

Publication Date: November 14, 2011
Effective Dates: January 1, 2012 until modified or repealed by the department

EmR1118

DATCP Docket #: 11-R-3

The statement of scope for this rule, published in Register No. 664, on April 30, 2011, was sent to LRB prior to the effective date of 2011 Wis. Act 21.

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

EMERGENCY RULE

2 The Wisconsin department of agriculture, trade and consumer protection adopts the following order *to amend* ATCP
3 53.01 (title); and *to create* ATCP 53.02 and Chapter ATCP 53 *Appendix B relating to* agricultural enterprise areas.

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

This rule designates agricultural enterprise areas (AEAs) pursuant to s. 91.84, Stats. An AEA is a contiguous land area, devoted primarily to agricultural use, which is locally targeted for agricultural preservation and agricultural development. Based upon evaluation of petitions submitted in February 2011, this rule will designate five additional designated AEAs. The five additional AEAs designated by this rule encompass just over 140,000 acres and include land in four counties and 12 towns (some of the AEAs cross town lines). Following promulgation of this rule, 17 areas, totaling approximately 340,000 acres in 14 counties and 39 towns, will be designated as AEAs in Wisconsin.

The designation of an AEA does not control or restrict land use. However, the owners of farms located within an AEA may enter into voluntary 15-year farmland preservation agreements with DATCP. That enables them to claim farmland preservation tax credits under s. 71.613, Stats.

Statutes Interpreted

Statutes Interpreted: ss. 91.84 and 91.86, Stats.

Statutory Authority

Statutory Authority: s. 91.84(1) and (2), Stats.

Explanation of Statutory Authority

Under s. 91.84(1), Stats., DATCP may designate AEAs, encompassing a total of not more than 1,000,000 acres. Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating an agricultural enterprise area or modifying or terminating the designation of an agricultural enterprise area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department is not required to determine that promulgating a rule under that subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under that subsection.

DATCP may designate AEAs in response to local petitions under s. 91.86, Stats. Each petition must be signed by at least 5 farmers within the AEA. Affected county and local governments must pass a resolution in support of the petition requesting the designation. Other persons may sign in support of a petition.

Related Rules or Statutes

Owners of farms located within an AEA may enter into voluntary 15-year farmland preservation agreements with DATCP, pursuant to s. 91.60, Stats. Those farmers may claim farmland preservation tax credits under s. 71.613, Stats. Tax credits are higher for farms that are also covered by a certified farmland preservation zoning ordinance under subch. III of ch. 91, Stats. An owner of a farm located within an AEA may enter into a farmland preservation agreement, regardless of whether the farm owner signed the petition requesting designation of the AEA.

Rule Summary

Based upon the evaluation of petitions submitted in 2011, this rule designates five additional AEAs, totaling just over 140,000 acres, in the locations described. With designation of the five new areas, there will be 17 AEAs totaling approximately 340,000 acres around the state. Maps and associated tax parcel numbers describing the AEAs are available at <http://workinglands.wi.gov>. The maps will be published with this rule in the Wisconsin administrative register. Hard copies of the maps are on file with the legislative reference bureau. Hard copies of the maps and associated tax parcel numbers are on file with DATCP and may be obtained by contacting DATCP at the contact address shown below.

AEA name	AEA Location (County and Town)
Burnett AEA	Dodge County, <i>Town of Burnett</i>
Fairfield AEA	Sauk County, <i>Town of Fairfield</i>
Heart of America's Dairyland AEA	Clark County, <i>Towns of Mayville, Colby, Unity, Beaver, Loyal</i>
Hilbert Ag Land on Track AEA	Calumet County, <i>Towns of Brillion, Chilton, Rantoul, Woodville</i>
Trenton AEA	Dodge County, <i>Town of Trenton</i>

Fiscal Impact

Eligible landowners located within the designated agricultural enterprise areas may voluntarily enter into farmland preservation agreements with the state. These agreements are signed by DATCP, and allow the landowner to claim tax credits paid by the Department of Revenue (DOR). Although promulgating this rule will not cost the department additional funds, the DOR will pay tax credits equal to \$5.00 per acre if the land is only subject to the agreement, and pay \$10 per acre if the land is subject to an agreement and covered by a certified farmland preservation zoning ordinance. The \$10 per acre tax credit is a \$2.50 per acre increase over the \$7.50 per acre credit available to a landowner under a certified farmland preservation zoning ordinance under the new ch. 91, Stats. The \$7.50 per acre credit does not require an agreement and would not be affected by promulgation of this rule. Landowners must meet conservation standards to claim the income tax credit, which may require some costs to ensure these standards are met. Overall, however, the rule is anticipated to have positive long-range fiscal implications for farm owners and potentially indirectly for businesses that depend upon agriculture.

Following promulgation of this rule, the 5 areas totaling nearly 141,000 acres will be located within designated agricultural enterprise areas and eligible for farmland preservation agreements with the state, with nearly 50% of this land also covered by farmland preservation zoning. If we assume that 50% of the eligible landowners within an area covered by farmland preservation zoning enter into an agreement to claim the \$10/acre credit, that is \$355,000 in tax credits to

small businesses. In addition, if 50% of the remaining landowners in the designated areas (not covered by zoning) enter into an agreement to claim the \$5/acre credit, that is \$175,000 in tax credits to those small businesses. It is anticipated that this additional \$530,000 in tax credits will support and encourage robust rural economies that make up Wisconsin's \$59 billion agricultural industry.

Considerations for Small Businesses

There are two main types of small businesses that may be affected by promulgation of this rule; farm businesses and farm-related businesses. However, this rule does not have a direct impact on businesses and imposes no new mandates on small business as defined by s. 227.114 (1)(a), Stats. (farmland preservation agreements are entirely voluntary). This rule is not subject to the small business delayed effective date under s. 227.22(2)(e), Stats.

Farm Businesses:

The designation of the agricultural enterprise areas enables eligible landowners owning land in a designated AEA to voluntarily enter into a farmland preservation agreement with the State of Wisconsin. Additional local programs may also be adopted or made available to businesses in these designated areas. As a result, the designation of AEAs through ATCP 53, Wis. Adm. Code has the potential to affect businesses, specifically farmers. Most of the affected farmers will meet the description of small business in Wisconsin, as defined by s. 227.114 (1)(a), Stats.

The greatest small business impact of the designation will be a farmer's ability to enter into a voluntary farmland preservation agreement to claim income tax credits under s. 71.613, Stats., in return for keeping land in agricultural use for at least 15 years and implementing soil and water conservation practices.

The available tax credit for eligible farmers is at least \$5 an acre, although farmers located in designated areas that are also certified for farmland preservation zoning may claim \$10 an acre. The average farm size in Wisconsin is 195 acres, which would enable an average-sized farmer to claim an average of \$975 to \$1,950 annually, depending on the available tax credit. The costs for implementing soil and water conservation practices will vary from farm to farm, depending upon the type of operation and existing compliance status. The costs to implement these practices will be offset by the farmland preservation tax credit.

In addition to establishing eligibility for tax credits, designation of an AEA may also foster agricultural investment, and promote collaborative working relationships among landowners, agriculture-related businesses and local governments. It may also promote a more secure and attractive climate for the continuation of agricultural land-use and focused agriculture-related investment. Local government and other organizations may also develop other local programs that target resources to farmers in a designated area.

Farm-related businesses:

Other businesses that may benefit from designation of the AEA are farm-related businesses. The designation may create a more stable agricultural industry in the area, maintaining or increasing business transactions and promoting future agricultural-related investment. These businesses may include food processing and farm supply companies, nutrient management planners, soil testing laboratories, agricultural engineers, construction contractors, food processors, testing laboratories, and agri-tourism interests located within and near the designated area. Some of these businesses may be small businesses in Wisconsin, as defined by s. 227.114 (1)(a), Stats.

Environmental Impact

This rule, by itself, does not have a direct impact on the environment. This rule enables eligible farmers to enter into voluntary farmland preservation agreements with the state. Those agreements will have a positive effect on the environment by preserving agricultural land and promoting compliance with state soil and water standards.

This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats. or ch. ATCP 3, Wis. Adm. Code.

Comparison to Federal and Surrounding State Programs

There are no federal programs comparable to the AEA program implemented by this rule. Over 15 states have “agricultural district” programs that bear some resemblance to the AEA program implemented by this rule, including the neighboring states of Illinois, Iowa, and Minnesota. However, each of those state programs has its own unique features.

None of the programs in other states is exactly comparable to the AEA program implemented by this rule, and some are more comparable to Wisconsin’s farmland preservation zoning program. Some include limits on non-farm development, local planning requirements, right-to-farm protection, rewards for conservation practices, per acre property tax credits, and eligibility for participation in a conservation easement program.

Data and Analytical Methodologies

DATCP evaluated AEA petitions in consultation with a panel that included independent reviewers. DATCP and the reviewers considered factors identified in ss. 91.84 and 91.86, Stats., as well as a variety of other factors identified in the petition forms. Petitioners were invited to submit, and did submit, extensive data and information to support their petitions.

DATCP Contact

Questions, comments, and requests for maps or associated tax parcel numbers related to AEAs designated by this rule may be directed to:

Coreen Fallat
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4625
E-Mail: coreen.fallat@wisconsin.gov

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FINDING OF EMERGENCY

2

Exemption from Finding of Emergency

3 Under s. 91.84(2), the department may use the procedure under s. 227.24 to promulgate a rule designating
4 an agricultural enterprise area or modifying or terminating the designation of an agricultural enterprise
5 area. Notwithstanding s. 227.24(1)(c) and (2), a rule promulgated under that subsection remains in effect
6 until the department modifies or repeals the rule. Notwithstanding s. 227.24(1)(a) and (3), the department
7 is not required to determine that promulgating a rule under that subsection as an emergency rule is
8 necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide
9 a finding of emergency for a rule promulgated under that subsection.

10

EMERGENCY RULE

11 **SECTION 1.** ATCP 53.01 (title) is amended to read:

12 **ATCP 53.01 (title) Designation of agricultural enterprise areas: January 2011.**

13 **SECTION 2.** ATCP 53.02 is created to read:

14 **ATCP 53.02 Designation of agricultural enterprise areas: January 2012.** The following areas
15 are designated as agricultural enterprise areas pursuant to s. 91.84, Stats.:

16 (1) BURNETT AGRICULTURAL ENTERPRISE AREA. The Burnett agricultural enterprise area,
17 consisting of approximately 14,833 acres in Dodge county, in the town of Burnett, is described by the

1 map and associated tax parcel numbers posted for that area at <http://workinglands.wi.gov> on November
2 14, 2011.

3 (2) FAIRFIELD AGRICULTURAL ENTERPRISE AREA. The Fairfield agricultural enterprise area,
4 consisting of approximately 9,509 acres in Sauk county, in the town of Fairfield, is described by the map
5 and associated tax parcel numbers posted for that area at <http://workinglands.wi.gov> on November 14,
6 2011.

7 (3) HEART OF AMERICA'S DAIRYLAND AGRICULTURAL ENTERPRISE AREA. The Heart of
8 America's Dairyland agricultural enterprise area, consisting of approximately 61,410 acres in
9 Clark county, in the towns of Beaver, Colby, Loyal, Mayville and Unity, is described by the map and
10 associated tax parcel numbers posted for that area at <http://workinglands.wi.gov> on November 14, 2011.

11 (4) HILBERT AG LAND ON TRACK AGRICULTURAL ENTERPRISE AREA. The Hilbert Ag Land on
12 Track agricultural enterprise area, consisting of approximately 28,477 acres in Calumet county, in the
13 towns of Brillion, Chilton, Rantoul, and Woodville, is described by the map and associated tax parcel
14 numbers posted for that area at <http://workinglands.wi.gov> on November 14, 2011.

15 (5) TRENTON AGRICULTURAL ENTERPRISE AREA. The Trenton agricultural enterprise area,
16 consisting of approximately 26,745 acres in Dodge county, in the town of Trenton, is described by the
17 map and associated tax parcel numbers posted for that area at <http://workinglands.wi.gov> on November
18 14, 2011.

19 **NOTE:** Hard copies of the maps referenced in s. ATCP 53.02 are on file with the legislative
20 reference bureau and the department of agriculture, trade and consumer protection.
21 Hard copies of the associated tax parcel numbers referenced in s. ATCP 53.02 are on
22 file with the department of agriculture, trade and consumer protection. Copies may be
23 obtained by contacting the department at the following address:

24 Department of Agriculture, Trade and Consumer Protection,
25 Division of Agricultural Resource Management
26 P.O. Box 8911
27 Madison, WI 53708-8911.

28 **SECTION 3.** Chapter ATCP 53 *Appendix B* is created to read as shown in *Appendix B* attached.

29 **SECTION 4. EFFECTIVE DATE.** This rule takes effect on January 1, 2012, pursuant to s.
30 91.84(5), Stats.

Signed this _____ day of _____, 2011.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary