

**Report From Agency**

**DATCP Docket No. 10-R-02**  
**Rules Clearinghouse No. 10-121**

**Final Draft Rule**  
**February 23, 2011**

**PROPOSED RULE**  
**OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,**  
**TRADE AND CONSUMER PROTECTION**

- 2 The Wisconsin department of agriculture, trade and consumer protection proposes the following  
3 rule *to create* ATCP 70.03(7)(e) and (note), *relating to* food processing plant license exemptions  
4 for certain maple sap processors.
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**Analysis Prepared by the Department**  
**of Agriculture, Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats. This rule exempts certain small food processors of maple sap from food processing plant licensing requirements under s. 97.29, Stats. Specifically, a person who processes maple sap to create maple syrup or concentrated maple sap that the person sells only to other processors for further processing, and who receives no more than \$5,000 from those sales in any license year, will not be required to obtaining a food processing plant license under s. 97.29(2), Stats.

***Statutes Interpreted***

Statutes Interpreted: ss. 97.09(4) and 97.29, Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07(1), 97.09(4), and 97.29(1)(g)8. and (5), Stats.

***Explanation of Statutory Authority***

- DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.
- Under s. 97.09(4), Stats., DATCP may establish and enforce standards governing the production, processing, packaging labeling, transportation, storage, handling, display, sale and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

- Under ss. 97.29(1)(g)8. and (5), Stats., DATCP may spell out food processing plant license requirements and exemptions.

### ***Related Statutes and Rules***

DATCP administers Wisconsin's food safety and labeling laws under ch. 97, Stats., including food processing plant license requirements under s. 97.29, Stats. DATCP has adopted food processing plant licensing rules under ch. ATCP 70, Wis. Adm. Code.

A person who processes food for sale or distribution is generally required to hold a state food processing plant license under s. 97.29, Stats. (there are certain exemptions). Persons who are engaged in dairy or meat processing, or who operate retail food establishments, must be licensed under other statutes. Local food license and zoning regulations may apply in some cases.

### ***Plain Language Analysis***

Under this rule, a person who processes maple sap to produce maple syrup or concentrated maple sap for sale to another processor for further processing is exempt from licensing under s. 97.29, Stats., if all of the following apply:

- The person receives less than \$5,000 from those sales in a license year.
- The person registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The person keeps a written record of each sale, retains that record for at least 2 years, and makes the record available to DATCP for inspection and copying upon request. The record must include the name and address of the purchaser, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

### ***Fiscal Impact***

This rule will not have a significant fiscal impact on the state of Wisconsin or on local governments. A complete *fiscal estimate* is attached.

### ***Business Impact***

This rule exempts certain small maple sap processors from licensing under s. 97.29. The exemption will relieve those processors from licensing and compliance costs, while ensuring adequate food safety protection. A complete *business impact analysis* is attached.

### ***Environmental Impact***

This rule will not have any significant environmental impact.

## ***Federal and Surrounding State Programs***

### **Federal Programs**

There is no federal law that addresses these issues or that compels DATCP to adopt this rule.

### **Surrounding State Programs**

Minnesota exempts a person from licensing as a food processor if the person produces less than \$5,000 of non-potentially hazardous food such as maple syrup. In addition, Minnesota has a state constitutional provision that would allow maple syrup produced on a farm from sap collected from trees on the farm to be exempt from licensure. But Minnesota would license all other maple syrup being produced for sale at wholesale.

Illinois does not license maple syrup processors. However, they inspect all known processors of maple syrup for sale.

In Iowa, maple syrup processors are licensed as food processing plants if they sell maple syrup other than direct to the consumer.

Michigan has a new law that exempts “cottage food operations” from food licensing and inspection requirements. A “cottage food operation” is an operation that produces or packages “non-potentially hazardous” food (such as baked goods, jams, jellies, candy, snack foods, cereal, granola, dry mixes, vinegar, or dried herbs) in a home kitchen that is located in the operator’s primary personal residence. Certain maple syrup operations that qualify as “cottage food operations” may be exempt from licensing and inspection requirements. However, maple syrup products must comply with other applicable laws, including provisions related to food labeling, adulteration and misbranding.

## ***Data and Analytical Methodologies***

This rule is not based on any specialized data or analytical methodologies.

### ***DATCP Contact***

Questions and comments related to this rule may be directed to:

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E-Mail: [tom.leitzke@wisconsin.gov](mailto:tom.leitzke@wisconsin.gov)

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**SECTION 1.** ATCP 70.03(7)(e) and (note) are created to read:

ATCP 70.03(7)(e) The processing of maple sap to produce maple syrup or concentrated maple sap if all of the following apply:

1. The processor sells the maple syrup or concentrated maple sap only to other processors for further processing.

2. The processor's combined gross receipts from all sales under subd. 1. during the license year total less than \$5,000.

3. The processor keeps a written record of every sale under subd. 1., retains that record for at least 2 years, and makes the record available for inspection and copying by the department upon request. The record shall include the name and address of the purchasing processor, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

4. The processor registers with the department before engaging in any processing activities under this paragraph in any license year ending March 31. A registration expires at the end of the license year. A processor shall register in writing on a form provided by the department, or shall register online at <http://www.datcp.state.wi.us/core/food/food.jsp>. The registration shall include information reasonably required by the department, including the registrant's name and address and information related to the nature, location and scope of the registrant's processing activities and product sales. There is no fee to register, and the registrant is not required to hold a registration certificate from the department.

**NOTE:** A registration form under subd. 4. may be obtained by contacting the department at the following address:

Department of Agriculture, Trade and Consumer Protection

1 Division of Food Safety  
2 P.O. Box 8911  
3 Madison, WI 53708

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel  
Secretary