

**The Case For A
State-by-State Adoption of
The Revised Codex Standard of Identity for Honey
(with certain deviations)**

**Delivered to
National Honey Packers & Dealers Association**

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Given the ongoing concerns over transshipments and contamination of honey, I want to be upfront about the focus of my presentation. I worked sixteen months in Florida for the adoption of the first standard of identity for honey in the nation. I avoided the collateral issue of contamination as pursuing two objectives at the same time weakens both. My goal today is to offer a compelling, persuasive argument for why a campaign for state-by-state adoption of the Honey Standard based on Revised Codex Standard as submitted to FDA and endorsed by the major industry groups, herein called Revised Codex, is the surest path to seeing the adoption of a national standard of identity for honey and achieving civil enforcement within the industry.

On November 10th, Charles Bronson, our Commissioner of Agriculture, signed Proposed Rule 5K-4.027, clearing the way for the rule to be published the obligatory four weeks in *Florida Administrative Weekly* prior to adoption. The formal announcement will come at the end of January or the first of February. A press conference will be held then.

When I presented the proposal to Charles Bronson in November of 2007, he refused to even consider adopting a standard stating it could not be forced. By February, Bronson, recognizing that adulterated honey posed too great a threat to

the honey producing industry and Florida consumers, agreed to begin work developing a honey standard for Florida and not wait for the FDA to take action. The state of Florida has some of the most progressive laws in the nation; we are one of the leading agricultural states. The Department is eager to begin enforcing the standard which will be accomplished and most assuredly in the Department's favor. Florida has led the way in adopting a standard of identity for honey which is congruous with Revised Codex, so I encourage the other states to adopt Revised Codex Standard as submitted to the FDA by the petitioners to maintain uniformity and bolster its enforceability.

Some of you are familiar with the story of how my grass roots campaign for a honey standard began. In August 2007, the status of FDA petition came up over lunch with members of the Florida State Beekeepers Association. The situation is hopeless, they say. I casually suggested, "Why don't you bypass the FDA; get Florida to adopt Revised Codex as the state honey standard, and the other states will follow suit." With the help of my husband, a thirty-year trial attorney and former chief litigation attorney for Florida Dept of Transportation, and Doug McGinnis, owner of Tropical Blossom Honey Co, in Edgewater, FL, I have met the first objective; Florida has a honey standard. My task now is to convince you, packers and dealers, the American Honey Producers Association, and the American Beekeeping Federation that you will never see a national standard of identity for honey unless you first pursue state by state adoption, that only through civil enforcement can we preserve honey and restore integrity to the industry.

The Plan for state adoption can be explained by answering four questions...

1. How does a state standard work?
2. What does the standard do?
3. Why are state standards necessary?
4. Are there other beneficial consequences to a state standard?

1. How does a state standard work?

In most states, laws of agriculture protect honey and define the product. Most likely then, all that is necessary is to convince your Department of Agriculture to substitute the existing definition of honey with the Revised Codex Standard. This action requires no legislation...

As I said, Bronson's initial reaction to a Florida standard however was not encouraging. He was troubled by the issue of non-refutable evidence, that

enforcement of the standard was not possible without the ability to identify the adulterant which is problematic without a sample of the adulterant for comparison.

His belief, and I suspect the same is true with many other agricultural commissioners, was heavily influenced by the loss of the 2006 FDA case against a Michigan & Florida packer for adulteration. The tests could not conclusively identify the adulterant, yet more importantly, the jury stated they could not make a determination because of “lack of regulatory standards for honey.”

So what is gained by adopting the Revised Codex Standard in a state? Once our standard is adopted, the Florida Department of Agriculture’s harsh enforcement will be a real threat to anyone adulterating honey, yet the splendid additional advantage is that we, in the honey industry, gain our constitutional right of access to the courts where we can inflict real pain: we sue anyone adulterating honey in the civil courts where actual and punitive damages are not held to a specific amount and where the burden of proof is not as onerous as in an administrative court. The adoption of the Revised Codex Standard, when used as a means to seek civil remedies, is the method by which we complement government enforcement with civil enforcement. With a state honey standard then, violations become acts of civil fraud.

Consider a buyer purchasing a barrel of honey. He tests the honey for adulterants and determines the barrel contents do not meet the state-adopted Revised Codex Standard. In a contractual relationship, which may, in your state, be nothing more than a handshake, the seller of the adulterant has breached the contract; the buyer contracted to purchase honey which he did not receive; the buyer can sue. If the buyer had contracts to sell the honey and fails to meet his contractual obligations, then the elevation of damages against the original seller intensifies. Furthermore, assume the buyer, in good faith, and not knowing the barrel was adulterated, sold the product to one of his consumers who then sold it again. The legal consequences against the original seller would probably ruin him.

If a honey producer finds she has nowhere to sell her honey for a profit because one firm is controlling the price, then the plaintiff may entertain a suit for interference with free enterprise. If it is proven that the defendant is in violation of anti-trust laws, the entire operation may be shut down. Win or lose, the threat of potential litigation is a strong deterrent to corporate action. In a capitalistic society, greed has its own rewards...

So we know that the reason neither the FDA nor a state is anxious to seek an administrative action against someone adulterating honey is due to the inconclusiveness of testing results when sampling honey for adulterants... Their concerns are legitimate; in a civil court, just like the state agency in an administrative action, the burden of proof of the adulterant rests with the plaintiff; yet the testing need only prove the honey is adulterated. The issue of non-refutable evidence is removed; A commercially available test (QSI, Applica) which proves that the substance is more than likely adulterated than not is sufficient. The tests are adequate for proof in a civil court because the plaintiff need not be concerned with the identity of the adulterant, only that the substance does not meet the Revised Codex Standard. I don't need to prove what they cut the honey with, only that they cut it with something. In this age of tremendous concern for honeybees and beekeepers, neither a judge nor a jury will need much help convincing themselves who is the guilty party in the courtroom. If the defendant introduces any of the more sophisticated testing procedures to prove the product is honey, given the inconclusiveness of those tests to identify an adulterant, the very tests that cannot convict a violator in an administrative court becomes the very weapon against the defendant in a civil action.

The big question many have asked me is "Who is going to pay for all these lawsuits?" ANSWER: Think class-action law firm.

2. What does the standard do?

Florida's standard applies to "all honey produced by honey bees from nectar and covers all styles of honey presentation that are processed and ultimately intended for direct consumption and to all honey packed, processed or intended for sale in bulk containers as honey, that may be repacked for retail sale, or for sale, or use as an ingredient in other food."

A product which does not conform to the standard must be removed from the shelves which mean syrups such as blended honey, packers blend, sugar free honey, and all the other imitation honeys can no longer be sold in the state. If you are thinking that labeling laws are sufficient, don't confuse a state honey standard with a statement of identity required on packaged foods. Honey labeling laws exist to stop packers from deceptive wording on a label. Honey labeling laws typically state you cannot use the words, "imitation honey." And that if the word "honey" appears on the "LABEL" then it must be "PURE honey manufactured by

honeybees.” And I could say back to you, “the honey in the bottle is PURE honey, but what we have here is a “honey blend.” I have clearly stated the CONTENTS on the LABEL as being honey containing 40% corn syrup. Labeling laws address the deceptiveness of the label; they DO NOT authenticate the product. A state honey standard defines precisely “WHAT IS HONEY” You restore honey as a product, and you increase the strength of labeling laws; otherwise, I will just change my label to some other deceptive wording, and put the junk right back on the shelf

3. Why is it necessary?

In Sacramento last year, I talked to California Secretary of Agriculture A.G. Kawamura. He asked me a straight-shooting question: are honey producers selling a product or a sweetener? I’m selling a product, yet over the years we have allowed our commodity to lose its uniqueness, partly because we beekeepers are insular creatures. A honey producer’s work is labor intensive and unless our occasional employee shares our passion for beekeeping, then they can’t appreciate the thrill of the sting, so we go it alone. We lick our wounds in silence and say, “things will get better next year.” But in doing so, we have not been a proactive agricultural group. Other agricultural enterprises take immediate action to safeguard their product. Orange juice in Florida is a good example. Originally, the product Sunny Delight was called Orange Delight, but the citrus growers sued in civil courts; the product name was trading on the commodity name. The citrus growers won and the name was changed. Dairy farmers were not so lucky. They waited too long to sue margarine manufacturers. Today, the public does not readily differentiate between butter, “buttery taste,” or “spreadable blend,” hence much of the uniqueness of butter has been lost...

At present we are in the cow pasture. You have to only look at the National Honey Board’s label confusion survey in 2005 to be convinced we are losing the uniqueness of our commodity. 42% asked believed that PURE honey contains additives and 17% believed honey contains added syrup. Honey Board’s CONCLUSION: “With a variety_of blended sweeteners and “honey pretenders” being introduced into the market, consumer understanding of the meaning of the term “honey” is likely to erode. THUS, the codification of the food name “honey” is timely and sorely needed.”

Yet can we, at this time, given the immense responsibilities of the FDA, believe they can restore honey to as clearly identifiable product as orange juice? You know the situation: The FDA is responsible for assuring the safety of twelve million shipments each year through 5,200 importer agents. Fifty percent rise in

those shipments since 1999; a minimum of 1000 Import Refusal Reports monthly. They've refused seafood, fruit products, spices & flavorings, soft drinks, bottled water, TV dinners. From China they recently found pet treat ornaments with poisonous dog biscuits, filthy frozen breaded shrimp and tuna steaks, bottles containing ten pills of poisonous herbal supplements, poisonous dried coriander, melanin in double chocolate flavored hot cocoa mix, and poisonous pear juice concentrate. You've got sixty percent of fresh fruits and vegetables and 75 percent of the seafood now consumed in the U.S being imported.

Add to that the 650 domestic food producers, producing \$417 billion annually. In one month, FDA issued safety_warning alerts on oysters suspected of norovirus; cheese, salmon, milk suspected of listeria; non-sterilized water in ophthalmic solution; mold in beverage water. They issued immediate recalls on blood supplies where the donor had previously returned from a malaria-infected region of the world and recalls on blood drawn from unknown donors.

Whether you are confident the FDA is adequately protecting the foodstuffs of America, or jeopardizing the health of its citizens, we simply cannot and should not ask the government to carry the entire burden of protecting our product. It's no wonder then that the buzzword in all American industry today is "self-enforcement" For us; it is through the civil courts then that we take back the product. We crush unscrupulous packers and throw out honey pretenders.

Thirteen other states will initiate their campaigns as soon as Florida makes the formal announcement. I spoke to the Texas Beekeepers convention in November; they passed the resolution for adoption and already have a working committee. In December, I went to Georgia Farm Bureau convention; they did the same...California is already at work. Oregon, Wisconsin, Ohio, New York, Kansas, South and North Dakota, North Carolina, West Virginia, Virginia, Maryland, and the Beehive State, Utah: these states know what they have to do and are doing it...

4. Are there any other beneficial consequences to a state honey standard?

I am convinced this standard can impact food manufacturers who are using the word honey as a marketing tool to increase the public's perception that the product is healthy and wholesome when most of the time, there is a disproportionately higher quantity of high fructose corn syrup than honey. You are familiar with bee-quick.com Wall of Shame: the webpage lists the names of foods that are marketed as containing honey yet have little or no honey listed in the nutritional content

label. If the standard has the power to shut down a bad packer, and get funny honey off the grocery shelves, then it also has the power to stop manufacturers from calling their product “Honey Something” just so consumers will buy it. I don’t expect the standard to immediately take down the likes of Nabisco (Honey Maid), Quaker (Honey Graham Life), Yum! Brands (KFC), Proctor & Gamble (Pringles), Ralcorp Holdings (Post Honey Bunches of Oats General Mills, Kraft, Quaker, Proctor & Gamble, but Soccer Mom and Concerned Dad will.

Our Department’s Marketing & Development division has planned a new promotional campaign about honey and the wholesomeness of the product. The consumers will be the ones to call attention to this deceptive advertising, and you can bet there will soon be more honey in that breakfast cereal. The prevailing thought in the past is these manufacturers would just drop honey and substitute a less expensive sweetener. I discount that possibility today considering the health risks of some syrups being called into question. We succeed in this state-by-state adoption campaign, and every food manufacturer engaged in this form of deceptive advertising could be threatened with class-action lawsuits.

As a consequence of state adoptions and its impact through industry civil enforcement, the FDA will most assuredly feel enough pressure from the states to ultimately adopt the Revised Codex Standard. Soon after I began work in Florida, I received a call from a former senior analyst with the FDA who assured me that once states start adopting, the FDA will be forced to do what he described as “reshuffle their priorities.”

Just recall your American history. Women in this nation campaigned unsuccessfully for almost 100 years to get the vote but not until they initiated a state by state campaign did Congress ever feel pressured enough to ratify the 19th amendment; countless other examples reveal some of our best legislation in America originated with the states...

The Committee for Promotion of Honey and Health sees honey as the next nutraceutical, a good ole natural food that delivers health benefits, and their 1st Symposium held in Sacramento reaffirmed the beauty of honey and its curative powers. Yet while we were inside falling in love all over again with the food from the bees, the honey in the public domain was being cut with adulterants as bad as dope on the streets. Phipps & Fessenden’s article in the August ‘07 *ABJ*, “The Crossroad of the American Honey Industry—A Call for Unity,” suggests there is a message that can unite the honey industry. And what words will unite us? “Honey

can deliver significant health benefits to an entire generation of Americans,” yet I am already hearing old customers and new tell me they won’t buy honey in the stores because it is probably contaminated honey. We know that what comes from the bees is pure and wholesome, but consumers are losing confidence in the product, and the market for honey may indeed be diminishing if we do not take action to restore this unique agricultural product.

Now is the time to test the waters with your agricultural commissioner. The recent exposure of the problems in the industry and the announcement of the Florida adoption will make it easier for other states to proceed. This is without a doubt the most opportune time we may ever have to stop all forms of adulteration. If we do not motivate ourselves to act now, we may lose this moment and never achieve it again...

Tammy Horn, author *Bees in America*, wrote that no health reform movements existed in the early days of the twentieth century. The first law to protect consumers was passed in 1906, and Charles Dadant is credited with getting the law passed. Without it, unscrupulous producers were selling their honey adulterated with sugar without fear of legal recrimination. “Honey adulteration, she writes, occurred often enough that the market suffered in the States and abroad.” When I read what Dadant had accomplished, I felt compelled to try and finish what he started one hundred and two years ago. I am neither war scarred nor battle weary; My friends in Florida can tell you that I am tenacious, short on patience, and long on perseverance, so consider me your loyal resource, and feel free to tap into my reserves.. The U.S. honey industry is not lost unless we wait for the government to save us. A state by state adoption of the Revised Codex Standard will give you what you want nationally and create civil enforcement where there has been none. Get this standard adopted state-by-state, and we will prevail...

