

CR 11-038

1

DATCP Docket No. 10-R-03
Rules Clearinghouse No. 11-038

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

2 The Wisconsin department of agriculture, trade and consumer protection adopts the following
3 rule *to renumber* ch. ATCP 157; *to renumber* ATCP 87.01(1) to (12); and *to create* 87.01 (6)
4 and (12), 87.015 and 87.017; *relating to* Wisconsin certified honey and the sale of products
5 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 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 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 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 producers and sellers of real 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.

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 estimated to be \$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 (2005), current through Revision 1, 2006. 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/cxs_012e.pdf.

DATCP Contact

Questions and 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 (1) to (12) are renumbered (4), (8), (1), (5), (3),(11), (10), (13),
3 (14), (7) (2) and (9).

4 **SECTION 3.** ATCP 87.01 (6) and (12) are created to read:

5 ATCP 81.07 (6) “Department” means the state of Wisconsin department of agriculture, trade
6 and consumer protection.

7 (12) “Honey” means the natural sweet substance produced by honey bees from the
8 nectar of plants or from secretions of living parts of plants or excretions of plant-sucking
9 insects on the living parts of plants, which the bees collect, transform by combining with
10 specific substances of their own, deposit, dehydrate, store and leave in the honey comb to ripen

1 and mature. When honey comes from the nectars of plants it can be called blossom honey or
2 nectar honey. When honey comes mainly from excretions of plant-sucking insects on the
3 living parts of plants or secretions of living parts of plants, it can be called honeydew honey.

4 **SECTION 4.** ATCP 87.015 and ATCP 87.017 are created to read:

5 **ATCP 87.015 Honey standard.** No person may represent, directly or by implication in
6 connection with the sale, offering for sale, or advertising or distributing for sale of any product,
7 that the product is “honey” unless the product meets the criteria for “honey” described in Part
8 One, Section 3.1 through Part One, Section 4.2 of the *Codex Alimentarius*, number 12-1981
9 (revised 2001) adopted by the United Nations food and agriculture organization and the World
10 Health Organization.

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

15 Violations of s. ATCP 87.015 are subject to the penalties in s. 97.72,
16 Stats., and the injunctive remedy provided in s. 97.73, Stats. A
17 competitor or other person who suffers damage as a result of a violation
18 may also pursue the private remedy provided under s. 100.187(3)(b),
19 Stats.

20 **ATCP 87.017 Wisconsin certified honey. (1) PROHIBITION.** No person may represent,
21 directly or by implication in connection with the sale, offering for sale, or advertising or
22 distributing for sale of any product, that the product is “Wisconsin certified honey” unless that
23 product meets all of the following requirements:
24

- 25 (a) It complies with the honey standard in s. ATCP 87.015.
26 (b) It was collected from honey bee hives in this state.
27 (c) Its producer holds a valid approval under sub. (2).

1 **NOTE:** Violations of s. ATCP 87.017 are subject to the penalties in s. 97.72, Stats., and
2 the injunctive or other remedies provided in s. 100.187(2)(b), Stats.

3
4 (2) BIENNIAL APPROVAL. A person who produces honey in this state may apply to the
5 department for a biennial approval authorizing any person to sell, offer, advertise or distribute
6 that honey as “Wisconsin certified honey.” Approval expires on December 31 in odd-numbered
7 years.

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

12
13 (3) APPLICATION FOR BIENNIAL APPROVAL. A person shall submit an application for a
14 biennial approval, under sub. (2), on a form provided by the department. The application shall
15 include all of the following:

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

19 1. It will be collected from honey bee hives in this state.

20 2. It will comply with the honey standard in s. ATCP 87.015.

21 (b) A summary of laboratory test results and the methods used to obtain those results that
22 supports the requirement under par. (a) 2. The summary shall include test results for moisture,
23 fructose and glucose content, sucrose content and internal stable carbon isotope ratio analysis.

24 The laboratory testing shall be performed at a commercial laboratory not affiliated with the
25 applicant on a representative sample of honey using methods established by AOAC International
26 or other methods approved by the department.

27 (c) A payment of \$50.

1 **NOTE:** A person may obtain an application form by calling (608) 224-4720, by
2 visiting the department website at <http://www.datcp.wi.gov>, or by writing to the
3 following address:

4
5 Wisconsin Department of Agriculture, Trade and Consumer Protection, Food
6 Safety Division, Attn: honey certification, P.O. Box 8911, Madison, WI
7 53708-8911

8
9 The "Official Methods of Analysis of AOAC International", 18th Edition
10 (2005), current through Revision 1, 2006, is on file with the department and the
11 legislative reference bureau. Copies are available from AOAC International at
12 481 North Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417.

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

17 **SECTION 5. EFFECTIVE DATE:** This rule takes effect on the first day of the month
18 following publication in the Wisconsin administrative register, as provided in s.
19 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____

Ben Brancel
Secretary