



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: September 13, 2011

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
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The Honorable Jeff Fitzgerald
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Wisconsin Certified Honey and the Sale of Products Represented as Honey (Clearinghouse Rule #11-038)

Introduction

The Department of Agriculture, Trade and Consumer Protection ("DATCP") is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

This rule prohibits sellers from misrepresenting adulterated or non-honey products as "honey and creates a voluntary program under which qualifying Wisconsin honey producers may sell their honey as "Wisconsin certified honey."

Background

Wisconsin ranked 8th among the states in honey production in 2010 (total Wisconsin production increased by 15% compared to 2009). Wisconsin's 2010 honey crop had an estimated value of \$7.27 million. There are approximately 900 honey producers in the state.

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This rule prohibits sellers from misrepresenting adulterated or non-honey products as “honey.” Some products sold as “honey” have been found to contain non-honey ingredients such as rice syrup, high fructose corn syrup and other sweeteners. Dangerous contaminants such as the antibiotic chloramphenicol have also been detected in samples of honey imported from foreign countries. Approximately 2/3 of the honey consumed in the United States is imported from other countries.

This rule also creates a voluntary program under which qualifying Wisconsin honey producers may sell their honey as “Wisconsin certified honey.”

Rule Content

General

This rule does all of the following:

- Renumbers the current ch. ATCP 157 (Honey and Maple Syrup) as ch. ATCP 87.
- Creates a “honey standard” (see below).
- Creates a “Wisconsin certified honey” program (see below).

“Honey Standard”

This rule creates a “honey standard,” in order to prevent the sale of adulterated or non-honey products as “honey.” This standard conforms to the standard contained in the *Codex Alimentarius* adopted by the United Nations Food and Agriculture Organization and the World Health Organization.

“Wisconsin Certified Honey” Program

Under this rule:

- No person may represent a product as “Wisconsin certified honey” unless the product meets all of the following requirements:
 - It complies with the honey standard under this rule.
 - It was collected from honeybee hives in this state.
 - Its producer holds a valid biennial approval from DATCP (see below).
- A honey producer who wishes to sell “Wisconsin certified honey” may apply for biennial DATCP approval. A biennial approval expires on December 31 in odd-numbered years. A biennial application must include all of the following:

- A statement by the applicant certifying that all honey which the applicant proposes to sell or distribute as “Wisconsin certified honey” will meet all of the following requirements:
 - * It will be collected from honeybee hives in this state.
 - * It will comply with the honey standard in this rule.
- A summary of laboratory test results and the methods used (for moisture, fructose and glucose content, sucrose content, and internal stable carbon isotope ratio analysis) to document that the honey complies with the standard in this rule. Testing must be performed at a commercial laboratory not affiliated with the applicant on a representative sample of honey using methods established by AOAC International or other methods approved by the department.
- A biennial payment of \$50.
- DATCP must grant or deny an application in writing, within 30 days after DATCP receives a complete application. If DATCP denies an application, it must specify the reasons for the denial.

Public Hearings

DATCP held two public hearings on the original rule proposal as listed below:

- July 25, 2011 in Madison
- July 28, 2011 in Stevens Point

DATCP accepted written comments until August 11, 2011. A total of thirteen people attended and registered at the two hearings. Three people attended both hearings. (See summary in Appendix A.) We also received 16 written comments, with one person submitting two comments. (See summary in Appendix B.)

Twenty-four of the 29 comments (82.7%) expressed support for the goals of Wis. Act 169. Nine comments (31%) expressed support specifically for AB575 and Wis. Act 169, with 15 comments (51.7%) supporting the rule or the goals of the rule. Three comments (10.3%) indicated they favored part and opposed part of the rule and two comments (6.9%) expressed neither support nor opposition to the rule. Ten comments (34.5%) expressed concern about the cost of certification.

***DATCP's Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments***

2009 Wis. Act 169 requires DATCP to establish standards for products sold as honey and methods private laboratories must use to test samples submitted by honey producers. The standards must be consistent with the standards for honey under the *Codex Alimentarius* of the Food and Agriculture Organization of the United Nations and the World Health Organization. The hearing draft required producers to submit a sample of their honey to a private laboratory for moisture, fructose and glucose, and sucrose content testing. One honey producer testified that the proposed tests were insufficient for determining the authenticity of honey. Further research found that the tests for fructose and glucose and sucrose content may not detect the presence of corn syrup, which is commonly used to adulterate honey. To address this issue, the final draft rule requires Internal Stable Carbon Isotope Ratio Analysis (ISCIRA) testing. ISCIRA is an effective test for determining whether honey contains corn syrup.

Many of the people who testified or submitted written comments were concerned about testing and approval costs. They believed that the costs associated with the rule could make it difficult for small producers to seek certification of their honey. To minimize costs, DATCP carefully considered the range of tests identified in the *Codex* and required only those tests that were necessary for proving the authenticity of honey. In addition, the final draft rule requires approval every two years rather than the annual requirement included in the hearing draft, which will reduce the cost by half.

The proposed rule also required testing to be completed using methods prescribed in the *Codex*. However, further research revealed that some of the methodologies listed in the *Codex* were outdated and not currently used by laboratories. The final draft rule requires laboratories to use methods identified in the Official Methods of Analysis of the AOAC International or other methods approved by the department. The rule also clarifies that the laboratory used for testing must be a commercial laboratory not affiliated with the applicant.

The rule reorganizes the definitions in s. ATCP 87.01 so that they are in alphabetical order as suggested by the Rules Clearinghouse. The rule also incorporates technical changes identified in the Rules Clearinghouse report.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. DATCP estimates that approximately 50 honey producers will apply in each biennial period for DATCP approval to sell their honey as “Wisconsin certified honey.” Participating producers must pay a \$50 fee biennially, which will cover a portion of DATCP’s costs. DATCP will absorb any remaining costs (including any costs to investigate the sale of adulterated or misbranded honey) with current budget and staff. This rule will have no fiscal effect on local governments. A complete *fiscal estimate* is attached.

Business Impact

This rule will prohibit the fraudulent sale of adulterated or non-honey products as “honey.” The prohibition will benefit honest producers and sellers of honey. This rule makes no exemption for small businesses, because small businesses as well as large businesses must refrain from fraudulent practices.

This rule also creates a “Wisconsin certified honey” program. Under this program, a honey producer may voluntarily apply to DATCP for biennial approval to sell honey as “Wisconsin certified honey” (DATCP approval is not required to sell honey, unless the honey is represented as “Wisconsin certified honey”). “Wisconsin certified honey” must be collected from hives in this state, and must comply with the honey standard in this rule. The producer must biennially submit a summary of lab test results and the methods used to obtain the results to document compliance with the honey standard. There is a biennial fee of \$50.

DATCP estimates that 50 of the 900 honey producers in Wisconsin will apply for biennial approval to sell their honey as “Wisconsin certified honey.” Most, if not all, of those producers are “small businesses.” Participating producers will pay for biennial lab testing costing approximately \$250 and must pay a \$50 biennial fee to DATCP. However, participation is voluntary and there will not be a significant financial impact on participating producers. A complete *business impact analysis* is attached.

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

Federal Programs

There are no federal regulations related to this rule.

Surrounding State Programs

There are no similar programs in surrounding states.

Data and Analytical Methodologies

To develop this rule, DATCP worked with the Wisconsin Honey Producers Association, Inc., and collected information from food laboratories about testing methodologies. Testing methodologies prescribed by this rule are those published by AOAC International.

Standards Incorporated by Reference

This rule incorporates, by reference, the *Codex Alimentarius* number 12-1981 (revised 2001), adopted by the United Nations food and agriculture organization and by the World Health Organization. The rule also incorporates, by reference, the “Official Methods of Analysis of AOAC International”, 18th Edition, Revision 4 (2011). Consent has been requested from the Attorney General to incorporate these standards by reference. A copy of these documents will be kept on file with DATCP and the legislative reference bureau. The *Codex Alimentarius* is also available in electronic format at www.codexalimentarius.net/download/standards/310/cxs012e.pdf.