



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 8, 2013

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
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The Honorable Robin Vos
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Wisconsin Farmland Preservation Program (Clearinghouse Rule #13-003)

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Background

Wisconsin’s Farmland Preservation Program (FPP), Ch. 91, Stats., was repealed and recreated under 2009 Wis. Act 28. Chapter 91, Stats., was updated to acknowledge the growing pressures on farmland across the state and to curb the increasing conversion of farmland out of agricultural use.

The farmland preservation law requires all counties to update their farmland preservation plans before January 1, 2016. The farmland preservation planning process ensures that local governments evaluate the agricultural land within their boundaries and consider the role that agriculture plays in their local economy. Counties must submit farmland preservation plans to DATCP for certification. In order to be certified by the department, the plan must meet certain

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requirements under ch. 91, Stats. Once certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the farmland preservation program.

One such part of the farmland preservation program is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Zoning ordinances must be updated and submitted to the department for certification. Similar to farmland preservation plans, zoning ordinances must be submitted to the department for certification. To be certified, the ordinance must meet certain requirements under ch. 91, Stats. The certification process ensures that only compatible uses are allowed in the farmland preservation district to limit pressures on active agriculture created by the presence of incompatible uses. Once certified, landowners are eligible to claim farmland preservation tax credits.

Another component of the farmland preservation program is the farmland preservation agreement. Under ch. 91., Stats., any new agreement must be located in a landowner-initiated and state-designated Agricultural Enterprise Area (AEA). Landowners with farmland preservation agreements are eligible to collect farmland preservation tax credits. By clustering agreements in areas that are primarily devoted to agricultural use, farmland can be better protected under the recognition that a concentration of agriculture provides landowners with the confidence that the surrounding land will remain in agriculture. This confidence encourages landowners to not only continue farming but to make additional investments in their agricultural operations as well.

Rule Content

General

This rule does all of the following:

- Creates ch. ATP 49.
- Adds to definitions listed under s. 91.01, Stats., and 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

This rule:

- 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 enable political subdivisions flexibility in administering this density restriction if they choose to utilize it.

Farmland Preservation Planning

This rule:

- 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 within 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 must 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

This rule:

- 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 a local government to request an extension to the expiration of its farmland preservation zoning ordinance 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 application 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.

Public Hearings

DATCP held four public hearings on the original rule proposal as listed below:

- February 14, 2013, in Appleton
- February 21, 2013, in Eau Claire
- February 26, 2013, in Wausau
- February 28, 2013, in Madison

DATCP accepted written comments until March 15, 2013. A total of 49 people attended and registered at the two hearings. A summary of the comments received is attached.

Seven of the 27 comments received were in support of the rule and the goals of farmland preservation. Two comments opposed the rule while three opposed specific parts. Four comments favored parts of the rule and opposed parts. Two comments were unrelated to the rule and three made technical suggestions to the rule language. The parts of the rule to which commenters objected were the provision that requires the rationale identifying the farmland preservation plan area to be primarily related to the characteristics of the land itself and not primarily based on individual landowner preference, and the specification that 80% of the land planned for farmland preservation should be zoned for farmland preservation in a certified farmland preservation zoning ordinance.

The department also received the following comments regarding the rule and requesting amendment of the rule language:

- Refine the language regarding the farmland preservation agreement application so as not to dissuade landowners from applying for an agreement.
- Allow local governments to craft their own definition of contiguous, giving them the option of either ending at or crossing over a river, stream, section line or road right-of-way.
- Allow local governments to add “farm family business” as an allowable use in the farmland preservation district, or enable the limit of four employees under s. 91.01(1)(d) to apply only to non-family members.
- Define “substantially consistent.”
- Adjust the zoning ordinance map requirements so that the rule does not read as though the department is requiring a local government to create a separate map just for farmland preservation – the farmland preservation district should be one of the districts listed on the zoning ordinance map.
- Do not request on an application for a farmland preservation agreement that landowners detail which lands they own inside an agricultural enterprise area that are being excluded from coverage under the proposed agreement.

***DATCP’s Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments***

The final draft rule does not alter the specification that the rationale be primarily based on characteristics of the land itself. This provision serves to ensure that the farmland preservation plan is developed in a manner consistent with the farmland preservation program goals. The final draft rule allows for the department to consider certifying a farmland preservation zoning ordinance that is between 70 and 80% consistent with a farmland preservation plan if the local government can demonstrate to the Secretary’s satisfaction that there is a reasonable, objective justification for the lower level of consistency.

Instead of requiring the landowner to specify which lands are excluded from a farmland preservation agreement application and provide a reason for excluding those lands, the final draft rule provides that the department may deny an application if it determines that the agreement would conflict with the goals of the agricultural enterprise area program or will impair or limit agricultural uses on other lands in the agricultural enterprise area.

The final draft rule adds “farm family business” as an allowable, permitted use in the farmland preservation district, sets a specific consistency standard and provides certain technical adjustments to the planning and zoning mapping requirements.

The Rules Clearinghouse made a number of additional technical comments and DATCP made the necessary changes to the proposed rule to incorporate the Clearinghouse suggestions.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Effect on Small Business

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.

Environmental Impact

This rule will not have any negative environmental impact.

Comparison with rules in adjacent states

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, however 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 that 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.

Summary of factual data and analytical methodologies

To develop this rule, DATCP consulted a group of stakeholders familiar with and potentially affected by the provisions of the rule. DATCP also collected feedback from local government officials who had experience working with, understanding, and implementing the farmland preservation law.