atcp053_EmR1040.pdf **Agriculture, Trade and Consumer Protection – Creates Ch. ATCP 53 – EmR1040**

Publication Date: **November 9, 2010**
Effective Dates: **January 1, 2011 until the Department modifies or repeals the rule**

ORDER OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection adopts the following order ***to create*** ch. ATCP 53, ***relating to*** agricultural enterprise areas.

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

This rule designates 12 agricultural enterprise areas (AEAs) pursuant to s. 91.84, Stats. An AEA is a contiguous land area, devoted primarily to agricultural use, which is locally targeted for agricultural preservation and agricultural development. The 12 AEAs designated by this rule encompass just under 200,000 acres. The AEAs include land in 11 counties and 27 towns (some of the AEAs cross town or county lines).

The designation of an AEA does not control or restrict land use. However, owners of farmland located within an AEA may enter into voluntary 15-year farmland preservation agreements with the Department of Agriculture, Trade and Consumer Protection (DATCP). That enables them to claim farmland preservation tax credits under s. 91.613, Stats.

Exemption from Finding of Emergency

Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural preservation area or modifying or terminating the designation of an agricultural preservation area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

The department views s. 91.84(2) as authority to adopt permanent rules that shall be published immediately in the Wisconsin Administrative Code.

Statutes Interpreted

Statutes Interpreted: ss. 91.84 and 91.86, Stats.

Statutory Authority

Statutory Authority: s. 91.84(1) and (2), Stats.

Explanation of Statutory Authority

Under s. 91.84(1), Stats., DATCP may designate up to 15 AEAs, encompassing a total of not more than 200,000 acres, before January 1, 2012. DATCP may designate additional AEAs after January 1, 2012. DATCP may designate AEAs by a special abbreviated rulemaking process described in s. 91.84(2), Stats.

DATCP may designate AEAs in response to local petitions under s. 91.86, Stats. Each petition must be signed by at least 5 farmers within the AEA, and by the affected county and local governments. Other persons may sign in support of a petition.

Related Rules or Statutes

Owners of farms located within an AEA may enter into voluntary 15-year farmland preservation agreements with DATCP, pursuant to s. 91.60, Stats. Those farmers may claim farmland preservation tax credits under s. 91.613, Stats.

Tax credits are higher for farms that are also covered by a certified farmland preservation zoning ordinance under subch. III of ch. 91, Stats. An owner of a farm located within an AEA may enter into a farmland preservation agreement, regardless of whether the farm owner signed the petition requesting designation of the AEA.

Plain Language Analysis

This rule designates the following 12 AEAs, totaling just under 200,000 acres, in the following locations. Maps and associated tax parcel numbers describing the AEAs are available at http://workinglands.wi.gov. The maps will be published with this rule in the Wisconsin administrative register. Hard copies of the maps are on file with the legislative reference bureau. Hard copies of the maps and associated tax parcel numbers are on file with DATCP and may be obtained by contacting DATCP at the contact address shown below.

AEA name	AEA Location (County and Town)
Antigo Flats AEA	*Langlade County*: Towns of Ackley, Antigo, Neva, Peck, Polar, Price and Rolling
Ashippun/Oconomowoc AEA	*Dodge and Waukesha Counties*: Towns of Ashippun and Oconomowoc
Bayfield AEA	*Bayfield County*: Town of Bayfield
Bloomer Area AEA	*Chippewa County*: Town of Bloomer
Cadott Area AEA	*Chippewa County*: Towns of Goetz and Delmar
La Prairie AEA	*Rock County*: Towns of La Prairie and Turtle
Maple Grove AEA	*Shawano County*: Town of Maple Grove
Rush River Legacy AEA	*St. Croix County*: Town of Rush River
Scuppernong AEA	*Jefferson County*: Towns of Cold Spring, Hebron, Palmyra and Sullivan
Squaw Lake AEA	*Polk and St. Croix Counties*: Towns of Alden, Farmington, Somerset and Star Prairie
Town of Dunn AEA	*Dane County*: Town of Dunn
Windsor AEA	*Dane County*: Town of Windsor

Fiscal Impact

As a result of this rule, owners of farmland in the designated AEAs will be able to enter into voluntary farmland preservation agreements with DATCP. That will enable them to claim farmland preservation tax credits under s. 71.613, Stats. A landowner may claim an income tax credit of $5.00 per acre for land covered by a farmland preservation agreement. If the land is *also* covered by a certified farmland preservation zoning ordinance, the landowner may claim a tax credit of $10.00 per acre.

The tax credits, paid by the Wisconsin Department of Revenue, will be an annual cost to the State of Wisconsin. The total additional annual cost will depend on the number of landowners in AEAs who choose to enter into farmland preservation agreements, the number of acres covered by those agreements, and whether the area is also covered by a farmland preservation zoning ordinance. DATCP estimates a total additional annual cost of approximately $266,000 assuming that landowners will enter into farmland preservation agreements covering 40% of the total acreage included the designated AEAs.

The Department of Revenue will incur some added costs for personnel, supplies and services to process tax credit claim forms and pay the tax credits. However, those costs can likely be absorbed within DOR's current operating budget.

DATCP will incur some added costs to publish this rule in the official state newspaper and for personnel, supplies and services to enter into farmland preservation agreements with farmers in the designated AEAs. However, those costs will be relatively small and can be absorbed within DATCP's current operating budget.

Farmers claiming tax credits in the designated AEAs must comply with state soil and water conservation requirements. Counties monitor compliance, and may suspend a farmer's tax credit eligibility if the farmer fails to comply. Counties in which the AEAs are located may incur some additional costs for personnel, supplies and services to monitor conservation compliance by farmers claiming tax credits pursuant to farmland preservation agreements in the designated AEAs. In many instances, that cost can be absorbed within the counties' current operating budgets.

Business Impact

This rule, by itself, does not have any direct impact on farmers or other business owners. The designation of an AEA does not control or restrict land use. However, farm owners in an AEA are eligible to enter into voluntary 15-year farmland preservation agreements with DATCP. That enables them to claim farmland preservation tax credits under s. 71.613, Stats.

Participating farmers may claim a significant tax credit benefit for the 15-year term of their agreement ($5 per acre per year, or $10 per acre per year if the land is also covered by a certified farmland preservation zoning ordinance). The AEA designation may also help reassure farmers and investors that the affected area will remain in agricultural use. The AEA designation may encourage, and help focus, agricultural investment and development.

Farmers who choose to enter into farmland preservation agreements (in order to qualify for tax credits) may incur some costs to keep their land in agricultural use for 15 years, and to comply with state soil and water conservation requirements. Some of these farmers may already be complying with conservation standards. In any case, the decision to enter into a farmland preservation agreement is voluntary. The cost of compliance for participating (if any) may be outweighed by the tax credit benefit.

Many of the farmers who will benefit from this rule are "small businesses." This rule will have a positive effect on those small businesses. This rule will impose no new mandates on small business (farmland preservation agreements are entirely voluntary). This rule is not subject to the small business delayed effective date under s. 227.22(2)(e), Stats.

Environmental Impact

This rule, by itself, does not have a direct impact on the environment. This rule enables eligible farmers to enter into voluntary farmland preservation agreements with the state. Those agreements will have a positive effect on the environment by preserving agricultural land and promoting compliance with state soil and water standards.

This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Federal and Surrounding State Programs

There are no federal programs comparable to the AEA program implemented by this rule. Over 15 states have "agricultural district" programs that bear some resemblance to the AEA program implemented by this rule, including the neighboring states of Illinois, Iowa, and Minnesota. However, each of those state programs has its own unique features.

None of the programs in other states is exactly comparable to the AEA program implemented by this rule, and some are more comparable to Wisconsin's farmland preservation zoning program. Some include limits on non-farm development, local planning requirements, right-to-farm protection, rewards for conservation practices, per acre property tax credits, and eligibility for participation in a conservation easement program.

Data and Analytical Methodologies

DATCP evaluated AEA petitions in consultation with a panel that included independent reviewers. DATCP and the reviewers considered factors identified in ss. 91.84 and 91.86, Stats., as well as a variety of other factors identified in the

petition forms. Petitioners were invited to submit, and did submit, extensive data and information to support their petitions.

DATCP Contact

Questions, comments, and requests for maps or associated tax parcel numbers related to AEAs designated by this rule may be directed to:

Coreen Fallat
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4625
E-Mail: coreen.fallat@wisconsin.gov

Section 1. Chapter ATCP 53 is created to read:

Chapter ATCP 53

AGRICULTURAL ENTERPRISE AREAS

NOTE: This chapter designates agricultural enterprise areas pursuant to s. 91.84, Stats. The designation of an agricultural enterprise area does not, by itself, control or restrict land use. However, owners of farms in a designated agricultural enterprise area may enter into voluntary 15-year farmland preservation agreements with the Wisconsin department of agriculture, trade and consumer protection, pursuant to s. 91.60, Stats. That enables them to claim farmland preservation tax credits under s. 91.613, Stats.

ATCP 53.01 Designation of agricultural enterprise areas. The following areas are designated as agricultural enterprise areas pursuant to s. 91.84, Stats.:

(1) ANTIGO FLATS AGRICULTURAL ENTERPRISE AREA. The Antigo Flats agricultural enterprise area, consisting of approximately 62,278 acres in Langlade county, in the towns of Ackley, Antigo, Neva, Peck, Polar, Price and Rolling, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(2) ASHIPPUN/OCONOMOWOC AGRICULTURAL ENTERPRISE AREA. The Ashippun/Oconomowoc agricultural enterprise area, consisting of approximately 30,159 acres in Dodge and Waukesha counties, in the towns of Ashippun and Oconomowoc, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(3) BAYFIELD AGRICULTURAL ENTERPRISE AREA. The Bayfield agricultural enterprise area, consisting of approximately 2,986 acres in Bayfield county, in the town of Bayfield, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(4) BLOOMER AREA AGRICULTURAL ENTERPRISE AREA. The Bloomer Area agricultural enterprise area, consisting of approximately 4,380 acres in Chippewa county in the town of Bloomer, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(5) CADOTT AREA AGRICULTURAL ENTERPRISE AREA. The Cadott Area agricultural enterprise area, consisting of approximately 1,640 acres in Chippewa county, in the towns of Delmar and Goetz, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(6) LA PRAIRIE AGRICULTURAL ENTERPRISE AREA. The La Prairie agricultural enterprise area, consisting of approximately 21,093 acres in Rock county, in the towns of La Prairie and Turtle, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(7) MAPLE GROVE AGRICULTURAL ENTERPRISE AREA. The Maple Grove agricultural enterprise area, consisting of approximately 21,867 acres in Shawano county, in the town of Maple Grove, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(8) RUSH RIVER LEGACY AGRICULTURAL ENTERPRISE AREA. The Rush River Legacy agricultural enterprise area, consisting of approximately 8,604 acres in St. Croix county, in the town of Rush River, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(9) SCUPPERNONG AGRICULTURAL ENTERPRISE AREA. The Scuppernong agricultural enterprise area, consisting of approximately 14,015 acres in Jefferson county, in the towns of Cold Spring, Hebron, Palmyra and Sullivan, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(10) SQUAW LAKE AGRICULTURAL ENTERPRISE AREA. The Squaw Lake agricultural enterprise area, consisting of approximately 9,718 acres in Polk and St. Croix counties, in the towns of Alden, Farmington, Somerset and Star Prairie, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(11) TOWN OF DUNN AGRICULTURAL ENTERPRISE AREA. The Town of Dunn agricultural enterprise area, consisting of approximately 10,339 acres in Dane County, in the town of Dunn, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

(12) WINDSOR AGRICULTURAL ENTERPRISE AREA. The Windsor agricultural enterprise area, consisting of approximately 11,167 acres in Dane County in the town of Windsor, is described by the map and associated tax parcel numbers posted for that area at http://workinglands.wi.gov on ***[newspaper inserts rule publication date].***

NOTE: Hard copies of the maps referenced in s. ATCP 53.01 are on file with the legislative reference bureau and the department of agriculture, trade and consumer protection. Hard copies of the associated tax parcel numbers referenced in s. ATCP 53.01 are on file with the department of agriculture, trade and consumer protection. Copies may be obtained by contacting the department at the following address:

Department of Agriculture, Trade and Consumer Protection,
P.O. Box 8911
Madison, WI 53708-8911.

SECTION 2. EFFECTIVE DATE. This rule takes effect on January 1, 2011, pursuant to s. 91.84(5), Stats.

Signed this _____ day of _____, 2010.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Randy Romanski, Secretary