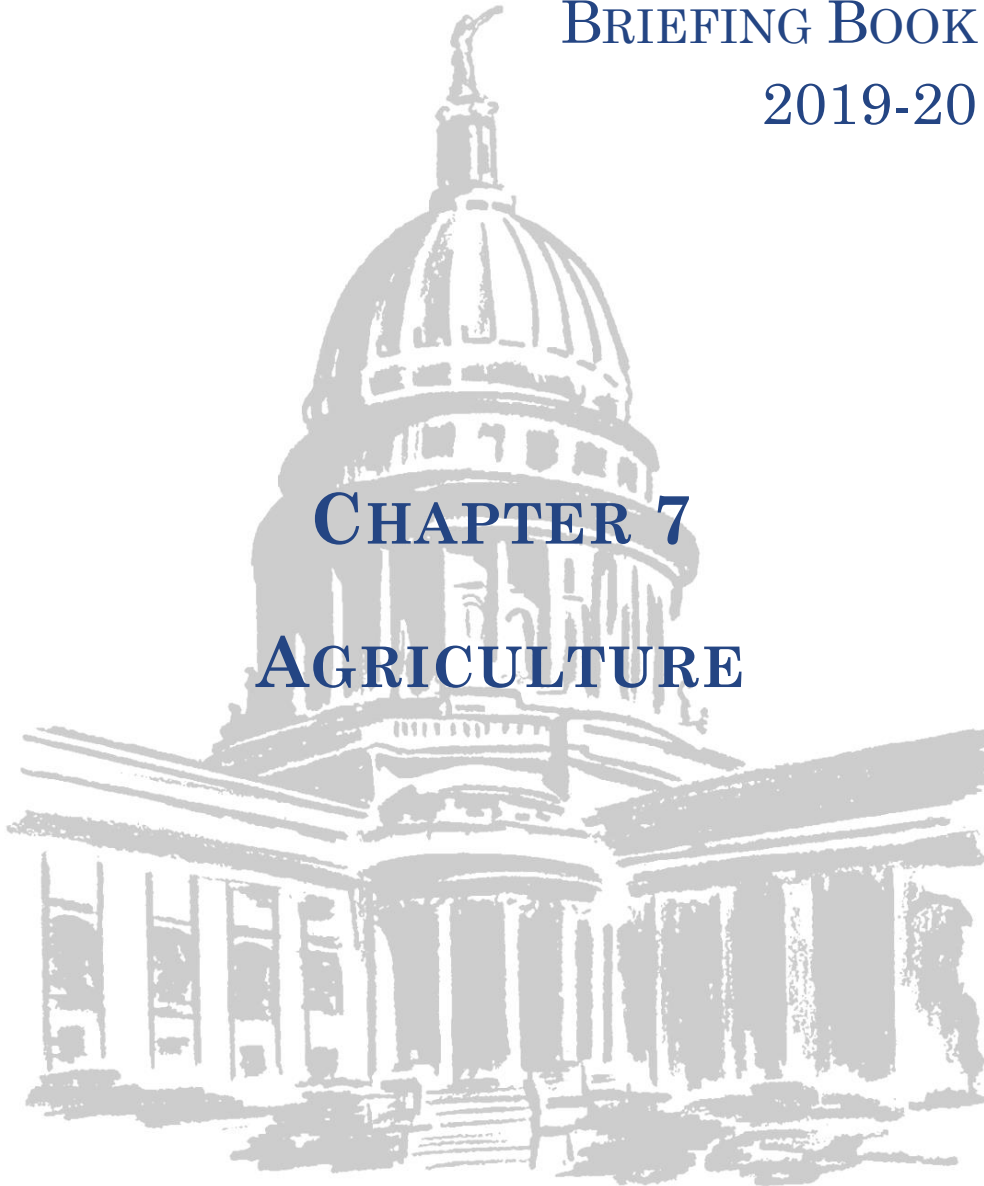


WISCONSIN LEGISLATOR
BRIEFING BOOK
2019-20

CHAPTER 7
AGRICULTURE



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INTRODUCTION

Wisconsin ranks among the top states in the production of agricultural commodities such as carrots, cheese, corn for silage, cranberries, snap beans, milk, oats, and potatoes.

Agricultural economics in Wisconsin depends in part on national and international market forces. For example, the volume of agricultural exports typically increases when the U.S. dollar is weak. Nationally, the cost of agricultural inputs such as fuel and fertilizer and market prices for agricultural products are important factors.

Government at all levels also plays a role in agriculture, both in support of the industry and in its regulation. On the federal level, the U.S. Department of Agriculture (USDA) provides crop insurance to farmers, offers assistance to beginning farmers, and administers various programs relating to conservation, energy, and the development of agricultural markets.

In addition to numerous state programs, this chapter provides an overview of numerous agricultural topics, including: land use and environmental regulation; farmland preservation; taxation; food safety and disease prevention; Wisconsin's "right to farm" law; fence law; and Wisconsin's new industrial hemp law.

STATE PROGRAMS

The Wisconsin Department of Agriculture, Trade, and Consumer Protection (DATCP) is the state agency with primary responsibility for administering agricultural programs. Other state entities, such as the University of Wisconsin (UW)-Extension and the Wisconsin Housing and Economic Development Authority (WHEDA), also provide assistance to farmers.

Technical and Legal Assistance

Wisconsin Farm Center

Wisconsin Farm Center's toll-free line: 1-800-942-2474.

Email: farmcenter@wisconsin.gov

The Wisconsin Farm Center, housed within DATCP, provides information on the introduction of new agricultural technologies; offers financial counseling for farm businesses; coordinates a mediation and arbitration

program; assists with rewiring farms to update antiquated electrical wiring and to minimize stray voltage; and answers general legal questions relating to issues such as taxation, estate planning, leases, and credit-debtor law.

UW-Extension Programs

The UW-Extension Cooperative Extension farming website is:

<http://fyi.uwex.edu/topic/farming/>

UW-Extension has significant resources available to farmers and others who work in the agricultural sector. Many of the resources focus on agricultural practices. For example, UW-Extension provides tips on farm budgeting and energy use, and provides recommendations on farming during difficult financial times. In addition, UW-Extension conducts research on pest management, sustainable agriculture, general business management, and farm safety.

Marketing Assistance

DATCP Agriculture Development Division

Through its Agriculture Development Division, DATCP works to develop, grow, and diversify Wisconsin agriculture, food, and related businesses. It operates the Farm Center, described above, and provides assistance with product development, identifying new markets, developing product identities, and exporting products to other states and countries.

Collective Marketing

Some of Wisconsin's agricultural producers market products collectively. One of the ways collective marketing is accomplished is through a system of agricultural marketing orders. Marketing orders are typically requested by producers of a specific commodity in a petition to DATCP. A marketing order levies a "check-off," which is an assessment on each producer, that generates revenues for the program. A marketing order is issued by the DATCP Secretary following a referendum in which the marketing order is approved by a majority of the producers, and thereafter is legally binding on all producers. Revenues from the check-off are used for research and development, public education, and marketing efforts. There are currently seven active marketing boards in the state, including marketing boards for cherries, cranberries, corn, milk, soybeans, ginseng, and potatoes.

Some agricultural producers market products collectively, through state marketing boards.

The Wisconsin Milk Marketing Board's website includes links to cheese recipes, maps, and more:

<http://www.eatwisconsincheese.com>

"Something Special from Wisconsin" Branding Campaign

DATCP authorizes specified products produced or manufactured in Wisconsin to be included in the state's trademarked "Something Special from Wisconsin" branding campaign. Approved products may bear the "Something Special from Wisconsin" logo. To

be eligible, 50% of a product's value must be attributable to Wisconsin ingredients, production, or processing activities.

Financial Assistance

WHEDA administers loan guarantee programs related to agriculture under ch. 234, Stats., including the following:

- The Credit Relief Outreach Program (CROP), which provides guarantees on agricultural production loans.
- The Farm Asset Reinvestment Management (FARM) program, which provides loan guarantees for starting, expanding, or modernizing agricultural operations.
- The Agricultural Production Disaster Assistance Program, which guarantees loans for certain extraordinary disaster-related costs.
- The Agricultural Development Program, under which guarantees can be issued for loans for capital or items to be used for processing or marketing products made from agricultural commodities produced in Wisconsin.

The Agricultural Producer Security Fund Program, administered by DATCP under ch. 126, Stats., is intended to protect agricultural producers from financial default by those purchasing the producer's products. This program affects dairy plant operators, vegetable processing plants, public warehouses, and grain dealers by providing a thorough review of the financial status of product purchasers and requiring them to provide financial assurances to protect the producers if payments are not made.

DAIRY-SPECIFIC PROGRAMS

Various state programs and initiatives provide support to the dairy industry. In addition to the programs discussed below, DATCP provides assistance to organic dairy farms, assists with diagnosing problems with animal herd health, and offers support to dairy farmers interested in incorporating grazing on their farms.

Dairy 30x20 Initiative

The Dairy 30x20 initiative, also called the "Grow Wisconsin Dairy" initiative, aims to help Wisconsin dairy farms to produce 30 billion pounds of milk annually by 2020 to meet growing demand. Under this initiative, various financial and technical benefits are available to dairy producers and processors. DATCP staff who coordinate this program may be reached at 855-WIDAIRY or GrowWisconsinDairy@wi.gov.

Wisconsin Center for Dairy Research

The Wisconsin Center for Dairy Research is located on the UW-Madison campus. It is one of the premier dairy research centers in the country. The center researches topics such as cheese making, dairy protein processing and separation, and product safety technologies.

Part of the funding for the center comes from assessments under the milk marketing order, described above.

LAND USE AND ENVIRONMENT

Like other types of entities, agricultural businesses must comply with laws regulating natural resources, land use, and the environment. The laws that apply to a given agricultural use depend on the nature of the agricultural practice and the characteristics of a given site. In addition to the laws described below, a particular agricultural operation may be subject to state or federal laws governing water use, waste management, or other environmental impacts.

Some of the regulatory programs, such as soil and water conservation requirements, animal waste regulations, and fertilizer and nutrient requirements, are imposed through a long-term management strategy rather than a traditional regulatory program. Some program requirements are imposed only when public funds are available to assist farmers in complying with the regulations.

Livestock Facility Siting

The livestock facility siting law, s. 93.90, Stats., establishes state water quality and odor management standards to be applied to any local regulation of new or expanding livestock facilities. The law applies to livestock facilities with 500 or more animal units.¹

The livestock siting law applies to livestock facilities with 500 or more animal units.

The livestock siting law requires **local government** regulations relating to new or expanded livestock facilities to adhere to state standards governing the local permitting process. The purpose of this law is to establish uniform standards statewide for livestock facility siting and expansion. The Livestock Facility Siting Review Board oversees challenges to local siting decisions.

Nonpoint Source Performance Standards

Nonpoint source pollution, or runoff pollution, is water pollution that is diffuse in nature, having no single, well-defined point of origin. Wisconsin law regulates nonpoint source pollution from farming activities.

Wisconsin law requires the Department of Natural Resources (DNR) to establish nonpoint source performance standards, and DATCP must write rules identifying practices for farmers to use to meet those standards. Specific performance standards include

¹ “Animal units” are calculated according to formulas set forth in s. NR 243.05, Wis. Adm. Code.

requirements related to nutrient management², erosion, tillage setbacks, phosphorus management, and manure storage and management. Cost sharing may be available to pay for the implementation of practices designed to meet these standards and, in some situations, must be provided before a farmer can be compelled to comply. [s. 281.16, Stats.]

Pesticides

Pesticides are subject to comprehensive regulation by DATCP in a state-run program based on federal mandates. Pesticide regulation is intended to protect public health, including the health of agricultural workers and nearby residents, and to protect the environment, particularly groundwater. The regulations focus on application methods and rates and disposal of pesticide containers. Licensing and certification is required for most pesticide applicators. In certain cases, state law exceeds federal requirements. For example, Wisconsin has exceeded minimum federal regulations for atrazine, a herbicide that has been found in Wisconsin's groundwater. [ch. 94, Stats.; ch. ATCP 29, Wis. Adm. Code.]

FARMLAND PRESERVATION

Relatively high prices for farm commodities in recent years have slowed a general trend toward selling agricultural land for non-agricultural purposes. However, market pressures have made the sale of agricultural land for non-agricultural uses attractive in some parts of the state.

Counties that would like to preserve agricultural uses of land in certain areas may adopt agricultural preservation plans, which must be certified by DATCP. Other municipalities may also adopt farmland preservation ordinances, but they must be consistent with the county's certified plan. [ch. 91, Stats.] Farms certified for farmland preservation zoning may be eligible for the farmland preservation tax credit, discussed below.

Counties and other municipalities may adopt agricultural preservation plans.

TAXATION

Property Taxation

In Wisconsin, for purposes of determining property taxes, agricultural land is assessed at its value for use as agricultural land, rather than at its market

Use-value taxation reduces farmers' property tax burden.

² "Nutrient management" is a method whereby farmers adopt a plan for managing all sources of nutrients particularly (nitrogen and phosphorous) that are applied to the land. The plan covers nutrients deposited by application of fertilizer, growing legumes, and manure spreading. Nutrient management often reduces the costs of fertilizer application for farmers and is intended to reduce the amount of nutrients that can be washed away from the fields during rainfall and carried into surface waters and groundwater.

value. Market value may reflect other considerations, such as the capacity to develop the property for nonfarm uses. This approach, commonly referred to as “use-value assessment,” has resulted in a major reduction in the amount of property taxes paid by Wisconsin farmers, with the intent of reducing the property tax burden on farmers so that land may be maintained in agricultural use.

Agricultural forest land, defined as land that either is producing or is capable of producing commercial forest products and that meets one of several conditions, is likewise assessed below market value for purposes of property taxes. This land is assessed at 50% of its fair market value. [s. 70.32 (2r), Stats.; ch. Tax V, Wis. Adm. Code.]

Farmland Preservation Tax Credit

Through the Farmland Preservation Tax Credit, the state provides an income tax credit to owners of land that is subject to certain agricultural use restrictions. The credits vary from \$5 to \$10 per acre. To be eligible, the land must be under a farmland preservation agreement and either in an area certified for farmland preservation zoning or in a designated agricultural enterprise area. [s. 71.57 et. seq., Stats.]

Income Tax Credit for Agricultural Production Activities

2013 Wisconsin Act 32, the 2013-15 Biennial Budget Act, created a nonrefundable tax credit for qualified manufacturing and agricultural production activities. The credit effectively reduces manufacturers’ and agricultural producers’ state income tax liability to zero for income resulting from business operations.

2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act, expanded the scope of eligible activities when calculating a tax credit. Eligible activities are qualified domestic production activities that are derived from property located in Wisconsin and assessed as agriculture, undeveloped, agricultural forest, productive forest land, or “other.”

The amount of the credit was phased-in over a several-year period. For tax years beginning in 2016, and in subsequent years, the credit equals 7.5% of qualified production activities.

[ss. 71.07 (5n) and 71.28 (5n), Stats.]

FOOD SAFETY AND DISEASE PREVENTION

Agriculture is subject to a wide variety of state and federal regulations intended to protect public health and safety. In general, food safety regulations apply to agriculture in the same manner as to any other industry.

Food Safety

DATCP and the Department of Health Services (DHS) share responsibility for the regulation of food safety, although DATCP has the primary responsibility for ensuring the safety of agricultural product production and processing.

Movement of Animals

DATCP administers a regulatory program that requires documentation of the movement of certain animals in Wisconsin, primarily to prevent the spread of disease. Imported livestock must be properly identified, and DATCP rules specify identification standards for each species. Animals entering Wisconsin require a certificate of

Animals entering the state must have a certificate of veterinary inspection.

veterinary inspection, and some may require a permit. Some livestock moved within the state must also be tested, and reporting requirements apply to certain animal diseases when discovered. [ch. 95, Stats.; chs. ATCP 10 and 12, Wis. Adm. Code.]

Livestock Premises Registration

Each location where livestock are kept (such as farms, feedlots, livestock dealers and haulers, and even backyard poultry flocks) must be registered with DATCP. The registration program provides a database of information that is used to track the source and spread of animal diseases. Information provided by a premises owner is confidential, unless release of the information is necessary to control disease. Premises registration is not the same as individual animal identification. [s. 95.51, Stats.]

Deer Farm Registration

In general, every person who keeps farm-raised deer in Wisconsin must register with DATCP. Keepers of farm-raised deer also must comply with requirements governing disease testing, fencing, and other requirements. [ch. 169, Stats.]

Raw Milk

The sale of unpasteurized (i.e., “raw”) milk is generally prohibited in Wisconsin. However, farmers may make incidental sales of raw milk, provided that the milk is delivered directly to the consumer on the farm where the milk is produced; is consumed by the consumer or the consumer’s family or nonpaying guests; and the farm does not advertise the sale of milk or sell the milk in the regular course of business. [s. 97.24, Stats.; ch. ATCP 60, Wis. Adm. Code.]

RIGHT TO FARM

Wisconsin’s “right to farm” law is set forth in s. 823.08, Stats. Despite its name, the law does not explicitly create a “right” to farm. Instead, the law directs courts to favor agricultural uses in certain legal disputes.

The law applies to civil suits in which a plaintiff alleges that a farm’s activities are a nuisance, meaning that the activities substantially and unreasonably harm the plaintiff’s use and enjoyment of his or her property. If the farm’s activities are not a substantial

threat to public health or safety, the law generally prevents a plaintiff from successfully curtailing the farm's activities under such a claim.

FENCE LAW

Wisconsin's fence law is set forth in ch. 90, Stats. When one or both of two neighboring properties is used for farming or grazing, both neighbors are equally responsible for maintaining a fence along the boundaries between the properties. Unless the neighbors agree to an alternate arrangement, the general rule is that each owner is responsible for the half of the fence that he or she views on the right when looking toward the property line from his or her property. If one of the property owners refuses to construct or maintain the portion of the fence for which the owner is responsible, "fence viewers" may be called upon to observe the situation and determine whether repairs are necessary. Town supervisors (or village board or city council members) typically serve as fence viewers.

Neighbors share the responsibility for maintaining fences along agricultural land.

INDUSTRIAL HEMP

The DATCP industrial hemp website is:

https://datcp.wi.gov/Pages/Programs_Services/IndustrialHemp.aspx

Wisconsin's industrial hemp law, which took effect December 2, 2017, creates a state industrial hemp program to be administered by DATCP. Generally, under the industrial hemp law, a person may plant, grow, cultivate, harvest, sample, test, process, transport, transfer, take possession of, sell, import, and export industrial

hemp to the greatest extent authorized under federal law and subject to regulations promulgated by DATCP. [s. 94.55 (2), Stats.] Such rules must regulate the authorized activities to the extent required under federal law, and in a manner that gives the greatest opportunity to engage in these activities.

Definition of "Industrial Hemp"

Wisconsin law defines "industrial hemp" as the plant *Cannabis sativa*, or any part of the plant including seeds, having a THC concentration of 0.3% or less, although this allowable percentage may be raised up to a maximum concentration of 1% THC if, in the future, federal law allows a higher percentage. The state industrial hemp law excludes from the definition a substance, material, or product that is not designated as a controlled substance under the state Uniform Controlled Substances Act, or the federal Controlled Substances Act, or both. [s. 94.55 (2), Stats.]

DATCP Emergency Rules

Effective March 2, 2018, DATCP promulgated an emergency rule that created program requirements for a pilot program to study the growth, cultivation, and marketing of industrial hemp. This emergency rule may remain in effect until July 1, 2020, or the date on which permanent rules take effect, whichever is sooner. [ch. ATCP 22, Wis. Adm. Code.]

Prosecution for Controlled Substances Violations

Wisconsin's industrial hemp law creates safe harbor protections for a person acting in accordance with DATCP rules. Such persons are exempt from criminal prosecution under the state Uniform Controlled Substances Act and exempt from municipal prosecution for engaging in certain activities. The industrial hemp law also provides that a person who engages in certain activities related to industrial hemp in violation of a DATCP rule may not be prosecuted for violations of the statutes or rules governing the industrial hemp program or violations of the state's Uniform Controlled Substances Act unless DATCP refers the person for prosecution. [s. 961.32 (3), Stats.]

ADDITIONAL REFERENCES

1. Legislative Council Information Memoranda, available at <http://lc.legis.wisconsin.gov/>:
 - IM 2016-09, *Wisconsin's Right to Farm Law*.
 - IM 2016-10, *Wisconsin Pollutant Discharge Elimination System (WPDES) Permits for Large Livestock Facilities*.
 - IM 2017-04, *Law of Adverse Possession*.
2. USDA, National Agricultural Statistics Service, Wisconsin Statistics, https://www.nass.usda.gov/Statistics_by_State/Wisconsin/index.php.
3. Legislative Audit Bureau audit reports, available at <http://www.legis.wisconsin.gov/lab>:
 - Letter Report, *Use Value Assessment of Agricultural Land* (July 2010).
 - Audit Report 08-6, *Food and Dairy Safety Program*.
4. UW-Extension publications:
 - *Fact Sheet No. 13, Fences in Agricultural Areas*, <http://lgc.uwex.edu/program/pdf/FactSheets/fs13FencesAgricultural.pdf>.
 - *Status of Wisconsin Agriculture 2014*, <http://www.aae.wisc.edu/pubs/status/docs/status2014.pdf>.
 - Deller, Steven C., *Contributors of Agriculture to the Wisconsin Economy* (2014), <http://anre.uwex.edu/economicimpact>.

GLOSSARY

Farmland preservation area: An area that is planned primarily for agricultural use or agriculture-related use, or both, and that is either: (a) identified as an agricultural preservation area or transition area in a farmland preservation plan; or (b) identified under in a farmland preservation plan.

Farmland preservation plan: A plan for the preservation of farmland in a county.

Farmland preservation zoning district: An area zoned for exclusive agricultural use under an ordinance or a farmland preservation zoning district designated by ordinance.

Farming: Defined broadly to mean not only planting and harvesting crops and raising livestock or other animals, but also activities such as processing, drying, packing, packaging, freezing, grading, or storing agricultural products.

Fertilizer: Any substance, containing one or more plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal or vegetable manures, marl, liming material, sewage sludge other than finished sewage sludge products, and wood ashes. "Fertilizer" includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, nonagricultural fertilizers and all other fertilizers or mixtures of fertilizers, regardless of type or form.

Nonpoint source pollution: Water pollution that does not have a single, well-defined point of origin. Runoff from agricultural land is a common form of nonpoint source pollution.

Pesticide: Any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.

Use-value taxation: For property tax purposes, land in agricultural use in Wisconsin is assessed based on its value for agricultural production rather than its market value.

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