

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Maple Syrup Grading and Processing
Adm. Code Reference: ATCP 70 and ATCP 87
Rules Clearinghouse #: 16-044
DATCP Docket #: 15-R-06

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (“Department”) is proposing this revised rule to replace Wisconsin’s existing maple syrup grade standards with grade standards for maple syrup recently adopted by the United States Department of Agriculture (“USDA”) and other leading maple syrup-producing states. The hearing and comment process showed very strong support for adopting the federal standards. The proposed new grading standard will include the re-categorization of dark maple syrup, currently allowed to be graded as only for manufacturing, so that it may be packaged as Grade A syrup and sold at retail.

The hearing and comment process also showed strong industry support for mandatory grading of maple syrup. In an effort to accommodate all types of maple syrup operations, the revised rule requires all maple syrup processors operating under a food processing plant license, and therefore wholesaling, to grade their syrup. Maple syrup processors not operating under a food processing plant license, i.e., generally only selling their syrup at retail, will have the choice of using the new grading system, labeling their syrup “ungraded,” or, provided they do not use any of the Grade A color class terms or flavor descriptors from the new standards, e.g., amber, and rich, neither grading their syrup nor labeling it as “ungraded”.

The revised rule also reduces the application of some general food processing plant facility standards, found in ATCP 70, to maple syrup facilities, operating under a food processing plant license, only concentrating maple sap (done by boiling, which often is preceded by a reverse osmosis treatment), i.e., “sugar houses.” This revision is in response to Department and industry concerns that it may not be necessary to hold small, traditional sugar houses, often in remote locations, to standards that are more appropriate for maple syrup producers performing more complex processing and packaging. With input received during the hearing and comment period from industry, the Department has determined the extent to which food processing plant regulations should defer to less stringent requirements for “sugar houses” found in the revised maple syrup regulations.

The revised rule contains specific requirements that address the unique characteristics of many sugar houses, without compromising public health or product wholesomeness. For example, the new rule specifically allows a tank, containing maple syrup before concentration, to be uncovered, as commenters from the maple syrup industry stated that maple sap in an uncovered tank cools more rapidly, leading to better quality sap, and an uncovered tank allows visual observation necessary for process control. Similarly, the revised rule has new, flexible but adequate requirements for the proximity of equipment-cleaning sinks, handwash sinks, and a toilet room in a maple sap concentration facility.

The revised rule also allows the storage of the water separated from maple sap by reverse osmosis (RO water) to be stored and used for cleaning of maple sap-contact equipment surfaces for up to 24 hours after the RO water is produced. This provision was strongly supported by industry attendees at the hearings.

The revised rule specifies that liquid maple products and maple-derived water (terms defined in the revised rule) may be transferred from a licensed maple sap concentration facility to a further-processing facility operated under a food processing plant license, provided basic sanitation requirements are met. This provision provides flexibility for processors.

The revised rule also addresses the emerging concerns of nomenclature and processing requirements for a range of new products related to maple syrup. Several comments were received on acceptable terminology for these products, including what the revised rule terms “maple sap water” (non- or partially-concentrated maple sap). The definition for this product in the revised rule is based on the comments received at hearings. We termed another new product “maple-derived water” and defined it as the permeate resulting from reverse osmosis treatment of maple sap that is bottled for consumption. The revised rule contains a requirement that processes for manufacturing maple-derived water be approved by the Division of Food and Recreational Businesses.

Small Businesses Affected

Department inspections of maple syrup concentration facilities, i.e., “sugar houses,” have proven challenging over the years. The major end product at most of these facilities (maple syrup) is not potentially hazardous, and the perishable raw material (maple sap) is exposed to the heat of boiling, which destroys microbes. Thus there is little concern about microbial food safety hazards in relation to the process. However, many small facilities are in remote locations and there is a small, but real, risk of product contamination related to characteristics of the facility, e.g., pests, pieces of wood, characteristics of equipment, or chemical contaminants from non-food-grade equipment used in harvesting, transporting, or concentrating maple sap. This situation makes rigorous compliance with, and enforcement of, all requirements of ATCP 70 (Food Processing Plants) difficult for the maple syrup industry and the Department, respectively.

This rule revision attempted to balance the unique circumstances faced by small maple sap concentration facilities operated under a food processing plant license with the public’s expectation for clean wholesome maple syrup. Most facilities already meet the requirements of the revised rule, so the revised rule will have little effect on most of the industry. Small 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. Businesses processing maple-derived water or maple sap water may face facility-upgrade costs, but the Department feels these costs are warranted by the relative sensitivity of these products to microbial contamination and spoilage.

Accommodation for Small Business

A primary focus of this new rule is the accommodation of small, traditional operations that simply boil maple sap, often after concentrating the sap by reverse osmosis. This rule will generally allow these businesses to continue operating without extensive facility upgrades. The proposed rule also contains language that clarifies requirements for acceptable transfer of concentrated sap from these simple, but licensed, maple sap concentration facilities to more complex licensed operations for further storage, processing, and/or packaging.

Although the revised rule mandates grading of maple syrup for maple syrup processors operating under a food processing plant license, maple syrup processors operating under a retail food establishment license or under an exemption from licensing may choose whether or not to grade their syrup, label it as ungraded, or have neither a grade nor ungraded designation on the label.

Conclusion

The revised rule brings Wisconsin's grading system into consistency with the federal system and provides a definition that will allow Wisconsin producers to showcase Wisconsin "brand" on the maple syrup processed in Wisconsin.

The provisions in this revised rule will benefit Wisconsin's maple sap and syrup industry, especially maple sap concentration operations ("sugar houses"), by creating adequate but less stringent food processing plant facility requirements. The revised rule will help ensure that maple sap concentration facilities are regulated in accordance with the minimal risks associated with their unique product.

The revised rule provides a regulatory framework to ensure the wholesomeness and safety of new and innovative products made from maple sap that are now being produced in Wisconsin.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steven C. Ingham, Administrator,
Division of Food Safety