

Report From Agency

**DATCP Docket No. 15-R-10
Rules Clearinghouse No. 16-049**

**Final Draft
December 5, 2016**

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

Final Draft

The Wisconsin Department of Agriculture, Trade and Consumer protection hereby proposes the following permanent rule *to create* ch. ATCP 52 *relating to* producer led watershed protection grants.

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

This permanent rule implements the producer led watershed protection grants program created under Wis. Stat. § 93.59, by 2015 Wisconsin Act 55 (“Budget Act”). Under Wis. Stat. § 93.59, 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. The Budget Act determines the annual appropriation in the department for each year of the biennium for grants to producer led watershed protection groups.

This 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: Wis. Stat. §§ 93.07 (1) and 93.59.

Statutory Authority

Statutory Authority: Wis. Stat. §§ 93.07 (1) and 93.59.

Explanation of Statutory Authority

The Department has broad general authority, under Wis. Stat. § 93.07(1), to adopt regulations to enforce laws under its jurisdiction. Under Wis. Stat. § 93.59(4), the Department 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 is designed to encourage producers to develop and use innovative approaches and conservation practices that reduce nonpoint source pollution within their watershed. The program will also work to increase producer communication and education regarding environmentally and economically effective conservation activities. The Producer Led Watershed Protection Grants 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. This rule will benefit affected businesses, including small businesses. This rule will have no negative impact on businesses since it only applies to those businesses that voluntarily seek and are awarded grant funds. Grant funds should positively impact businesses that provide goods and services used in pollution abatement activities under this rule.

The Department shall award no more than the amount specified in Wis. Stat. § 93.59(5), of grant funding to any producer led group in any state fiscal year.

Under Wis. Stat. § 93.59(2), grant recipients must meet all of the listed eligibility requirements.

Grant Purposes

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

- Startup costs associated with: work planning, mission development, goal setting or learning days to have experts discuss conservation topics.
- Provide incentive payments to producers to implement conservation practices such as soil testing, cover crops, nutrient and manure management planning, no-till, buffer strips, grassed waterways, manure composting or low-disturbance manure injection.
- Measure and promote economic and environmental benefits of conservation practices.
- Perform nutrient management planning, training and assessments.
- Develop innovative approaches to manure storage, stacking, or conservation equipment-sharing that increases and identifies economic and environmental benefits of such practices.

- Increase voluntary producer and agribusiness participation in a watershed through education and outreach activities such as hosting conferences, workshops or field days.
- Collaborate with partners for on-farm research that identifies economic and environmental benefits and opportunities of utilizing various conservation practices or strategies.
- Complete cost-effective edge-of-field and in-stream water quality monitoring.
- Perform farm assessments to evaluate farm, manure, and nutrient management practices and identify solutions to resource concerns.
- Other activities deemed by the department as consistent with the purpose of s 93.59, Stats.

Use of Grant Funds

Under this permanent 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:

- Development of work plans, mission development, goal setting, learning days to have experts discuss related topics or development of incentive program.
- Incentive payments for conservation practices such as soil testing or cover crop seed.
- Field days, workshops and conferences including facility rentals, meals, and expenses directly related to hosting the event.
- Personnel for coordinator role including expenses for salaries and wages, contract and consulting services, and mileage at allowable state rates. The maximum amount for any type of labor expense is \$25/hour.
- Mailings, creation of marketing and outreach brochures, handouts, newsletters, or factsheets.
- Materials and supplies directly associated with the project.
- Incentive payments for equipment rentals of innovative technologies used or shared by all farmers within the producer led group; for example costs for renting a low-disturbance manure injector or no-till drill.
- Rental costs for equipment directly associated with research projects, if pre-approved by the project manager.
- Cost-effective edge-of-field and water quality monitoring.
- Farm assessments to identify and evaluate potential or existing resource concerns, nutrient management implementation, and other water quality practices.
- Other costs deemed by the department to be consistent with the purpose of Wis. Stat. § 93.59.

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 prior to or extending beyond the term of the grant contract.

- Equipment purchases.
- Administrative or overhead costs that are not direct costs of the grant project.
- Lobbying.

Grant Proposals

Under this permanent 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 permanent rule, the Department must evaluate grant proposals and issue its grant awards within 60 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 pollution abatement activities and producer participation.
- Whether the proposal complies with the Department's request for proposals and budget requirements.
- Whether the proposed project meets the standards prescribed in this permanent rule.
- The viability of the proposed project.
- The management and technical qualifications of the grant applicant.
- The qualifications of the persons, collaborators, and 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.
- Whether grant funds have been awarded to grant applicant in previous funding cycles.
- Past performance under previous grant awards and contracts.
- Other factors deemed by the department to be consistent with the purpose of Wis. Stat. § 93.59.

Grant Contracts

Under this rule, the Department must enter into a contract with a legal entity before distributing funds. The contract will be with the producer led group or a legal entity accepting the grant funds on behalf of the producer led group. 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 and attend an annual information-sharing workshop hosted by the Department.

Grant Payments

Under this rule, the Department may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. The contract must describe payment terms and conditions. The Department will require grant recipients to submit expense documentation as necessary to support grant payments.

Fiscal Impact

This rule will have a fiscal impact on the Department operations. Under this rule, the department must issue at least one request for grant proposals in each state fiscal biennium and host annual information-sharing workshop. 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 0.50 FTE staff in the Department's Division of Agricultural Resource Management. This does not include legal, managerial, Department central accounting, or other indirect staff support. The cost for the 0.50 FTE staff will be \$70,000 per year, including salary, fringe benefits and support costs. A complete Economic Impact Analysis and Fiscal Estimate is attached.

Effect on Small Business

This rule will have no adverse effect on small business. The Producer Led Watershed Protection Grants program is voluntary and thus imposes no cost on businesses. By providing grant funding to agricultural producers, the Producer Led Watershed Protection Grants 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 soil and water quality. The Department plans to use proposal procedures that will make the cost of applying insignificant. A complete Regulatory Flexibility Analysis is attached.

Analysis and Supporting Documents used to Determine Effect on Small Business

Because it is a voluntary grant program, neither analysis nor supporting documents are needed to determine that the proposed rule will impose no cost or other obligation on small business.

Economic Impact

The Producer Led Watershed Protection Grants program is voluntary and thus imposes no cost on businesses. This program imposes no cost on utility rate payers or the general public. By providing grant funding to producer led groups, the Producer Led Watershed Protection Grants program will benefit all types of farming operations, other businesses, and communities that participate in production, distribution or marketing of agricultural products. Grant recipients will benefit directly, while others will benefit indirectly from the creation of a stronger agricultural industry. The Department plans to use application procedures that will make the cost of applying insignificant. This rule will have a positive effect on the agricultural sector of the economy and therefore on the state economy and in that way will produce positive results for the general public. This program will have an effect on local governments that choose to participate in this program in partnership with a producer led group. The costs associated with their involvement can be covered by this grant program.

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 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

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

1 SECTION 1. ATCP 52 is created to read:

2 Chapter ATCP 52

3 PRODUCER LED WATERSHED PROTECTION GRANTS

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

6 ATCP 52.02 Definitions. In this chapter:

7 (1) "Department" means the state of Wisconsin department of agriculture, trade and consumer
8 protection.

9 (2) "Legal entity" includes a corporation, partnership, company, or association registered by
10 the department of financial institutions or a nonprofit organization with tax-exempt status under
11 section 501(c)(3) of the internal revenue code.

12 ATCP 52.03 Application requirements and procedures.

13 (1) REQUEST FOR PROPOSALS. The department shall issue at least one request for proposals in
14 each fiscal biennium. The request for proposals shall describe the required form and content of
15 grant proposals, and shall specify a deadline for submitting grant proposals, and specify any
16 restrictions or limitations on how the grant funding may be spent. Applicants must submit grant
17 proposals to the department, in the manner prescribed by the department's request for proposals.
18 The department shall publish the request for grant proposals on its webpage. The department
19 shall also issue a press release announcing its request for proposals to news media likely to give
20 notice to the public. The department shall announce grant awards within 60 days of the deadline
21 for submitting grant proposals.

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

24 (a) Whether the proposed project will improve water quality within the respective
25 watershed.

26 (b) The extent to which a proposed project will increase nonpoint pollution abatement
27 activities and producer participation.

28 (c) Whether the proposal complies with the department's request for proposals and
29 budget requirements.

30 (d) Whether the proposed project meets the standards prescribed in this rule.

31 (e) The viability of the proposed project.

32 (f) The management and technical qualifications of the grant applicants.

33 (g) The qualifications of the persons, collaborators and legal entities who will carry out
34 the project.

35 (h) The financial capacity of the grant applicant to complete the project as proposed.

36 (i) The adequacy of the project plan and budget.

37 (j) Whether the grant proposal and budget adequately identifies the nature of project
38 expenses to be reimbursed under the proposed grant.

39 (k) Whether grant funds have been awarded to grant applicant in previous funding cycles.

40 (l) Past performance under previous grant awards and contracts.

41 (m) Other factors deemed by the department as consistent with the purpose of s 93.59,
42 Stats.

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

- 45 (1) Fund startup costs associated with: work planning, mission development, goal setting or
46 learning days to have experts discuss conservation topics.
- 47 (2) Provide incentive payments to producers to implement conservation practices such as soil
48 testing, cover crops, nutrient and manure management planning, no-till, buffer strips,
49 grassed waterways, manure composting or low-disturbance manure injection.
- 50 (3) Measure and promote economic and environmental benefits of conservation practices.
- 51 (4) Perform nutrient management planning, training and assessments.
- 52 (5) Develop innovative approaches to manure storage, stacking, or conservation equipment-
53 sharing that increases and identifies economic and environmental benefits of such
54 practices.
- 55 (6) Increase voluntary producer and agribusiness participation in a watershed through
56 education and outreach activities such as hosting conferences, workshops or field days.
- 57 (7) Collaborate with partners for on-farm research that identifies economic and
58 environmental benefits and opportunities of utilizing various conservation practices or
59 strategies.
- 60 (8) Complete cost-effective edge-of-field and in-stream water quality monitoring.
- 61 (9) Perform farm assessments to evaluate farm, manure, and nutrient management practices
62 and identify solutions to resource concerns.
- 63 (10) Other activities deemed by the department as consistent with the purpose of s 93.59,
64 Stats.

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

- 67 (1) Development of work plan, mission development, goal setting, learning days to have

- 68 experts discuss related topics or development of incentive program.
- 69 (2) Incentive payments for conservation practices such as soil testing and cover crop seed.
- 70 (3) Field days, workshops and conferences including facility rentals, meals, and expenses
71 directly related to hosting the event.
- 72 (4) Personnel for coordinator role including expenses for salaries and wages, contract and
73 consulting services, and mileage at allowable state rates. The maximum amount for any
74 type of labor expense is \$25/hour.
- 75 (5) Mailings, creation of marketing and outreach brochures, handouts, newsletters or
76 factsheets.
- 77 (6) Materials and supplies directly associated with the project.
- 78 (7) Incentive payments for equipment rentals of innovative technologies used or shared by
79 all farmers within the producer led group, for example covering costs for renting a low-
80 disturbance manure injector or no-till drill.
- 81 (8) Rental costs for equipment directly associated with research projects, if pre-approved by
82 project manager.
- 83 (9) Cost-effective edge-of-field and water quality monitoring.
- 84 (10) Farm assessments to identify and evaluate potential or existing resource concerns,
85 nutrient management implementation and other water quality practices.
- 86 (11) Other costs deemed by the department as consistent with the purpose of s 93.59, Stats.

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

- 89 (1) Real estate purchases.
- 90 (2) Repayment of loans or mortgages.

91 (3) Rent or contract payments for time periods extending beyond the term of the grant
92 contract.

93 (4) Equipment purchases.

94 (5) Administrative or overhead costs that are not specifically requested as costs of the grant
95 project.

96 (6) Costs associated with individual farm compliance issues.

97 (7) Costs not associated directly with the purpose of s 93.59, Stats.

98 **ATCP 52.07 Grant contracts.**

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

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

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

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

113 **SECTION 2. EFFECTIVE DATE:** This rule shall take effect on the first day of the month
114 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
115 (intro).

116 Dated this _____ day of _____, 2017.

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118 WISCONSIN DEPARTMENT OF AGRICULTURE,
119 TRADE AND CONSUMER PROTECTION

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By _____
Ben Brancel, Secretary