

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Wisconsin Farmland Preservation Program
Adm. Code Reference: ATCP 49
Rules Clearinghouse #: CR 13-003
DATCP Docket #: 12-R-03

Rule Summary

This rule interprets the Wisconsin Farmland Preservation Program administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”). Among other things, this rule does all of the following:

General

- Creates ch. ATCP 49.
- Adds to definitions listed under s. 91.01, Stats., and further clarifies certain terms in ch. 91.
- Specifies the application content and process for 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 when the department may deny an application for a farmland preservation agreement.

Definitions

- Makes clear the types of uses that may be listed by a political subdivision as accessory uses and agriculture-related uses.
- Defines several terms including crops and forest management.
- Adds a definition of base farm tract to provide political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Plans

- Reiterates the statutory requirement that, unless a county obtains certification of a new farmland preservation plan by December 31 of the year following the expiration date of the county plan, the department may withdraw certification of any zoning ordinances in the county.
- Explains the circumstances under which a county may receive an extension to the expiration of their farmland preservation plan to facilitate coordination with other

- planning and zoning efforts that may be occurring in the county.
- Reiterates the statutory requirement that any amendment to a certified farmland preservation plan be submitted to the department for certification.
 - Provides that the rationale used for identifying the farmland preservation area must be based on objective criteria. Describes the relationship between the farmland preservation plan and any county comprehensive plan.
 - Provides technical specifications for the farmland preservation plan map and states that the county must provide the department with the data used to create the map.

Farmland Preservation Zoning

- Provides that nonfarm residences existing at the time an ordinance is certified may be considered permitted uses rather than prior nonconforming uses.
- Authorizes single-family and duplex nonfarm dwellings as conditional uses subject to density restrictions that are as restrictive as the density standards under ch. 91, Stats.
- Clarifies the statutory provision that an ordinance certification expires according to the statutory schedule in s. 91.34, Stats., and a political subdivision has until December 31 of the year following the expiration date to have its ordinance certified by the department to prevent landowners from losing eligibility to claim farmland preservation tax credits.
- Clarifies the statutory provision which authorizes local governments to request an extension to the expiration of its farmland preservation zoning ordinance certification to facilitate coordination with other planning and zoning efforts that may be occurring in the town or county.
- Describes the relationship between a political subdivision's farmland preservation zoning ordinance and the county's farmland preservation plan.
- Provides technical specifications for the farmland preservation zoning map and states that the political subdivision must provide the department with the data used to create the map.
- Specifies that the department may withdraw certification of an ordinance if the county farmland preservation plan expires or if the political subdivision adopts an ordinance that fails to comply with ch. 91, Stats.
- Specifies when an amendment to a farmland preservation zoning ordinance must be submitted to the department for certification.

Farmland Preservation Agreements

This rule:

- Provides that the department may deny a farmland preservation agreement if the department determines that lands to be excluded from the proposed agreement are withheld for purposes that conflict with the goals of the Agricultural Enterprise Area, or are withheld for purposes that will likely impair or limit agricultural use on other lands in the Agricultural Enterprise Area or lands proposed for inclusion

under a farmland preservation agreement.

Small Businesses Affected

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. This rule affects businesses in the following ways:

Farmland Preservation Plans

- As part of the farmland preservation planning process, ch. 91, Stats., counties are required to describe the rationale used for determining the farmland preservation area. This rule clarifies that the rationale must be based on objective criteria related to characteristics of the land parcels themselves, including the proximity of parcels to agricultural infrastructure and the historical use of the land for agriculture-related purposes. As part of the farmland preservation planning process, counties are required to inventory and evaluate agriculture-related businesses and services, including agricultural production and enterprises related to agriculture. This process helps to ensure that agriculture-related businesses can be measured within the community and aids counties as they continue to plan for the presence of these businesses.

Farmland Preservation Zoning

- Chapter 91, Stats., allows a political subdivision to locate accessory and agriculture-related uses within a certified farmland preservation district. This rule provides guidance as to the types of uses that may be considered accessory and agriculture-related.
- Accessory uses, under the rule, include facilities for storing, processing, selling, and housing agricultural products. Such uses primarily support agricultural activities occurring on the farm. These uses can make it possible for a farm to generate income through direct-to-consumer sales, such as a roadside farm, or can add value to a product produced on the farm, such as a cheese processing facility. The rule also specifies that an accessory use may include those uses that generate income yet do not conflict with (or may be enhanced by) the farm operation. Listed uses include crop mazes, agricultural tourism, and you-pick operations. The clarification of permissible accessory uses facilitates the inclusion of agricultural businesses, particularly small agricultural businesses, within the farmland preservation district.
- The rule also clarifies that agriculture-related uses include facilities that support agriculture even though the use itself may not be located on a farm. Such uses include facilities that primarily provide agricultural supplies, agricultural equipment, fertilizers, pesticides or other agricultural inputs, or other agricultural services directly to farms. These uses also include manure digesters, facilities that

slaughter livestock, and agricultural processing plants. The rule clarifies that political subdivisions may include within a farmland preservation zoning district businesses that support agriculture. Allowing such businesses to locate within a farmland preservation district helps provide these businesses with a potential customer base and may add additional economic certainty to farmers with land in the certified farmland preservation district.

Farmland Preservation Agreements

This rule clarifies that the department may deny an application for a farmland preservation agreement if the department determines that the agreement would conflict with the goals of the agricultural enterprise area program or would impair or limit agricultural uses on other lands in the agricultural enterprise area.

Reporting, Bookkeeping and other Procedures

The proposed rule does not regulate any small businesses and thus there are no reporting, bookkeeping or other procedures in the proposed rule for small businesses.

Professional Skills Required

The proposed rule does not regulate any small businesses and thus there is no professional skill required for small businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are “small businesses.” This rule does not make special exceptions for small businesses because the farmland preservation program encompasses agricultural operations of all sizes and types, including farms.

This rule includes provisions that will benefit large and small businesses alike, including agriculture-related businesses and farm operations. For example, this rule:

- Requires counties to consider agricultural businesses and farm operations, regardless of size, when determining which lands to plan for farmland preservation.
- Clarifies that certain activities that support and enhance agricultural uses may be located within a farmland preservation zoning district. These activities may include supplemental business ventures that can occur on a farm and help support a small agricultural operation, such as agricultural tourism or seasonal activities.

Conclusion

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. 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.

Dated this _____ day of _____, 20____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
John Petty, Administrator
Division of Agricultural Resource Management