STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
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FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis
☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number
ATCP 70, Food Processing Plants; ATCP 87, Honey and Maple Syrup

3. Subject
Adopting new federal standards for maple syrup grading, defining standards for licensed facilities used only for oncentration of maple sap, and addressing standards and processes for new products derived from maple sap.

4. Fund Sources Affected
☒ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected
20.115(1)(gb)

6. Fiscal Effect of Implementing the Rule
☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)
☒ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☒ Small Businesses **(if checked, complete Attachment A)**

8. Would Implementation and Compliance Costs Be Greater Than $20 million?
☐ Yes ☒ No

9. Policy Problem Addressed by the Rule
The United States Department of Agriculture (USDA) has promulgated new grade standards for maple syrup; several leading maple syrup-producing states have adopted the standards and many Wisconsin maple syrup processors have requested that Wisconsin do the same. Adopting the new standards, with provision for an additional "Wisconsin" geographical designation, will ensure access for Wisconsin-made maple syrup to the national and international marketplace. Many general food processing plant requirements in ATCP 70 are not appropriate for licensed facilities that only concentrate maple sap. These facilities are often in remote or rustic locations, but pose little or no food safety risk. Specific requirements for these maple sap concentration facilities licensed as food processing plants would ensure food safety and wholesomeness without creating an undue regulatory burden. The maple syrup industry is developing several new products derived from maple sap. In order to prevent sale of adulterated or misbranded products, it is essential to define these products and specify facility and process requirements that must be met by businesses making these products.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.
All maple syrup producers holding a food processing plant license were informed by mail of the hearings held to solicit comments on this rule revision. In addition, there was extensive communication by e-mail and mail with the President and other members of the Wisconsin Maple Syrup Producers Association. The revised rule has little effect on local governmental units.

11. Identify the local governmental units that participated in the development of this EIA.
Producers of maple syrup and other products from maple sap often hold a food processing plant license and are regulated by the Department of Agriculture, Trade and Consumer Protection (Department), which was the sole agency participating in this EIA. Local governmental units are not typically impacted by this rule, with the exception of certain maple syrup processors that hold a retail food establishment license in a jurisdiction in which the local health department operates as an agent of the Department. As the number of such processors is low, local health departments did not participate in development of this EIA.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule change neither eliminates a fee nor creates one. Its impact will be favorable for licensed food processing plant businesses that are currently only operating maple sap concentration facilities. These facilities will likely not require upgrading to meet the revised standards in the proposed rule. Some of these facilities will be able to inexpensively add a reverse osmosis unit to a facility that is now only performing thermal concentration of maple sap. Businesses that do not currently meet the proposed facility requirements for maple syrup operations may face some facility-upgrade costs, particularly the installation of a three-compartment sink necessary for effective cleaning, rinsing, and sanitizing equipment, and any upgrades in areas of their facility in which finished syrup is stored and packaged. The proposed rule may necessitate a facility upgrade for businesses adding processing steps more complex than concentration of maple sap, such as the production and bottling or packaging of new, maple sap-based products. The modernization of Wisconsin's maple syrup grade standards may enhance sale of Wisconsin maple syrup in other states and countries. Inexpensive grading kits are available. Some businesses may have to purchase new labels to accommodate the new grade standards.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Failure to make the proposed rule change could adversely impact the industry by requiring upgrades at facilities used only for concentration of maple sap, in order to meet existing general food processing plant standards. It could also result in the maple syrup produced in Wisconsin being sold under standards that are only commonly understood by Wisconsin maple syrup producers. Not changing the rule could allow a range of different maple sap-derived products to be produced without adequate consideration of facility and process factors necessary to ensure product safety and wholesomeness. Adapting new maple syrup grade standards that mirror new federal standards, and allowing the inclusion of the geographic designation "Wisconsin" on the label with the grade information will allow Wisconsin's syrup to compete in the same markets as syrup from other states. The proposed rule will also allow new and innovative products to be developed, safely produced, and marketed throughout the nation and outside our borders. The result will be an enhancement of Wisconsin's "brand."

14. Long Range Implications of Implementing the Rule

Implementing this rule will ensure that Wisconsin continues to maintain a substantial presence in the maple syrup market as well as have standing in the the marketplace for new and innovative products derived from maple sap. It will enable Wisconsin's maple sap and syrup-related businesses to continue to fairly compete against similar businesses in other states. It will ensure that the range of maple sap processing operations receive the appropriate level of regulatory oversight to prevent product adulteration or misbranding.

15. Compare With Approaches Being Used by Federal Government

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" and subject to the Food Safety Modernization Act (FSMA) and the rules that implement FSMA. There is a federal standard of identity for maple syrup, and maple syrup producers involved in interstate commerce must follow Good Manufacturing Practices, as spelled out in federal regulations. These federal regulations do not specifically account for the unique facility and process constraints present in many remote facilities that only concentrate maple sap. The proposed rule adopts the voluntary federal grade standards for maple syrup, with only minor modifications.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Retail sales of maple syrup in Illinois are under the jurisdiction of state or local health departments and regulations modeled on the FDA Food Code. Therefore, maple syrup sold at retail must originate in a facility subject to FDA or state inspection. Maple syrup is not one of the foods exempted from food processing rules via the Illinois Cottage Food Bill. Illinois does not license food processing plants. Production of maple syrup for wholesale is done in facilities subject to state rules that largely adopt FDA regulations.

Michigan licenses maple syrup producers who sell their product wholesale but does not require a retail food establishment license for sales of maple syrup made by a licensed producer. Maple syrup producers in Michigan can qualify for a cottage foods exemption from the food licensing requirement. Maple syrup producers who meet licensing

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exemptions (less than $15,000 annually in sales) must follow the same labeling requirements for their maple syrup as those outlined for other cottage food products. (Note: because maple syrup cannot be processed in a home kitchen, the label must read, "Processed in a facility not inspected by the Michigan Department of Agriculture & Rural Development.") Maple syrup producers who meet the licensing exemptions still must meet all requirements of the Michigan Food Law, including sanitation, building construct and design, employee hygiene, etc.

Iowa considers maple syrup an agricultural commodity, and thus not subject to state inspection. Notwithstanding, Iowa food processing plant regulations largely cite FDA rules. Iowa also exempts cottage food operations from licensing requirements.

In Minnesota, a license is required to legally sell maple syrup to the public unless all sap is obtained from the maple syrup producer's land and no other "off farm" inputs are used in making the product (e.g. sap from neighbors' trees). However, all maple syrup operations selling to the public are subject to inspections by the Minnesota Department of Agriculture. Labeling requirements for maple syrup are the same as for other foods under Minnesota jurisdiction.

17. Contact Name	18. Contact Phone Number
Pete Haase, Director-Bureau of Food Safety and Inspection	(608) 224-4711

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This rule is expected to have a positive impact on small businesses licensed as food processing plants and seeking to have their maple syrup graded and marketed in competition with maple syrup from other states. The rule will also have a positive impact on those who only wish to process and grade maple syrup and sell it at retail. Most small businesses with facilities used only for concentration of maple sap will not be affected by the revised facility requirements, although it is possible that a few businesses will have to upgrade their facilities. Licensed food processing plants adding more complex processes, such as the production and packaging of maple sap-related products, to a maple sap concentration facility may have to upgrade their facilites, as might businesses whose storage and packaging facilities don't meet existing food processing plant requirements. Businesses processing maple-derived water or maple sap water may also face facility-upgrade costs to comply with food processing plant standards.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The agency reviewed extensive photographic documentation of existing licensed maple syrup processing facilities, and reviewed communications received from the Wisconsin Maple Syrup Producers Association and its members.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

☒ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☒ Exemption of Small Businesses from some or all requirements
☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

A primary focus of this rule is the accomodation of small, often rustic, facilites that solely boil sap (with or without a preliminary reverse osmosis treatment) to produce maple syrup or concentrated maple sap. This rule will allow many such facilities to continue operating without facility upgrades that would be necessary to otherwise meet the existing general food processing plant standards. It also gives small maple syrup processors the flexibility to grade their products or not if selling them only under a retail food establishment license or under an exemption from licensing, and provides the latter processors the option of not using the term "ungraded" as long as they do not use Grade A color class terms or flavor descriptors contained in the new grading system.

In addition, this new rule allows the transport without susequent pasteurization of the syrup or sap to another facility where further processing or packaging will occur.

5. Describe the Rule's Enforcement Provisions

Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses. The agency operates under a progressive compliance philosophy that stresses education of the business operator before these enforcement provisions are used.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No