

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

**EMERGENCY RULE
Chapter ATCP 52**

The Wisconsin Department of Agriculture, Trade and Consumer protection hereby adopts the following emergency rule *to create* ch. ATCP 52 *relating to* producer led watershed protection grants and affecting small businesses.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This emergency rule implements the “producer led watershed protection grants” program created under s. 93.59 Stats., by 2015 Act 55. Under s. 93.59 Stats., the Department of Agriculture, Trade and Consumer Protection (“Department”) is authorized to make grants for nonpoint source pollution abatement activities that are conducted with the assistance of producer led groups. 2015 Act 55 created an annual appropriation in the Department of \$250,000 for each year of the biennium for grants to producer led watershed groups.

This emergency rule does all of the following:

- Defines "legal entity" for the purposes of the grant program
- Specifies the application process for a grant
- Specifies activities that may be conducted using a grant

Statutes Interpreted

Statute Interpreted: ss. 93.07 (1) and 93.59, Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and 93.59, Stats.

Explanation of Statutory Authority

The Department has broad general authority, under s. 93.07(1), Stats., to adopt regulations to enforce laws under its jurisdiction. Under s. 93.59(4), Stats., DATCP is authorized to adopt rules to define legal entity for purposes of the grant program, specify the grant application process, and specify the activities that may be conducted using a grant.

Related Rules or Statutes

There are no directly related rules or statutes, other than those cited above.

Plain Language Analysis

The Producer Led Watershed Protection Grants Program (“Program”) is designed to encourage producers to develop and use innovative approaches and/or conservation practices that reduce nonpoint source pollution within their watershed(s). The Program will also work to increase producer communication and education regarding environmentally and economically effective conservation activities. 2015 Act 55 appropriated \$250,000 in grant funding for each year of the FY 2015-17 fiscal biennium. The Program will support projects proposed by producer-led groups that involve voluntary nonpoint source pollution abatement activities within their watershed with the purpose of improving water quality in that watershed, as well as efforts to increase additional voluntary farm and agribusiness participation, expanding the overall breadth of the program.

Under s. 93.59 (5), Stats., DATCP may award no more than \$20,000 of grant funding to any producer led group in any state fiscal year.

Grant recipients must meet all of the following eligibility requirements to be considered for funding:

- (a) The producer-led group includes at least 5 agricultural producers each of whom operates an eligible farm, as defined in s.91.86 (1), Stats., in one watershed. The group may include additional agricultural producers who are not required to be operators of eligible farms.
- (b) The group is formed through a memorandum of understanding with one of the following collaborating entities:
 - 1. The department.
 - 2. The department of natural resources.
 - 3. A county land conservation committee.
 - 4. The University of Wisconsin-Extension or the Discovery Farms program of the University of Wisconsin-Extension.
 - 5. A nonprofit conservation organization.
- (c) The group assists agricultural producers in the watershed to voluntarily conduct nonpoint source water pollution abatement activities.
- (d) The group contributes matching funds at least equal to the amount requested.

Wis. Stat. §93.59 (2).

Grant Purposes

Under this emergency rule, the Department awards grants for projects that focus on nonpoint source pollution abatement activities to improve water quality through any of the following methods:

- Startup, work planning, mission development, goal setting, learning days to have experts discuss related topics, etc.
- Provide incentive payments to producers to implement conservation practices such as cover crops, nutrient and manure management planning, no-till, buffer strips, grassed waterways, manure composting, low-disturbance manure injection, etc.
- Measure and promote economic and environmental benefits of conservation practices
- Develop innovative approaches to manure storage, stacking, or conservation equipment-sharing that increases and/or identifies economic and environmental benefits of such practices
- Increase voluntary producer and agribusiness participation in their respective watersheds through education and outreach activities such as hosting conferences, workshops, or field days
- Collaborate with partner(s) for on-farm research that identifies economic and environmental benefits/opportunities of utilizing various conservation practices
- Complete cost-effective edge-of-field and in-stream water quality monitoring and soil testing
- Perform farm walkovers to evaluate farm, manure, and nutrient management practices and identify solutions to resource concerns

Use of Grant Funds

Under this emergency rule, grant funds may be used to reimburse expenses that are determined by the Department to be a reasonable and necessary part of the grant project. Eligible expenses may include, but are not limited to:

- Personnel for coordinator role including expenses for salaries and wages, contract and consulting services, and travel
- Incentive payments for conservation practices
- Outreach and educational activities
 - Field days, workshops, conferences
 - Mailings, creation of marketing and outreach brochures, handouts, factsheets, etc.
 - Materials and supplies
 - Meals for hosted outreach events
- Incentive payments for equipment rentals of innovative technologies used/shared by all producers within the producer-led group, for example covering costs for renting low-disturbance manure injector, no-till drill, etc.
- Edge-of-field and in-stream water quality monitoring and soil testing
- Farm walkovers to identify and evaluate potential or existing resource concerns, nutrient management implementation and other water quality practices

Grant funds may not reimburse any of the following expenses:

- Real estate purchases
- Repayment of loans or mortgages
- Rent or contract payments for time periods extending beyond the term of the grant contract
- Equipment purchases
- Administrative or overhead costs that are not direct costs of the grant project

Grant Proposals

Under this emergency rule, the Department must issue at least one request for grant proposals in each state fiscal biennium (the Department may issue more frequent requests, if it chooses to do so). The request for proposals must describe the required form and content of grant proposals, and must specify a deadline for submitting grant proposals. Applicants must submit grant proposals to the Department, in the manner prescribed within the Department's request for proposals.

Grant Awards

Under this emergency rule, the Department must evaluate grant proposals and issue its grant awards within 45 days after the closing of the grant proposal deadline. The Department must clearly identify each award recipient, the amount of the award, the purposes for which the award is given, and what is to be included in the annual report. At a minimum, the Department must consider all of the following criteria when evaluating grant proposals and making grant awards:

- Whether the proposed project will improve water quality within their respective watershed
- The extent to which a proposed project will increase nonpoint source pollution abatement activities and producer participation
- Whether the proposal complies with the Department's request for proposals
- Whether the proposed project meets the standards prescribed in this emergency rule
- The viability of the proposed project
- The management and technical qualifications of the grant applicant
- The qualifications of the persons, collaborators, and/or legal entities who will carry out the project
- The financial capacity of the grant applicant to complete the project as proposed.
- The adequacy of the project plan and budget
- Whether the grant proposal and budget adequately identifies the nature of project expenses to be reimbursed under the proposed grant

Grant Contracts

Under this emergency rule, the Department must enter into a contract with a legal entity before distributing funds. The contract must spell out grant terms and conditions, including performance requirements, reporting requirements, and payment terms. Grant recipients will be required to file an annual report with the Department.

Fiscal Impact

This emergency rule will have a fiscal impact on the Department's operations. Under this emergency rule, the Department must issue at least one request for grant proposals in each state fiscal biennium. Department staff must review grant proposals, recommend grant awards, administer grants, and ensure compliance with applicable requirements. Department staff will also provide technical assistance to grant applicants and recipients, as appropriate.

Program administration will occupy at least 0.25 FTE staff in the Department's Division of Agricultural Resource Management (this does not include legal, managerial, the Department's central accounting, or other indirect staff support). The cost for the 0.25 FTE staff will be \$35,000 per year, including salary, fringe benefits, and support costs.

Analysis and Supporting Documents used to Determine Effect on Small Business

Because the program is voluntary, no significant analysis was required to determine the effect on small businesses.

Business Impact

This emergency rule will have no adverse effect on small business. The Program is voluntary and thus imposes no cost on businesses. By providing \$250,000 in grant funding to agricultural producers, the Program will benefit agricultural producers, other agricultural businesses, and communities that participate in the grant program. Grant recipients will benefit directly, while others will benefit indirectly from the creation of a stronger agricultural industry and improved water quality. The Department plans to use proposal procedures that will make the cost of applying insignificant.

Federal and Surrounding State Programs

Federal Programs

There are currently no similar federal programs.

Surrounding State Programs

The Iowa Department of Agriculture funds the Hewitt Creek Watershed Group, which is a producer-led, performance-based farm and watershed management group in eastern Iowa that

was formed to improve soil and water quality. The group was established in 2004 in response to the 2002 impaired waters listing of the Hickory Creek, located in the Hewitt-Hickory Creek Watershed. Funding for this project began with an Iowa Farm Bureau Federation grant and additional funding from the Iowa Department of Agriculture has helped to sustain the project.

Data and Analytical Methodologies

DATCP worked with representatives of the agriculture industry, potential producer-led groups, and collaborators to develop standards for grant determinations contained in this emergency rule.

DATCP Contact

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

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Governor and published in the Wisconsin State Journal.

FINDING OF EMERGENCY

A finding of emergency is not required. Section 9102 of 2015 Act 55 provides that, “Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of a the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

EMERGENCY RULE

Chapter ATCP 52

PRODUCER LED WATERSHED PROTECTION GRANTS

ATCP 52 .01 Purpose. This chapter implements the producer led watershed protection grants program created under s 93.59, Stats.

ATCP 52.02 Definitions. As used in this rule:

"Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(2) "Legal entity" means an association, corporation, partnership, proprietorship, or trust that has legal standing according to law.

ATCP 52.03 Application requirements and procedures.

(1) **REQUEST FOR PROPOSALS.** The department shall issue at least one request for proposals in each fiscal biennium. The request for proposals shall describe the required form and content of grant proposals, and shall specify a deadline for submitting grant proposals. Applicants must submit grant proposals to the department, in the manner prescribed by the department's request for proposals. The department shall publish the request for grant proposals on its webpage. The department shall also issue a press release announcing its request for proposals to news media likely to give notice to the public. The department shall announce grant awards within 45 days of the deadline for submitting grant proposals.

(2) **CRITERIA.** The department shall consider all of the following when evaluating grant proposals and making grant awards:

- (a) Whether the proposed project will improve water quality within their respective watershed.
- (b) The extent to which a proposed project will increase nonpoint pollution abatement activities and producer participation.
- (c) Whether the proposal complies with the department's request for proposals.
- (d) Whether the proposed project meets the standards prescribed in this emergency rule.
- (e) The viability of the proposed project.
- (f) The management and technical qualifications of the grant applicant(s).
- (g) The qualifications of the persons, collaborators and/or legal entities who will carry out the project.
- (h) The financial capacity of the grant applicant to complete the project as proposed.
- (i) The adequacy of the project plan and budget.
- (j) Whether the grant proposal and budget adequately identifies the nature of project expenses to be reimbursed under the proposed grant.

ATCP 52.04 Grant activities. The department may award grants for projects undertaken by agricultural producers that are designed to do any of the following:

- (1) Startup, work planning, mission development, goal setting, learning days to have experts discuss related topics, etc.
- (2) Provide incentive payments to producers to implement conservation practices such as cover crops, nutrient and manure management planning, no-till, buffer strips, grassed waterways, manure composting, low-disturbance manure injection, etc.

- (3) Measure and promote economic and environmental benefits of conservation practices
- (4) Develop innovative approaches to manure storage, stacking, or conservation equipment-sharing that increases and/or identifies economic and environmental benefits of such practices
- (5) Increase voluntary producer and agribusiness participation in their respective watersheds through education and outreach activities such as hosting conferences, workshops or field days
- (6) Collaborate with partner(s) for on-farm research that identifies economic and environmental benefits/opportunities of utilizing various conservation practices
- (7) Complete cost-effective edge-of-field and in-stream water quality monitoring and soil testing
- (8) Perform farm walkovers to evaluate farm, manure, and nutrient management practices and identify solutions to resource concerns

ATCP 52.05 Permitted use of grant funds. Permitted uses for grant funds include the following:

- (1) Personnel for coordinator role including expenses for salaries and wages, contract and consulting services, and travel at rates to be described in the annual request for proposals developed by the department.
- (2) Incentive payments for conservation practices.
- (3) Outreach and educational activities including:
 - (a) field days, workshops and conferences;
 - (b) mailings, creation of marketing brochures, handouts, factsheets, and related documents.;
 - (c) materials and supplies; and
 - (d) meals for hosted outreach events.
- (4) Incentive payments for equipment rentals of innovative technologies used or shared by all producers within the producer led group, including but not limited to covering costs for renting low-disturbance manure injector and no-till drill.
- (5) Cost effective edge-of-field and water quality monitoring and soil testing.
- (6) Farm walkovers to identify and evaluate potential or existing resource concerns, nutrient management implementation and other water quality practices.

ATCP 52.06 Prohibited uses of grant funds. Grant funds may not be used for any of the following:

- (1) Real estate purchases.
- (2) Repayment of loans or mortgages.
- (3) Rent or contract payments for time periods extending beyond the term of the grant contract.
- (4) Equipment purchases.
- (5) Administrative or overhead costs that are not direct costs of the grant project.

ATCP 52.07 Grant contracts.

(1) **CONTRACT REQUIRED.** A successful grant applicant shall enter into a contract with the department before any grant money is distributed to the applicant. No funding commitment is final until the contract is executed.

(2) **CONTRACT PROVISIONS.** A grant contract shall be reasonably designed to ensure that the grant recipient carries out the recipient's obligations with respect to the grant. The contract shall be signed by an authorized department official and by the applicant. The parties may amend the contract by mutual written consent.

(3) **BREACH OF CONTRACT.** The department may void a contract and seek return of any funds released under the contract for failure by the award recipient to perform the recipient's obligations under the contract.

(4) **REPORTING.** Every contract shall set forth a schedule of progress reports and payments. A grant recipient shall provide the department with a final progress report. Reimbursement payments shall be conditioned upon the receipt of reimbursement requests, and reports, as provided in the contract.

EFFECTIVE DATE AND DURATION: This emergency rule takes effect upon publication and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.