored maple syrup which is currently classified as manufacturing grade under Wisconsin's current standards. By creating a Grade A option for this syrup, consistent with standards adopted in other states, the new standards will remove a grading stigma against this increasingly popular product.

In today's marketplace, many consumers care about a food's origin and prefer locally produced items. They also seek accurate descriptions of the products they purchase. Immediate implementation of the new Wisconsin maple syrup grade standards allows maple syrup producers to present the Wisconsin "brand" and descriptive color and flavor information to consumers in the same format as available to maple syrup producers in competing states.

Wisconsin's maple syrup producers' financial success is highly concentrated in a short tapping, processing, and packaging season – often only three or four weeks long – which will begin shortly. This emergency rule is essential for protecting the financial welfare of Wisconsin's maple syrup producers.

2. Detailed description of the objective of the proposed rule:

The primary objectives of this proposed rule are to modernize grade standards to improve Wisconsin's maple syrup producers' ability to sell maple syrup products in interstate and international commerce, to allow Wisconsin maple syrup producers to develop new maple syrup products, and to develop processing plant requirements specifically designed for maple syrup facilities.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Wisconsin's maple syrup grade standards are found in ss. ATCP 87.11 to 87.14 of subch. II of ATCP 87, "Honey and Maple Syrup". Sections ATCP 87.11, 87.12, and 87.13 establish standards for "Wisconsin fancy", "Wisconsin grade A," and "Wisconsin manufacturer's grade", respectively. Section ATCP 87.14 establishes color standards used to determine each grade. Wisconsin's maple syrup grade standards have remained essentially unchanged since 1956, with s. ATCP 87.14 referencing color standards for maple syrup established in 1950.

Wisconsin maple syrup producers who sell their products directly to consumers and who do no additional food processing are exempt from holding a retail food establishment license under s. 97.30 (2)(b)1.b., Stats. Maple syrup producers who wholesale their product are required to hold a food processing plant license, although some exemptions exist, under s. ATCP 70.03 (7)(e). In maple syrup production and packaging facilities licensed as food processing plants, Wisconsin currently enforces its general food processing plant regulations.

Consistent with the proposed permanent rule, the Department proposes that the emergency rule adopt the following policies:

- 1) Modernize Wisconsin's maple syrup grade standards. The USDA's Agricultural Marketing Service ("USDA-AMS") adopted new maple syrup grade standards in 2015. The changes included upgrading USDA-AMS Grade A color classes so that they are based on spectrophotometric analysis and replacing the Grade B syrup designation with a Processing Grade designation. The new USDA-AMS standards have already been adopted by Vermont, New Hampshire, New York, and Maine. The Department plans to replace existing Wisconsin maple syrup grade standards, which were last adopted in 1980, with those recently developed by the USDA-AMS. Doing so will ensure that Wisconsin's maple syrup industry remains competitive.
- 2) Revise and modernize requirements for maple syrup facilities. Some maple syrup producers who sell their products directly to consumers are exempt from holding a retail food establishment license. However, maple syrup producers who wholesale their product are required to hold a general food processing plant license (although some exemptions exist). The proposed rule will differentiate stringent general requirements for food processing facilities from specific requirements for those facilities in which the only activity is the concentration of sap, reducing the need for maple syrup producers to meet potentially burdensome requirements that are unnecessary for ensuring the safe production of maple syrup and maple syrup products.
- 3) Establish requirements that will allow production and sale of a range of new products related to maple syrup. The Department plans to incorporate new terminology and processing

requirements for a range of new products related to maple syrup, such as non- or partially-concentrated maple sap, and water removed from maple sap by reverse osmosis.

4) Other changes as needed to modernize the rule and improve the marketability of Wisconsin's maple syrup products.

Without this rule revision, Wisconsin's grade standards will remain outdated and not consistent with international and national maple syrup grade standards used by producers in other states. Wisconsin maple syrup producers will not be able to produce new maple syrup products, such as maple-derived water. Under the status quo, producers may be expected to meet general requirements established for food processing plants rather than requirements more specifically developed for the unique characteristics of a "sugar house" facility used only to concentrate maple sap.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The Department has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The Department has specific authority to adopt rules related to food grade standards in s. 93.09 (1), Stats. The Department also has general authority under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. The Department has specific authority to promulgate rules related to food processors in s. 97.29 (5), Stats.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

This emergency rule will take approximately 20 hours of staff time to develop.

6. List with description of all entities that may be affected by the proposed rule:

This rule will affect Wisconsin maple syrup producers who wish to grade their product. The rule will also help producers market their products in interstate and international commerce and will allow Wisconsin's maple syrup producers to develop and market new products. It will reduce the potential regulatory burden of meeting general food processing plant requirements that are unnecessary for ensuring the safe production of maple syrup and maple syrup products. It will help consumers of Wisconsin maple syrup to more easily compare and choose the maple syrup product they prefer.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Businesses that only harvest maple sap are not subject to federal food safety rules, but businesses that convert the sap to maple syrup or any other food are considered "facilities", subject to the Food Safety Modernization Act and the rules that implement it. There is a federal standard of identity for maple syrup under 21 CFR 168.140, and maple syrup producers involved in interstate commerce must follow Good Manufacturing Practices as outlined in 21 CFR 117.

This rule is expected to bring Wisconsin's maple syrup grading regulations into alignment with the recently adopted United States Standards for Grades of Maple Syrup. The federal standards replace the previous federal grading standards with new color and flavor descriptors, consistent with international maple syrup grading standards. Certain dark maple syrup which previously could only be sold for further processing may now be sold directly to consumers as Grade A syrup, if the syrup is free from damage and is sold in specified-size containers.

Wisconsin's current maple syrup grading standards differ from the new federal standards in several ways. The federal grading categories include four new color and flavor classes of Grade A syrup. Wisconsin's grading standards are also based on color and flavor, as well as the clarity of the syrup, but only include three classifications. Unlike the federal standards for Processing Grade syrup, Wisconsin's manufacturer's grade maple syrup is based on color, flavor, and level of sediment in the syrup. Wisconsin's standards still rely on "permanent glass color standards for maple syrup" established in 1950, while the federal standards replace this method with an approach that measures the percent of light transmission through the syrup as measured with a spectrophotometer, or a method yielding equivalent results. The Department intends to adopt the voluntary federal grade standards for maple syrup, with only minor modifications.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

DATCP expects the proposed emergency rule to have only a positive economic impact on Wisconsin's maple syrup industry. Use of a common, international grading system will make it easier for Wisconsin's maple syrup industry to sell their product in interstate and international commerce. It will open a new market by allowing Wisconsin's maple syrup producers to sell dark maple syrup, which would previously have been graded only for manufacturing uses, to be sold graded at retail, if the syrup meets other Grade A and container size standards. It may also open markets for new products related to maple syrup production.

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Department Head or Authorized Signature


Date Submitted