State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: August 28, 2015

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Steve Ingham, Administrator, Division of Food Safety

SUBJECT: **ATCP 87- Maple Syrup Grading Standards and Processing; Rulemaking Scope Statement**

PRESENTED BY: Steve Ingham, Division of Food Safety

REQUESTED ACTION:

At the September 23, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "scope statement" (copy attached) for potential changes to current DATCP rules related to maple syrup grading and processing. The rule revision will assess and revise rules, as necessary, to modernize grading standards, to ensure food processing regulations meet the unique needs of the maple syrup industry, and to ensure regulations are adequate to ensure the safety of newly developed maple syrup products.

The primary goal of the rule revision will be to review Wisconsin's maple syrup grading regulations to determine whether to adopt newly enacted United States Department of Agriculture (USDA) maple syrup grading standards, keep existing standards, or develop new unique standards. Grading standards facilitate marketing by providing a common language to describe product quality. Each maple syrup grade describes the color, flavor, and appearance of maple syrup. Food manufacturers and chefs, for example, rely on maple syrup grades to ensure consistency in food made with maple syrup.

In 2011, USDA's Agricultural Marketing Service (AMS) received a petition from the International Maple Syrup Institute (IMSI) requesting that they revise the federal voluntary U.S. Standards for Grades of Maple Sirup (Syrup), which AMS adopted in January 14, 1980. IMSI is a non-profit organization representing the maple syrup industry in the U.S. and Canada. It was founded in 1975 to promote cooperation in the maple syrup industry. AMS promulgated new federal standards, based on maple syrup grades developed by IMSI, with an effective date of March 2, 2015. Among the changes made were:

- Replacing the three color classifications of the Grade A standards for maple syrup with four classifications, including a Grade A category for "very dark" maple syrup. Previously, the standards labeled darker syrups with "rich bold flavor" as "U.S. Grade B for Reprocessing", which was maple syrup not intended for retail sale. The revision will allow darker syrup that meets other Grade A standards to be sold at retail, recognizing an increasing consumer demand for the darkest color class of maple syrup for cooking and table use.

- Removing references to the USDA permanent glass color standards, which will no longer be applicable to maple syrup grading. Maple syrup color will now be evaluated by spectrophotometer or any method that provides equivalent results.
- Removing the category of "U.S. Grade B for Reprocessing" and replacing it with a new "Processing Grade." Unlike Grade B syrup, this new "Processing Grade" is not restricted to dark maple syrup, but includes any color of syrup with a "good characteristic maple taste." "Processing Grade" syrup may contain off-flavors and must be fairly free of damage, turbidity or cloudiness, and be fairly clean. "Processing Grade" maple syrup is used solely for manufacturing and may not be sold at retail.

In the past, Wisconsin was one of only a few maple syrup producing states to establish its own maple syrup grading standards. Producers in Wisconsin have the option to describe their product using federal grading standards, Wisconsin maple syrup grades, or no grade at all. Wisconsin's maple syrup grades, which are authorized by s. 93.09, Stats., and are promulgated in ATCP 87.11 to 87.14, include three categories of maple syrup. Each category is determined by the color, flavor, and appearance of the maple syrup: Wisconsin fancy, Wisconsin grade A, and Wisconsin manufacturer's grade. Wisconsin's standards were first established in March 1956 and require use of the USDA's 1950 permanent glass color standards for maple syrup established in 1950 to classify the color.

The goal of this rule revision is to modernize Wisconsin's maple syrup grades. Adopting the federal standards, for instance, would remove outdated reference to USDA's 1950 permanent glass color standards. It would allow Wisconsin's maple syrup producers to label and market for table use some maple syrup that now currently is sold only for use in manufacturing. It would align Wisconsin's maple syrup grades with federal and international standards, making it easier for Wisconsin's maple syrup producers to sell their products outside of the state.

This rule revision will also assess Wisconsin's food processing regulations to determine whether, and the extent to which, ATCP 70 (Food Processing Plants) should be revised. Maple syrup production and packaging are often done seasonally and/or in rustic facilities in remote locations. Within a given facility, there may be a wide range of materials used to construct the facility. It is uncertain whether all food processing plant requirements in ATCP 70 are germane to all parts of a facility. The department will review regulations in other states and consult with industry to determine whether and the extent to which Wisconsin's regulations should be modified to address the unique processes associated with production of maple syrup, other tree-derived syrups, and beverage production from tree sap.

Finally, this revision will assess the extent to which existing rules accommodate the manufacture of new products related to maple syrup production. For example, the department has received inquiries from maple syrup producers who are interested in producing "maple water", which is variously defined as pasteurized maple sap (not concentrated) or water removed from maple sap by reverse osmosis, and then bottled for consumption. Some research suggests that other species of trees, such as black walnut trees (*Juglans nigra*) and butternut trees (*Juglans cinerea*), may also be tapped to produce syrup. The department will work with industry to determine whether and to what extent rule revisions are needed to address any food safety hazards associated with these products and provide a regulatory framework for their production and sale.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for that rule as required under s. 227.135(2), Stats. This scope statement was approved by the Governor on August 17, 2015. Wisconsin statutes also require the DATCP Board to approve a scope statement before the department can begin to draft a proposed rule. DATCP is required to publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP has filed the attached scope statement with the Legislative Reference Bureau for publication and with DOA as required.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Chs. ATCP 70 and 87, Wis. Adm. Code (Existing)

Relating to: Maple Syrup Processing and Grading Standards

1. Description of the objective of the rule:

This proposed revision may replace Wisconsin's existing maple syrup standards with grading standards for maple syrup recently adopted by the United States Department of Agriculture (USDA), determine it is appropriate to keep the existing standards, or develop new unique standards. The revision is proposed to modernize Wisconsin's maple syrup standards, which were first adopted in 1956 and which rely on color standards established in 1950. If the new USDA grading standards are adopted, the revision will align Wisconsin's maple syrup standards with federal and international standards for maple syrup, making it easier to market Wisconsin's maple syrup outside the state. In a letter to the department in support of the new USDA grading standards, the Wisconsin Maple Syrup Producers Association indicated that the new system will make it easier for maple syrup consumers to understand what they are buying, no matter where they purchase maple syrup. They indicate that the new standards will allow them to compete on a national and international level and will put Wisconsin on a level playing field with the rest of North America. Of particular note to many processors and consumers, adoption of the new grading standards will re-categorize certain darker syrup, currently allowed to be used only for manufacturing, so that it may be packaged as Grade A syrup and sold at retail.

This proposed revision will also determine whether the regulations in ATCP 70 (Food Processing Plants) are appropriate, for maple syrup producers licensed as food processing plants, or whether more industry-specific standards are necessary. The department will review ATCP 70 and, working with industry, determine whether and to what extent food processing plant regulations should be revised.

Another goal of this revision will be to assess the extent to which existing rules accommodate the manufacture of new products related to maple syrup production. For example, the department has received inquiries from maple syrup producers who are interested in producing "maple water", which is variously defined as pasteurized maple sap (not concentrated) or water removed from maple sap by reverse osmosis and then bottled for consumption. Some research suggests that other species of trees, such as black walnut (*Juglans nigra*) and butternut (*Juglans cinerea*), may also be tapped to produce syrup. The department will work with industry to determine whether, and to what extent, rule revisions are needed to address any food safety hazards associated with these products and provide a regulatory framework for their production and sale.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Maple Syrup Production and its Importance in Wisconsin Agriculture. Maple syrup is created by heating sap from the sugar maple tree (*Acer saccharum*) to evaporate water from the sap. It takes about 40 gallons of sap to produce one gallon of maple syrup. According to the USDA's National Agricultural Statistical Services (NASS), Wisconsin was the nation's fourth largest maple syrup producer in 2014, producing 200,000 gallons of maple syrup. The value of maple syrup produced was $9,911,000 in 2013, the most recent year for which financial data were available. Maple syrup production in the U.S. is concentrated almost exclusively in 10 states, which by order of the volume of production are: Vermont, New York, Maine, Wisconsin, Pennsylvania, Ohio, New Hampshire, Michigan, Massachusetts, and Connecticut.

Grading of Maple Syrup. Maple syrup must meet the standard of identity prescribed in the U.S. Food and Drug Administration (FDA) Standards of Identity for Maple "Sirup" (Syrup) found in 21 CFR 168.140. Maple syrup may also be graded according to voluntary standards that may be applied to the syrup to designate different levels of quality. Grading facilitates marketing by providing a common language to describe product quality. Food manufacturers and chefs, for example, rely on maple syrup grades to ensure consistency in food made using maple syrup. Maple syrup consumers may rely on the grade to determine the intensity of maple syrup flavor they prefer to purchase.

Section 203 (c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended, authorizes the U.S. Department of Agriculture (USDA), through USDA's Agricultural Marketing Service (AMS), to establish maple syrup grading standards. USDA grades for maple syrup are not mandatory, but producers and other businesses that apply a U.S. grade are responsible for ensuring the accuracy of the grade. Official inspection of maple syrup is not required before a grade is assigned, but most other graded products must be officially inspected before application of an official USDA grade mark.

In 2011, AMS received a petition from the International Maple Syrup Institute (IMSI) requesting revision of the U.S. Standards for Grades of Maple Sirup (Syrup), which AMS adopted in January 14, 1980. IMSI is a non-profit organization representing the maple syrup industry in the U.S. and Canada. It was founded in 1975 to promote cooperation in the maple syrup industry, protect the integrity of pure maple syrup, and improve intra-industry communication. AMS promulgated new federal standards, based on maple syrup grades developed by IMSI, with an effective date of March 2, 2015. Among the changes made were:

- Changing the spelling of "sirup" to the more common spelling, "syrup".
- Replacing the three color classifications of the Grade A standards for maple syrup with four classifications, including a Grade A category for "very dark" maple syrup. Previously, the standards labeled darker syrups with "rich bold flavor" as "U.S. Grade B for Reprocessing", which was maple syrup not intended for retail sale. The revision will allow darker syrup that meets other Grade A standards to be sold at retail, recognizing an increasing consumer demand for the darkest color class of maple syrup for cooking and table use.

- Removing references to the USDA permanent glass color standards, which will no longer be applicable to maple syrup grading. Maple syrup color will now be evaluated by spectrophotometer or any method that provides equivalent results.
- Removing the category of "U.S. Grade B for Reprocessing" and replacing it with a new "Processing Grade." Unlike Grade B syrup, this new "Processing Grade" is not restricted to dark maple syrup, but includes any color of syrup with a "good characteristic maple taste." "Processing Grade" syrup may contain off-flavors and must be fairly free of damage, turbidity or cloudiness, and be fairly clean. "Processing Grade" maple syrup is used solely for manufacturing and may not be sold at retail.

In the past, five of the top ten maple syrup producing states, including Wisconsin, established their own maple syrup grading standards. Producers in Wisconsin have the option to describe their product using federal grading standards, Wisconsin maple syrup grades, or no grade at all. Wisconsin's maple syrup grades, which are authorized by s. 93.09, Stats., and are promulgated in ATCP 87.11 to 87.14, include three categories of maple syrup. Each category is determined by the color, flavor, and appearance of the maple syrup: Wisconsin fancy, Wisconsin grade A, and Wisconsin manufacturer's grade. The standards were first established in March 1956 and require use of the USDA's 1950 permanent glass color standards for maple syrup to classify the color.

Some states, such as Vermont, New Hampshire, and Maine, have already revised their state grading standards to be consistent with the IMSI grading system. At the request of the Wisconsin Maple Syrup Producer's Association, this rule revision will evaluate whether to replace Wisconsin's current maple syrup grades with the new federal grading standards adopted by reference, keep the existing standards, or develop new unique standards. The goal of the revision will be to bring Wisconsin's maple syrup grades in line with federal and international standards, if they align with the needs of Wisconsin's maple producers and consumers.

Licensing and Regulation of Maple Syrup Production. Wisconsin maple syrup producers who sell their products directly to consumers may be exempt from holding a retail food establishment license (s. 97.30 (2)(b)(1)(a), Stats.). Maple syrup producers who wholesale their product are required to hold a food processing plant license with some exemptions (ATCP 70.03 (7)(e)). In maple syrup production and packaging facilities licensed as food processing plants, Wisconsin currently enforces its general food processing plant regulations.

The department will examine these existing food processing plant regulations for relevance to facility, sanitation, equipment and other food safety issues that may be related to maple syrup, other tree-derived syrups, and beverage production from tree sap. Maple syrup production and packaging are often done seasonally and/or in rustic facilities in remote locations. Within a given facility, there may be a wide range of materials used to construct the facility and equipment. It is uncertain whether all food processing plant requirements in ATCP 70 are germane to all parts of a facility, i.e. sap concentration room vs. bottling room, or are necessary for processing of maple syrup, other tree-derived syrups, or beverage production from tree sap. In its evaluation, the department will review regulations in other states and consult with industry to determine whether and the extent to which Wisconsin's regulations should be modified to address the unique processes associated with production of maple syrup, other tree-derived syrups, and beverage production from tree sap.

Policy Alternatives. As additional states adopt the United States Standards for Grades of Maple Syrup, Wisconsin's maple syrup industry may face increasing difficulty marketing its products outside of the state and in international commerce if the current rule is not changed or if Wisconsin-unique standards are developed. It will be more difficult for consumers who become accustomed to an internationally standardized grading system to use a unique Wisconsin's system in making informed choices about Wisconsin maple syrup. If the rule is not updated, it will contain outdated references to "Permanent glass color standards for maple syrup" from 1950, which have been removed and are no longer applicable in federal maple syrup standards. If Wisconsin's food processing plant regulations are not reviewed for applicability to the different stages and areas of maple syrup production, it is possible that an unnecessary regulatory burden may be placed on some processors. It is also possible that Wisconsin's existing food processing plant regulations are not appropriate for production of the various forms of "maple water" and syrups produced from non-maple tree species. This rule revision is necessary to ensure that the regulatory framework is suitable for product innovation by Wisconsin's maple industry.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1), 93.09, 97.09 (4), and 97.29 (5), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

93.09 Standards and regulations.

(1) The department, after public hearing, may establish standards for the grade of food products and farm products and for receptacles therefor and may prescribe regulations governing the marks or tags which may be required upon food products or farm products or upon receptacles therefor, for the purpose of showing the name, address or serial number of the person producing or marketing the product or receptacle, the grade of the product or receptacle, the quality, quantity, type, variety, size, weight, dimensions or shape of the product or the quality, type, size, weight, content, dimensions or shape of the receptacle.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.29 Food processing plants.

(5) RULE MAKING. The department may promulgate rules to establish the fees, required under sub. (3) (a) or (c), or to govern the operation of food processing plants. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling and storage; sanitary production and processing; and food sources and food labeling.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule will affect Wisconsin maple syrup producers who wish to grade their product. The rule may also help those producers market their product in interstate and international commerce and may help Wisconsin's maple syrup producers develop and market new products. It will help consumers of Wisconsin maple syrup to more easily compare and choose the maple syrup product they prefer. After review and consultation with industry, this rule may also be revised to clarify requirements that must be met by maple syrup producers who hold a food processing plant license.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

This rule may bring Wisconsin's maple syrup grading regulations into alignment with the newly adopted Untied States Standards for Grades of Maple Syrup. USDA adopted the final regulations on March 2, 2015 to replace existing maple syrup grading standards that were adopted by USDA on January 14, 1980. USDA adopted the maple syrup grading standards in response to a request from the IMSI, who represents the international maple syrup industry, which is located primarily in Canada and the United States. The goal of this effort was to replace a "patchwork" of state and federal grading standards with one simplified set of standards based primarily on the color and taste of the maple syrup.

The newly adopted federal standards replace the previous federal grading standards with new color and flavor descriptors, consistent with international maple syrup grading standards. Certain dark maple syrup which previously could only be sold for further processing may now be sold directly to consumers as Grade A syrup, if the syrup is free from damage. The regulation makes the reference to "USDA Color Standards for Maple Sirup", which were based on the USDA permanent glass color standards, obsolete. The new federal standards require that maple syrup color now be determined by using a spectrophotometer, or any method that provides equivalent results. The federal grading standards replace the previous "U.S. Grade B for Reprocessing" classification with a new "Processing Grade", which is not based on color but refers to maple syrup that fails to meet Grade A standards but is fairly free of damage, turbidity

or cloudiness, and is fairly clean. "Processing Grade" maple syrup is intended for use in commercial markets and may be used in the manufacturing of other products. Finally, the standards also modernize the spelling of syrup.

Wisconsin's current maple syrup grading standards differ from the new federal standards in several ways. The federal grading categories include four new color and flavor classes of syrup including: U.S. Grade A Golden, U.S. Grade A Amber, U.S. Grade A Dark, and U.S. Grade A Very Dark, along with the Processing Grade. All Grade A syrup must possess a "good maple flavor", be "clean, free from turbidity or cloudiness," and "off-flavors and odors"; and have "good uniform color." Wisconsin's grading standards are also based on color and flavor, as well as the clarity of the syrup, but only include three classifications. Wisconsin fancy maple syrup is lighter than medium amber and has a "characteristic and pleasant maple flavor" and Wisconsin Grade A maple syrup may not be lighter than medium amber nor darker than dark amber, possess a "characteristic maple flavor," and may contain a "trace" of sediment. Unlike the federal standards for Processing Grade syrup, Wisconsin's manufacturer's grade maple syrup is based on color, flavor, and level of sediment in the syrup. Wisconsin manufacturer's grade is darker than dark amber, possesses a characteristic maple flavor and may contain "somewhat more than a trace" of sediment. Wisconsin's standards still rely on "Permanent glass color standards for maple syrup," while the federal standards replace this method that measures the percent of light transmission through the syrup as measured with a spectrophotometer.

7. Anticipated economic impact

DATCP expects the proposed rule to have only a positive economic impact on Wisconsin's maple syrup industry. Use of a common, international grading system will make it easier for Wisconsin's maple syrup industry to sell their product in interstate and international commerce. It will open a new market by allowing Wisconsin's maple syrup producers to sell dark maple syrup, that would previously have been graded only for manufacturing uses, to be sold graded at retail, if the syrup meets other Grade A standards. It may also open markets for new products related to maple syrup production. If the department does not review food processing plant regulations, as they apply to maple syrup, it cannot be assured that Wisconsin's regulations properly address maple syrup processing activities and are not confusing to the maple syrup industry.

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6-25-15
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