

Report From Agency

DATCP Docket No. 12-R-03
Rules Clearinghouse No. 13-003

Final Draft Rule
May 3, 2013

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

2 The Wisconsin department of agriculture, trade and consumer protection proposes the following
3 rule *to create* ch. ATCP 49 *relating to* Wisconsin's farmland preservation program and affecting
4 small business.

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

Statutes Interpreted

Statutes Interpreted: ch. 91, Stats.

Statutory Authority

Statutory Authority: ss. 91.02, and 93.07 (1), Stats.

Explanation of Statutory Authority

DATCP has specific and general authority to establish rules interpreting and clarifying provisions of ch. 91, the farmland preservation program. DATCP has general authority for promulgating rules under s. 93.07 (1), for all of its program areas, and under s. 91.02 for the administration of ch. 91, Stats. Under s. 91.02 (1), DATCP has specific authority to set forth technical specifications for farmland preservation zoning maps under s. 91.38 (1) (d). DATCP has specific authority under s. 91.02 (2) to identify additional uses that would qualify as accessory uses, agricultural uses, agriculture-related uses, and base farm tracts. DATCP also has specific authority under s. 91.02 (2) to specify requirements for certifications of farmland preservation plans under s. 91.18 (1) (b) as well as farmland preservation zoning ordinances under s. 91.38 (1) (i). Section 91.02 (2) also gives DATCP specific authority to require information in an application for certification of a farmland preservation plan or amendment under s. 91.20 (4) or zoning ordinance under s. 91.40 (5), and to specify the types of ordinance amendments for which certification is required under s. 91.36 (8) (b) 3. DATCP has authority

under s. 91.02 (2) to authorize additional uses in a farmland preservation zoning district under s. 91.42 (4), including additional uses allowed as permitted uses under s. 91.44 (1) (g) and as conditional uses under s. 91.46 (1) (j). Finally, DATCP has the authority under s. 91.02 (2) to require information in an application for a farmland preservation agreement under s. 91.64 (2) (h).

Related Statutes and Rules

Chapter 91 governs the state's farmland preservation program. Landowners who participate in the zoning or farmland preservation agreement provisions of the program are eligible for farmland preservation tax credits under s. 71.613, Stats. Under ss. 91.80 and 91.82, Stats., landowners claiming those tax credits are required to comply with soil and water conservation standards promulgated by the department under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats. Those standards are found primarily in ch. ATCP 50, Wis. Adm. Code, as well as the Department of Natural Resources performance standards under ss. NR 151.02 to 151.08, Wis. Adm. Code.

Plain Language Analysis

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 DATCP, the plan must meet certain requirements under ch. 91, Stats. Once a plan is certified, land that is identified as part of a farmland preservation area is then eligible for other parts of the FPP.

One such part of the FPP is farmland preservation zoning. Local governments may choose to adopt farmland preservation zoning ordinances to protect farmland. Similar to farmland preservation plans, zoning ordinances must also 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 FPP is the farmland preservation agreement. Under ch. 91., Stats., any new agreement must cover land 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 because a concentration of

agriculture provides landowners with the confidence that the surrounding land will remain in agriculture. This confidence encourages landowners not only to continue farming, but to make additional investments in their agricultural operations.

Rule Content

General

This rule does all of the following:

- 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

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

Farmland Preservation Plans

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 farmland preservation 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's 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 that authorizes a local government 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 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.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

There are no federal regulations or statutes related to this rule.

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 voluntarily to 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.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of the Economic Impact Analysis

This rule will not have a significant fiscal impact on state government and will have no significant negative fiscal effect on local governments or public utility rate payers. To determine the potential economic impact of the rule, the department posted the rule on the department website and the state of Wisconsin administrative rules website, and contacted appropriate organizations to solicit information and advice from businesses, business sectors, associations, local governmental units, and individuals that may be affected by the proposed rule.

Effect on Small Businesses

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.

Agency Contact Person

Questions and comments related to this rule may be directed to:

Alison Volk
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608)224-4634
E-Mail: alison.volk@wi.gov

1 (b) A facility integral to an agricultural use, regardless of whether the facility is located
2 on a farm, that relies on agricultural uses conducted primarily off-site.

3 **Note:** These “agriculture-related uses” may include facilities to: provide agricultural
4 supplies, equipment, fertilizers, pesticides or other agricultural inputs or services
5 to farms; store, process, handle, or market raw agricultural commodities;
6 slaughter or process livestock that were primarily kept off-site; or process
7 agricultural by-products or wastes produced primarily off-site. A manure
8 digester, bio-fuel facility or other facility that produces energy for use primarily
9 off-site may also be considered an agriculture-related use.
10

11 (c) A facility used for providing veterinary services primarily to livestock, including the
12 sale of supplies and pharmaceuticals related to animal husbandry.

13 (3) “Base farm tract” means one of the following:

14 (a) A tract of land as defined in s. 91.01(5)(a), Stats.

15 (b) All land, whether or not the parcels are contiguous, that is in a farmland preservation
16 zoning district under the same zoning ordinance and that is part of a single farm on the date that
17 the owner of the farm first creates a new lot or parcel from that farm, regardless of any
18 subsequent changes in the size of the farm. All land, at the time of the creation of the new lot or
19 parcel by the owner, is considered part of the same base farm tract, including the newly created
20 lot or parcel.

21 **Note:** Under this provision, the political subdivision may now choose to define “base
22 farm tract” in any of the following ways: 1) all contiguous parcels in single
23 ownership under the same zoning ordinance, *on the date the department first*
24 *certifies* the ordinance, 2) all contiguous parcels in single ownership under the
25 same zoning ordinance *on a date, specified in the ordinance, which occurred*
26 *before the department first certifies* the ordinance, or 3) all parcels in single
27 ownership under the same zoning ordinance *on the date the owner first creates a*
28 *new lot or parcel*, which occurs *after* the department first certifies the ordinance.
29 The political subdivision must choose one of these ways of defining “base farm
30 tract” in its ordinance, and any further subdividing or ownership transfers does
31 not affect that determination.

32 (4) “Communications use,” as used in s. 91.46(1)(f), includes transmission lines, cell
33 towers, antennae and broadcast towers.

1 **(5)** “Consistent with” means furthers or does not contradict objectives, goals, and
2 policies in a relevant document.

3 **Note:** This definition is similar to that found in s. 66.1001 (1) (am), Stats., for the
4 comprehensive planning program. Under s. 91.10 (2), Stats., the farmland
5 preservation plan is required to be “consistent with” the county’s comprehensive
6 plan.
7

8 **(6)** “Contiguous” means adjacent to or sharing a common boundary.

9 **Note:** A political subdivision may choose to define “contiguous” lands as including
10 lands separated by a road, stream or section line, or as not including those
11 separate lands. Contiguity is defined under s. 91.84(1)(e)3., Stats., specifically
12 for the Agricultural Enterprise Area program.

13 **(7)** “Crop” means a cultivated plant that includes any of the following:

14 (a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes, and dry beans.

15 (b) Fruits, including apples, grapes, cranberries, cherries, and berries.

16 (c) Vegetables, including tomatoes, carrots, sweet corn, and squash.

17 (d) Plants raised for culinary, medicinal, or aesthetic purposes, including herbs and
18 spices, ginseng, and ornamental shrubs and trees.

19 (e) Plants raised for energy production, including switchgrass, or textile use, including
20 cotton or bamboo.

21 **(8)** “Department” means the state of Wisconsin department of agriculture, trade and
22 consumer protection.

23 **(9)** “Drainage use,” as used in s. 91.46 (1) (f), includes drainage ditches and drains, as
24 defined in s. 88.01 (8), Stats.

25 **(10)** “Electric transmission use,” as used in s. 91.46 (1) (f), includes high voltage lines
26 and electric substations.

27 **(11)** “Farm family business” means a business operated by the owner or operator, or
28 resident family member of the owner or operator, of a farm, that is not associated with an

1 agricultural use, that requires no buildings, structures, or improvements other than those
2 described in s. 91.01(1)(a) or (c), that employs no more than 4 full-time non-family employees
3 annually, and that does not impair or limit the current or future agricultural use of the farm or of
4 other protected farmland.

5 (12) “Forest management,” as used in s. 91.01 (2) (a) 7., means private forest lands and
6 woodlands managed in accordance with any type of written management plan, including a plan
7 prepared under the state’s managed forest law.

8 **Note:** This includes land that is designated as managed forest land under a forest tax
9 program established in ss. 77.80 to 77.91, Stats. Though active agricultural land
10 may not qualify for the managed forest law program under ss. 77.82(1)(b)1 and
11 77.875, Stats., land covered by the managed forest law program can qualify as an
12 agricultural use for the purposes of the farmland preservation program. A
13 wooded lot that is not actively managed under a written management plan may be
14 included in a farmland preservation zoning district as an open space or natural
15 resource area but may not be included as an agricultural use. Government-owned
16 woodlands may also be included as an open space or natural resource area.

17
18 (13) “Governmental use,” as used in s. 91.46(1)(g), includes community centers, police
19 and fire facilities, public parks and town halls.

20 (14) “Pipeline use,” as used in s. 91.46(1)(f), includes oil and gas pipelines.

21 (15) “Political subdivision” has the meaning given in s. 91.01(24), Stats.

22 (16) “Secretary” means the secretary of the department of agriculture, trade and
23 consumer protection.

24 (17) “Spatial location data” means data referenced to a specific coordinate system that
25 identifies the boundaries and spatial extent of parcels of land included in a farmland preservation
26 area or a farmland preservation zoning district.

27 (18) “Transportation use,” as used in s. 91.46 (1) (f), includes roads and rail facilities.

1 **(3) AMENDMENTS AND CERTIFICATION.** If, after July 1, 2009, a county amends a
2 farmland preservation plan in accordance with s. 66.1001 (4), Stats., the amendment shall be
3 submitted to the department for certification.

4 **Note:** Under s. 91.16 (8), Stats., amendments are not effective unless certified by the
5 department.
6

7 **ATCP 49.12 Certification standards.** The department may certify a county’s farmland
8 preservation plan under s. 91.16, Stats., if that plan complies with the requirements in s. 91.10
9 (1) and (2), Stats., and all of the following:

10 **(1) RATIONALE.** (a) The farmland preservation plan shall describe the rationale used to
11 determine which areas the county plans to preserve for agricultural use and agriculture-related
12 use. The rationale shall be based on objective criteria related to the characteristics of the land
13 parcels themselves, including consideration of all of the following criteria:

- 14 1. Whether the soils are suitable for agricultural production.
- 15 2. Whether the land has historically been used for agricultural use or agriculture-related
16 use.
- 17 3. Whether the land is in close proximity to agricultural infrastructure.
- 18 4. Whether the land is in undeveloped natural resource or open space areas that connect
19 other farmland parcels to create a large, uninterrupted block of preserved area.
- 20 5. Whether the land may be under some development pressure but the land is not located
21 in an area the county plans for development in the next 15 years.

22 **Note:** The criteria listed above are all land-based considerations that may or may not be
23 relevant in the county. Other factors may also be considered such as availability
24 of supporting infrastructure or presence of protected land.

1 (b) The rationale shall exclude from a farmland preservation area any parcels planned,
2 within 15 years, for nonagricultural development or other incompatible uses in the town or
3 county comprehensive plans.

4 (c) The rationale may not be based primarily on landowner preferences.

5 (d) The rationale shall be applied consistently across the county to the extent applicable
6 and practicable.

7 (e) The farmland preservation plan map shall accurately reflect the rationale utilized by
8 the county.

9 **Note:** Utilizing objective criteria means that the criteria must be applied impartially and
10 not favor some landowners over other landowners. The criteria should be based
11 on characteristics associated with the land itself or existing pressures that may
12 affect the future use of the land instead of focusing solely on the preferences of
13 individual landowners.
14

15 **(2) RELATIONSHIP TO THE COUNTY COMPREHENSIVE PLAN.** (a) The farmland preservation
16 plan shall be consistent with any county comprehensive plan.

17 **Note:** To be “consistent with” does not mean that the farmland preservation plan and the
18 comprehensive plan must be identical; however, for the department to find that
19 the plans are consistent there should not be any significant difference between
20 elements of the plans. For example, not every area that is shown as an
21 agricultural area in the comprehensive plan future land use map must be included
22 as a farmland preservation area in the farmland preservation plan map; however,
23 lands planned for residential or non-agricultural commercial use in the
24 comprehensive plan should not be planned for farmland preservation in the
25 farmland preservation plan within the next 15 years.
26

27 (b) The farmland preservation plan shall be included in any county comprehensive plan.

28 **Note:** Under s. 91.10 (2), Stats., the county is required to include the farmland
29 preservation plan in any county comprehensive plan it adopts. Under s. 91.18,
30 Stats., the farmland preservation plan is not qualified for certification by the
31 department if pars. (a) and (b) are not met.
32

33 **(3) PLAN INELIGIBLE FOR CERTIFICATION.** The department may not certify a farmland
34 preservation plan that does not meet the requirements of ch. 91, Stats., and this subchapter.

1 **ATCP 49.14 Applying for certification of a plan or a plan amendment.**

2 **(1) GENERAL.** A county seeking certification of its farmland preservation plan or a plan
3 amendment shall submit an application to the department as provided in this section.

4 **(2) REQUIRED INFORMATION.** The application for certification shall include all of the
5 following in order to be considered complete and to be evaluated for compliance with s. 91.16,
6 Stats.:

7 (a) An application on a form developed by the department that includes the information
8 required under ss. 91.20 (2) and (3), Stats.

9 **Note:** You may obtain a copy of the form by contacting the department at the following
10 address:

11
12 Department of Agriculture, Trade and Consumer Protection
13 Attn: Bureau of Land and Water Resource Management
14 2811 Agriculture Drive
15 Madison, WI 53718

16 Website:

17 [http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservati
18 on_Planning/index.aspx](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Planning/index.aspx)

19
20 (b) All parts of the plan for which the County is seeking certification. A county seeking
21 certification of a full plan shall submit the text and map of the plan along with the spatial
22 location data used to create the farmland preservation plan map. A county seeking certification
23 of an amendment to a certified plan shall submit all parts of the plan affected by the amendment.

24 **Note:** A county seeking certification of a plan amendment only needs to submit those
25 parts of the plan that are affected by the amendment. If a county wishes to amend
26 the text of its farmland preservation plan, then the county may submit just the
27 plan text. If a county wishes to amend the plan map, then the county may submit
28 just the plan map. If the amendment makes changes to both the plan map and
29 text, then the county should submit both the map and the text.

30 (c) All spatial location data used to delineate the farmland preservation areas proposed
31 for certification, submitted in accordance with the department requirements on format.

1 (3) PLAN TEXT. The plan text shall comply with the requirements in ss. 91.10 (1) and (2),
2 Stats., and this subchapter.

3 (4) PLAN MAP. A farmland preservation plan shall include a map that clearly delineates
4 all areas in the county identified as a farmland preservation area so that a reader can determine
5 whether a parcel is within an identified area. The farmland preservation plan map shall:

6 (a) Be comprised of one county map or a series of town, village, and city maps.

7 (b) Be titled “Farmland Preservation Plan Map” followed by the name of the political
8 subdivision depicted on the map.

9 (c) Specify the county in which the farmland preservation plan area is located.

10 (d) Clearly delineate areas designated for farmland preservation, designating parcels as
11 included or excluded from the district and following parcel boundaries where possible.

12 (e) Display environmental or other overlay areas, if any, in a manner that does not
13 obscure or confuse the boundaries of an underlying farmland preservation area.

14 (f) Be drawn at a scale no greater than one inch to 2,000 feet (1:24,000).

15 **Note:** The county may fulfill this requirement by submitting maps at that required scale
16 only for the towns which are to include farmland preservation areas.

17 (g) Show political boundaries, parcel boundaries, section lines, section numbers, roads,
18 and water bodies.

19 (h) Include a map legend with corresponding symbols or colors for all data represented
20 on the map.

21 (i) Identify farmland preservation areas and non-farmland preservation areas with
22 corresponding symbols in the legend and with titles that correspond to the titles in the plan text
23 that apply to those areas.

24 (j) Specify map scale, north arrow direction, map date, and map producer.

1 SUBCHAPTER III

2 FARMLAND PRESERVATION ZONING

3 **ATCP 49.20 General.** A political subdivision may adopt a farmland preservation
4 zoning ordinance. In order for the ordinance to be certified by the department under s. 91.36,
5 Stats., the ordinance must meet the requirements of s. 91.38, Stats., and this subchapter.

6 **ATCP 49.22 Permitted uses.** In addition to the uses listed under s. 91.44 (1), Stats.,
7 the following uses may be allowed as permitted uses in a certified district:

8 (1) **EXISTING RESIDENCE.** Residences, regardless of occupancy, existing as of the
9 effective date [LRB inserts date] or an earlier date specified by the ordinance may be permitted.

10 **Note:** Residences, which may or may not be associated with a farm, that are constructed
11 as of a date specified in the zoning ordinance text may be allowed as permitted
12 uses in the district. These residences need not receive a conditional use permit
13 unless the local government decides to require it and they need not follow the
14 prior nonconforming use provisions found under s. 59.69 (1), 60.61 (5), or 62.23
15 (7) (h), Stats., unless mandated by the local government.

16 (2) **FARM FAMILY BUSINESS.**

17 **ATCP 49.23 Conditional uses.** In addition to the uses listed in s. 91.46, Stats., and
18 ATCP 49.22, a proposed new single-family or duplex nonfarm dwelling may be allowed as a
19 conditional use in a certified farmland preservation district. The new nonfarm dwelling is
20 subject to legal restrictions established by the political subdivision which demonstrate to the
21 department's satisfaction that the restrictions will be as restrictive as the density standards for
22 nonfarm residences set forth in s. 91.46 (2), Stats.

23 **Note:** A political subdivision that chooses to allow limited nonfarm residences within the
24 certified farmland preservation district may choose to implement the base farm
25 tract concept defined in s. 91.01 (5), Stats., and applied through s. 91.46 (2) (c) 1.
26 and 2., Stats., or may utilize an alternative provision developed at the local level.
27 The political subdivision must demonstrate to the Secretary that the local
28 provision limits nonfarm development to the same extent or more as the state
29 statutes so that the alternative policy would not allow for both additional nonfarm
30 residences to be built and more nonfarm residential acreage to be introduced into

1 the farmland preservation district. The political subdivision may choose to apply
2 a density restriction to all parcels in the district regardless of whether the parcels
3 qualify as farms under the definition of farm in the ordinance. The conditional
4 use permit for a nonfarm residence is an optional provision that a political
5 subdivision may choose to include in a farmland preservation zoning ordinance.

6 **ATCP 49.24 Zoning ordinance certification expiration. (1) CERTIFICATION**

7 EXPIRATION. The certification of a farmland preservation zoning ordinance expires on the date
8 provided in the most recent certification of the ordinance or its amendment, or, if the certification
9 does not provide an expiration date, on the date provided under s. 91.34, Stats. If a local
10 government with an expired ordinance does not obtain certification of a farmland preservation
11 zoning ordinance by December 31 of the year following the expiration date, landowners covered
12 by the zoning ordinance are not eligible to claim farmland preservation tax credits beginning in
13 the year following the year of the expiration date.

14 **Note:** If a farmland preservation zoning ordinance expires on December 31, 2014, the
15 political subdivision has until December 31, 2015, to obtain certification of its
16 ordinance by the department. If the political subdivision's ordinance is not
17 certified by the department by December 31, 2015, all landowners with land
18 located in the farmland preservation zoning district may not claim tax credits for
19 tax year 2015. The political subdivision is not precluded from seeking future
20 certification of its farmland preservation zoning ordinance.
21

22 **(2) CERTIFICATION EXPIRATION EXTENSION.** The secretary may delay the expiration date
23 of the certification of a farmland preservation zoning ordinance for up to 2 years upon a written
24 request from the political subdivision demonstrating to the secretary's satisfaction that a delay
25 would allow the political subdivision to coordinate updating the farmland preservation zoning
26 ordinance with other planning efforts in the political subdivision.

27 **ATCP 49.25 Certification standards. (1) QUALIFYING FOR CERTIFICATION.** The
28 department may certify a farmland preservation zoning ordinance under s. 91.36, Stats., if that
29 ordinance complies with the requirements in ss. 91.38 and 91.40, Stats., and this subchapter.

1 (2) CONSISTENCY WITH FARMLAND PRESERVATION PLAN. At least 80% of the area
2 planned for farmland preservation in each town, city, or village covered by a certified farmland
3 preservation plan shall be included in the farmland preservation district or a district that imposes
4 land use restrictions as restrictive as or more restrictive than the farmland preservation zoning
5 district. The department may consider certifying a farmland preservation zoning ordinance that
6 is between 70 and 80% consistent with a farmland preservation plan if the political subdivision
7 can demonstrate to the Secretary's satisfaction a reasonable, objective justification for the lower
8 level of consistency.

9 **Note:** If an area is planned for farmland preservation but is not zoned for farmland
10 preservation, it may be zoned as open space or conservancy. Such a zoning
11 designation would be consistent with farmland preservation. Areas that are zoned
12 for nonagricultural residential, commercial, or industrial use, however, would not
13 be consistent with farmland preservation.
14

15 **ATCP 49.26 Applying for ordinance certification. (1) GENERAL.** Except as provided
16 under s. 91.36 (8), Stats., and s. ATCP 49.27, a political subdivision seeking certification of its
17 farmland preservation ordinance shall submit an application to the department as provided in this
18 section.

19 (2) REQUIRED INFORMATION. The application for certification shall include all of the
20 following in order to be considered complete and evaluated for compliance with s. 91.36, Stats.:

21 (a) An application on a form developed by the department that includes the information
22 required under s. 91.40 (2), Stats.

23 **Note:** You may obtain a copy of the form by contacting the department at the following
24 address:

25
26 Department of Agriculture, Trade and Consumer Protection
27 Attn: Bureau of Land and Water Resource Management
28 2811 Agriculture Drive
29 Madison, WI 53718

1 Website:
2 [http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservati](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Zoning/index.aspx)
3 [on_Zoning/index.aspx](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Farmland_Preservation_Zoning/index.aspx)

4 (b) All parts of the zoning ordinance affected by the farmland preservation
5 district for which the political subdivision is seeking certification.

6 (c) All spatial location data used to delineate the farmland preservation zoning districts
7 proposed for certification.

8 (3) ORDINANCE TEXT. The ordinance text shall comply with the requirements in s. 91.38
9 (1), Stats.

10 (4) ORDINANCE MAP. A farmland preservation zoning ordinance shall include a map that
11 clearly delineates each farmland preservation zoning district so that a reader can determine
12 whether a parcel is within a farmland preservation district. The farmland preservation zoning
13 ordinance map shall do all of the following:

14 (a) Be comprised of one county map or a series of town maps for a county ordinance, or
15 one map for a city, town, or village ordinance.

16 (b) Be titled “Zoning Ordinance Map” preceded or followed by the name of the political
17 subdivision depicted on the map.

18 (c) Specify the county in which the farmland preservation zoning district is located, if
19 the map covers only one town, city, or village.

20 (d) Clearly delineate areas zoned for farmland preservation, designating parcels as
21 included in the farmland preservation district or included in another zoning district and following
22 parcel boundaries to the extent possible.

23 **Note:** The zoning district does not need to follow parcel boundaries, although the
24 department prefers that districts follow parcel boundaries. For purposes of the tax
25 credit, landowners covered by the farmland preservation zoning district are
26 responsible for claiming the correct number of acres of land they own that are

1 covered by the farmland preservation district, regardless of whether the political
2 subdivision follows parcel boundaries.

3
4 (e) Display environmental or other overlay areas in a way that does not obscure or
5 confuse the boundaries of an underlying farmland preservation zoning district.

6 (f) Be drawn at a map scale no greater than one inch to 2,000 feet (1:24,000).

7 **Note:** For submission of a county ordinance, the county may fulfill this requirement by
8 submitting maps at the required scale only for the towns which are to include
9 farmland preservation districts.

10 (g) Show political boundaries, parcel boundaries, section lines, section numbers, roads,
11 and water bodies.

12 (h) Include a map legend that includes corresponding symbols or colors for all data
13 represented on the map.

14 (i) Identify all mapped farmland preservation districts with titles that correspond to the
15 titles in the zoning ordinance text that apply to those districts.

16 (j) Specify map scale, north arrow direction, map date, and map producer.

17 **ATCP 49.27 Applying for certification of an ordinance amendment.** (1) An
18 amendment to a certified farmland preservation zoning ordinance is automatically considered to
19 be certified as part of the certified farmland preservation zoning ordinance, except as provided in
20 sub. (2).

21 **Note:** A political subdivision may submit to the department, at any time, an amendment
22 to a certified farmland preservation zoning ordinance, and request a written
23 determination from the department as to whether the amendment requires
24 certification by the department.

25
26 (2) An amendment to a certified farmland preservation zoning ordinance shall be
27 submitted to the department for certification review under s. 91.36, Stats., and s. ATCP 49.26,
28 and is not considered to be automatically certified, if the amendment does any of the following:

29 (a) Adds uses not previously allowed in the farmland preservation district.

1 (b) Eliminates findings or conditions that must be met before approving a use for a
2 location in the farmland preservation district.

3 (c) Increases the number of nonfarm residences or the number of nonfarm acres allowed
4 in the farmland preservation district.

5 (d) Changes the findings required for allowing a rezone out of a farmland preservation
6 district.

7 (e) Results in a farmland preservation zoning ordinance map that is no longer meets the
8 requirements of s. ATCP 49.25(2).

9 **Note:** Changing the numbering or formatting of the ordinance, changing the minimum
10 lot size, rezoning land out of a farmland preservation district unless the rezone
11 would result in a farmland preservation zoning map that no longer meets the
12 specified consistency requirements with the currently certified farmland
13 preservation plan map, or making changes that only affect districts outside of the
14 farmland preservation zoning district do not require certification by the
15 department.
16

17 **ATCP 49.29 Withdrawal of certification.** (1) Pursuant to s. 91.36 (8) (c), Stats., the
18 department may by written notice, without prior notice or hearing, withdraw certification of a
19 farmland preservation zoning ordinance under this section. The withdrawal is a summary special
20 order under ch. ATCP 1.

21 (2) The secretary may withdraw certification under sub. (1) if any of the following occur:

22 (a) The certification of a county farmland preservation plan for the lands under the
23 certified farmland preservation zoning ordinance has expired.

24 (b) An amendment, adopted after July 1, 2009, to a certified farmland preservation
25 zoning ordinance fails to comply with the requirements of s. 91.38, Stats.

26 (3) The notice under sub, (1) shall state the reason for the withdrawal of certification.

27 **Note:** The department may withdraw certification of an ordinance under this section
28 regardless of the date the ordinance was certified, and regardless of whether the

1 ordinance was developed under the provisions of s. 91.06, 2007 Stats., or ch. 91,
2 Stats., (*see* s. 91.36 (8) (c), Stats.).
3
4

5 SUBCHAPTER IV

6 FARMLAND PRESERVATION AGREEMENTS

7 **ATCP 49.30 FARMLAND PRESERVATION AGREEMENTS; DENIAL OF APPLICATION.**

8 The department may deny an application to enter into a farmland preservation agreement if any
9 of the following apply:

10 (1) The department determines that lands to be excluded from the proposed agreement
11 are being withheld for purposes that conflict with the goals of the agricultural enterprise area
12 program under s. 91.84, Stats.

13 (2) The department determines that lands to be excluded from the agreement are being
14 withheld for purposes that will likely impair or limit agricultural use on other lands in the
15 agricultural enterprise area or lands proposed for inclusion under a farmland preservation
16 agreement.

17 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the month
18 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
19 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary