

Clearinghouse Rule 11-038

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DATCP Docket No. 10-R-03
Rules Clearinghouse No. _____

Proposed Hearing Draft
April 27, 2011

PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION ADOPTING RULES

3 The Wisconsin department of agriculture, trade and consumer protection proposes the following
4 rule *to renumber* ch. ATCP 157; and *to create* ATCP 87.01(13), 87.015 and 87.017; *relating to*
5 Wisconsin certified honey and the sale of products represented as honey.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

This rule implements 2009 Wis. Act 169, which directs the department of agriculture, trade and consumer protection (DATCP) to promulgate rules related to Wisconsin certified honey and the sale of products represented as honey.

Statutes Interpreted

Statutes Interpreted: ss. 93.06(1m) and (1p), 97.09(4) and 100.187, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.09(4) and 100.187, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 93.06(1m) and (1p), Stats., to evaluate farm products upon request for certification purposes, and to charge a fee to cover the cost of the service. DATCP 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. DATCP also has specific authority, under s. 100.187, Stats, (created by 2009 Wis. Act 169), to promulgate rules related to Wisconsin certified honey and the sale of products represented as honey.

Related Statutes and Rules

Section 97.09, Stats., currently incorporates federal food standards of identity by reference; however, there is currently no federal standard of identity for honey. Section 97.10, Stats., prohibits the sale of adulterated or misbranded food as defined in ss. 97.02 and 97.03, Stats., including food whose identity is misrepresented. Section 100.183, Stats., prohibits deceptive advertising of food.

Plain Language Analysis

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.

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 "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 standard of identity for "honey" (see below).
- Creates a "Wisconsin certified honey" program (see below).

Standard of Identity for "Honey"

This rule creates a standard of identity for "honey," in order to prevent the sale of adulterated or non-honey products as "honey." The standard of identity 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 “Wisconsin certified honey” unless the product meets all of the following requirements:
 - It complies with the honey standard of identity under this rule.
 - It was collected from honeybee hives in this state.
 - Its producer holds a valid annual approval from DATCP (see below).
- A honey producer who wishes to sell “Wisconsin certified honey” may apply for annual DATCP approval (an annual approval expires on December 31). An annual application must include all of the following:
 - A statement 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 of identity in this rule.
 - Laboratory test results (moisture, fructose and glucose, and sucrose) to document that the honey complies with the standard of identity in this rule. Testing must be performed on a representative sample of honey using methods prescribed in the *Codex Alimentarius*.
 - A fee 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.

Fiscal Impact

This rule will not have a significant fiscal impact on state government. DATCP estimates that approximately 50 honey producers will apply each year for DATCP approval to sell their honey as “Wisconsin certified honey.” Participating producers must pay a \$50 annual fee, 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 approval to sell honey as “Wisconsin certified honey” (DATCP approval is not required to sell honey, unless the honey is represented “Wisconsin certified honey”). “Wisconsin certified honey” must be collected from hives in this state, and must comply with the honey standard of identity in this rule. The producer must submit annual lab test results to document compliance with the standard of identity. There is an annual fee of \$50.

DATCP estimates that 50 of the 900 honey producers in Wisconsin will apply each year for approval to sell their honey as “Wisconsin certified honey.” Most, if not all, of those producers are “small businesses.” Participating producers will pay for annual lab testing and must pay a \$50 annual 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

DATCP worked with the Wisconsin honey producers association to develop this rule. Analytical methodologies prescribed by this rule are those prescribed by the *Codex Alimentarius*.

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. DATCP will seek permission from the Attorney General to incorporate this standard by reference. A copy of the standard will be kept on file with DATCP and the legislative reference bureau.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

Terri Wenger
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4714
E-Mail: terri.wenger@wi.gov

1 **SECTION 1.** Chapter ATCP 157 is renumbered ch. ATCP 87.

2 **SECTION 2.** ATCP 87.01(13) is created to read:

3 ATCP 87.01(13) “Department” means the Wisconsin department of agriculture, trade
4 and consumer protection.

5 **SECTION 3.** ATCP 87.015 and 87.017 are created to read:

6 **ATCP 87.015 Honey standard of identity.** No person may represent, directly or by
7 implication in connection with the sale, offering for sale, or advertising or distributing for sale of
8 any product, that the product is “honey” unless the product meets the standard of identity for
9 “honey” under the *Codex Alimentarius*, number 12-1981 (revised 2001) adopted by the United
10 Nations food and agriculture organization and the World Health Organization.

11 **NOTE:** Copies of the *Codex Alimentarius* number 12-1981 (revised 2001) are on file
12 with the department and the legislative reference bureau. Copies may also be
13 obtained at www.codexalimentarius.net/download/standards/310/cxs_012e.pdf.

14 Violations of s. ATCP 87.015 are subject to the penalties in ss. 97.72, Stats., and
15 the injunctive remedy provided in 97.73, Stats. A competitor or other person who
16 suffers damage as a result of a violation may also pursue the private remedy
17 provided under s. 100.87(3)(b), Stats.

ATCP 87.017 Wisconsin certified honey. (1) PROHIBITION. No person may represent
a product as “Wisconsin certified honey” unless that product meets all of the following
requirements:

(a) It complies with the honey standard of identity in s. ATCP 87.015.

(b) It was collected from honeybee hives in this state.

(c) Its producer holds a valid annual approval under sub. (2).

(2) ANNUAL APPROVAL. A person who produces honey in this state may apply to the department for an annual approval authorizing any person to sell, offer, advertise or distribute that honey as “Wisconsin certified honey.” An annual approval expires on December 31 of the year in which it is granted.

NOTE: An approval under sub. (2) authorizes the honey producer (and the producer’s downstream distributors) to sell honey as “Wisconsin certified honey.” However, it does not constitute a warranty from the department to any buyer that the honey complies with sub. (1).

(3) APPLICATION FOR ANNUAL APPROVAL. A person shall submit an application under sub. (2) on a form provided by the department. The application shall include all of the following:

(a) A statement by the applicant certifying that all honey which the applicant proposes to sell, offer, advertise or distribute as “Wisconsin certified honey” will meet all of the following requirements:

1. It will be collected from honeybee hives in this state.

1 2. It will comply with the honey standard of identity in s. ATCP 87.015.

2 (b) Laboratory test results that support the statement under par. (a)2. The test results
3 shall include test results for moisture, fructose and glucose, and sucrose content. The laboratory
4 testing shall be performed on a representative sample of honey under par. (a), using methods
5 prescribed in the *Codex Alimentarius*, number 12-1981 (revised 2001) adopted by the United
6 Nations food and agriculture organization and the World Health Organization.

1 **NOTE:** You may obtain an application form from the department at the following
2 address:

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4 Wisconsin Department of Agriculture, Trade and Consumer Protection, Food
5 Safety Division, Attn: Donna Johnson, P.O. Box 8911, Madison, WI 53708-8911,
6 Phone: (608) 224-4720

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8 Copies of the *Codex Alimentarius* number 12-1981 (revised 2001) are on file
9 with the department and the legislative reference bureau. Copies may also be
10 obtained at www.codexalimentarius.net/download/standards/310/cxs_012e.pdf.

(c) A fee of \$50.

11 (4) ACTION ON APPLICATION. The department shall grant or deny an application under
12 sub. (3) in writing, within 30 days after the department receives a complete application. If the
13 department denies an application, the department shall specify the reasons for the denial.

14 **SECTION 5. EFFECTIVE DATE:** This rule takes effect on the first day of the month
15 following publication in the Wisconsin administrative register, as provided in s.
16 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel
Secretary