



**MAPLE SYRUP PRODUCERS
ASSOCIATION OF CONNECTICUT, Inc.**

August 27, 2020

Commissioner Bryan P. Hurlburt
Connecticut Department of Agriculture
450 Columbus Blvd, Suite 701
Hartford, Connecticut 06103

Dear Commissioner Hurlburt,

Please accept this submission into the comments process that opened on July 14, 2020 when the Connecticut Department of Agriculture disclosed publicly its proposed regulations of the producers of maple syrup in Connecticut (CGS 22-54u-2 to CGS 22-54u-6).

The Maple Syrup Producers Association of Connecticut (MSPAC) is a non-profit membership organization whose mission is to encourage the production and handling of high-quality maple sap products in Connecticut. Our education work has spanned almost 40 years and our 170 members are among the several hundred commercial and hobbyist maple producers that can be found filling the sky with steam and sparks on many a winter's night and selling maple products across the state wherever Connecticut Grown food is favored by residents. These maple producers are family farms engaged in earning a living and represent future employers in our state.

We were encouraged that in June 2019 the Connecticut Legislature transferred regulation of the preparation, packaging, labeling and sale of maple syrup produced in Connecticut to the Department of Agriculture. By statute the department's efforts are directed specifically to agriculture and among the first of its duties (as enumerated in CGS 22-6) is that the "Commissioner shall encourage and promote the development of agriculture within the state . . ." The Department's consideration of and attention to how new maple regulations might negatively impact the viability and vibrancy of Connecticut's maple industry is comforting. And thank you for previously soliciting MSPAC's input and perspective on how these regulations might impact our Connecticut industry.

After reviewing the Department's proposed regulations, we have areas of concern as they relate to the treatment of small sugar-makers (not required to register with the Department) and larger sugar-makers (required to register). In the following paragraphs we highlight these areas of concern, and we provide suggestions on how the Department can modify the regulation while meeting the language and intent of the law (PA 18-19), as passed by the Legislature in June 2019. We ask you to address these issues in order to avoid harming the Connecticut maple industry.

1. Coverage of Small sugar-makers and hobbyists - Definition of Adulterated

In the proposed regulation the determination of adulteration (sec. 22-54-u-4) by the Department will rely on the definition of this term in US Federal Code (as indicated in sec. 22-54u-1). Because section 22-

54u-1 refers to the title in the US Code but does not recite the actual definition it will lead to lower compliance because the US Code is not easy to find on-line and especially difficult to search. To improve the likelihood of compliance, the Department should provide the definition of this term directly within sec. 22-54-u-1.

More importantly, use of the US Code as a source for the definition would lead to confusion on which regulations the small sugar-maker must follow in order to avoid a violation. If the Department wants them to adhere to US Code in order to avoid a violation, the Department will be subjecting small sugar-makers and hobbyists to the full FSMA Preventive Controls Rule (21 CFR 117) and these small business would be required to establish compliance through documentation and record keeping. The requirements of 21 CFR 117 – even reading all 23,000 words! – would place an exceptional burden on small sugar-makers and hurt the development of the Connecticut maple syrup industry.

Our request, therefore, is to insert directly into 22-54u-1 the definition of adulteration that the Department seeks. The definition might be similar or identical to that of 21 USC 342 but we believe the treatment of the definition within the regulation, similar to the Department’s treatment within the milk regulations (22-127(1)) will generate the least confusion and the highest compliance among small sugar-makers and maple hobbyists. We would discourage the Department from applying any of the provisions of 21 CFR 117 to small sugar-makers as small hobby production would no longer be viable.

2. Coverage of Small sugar-makers and hobbyists - Definition of Misbranded

In order to avoid a misbranding violation, section 22-54u-3 requires “producers” to label products in accordance with 21 CFR 101 and section 22-54u-3 also enumerates the types of information the label should contain, at a minimum. It’s not clear from this language if only producers required to register with the Department must follow 21 CFR 101 or whether producer of all size must follow it. If the Department’s final regulation requires the latter, it will have devastating consequences for our industry. 21 CFR 101 is a 100,000 word Federal regulation requiring a dozen hours of study to attain sufficient familiarity. A single consulting project for label review can cost several hundred dollars and would be uneconomic for most smaller sugar-makers.

Our request is that 21 CFR 101 be required of only the largest sugar-makers in the state. Perhaps require it of those sugar-makers who must register, but frankly, \$25,000 of sales (the proposed threshold) is an insufficient size to absorb the initial and on-going costs of complying with 21 CFR 101. For the smallest sugar-makers, we believe that the minimum information requirements enumerated in section 22-54u-3 will be adequate for Connecticut consumers.

3. Larger sugar-makers required to register – Increase threshold

These proposed regulations would require that sugar-makers with over \$25,000 in sales be subject to the same detailed Federal manufacturing and labeling requirements as billion-dollar pharmaceutical companies (21 CFR 117). The Department chose this \$25,000 threshold because it is the same monetary threshold the FDA used to require farm compliance with 21 CFR 112 (the Produce Rule). There are a few important reasons that the \$25,000 threshold is far too low for producers of maple syrup.

According to the CDC, 45% of all food-borne illness is caused by contaminated produce, 22% is caused by meat-poultry and 14% is caused by dairy¹. While it's not within the scope of this letter to offer reasons why this is the case, we do want to contrast the poor record of these other food groups with the impeccable food safety record of maple syrup. While you can find produce at the top of the list of major food-borne illness outbreaks in any given month you will not find maple syrup even on the list! Maple syrup benefits from pasteurization during production and again before bottling, requires syrup clarity that necessitates fine filtration that in turn reduces the risk of physical contamination, and finally, involves a production process and equipment that requires minimal chemical cleaning thereby reducing the risk of chemical contamination. While maple producers must always be vigilant, the risk of food-borne illness is low. The FDA has acknowledged that maple syrup production is a low risk activity while at the same time classifying many types of vegetables as high risk. Based on food safety risk, if the food safety compliance threshold for vegetable growers is \$25,000 then the threshold for maple syrup producers should be far higher.

Beyond food safety concerns, another important factor when choosing a size threshold at which compliance should be required is whether the producers can bear the cost of the regulation. Maple syrup, as a mixed type facility (part harvesting sap and part manufacturing maple syrup) is far more capital intensive than growing produce/vegetables. In other words, when 21 CFR 117 demands that producers have clean-able sanitary surface material, potable hot water and hand washing stations, stainless steel equipment that is cleanable by design, building design and construction that facilitates function, construction and maintenance that implements pest management – these improvements cost a great deal of money. If the Department requires Connecticut maple producers with a modest sales level to invest in facilities that meet 21 CFR 117 requirements, then our Connecticut industry will die.

Our recommendation is that the Department raise the threshold at which maple producers must register with the Department and comply with 21 CFR 117 and 21 CFR 101 to \$45,000. We believe that it is only at this higher level of economic activity that producers might have the financial wherewithal to undertake the equipment upgrades and building modifications that would allow them to comply. Importantly, this monetary level should be fixed at a base year that will be adjusted annually to reflect inflation using a standard economic measure such as the Bureau of Labor Statistics CPI-U/food.

Resources needed from the Department of Agriculture

MSPAC is grateful to work with the Department on developing appropriate regulations for the production of maple syrup in Connecticut and we are comforted to know the most prominent part of the Department's mandate is the encouragement and promotion of agriculture, including maple syrup. Some of our members have expressed disappointment with the proposed regulations now open to comment, but we think that the modest changes that we have recommended in this letter would ease many of these concerns. These changes would 1) clarify to small sugar-makers that documented compliance with 21 CFR 117 is not required to prove that their maple product is not adulterated, 2) provide simple labeling requirements for small-sugar makers and clarify that compliance with 21 CFR 101 is not required, and 3) acknowledge that maple syrup is a low risk food when compared with produce covered in 21 CFR 112 and that a threshold of \$45,000 of sales is more appropriate to the low

¹ Attribution of Foodborne Illnesses, Hospitalizations, and Deaths to Food Commodities by using Outbreak Data, United States, 1998–2008, Centers for Disease Control and Prevention, Atlanta, GA, USA

food safety risk and limited economic wherewithal of Connecticut producers. Still, these regulations will be a hardship for Connecticut's newly regulated producers, and we look forward to working with the Department of Agriculture to secure funding and assistance for compliance.

Thanks again for this opportunity to comment.

Sincerely,

Mark Harran

President, MSPAC
