

**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis		
<input type="checkbox"/> Original <input checked="" type="checkbox"/> Updated <input type="checkbox"/> Corrected		
Administrative Rule Chapter, Title and Number		
Ch. ATCP 49, Farmland Preservation		
Subject		
Wisconsin Farmland Preservation Program		
Fund Sources Affected		Chapter 20 , Stats. Appropriations Affected
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		
Fiscal Effect of Implementing the Rule		
<input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Costs
The Rule Will Impact the Following (Check All That Apply)		
<input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Local Government Units	<input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Public Utility Rate Payers	
Would Implementation and Compliance Costs Be Greater Than \$20 million?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Policy Problem Addressed by the Rule		
<p>Wisconsin's farmland preservation program, ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. There are no rules in effect related to the farmland preservation program. This rule is necessary to provide clarity to counties updating their farmland preservation plans, local governments writing farmland preservation zoning ordinances, and landowners applying for farmland preservation agreements.</p> <p>The rule does all of the following:</p> <ul style="list-style-type: none"> • Creates ch. ATCP 49. • Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91. • Provides guidance for applying for and receiving certification of farmland preservation plans and ordinances. • Specifies types of ordinance amendments for which certification is required under s. 91.36(8)(b)3, Stats. • Authorizes additional uses allowed in a farmland preservation zoning district. • Specifies information required in an application for a farmland preservation agreement under s. 91.64(2)(h). 		
Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)		
<p>This rule will not have any significant negative economic or fiscal impact on businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole and does not create additional requirements that local governments must follow. Chapter 91, Stats., requires all counties to update their farmland preservation plans before January 1, 2016. Implementing the plan through farmland preservation zoning is optional for local governments. This rule clarifies the requirements under ch. 91, Stats, for completing a farmland preservation plan and a zoning ordinance for those local governments that choose to adopt one. Added clarity will make the certification process of farmland preservation plans and zoning ordinances easier for local governments to understand and complete, and faster for the department to review. This will decrease the overall number of local government and state staff hours necessary to complete the</p>		

planning and zoning process.

This rule will have a generally positive impact on agriculture-related businesses of all sizes, including farms. This rule will have no negative impact on non-agriculture related businesses. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including farm operations, agricultural production facilities, and enterprises related to agriculture. This process helps to ensure that the impact of farm operations and agriculture-related business can be measured within the community. By clarifying this requirement in the planning process, the rule may aid communities in accurately capturing the impact and breadth of farm operations and agriculture-related businesses within the area.

This rule also provides clarity in the farmland preservation zoning standards, encouraging local governments to include farm operations and agriculture-related enterprises in the zoning district. Farm operations and agriculture-related businesses may be allowed in a farmland preservation zoning district either as an agricultural use, an agriculture-related use, or an accessory use. The rule provides additional flexibility and a positive economic impact to farmers and agricultural business, including small businesses. Though such businesses may or may not claim tax credits, their presence in the district may add additional certainty to farmers also within the certified farmland preservation district, encouraging those farmers to continue to invest in their farm operations.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule will clarify statutory requirements, which will alleviate costs at both the state and local level. With added clarity in requirements for planning and zoning certification, local government staff will require less time to complete farmland preservation plans and ordinances while staff at the state level will require less time to review these plans and ordinances. Clarity in the farmland preservation zoning standards may also encourage additional agriculture-related businesses to be included within the farmland preservation zoning district, creating added stability for businesses that may foster agricultural economic development within the district.

If DATCP does not adopt this rule, counties, towns, and municipalities will continue to update their farmland preservation plans and ordinances; however, these local governments would fail to benefit from the guidance and direction that this rule could provide. This lack of guidance may result in added staff time at both the local and state level.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit local governments, agriculture-related businesses, and agricultural producers. Plans and ordinances are required to be updated at a minimum of every ten years. As a result, this rule will provide needed guidance to local governments both now and into the future. Further clarification of farmland preservation zoning standards will also provide assurance to agriculture-related businesses and agricultural producers that activities supporting agricultural operations will be allowed within the certified district.

Compare With Approaches Being Used by Federal Government

There are no federal regulations or statutes related to this rule.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Michigan, Illinois, and Minnesota have statewide programs in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits. These programs require local governments to engage in planning efforts prior to allowing landowners to enter into these agreements.

Michigan allows farmers to voluntarily enter into a Farmland Development Rights Agreement with the state. In exchange for income tax credits and exemptions from special assessments, landowners agree not to develop the land for a specified number of years.

In Illinois, any single landowner, or two or more contiguous landowners with over 350 acres of land, may form an Agricultural District. The county government is responsible for approving and implementing these areas, but the Illinois Department of Agriculture may advise those county governments interested in forming or expanding these areas. Once land is within an Agricultural District, the area remains protected for ten years. Landowners can request additions to, deletions from, or dissolution of the area. Land within the area is protected from local laws that might restrict farming practices and from special assessments.

In Minnesota, counties outside of the metropolitan area can participate in the Greater Minnesota Agricultural Preserves Program. Counties that want to participate must develop an agricultural land preservation plan for review and approval by the commissioner of the Minnesota Department of Agriculture. The plan must identify land for long-term agricultural use and anticipate expected growth around urbanized areas. The designated areas must be adopted as part of the county's comprehensive plan. Landowners who are located within these areas may then place a restrictive covenant on their land agreeing to limit the land to agricultural or forestry use. The covenant is recorded on the title to the land. In exchange for agreeing to preserve land for long-term agricultural use, the landowner receives property tax credits of \$1.50 per acre, per year.

Comments Received in Response to Web Posting and DATCP Response

The department received comments related to the economic impact of this rule from the Wisconsin REALTORS Association and the Wisconsin Builders Association. Each comment is listed below followed by DATCP's response. After reviewing the comments, DATCP has determined that they do not alter the economic impact analysis of ATCP 49. The comments either relate to the impact of ch. 91, Stats., regardless of the presence of an administrative rule or the comments address specific language within the rule itself. As a result, DATCP has encouraged both the Wisconsin REALTORS Association and the Wisconsin Builders Association to submit their comments either orally or in writing during the rulemaking hearing period.

1. Analysis of impact on small businesses is inadequate – The small business impact analysis on pp. 5-6 is inadequate given that it focuses exclusively on agriculture-related business. The analysis does not consider the impact on non-agriculture-related businesses, such as real estate development related businesses. Accordingly, the scope of the analysis should be expanded to include all small businesses.

ATCP 49 will not impact other small businesses such as real estate development related businesses. The rule does not mandate that additional land should be unavailable for development. Instead, the rule clarifies that certain businesses may be included in a certified farmland preservation zoning district. These businesses are necessarily agricultural-related or are incidental to the agricultural use of the farm. As a result, the rule does not impact real estate development related businesses any further than ch. 91, Stats.

2. Housing impact statement requirement not met – Section 227.115 of the Wisconsin Statutes requires the Department of Administration to perform a housing impact report on any administrative rule that affects, among other things, the cost of housing or cost of constructing, rehabilitating, improving or maintaining single family or multifamily dwellings. Because ATCP 91 [sic] likely has an impact on the cost of housing by limiting the supply of developable land, a housing impact statement should be prepared as part of the administrative rulemaking process.

ATCP 49 does not limit the supply of developable land any further than ch. 91, Stats. The rule clarifies that the rationale in the farmland preservation plan must be based on objective criteria related to characteristics of the land. One such characteristic is whether the land is under some development pressure even if the land is not located in an area the county plans for development in the next 15 years. Applying such objective criteria would not limit the supply of developable land

because the county could use this determination as a reason for excluding this land from the farmland preservation area. Moreover, the farmland preservation plan itself does not limit whether land may be used for nonagricultural development. The farmland preservation plan is meant to guide future land use decisions, but it is not by itself a land use restriction.

ATCP 49 also requires that a farmland preservation zoning ordinance zones at least 80% of the land that is planned for farmland preservation. The process of farmland preservation planning and then zoning means that the local government has first looked at the land and determined what areas are likely to remain in agricultural use. The 80% zoning requirement then ensures that the local government is treating all agricultural landowners within its jurisdiction equally. If the county has undergone the planning process, then the land that is planned for farmland preservation has already been determined to not be available for development. Thus the 80% rule would not be removing any lands from the pool of lands with the potential to be developed.

3. Application of the “under some development pressure” standard -- With respect to ATCP § 49.12(1)(a)(5) on page 13, lines 9-10, we are not clear on how DATCP will apply the "under some development pressure" standard. If the land is "under some development pressure," should the land be included or excluded from the farmland preservation plan? If the land is under development pressure, the land arguably should be planned for nonagricultural development within the next 15 years and, thus, should not be included in the farmland preservation plan. Moreover, whether land is under some development pressure should not be relevant to the issue of whether it is good farmland.

This comment addresses the clarity of suggested rule language, not the potential economic impact that the rule will have. Consequently, it would be more appropriate to comment on this rule provision during the public hearing period. It should perhaps be noted that leaving the language as it is in the rule would enable counties to treat development pressure either way it chooses. Perhaps a county feels that the presence of some development pressure means that the land is appropriate to be included in the farmland preservation area for now, because inclusion means that the county has some tools available to try to steer development away from this sensitive area. Perhaps another county feels that the presence of even some development pressure makes the likelihood of conversion out of agricultural use too great for the land to be included in the farmland preservation area. Either way, the rule language allows the county to make this determination. The criterion fundamentally emphasizes the need to pay attention to factors at work on the land itself and not primarily the wishes of individual landowners.

4. Failure to consider city and village comprehensive plans -- With respect to ATCP § 49.12(1)(a)(6) on page 13, lines 11-12, this provision requires counties to consider future nonagricultural development and incompatible uses as determined by the county and town comprehensive plans. However, this provision does not require counties to consider nonagricultural development and incompatible uses identified by village and city comprehensive plans. Because comprehensive plans of cities and villages also contain projections for future nonagricultural development and possible uses that are incompatible with agricultural uses, the comprehensive plans of cities and villages should also be considered.

This comment is also more appropriate for the public hearing period because it addresses the substance of the rule itself instead of any potential economic impact that this provision of the rule will have. A request could be made to change the provision to include the comprehensive plans of cities and villages. Whether the department can or should include such language would need to be evaluated after all of the public comments have been collected.

5. Areas to be included in farmland preservation zoning district -- With respect to ATCP § 49.25(2) on page 18, lines 22-23, this provision requires at least 80% of the area planned for farmland preservation to be included in the farmland preservation district or a district that imposes land use regulations that are at least as restrictive as the farmland preservation zoning district. Is this requirement found in Chapter 91 of the Wisconsin Statutes or some other statute? If not, where does it come from?

This question also does not relate to the economic impact of the rule. Any comment regarding the 80% threshold should be made during the public hearing period. We have historically used 80% as a guideline and it is a threshold to which many zoning authorities are already accustomed. Chapter 91 uses the term “substantially consistent.” We know that this is much greater than 50%, but not quite 100%. To give local governments additional guidance, we have chosen to codify the already-recognized 80% guideline.