

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Soil and Water Resource Management Program

Adm. Code Reference: ATCP 50

Rule Summary

In 2018, the Wisconsin Department of Natural Resources (DNR) promulgated a targeted performance standard related to Silurian bedrock in ch. NR 151.075, Wis. Adm. Code, designed to minimize the risk for pathogen delivery to groundwater. The performance standard applies within parts of 16 counties in the Silurian bedrock area (Brown, Calumet, Dodge, Door, Fond du Lac, Kenosha, Kewaunee, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Sheboygan, Walworth, Washington, and Waukesha). The performance standard sets forth manure spreading rates and practices for mechanical manure application that vary according to the soil depth and texture. The most restrictive practices apply to those limited areas of the highest risk for pathogen delivery. Less restrictive requirements apply in areas with 5 to 20 feet to bedrock.

The Department of Agriculture, Trade and Consumer Protection (department) is responsible for developing and disseminating technical standards to implement the ch. NR 151 performance standards and prohibitions. The proposed revisions to ch. ATCP 50 adds Silurian bedrock as a farm conservation practice and describes the requirements farmers and landowners must meet to implement the performance standard. The rule adds DATCP 01 Verification of Depth to Bedrock Technical Standard as a voluntary tool farmers and landowners can use to verify the depth to bedrock. The rule also allows counties to cost-share the use this technical standard and to update a nutrient management plan to comply with the Silurian bedrock performance standard. It establishes a delayed date of implementation.

In addition to adding provisions to implement the Silurian bedrock performance standard, the rule does the following:

- Makes language updates and changes, including corrections to outdated provisions.
- Updates and adds definitions to clarify the meaning of important terms.
- Updates provisions related to soil and water conservation on farms.
- Updates requirements for administration of the soil and water resource management grant program.
- Updates and clarifies the process for counties to receive grants from the department.
- Adds options for providing financial assistance to landowners.
- Updates and adds maximum rates of financial assistance for some cropping practices.
- Clarifies and updates requirements and eligibility related to engineering certification and nutrient management planning.
- Adds a process for development of technical standards.
- Updates conservation practices and adds new conservation practices.

Small Businesses Affected

This rule will mostly impact landowners and agricultural producers, many of whom qualify as small businesses. This rule may also impact agricultural service providers, such as certified crop consultants or agricultural engineers.

Landowners and Agricultural Producers

The proposed rule does not add any additional requirements beyond what DNR already included in their 2018 ch. NR 151 for agricultural producers. Instead, the rule focuses on identifying mechanisms for landowners to implement agricultural performance standards established by DNR, specifically the Silurian bedrock performance standard promulgated in 2018. The proposed rule incorporates Silurian bedrock as a farm conservation practice. The primary conservation practice to meet this agricultural performance standard is implementation of a nutrient management plan written to account for the Silurian bedrock performance standard. The rule identifies various tools to support landowners in implementing this performance standard including cost-sharing, delayed implementation, and access to a voluntary tool to determine if the agricultural performance standard applies or to determine which spreading restrictions apply. Additional changes in the proposed rule add options for meeting soil and water conservation needs by adding additional conservation practices and allow landowners to receive financial assistance in a form other than cost-sharing.

Agricultural Service Providers

The rule may impact businesses other than agricultural producers including nutrient management planners, certified crop consultants, farm supply organizations, manure haulers, agricultural engineering practitioners and consultants, and contractors. Proposed changes in the rule will likely lead to requests for assistance to update nutrient management plans and potential requests for assistance to verify depth to bedrock in cropland. Nutrient management plans may lead to farm management changes that require assistance or products from farm supply organization, agricultural engineering practitioners and consultants, contractors, certified crop consultants and manure haulers. Additional changes in the rule will enable architects to sign off on roof structure designs.

Reporting, Bookkeeping and other Procedures

The proposed rule does not create any new reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

Implementation of the proposed rule will assist landowners with compliance with the Silurian bedrock performance standard which was passed in 2018. The rule adds DATCP 01 Verification of Depth to Bedrock Technical Standard as a voluntary tool farmers and landowners can use to verify the depth to bedrock in fields prior to mechanical application of manure. The rule also allows for cost-sharing to use this technical standard and to update a nutrient management plan to comply with the Silurian bedrock performance standard and establishes a delayed date of implementation. The rule requires landowners who claim farmland preservation tax credits to comply with the Silurian bedrock performance standard beginning April 1, 2027, if applicable, which is a delayed implementation date.

Updating standards and expanding the list of conservation practices that are eligible for cost share benefits producers, counties, and other small businesses in the agricultural sector by allowing state funds to be used more widely and for innovative projects. Updating the standards will result in increased consistency with practice implementation since some counties are requiring the most updated standards, while the state uses

outdated standards. Stakeholders also benefit from updates in the rule that clarify definitions and processes, including adding a technical standard to verify depth to bedrock, adding a process for development of technical standards, and updating requirements and eligibility related to engineering certification and nutrient management planning.

Conclusion

The department expects the proposed rule to have a positive long-range impact on stakeholders because it will give more flexibility for farmers complying with DNR’s Silurian Bedrock Performance Standards. Additionally, updating standards and expanding the list of conservation practices that are eligible for cost share benefits producers, counties, and other small businesses in the agricultural sector by allowing state funds to be used more widely and for innovative projects.

This rule will not have a significant adverse effect on small business and is not subject to the delayed small business effective date provided in s. 227.22 (2) (e), Stats.

The department will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2023.

STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER
PROTECTION

By _____
Brian Kuhn, Acting Administrator,
Division of Agricultural Resource Management