

## Wisconsin Department of Agriculture, Trade and Consumer Protection

### Regulatory Flexibility Analysis

**Rule Subject:** Maple Syrup Grading and Processing; Emergency Rule

**Adm. Code Reference:** ATCP 70 and ATCP 87

**DATCP Docket #:** 17-R-01

#### *Rule Summary*

The Department of Agriculture, Trade and Consumer Protection (“Department”) regulates maple syrup grading and processing through ch. ATCP 70 (Food Processing Plants) and ch. ATCP 87 (Honey and Maple Syrup). The Department is in the final stages of promulgating a permanent rule that will modernize Wisconsin’s outdated maple syrup standards. This emergency rule temporarily adopts the exact same rule provisions, so they will be available to maple syrup processing plants for the 2017 maple syrup season. This rule incorporates recent changes to federal maple syrup grade standards and also exempts maple sap concentration facilities licensed as food processing plants from some food processing plant requirements.

This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The legislature’s Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days. However, the Department does not anticipate requesting an extension for this emergency rule.

Wisconsin ranks fourth in the nation in maple sap production. In 2015, Wisconsin maple syrup producers made 200,000 gallons of maple syrup with a value of \$7,000,000. Maple syrup grades provide a common language for describing maple syrup sold both at wholesale and retail. Maple syrup grades are currently established by the United States Department of Agriculture (“USDA”), several states including Wisconsin, and the Canadian provinces of Ontario and Quebec. The existing Wisconsin grade standards were adopted in 1980.

The Department is proposing the separate permanent rule to modernize the Wisconsin maple syrup grade standards at the request of Wisconsin’s maple syrup producers. The USDA’s Agricultural Marketing Service (USDA-AMS) adopted new maple syrup grade standards in 2015. In conjunction with the International Maple Syrup Institute, USDA-AMS upgraded the Grade A color classes so that they are based on spectrophotometric analysis. Among other changes, the Grade B syrup designation was eliminated, and replaced with a Processing Grade designation. The new USDA-AMS standards have already been adopted by Vermont, New Hampshire, New York, and Maine.

This emergency rule will temporarily replace the existing Wisconsin maple syrup standards with those recently developed by the USDA-AMS for the 2017 maple syrup season. The alternatives of keeping the existing standards or having the Department develop new and unique standards for Wisconsin were discussed as part of the permanent rulemaking process and not supported by the Wisconsin maple syrup industry and were not included in this emergency rule. As suggested by Wisconsin maple syrup industry representatives during the permanent rulemaking process, this rule requires containers of maple syrup produced in a licensed food processing plant to be labeled with the grade designation that accurately describes the syrup inside the container. Containers of maple syrup produced in a facility not operating under a food processing plant license may be labeled the same way, with the term “ungraded,” or with no reference to grading. If Grade A color class terms or flavor descriptors from the new standards, e.g., amber and rich, respectively, are included on the maple syrup label, then the label must indicate the grade of syrup inside the container, or that the syrup is “ungraded.” Depending on where the syrup in a

container of graded maple syrup was produced, the geographical designation “Wisconsin” or “U.S.” may precede certain grade designations. The rule also describes requirements for labeling maple syrup as “Bottled in Wisconsin” or “Packaged in Wisconsin.”

This emergency rule also addresses requirements for certain maple syrup facilities. The rule differentiates the stringent general requirements for food processing plants and specific requirements for those food processing plants in which the only activity is the concentration of sap, i.e., “sugar houses.” The rule contains specific requirements that address the unique characteristics of many sugar houses, without compromising public health or product wholesomeness. For example, the 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 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 rule specifies that liquid maple products and maple-derived water (terms defined in the rule) may be transferred from a concentration facility to a further-processing facility operated under a food processing plant license, provided basic sanitation requirements are met. The rule also defines when and how water removed from reverse osmosis treatment of maple sap may be used for other purposes in a maple sap concentration facility operating under a food processing plant license. This latter topic was the focus of several comments received from maple syrup producers during the permanent rule revision.

Comments from maple syrup producers during the permanent rulemaking process also led to the inclusion of one new maple syrup-specific provision in the rule. The use of syrup de-foaming agents that contain major food allergens such as milk or soy is prohibited in this emergency rule. In the past, cream was commonly used as a de-foamer, but the possible presence of trace amounts of milk protein in maple syrup was seldom if ever indicated on the label. Industry attendees indicated that non-allergenic de-foaming agents are readily available and advocated for the prohibition against use of allergen-containing agents.

This emergency rule also addresses the emerging concerns of nomenclature and processing requirements for a range of new products related to maple syrup. During the permanent rulemaking process, several comments were received on acceptable terminology for these products, including what the rule terms “maple sap water,” which is non- or partially-concentrated maple sap. The definition for this product in this emergency rule is based on the comments received. 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. This emergency rule contains a requirement that the Division of Food and Recreational Safety approve processes for manufacturing maple-derived water.

### ***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 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, or characteristics of equipment, e.g. 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. Most facilities already meet the requirements of this rule, so this rule will have little effect on most of the industry. Small businesses holding a food processing plant license 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. This emergency rule will not have a significant adverse economic effect on “small business.”

### *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 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*

This emergency 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 emergency 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 emergency rule will temporarily adopt these standards for the 2017 maple syrup season.

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.

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