

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

- 1 The state of Wisconsin department of agriculture, trade and consumer protection adopts the
 - 2 following order to create subchapter III of chapter ATCP 161, relating to payments to ethanol
 - 3 producers.
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**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1) and 93.75(3), Stats.
Statutes interpreted: s. 93.75, Stats.

The legislature, in 1999 Wisconsin Act 55, created an ethanol payment program under s. 93.75, Stats. The legislature authorized the department of agriculture, trade and consumer protection (DATCP) to make payments to ethanol producers in this state. The legislature has not yet provided any funding for the payment program. This rule implements the payment program, subject to legislative funding. The ethanol payment program is scheduled to sunset on July 1, 2006.

Statutory Requirements

To be eligible for a payment under s. 93.75, Stats., an ethanol producer must produce at least 10 million gallons of ethanol in a 12-month period unless DATCP specifies a different amount by rule. The ethanol producer must also purchase commodity inputs from “local sources” as defined by DATCP rule.

Under s. 93.75, Stats., an ethanol producer is eligible for payments during the first 60 months of ethanol production. Subject to available funding, the legislature directed DATCP to pay 20 cents per gallon for up to 15 million gallons of eligible ethanol production per 12-month period. DATCP must adopt rules to prorate payments if there are not enough funds to pay all ethanol producers at the authorized statutory rate.

Rule Contents

Annual Payments to Ethanol Producers

Under this rule, an ethanol producer may apply by March 1 of each year to receive an ethanol production payment for any consecutive 12-month period ending within a year prior to that March 1. (The applicant chooses the consecutive 12-month period.) Subject to available funding, DATCP will award to each eligible applicant a payment of 20 cents per gallon for up to 15 million gallons of “eligible ethanol” produced during the “production period” identified in the application.

Eligible Producer

An ethanol producer is eligible for an annual payment if all the following apply:

- The producer produced at least 10 million gallons of “eligible ethanol” during the consecutive 12-month period identified in the application.
- DATCP has not previously awarded a payment to the ethanol producer for ethanol produced during the consecutive 12-month period identified in the application.
- The ethanol producer first began producing ethanol in this state not more than 60 months prior to the end of consecutive 12-month period identified in the application.

Eligible Ethanol

Under this rule, DATCP will make payments only for “eligible ethanol” production. “Eligible ethanol” means ethanol that the ethanol producer produces in this state from commodities purchased from local sources. A “commodity” includes grain or another agricultural source of starch or sugar. A “commodity purchased from a local source” means any of the following:

- A commodity that the ethanol producer purchases from a person who produced that commodity in this state.
- Grain that the ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

Payment Application

An ethanol producer must submit a payment application in writing. The application must specify all the following:

- The production period for which the applicant seeks a payment.
- The total gallons of “eligible ethanol” that the applicant produced during that consecutive 12-month period.

- The name and address of each supplier from whom the applicant purchased a commodity used to produce the “eligible ethanol.” The applicant must identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant must give the address of the grain facility from which the grain dealer shipped that grain to the applicant.
- The applicant’s federal tax identification number.
- The date on which the applicant first produced ethanol in this state.
- Any other information required by DATCP.

DATCP Action on Applications

DATCP must notify applicants of payment awards by May 1 of each year, and must make payment by June 30 (the end of the state fiscal year). If DATCP denies a payment application, or awards a smaller prorated amount (see below), DATCP must explain its action in writing.

DATCP may require an applicant to provide additional information, and may deny a payment application if the applicant fails to honor DATCP’s reasonable request for relevant information. DATCP may exercise its authority under ch. 93, Stats., to verify a payment application, or to verify the applicant’s eligibility for a payment.

In cases where an applicant is using corn as the commodity source of the ethanol, DATCP will presume the ethanol producer is able to produce 2.5 gallons of ethanol for every one bushel of corn purchased. The applicant may present evidence of a different conversion rate.

DATCP may deny a payment application, or recover payments made to an applicant, if DATCP finds that the applicant has materially misrepresented any information related to a payment application. DATCP may also refuse payment to an ethanol producer who stops producing ethanol before DATCP makes payment.

Prorating payments

Under this rule, if all payment awards in any state fiscal year exceed the funds appropriated for that fiscal year, DATCP must prorate payment awards based on each applicant’s eligible ethanol production during the consecutive 12-month period identified in the applicant’s payment application. An ethanol producer who receives a pro-rated payment may *not* apply for the balance of that payment in the next fiscal year.

1 **SECTION 1.** Chapter ATCP 161, Subchapter III, is created to read:

1 **Subchapter III**

2 **Payment to Ethanol Producers**

3 **ATCP 161.30 Purpose.** This subchapter establishes standards and procedures for
4 making payments to ethanol producers under s. 93.75, Stats.

5 **ATCP 161.31 Definitions.** In this subchapter:

6 (1) “Commodity” means grain, or another agricultural source of starch or sugar, that can
7 be fermented and distilled to produce ethanol.

8 (2) “Commodity purchased from a local source” means any of the following:

9 (a) A commodity that an ethanol producer purchases from a person who produced that
10 commodity in this state.

11 (b) Grain that an ethanol producer purchases from a grain dealer and receives directly
12 from a grain facility located in this state.

13 (3) “Department” means the state of Wisconsin department of agriculture, trade and
14 consumer protection.

15 (4) “Eligible ethanol” means ethanol that an ethanol producer produces in this state from
16 commodities purchased from local sources.

17 (5) “Ethanol producer” means a person who owns and operates an ethanol production
18 facility in this state.

19 (6) “Grain” means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum,
20 flaxseed, milo, sunflower seed and mixed grain as defined in the federal standards act, 7 USC
21 241 to 271.

22 (7) “Grain dealer” means a grain dealer as defined in s. 127.01(19), Stats.

1 (8) “Grain facility” means any building, bin or storage facility, used for receiving,
2 storing, conditioning, shipping or handling grain, whose operator is one of the following:

3 (a) A warehouse keeper licensed under ch. 127, Stats., or 7 USC 241 to 271.

4 (b) An exempt warehouse keeper, as defined in s. 127.01(14), Stats.

5 (9) “Production period” means a consecutive 12 month period of ethanol production
6 designated by the ethanol producer.

7 **ATCP 161.32 Payments to ethanol producers.** (1) ANNUAL PAYMENT APPLICATION.

8 An ethanol producer may apply to the department, by March 1 of each year, to receive an ethanol
9 production payment for any production period ending not more than one year prior to that March
10 1.

11 (2) PAYMENT AMOUNT. Except as provided in s. ATCP 161.36, the department shall in
12 each state fiscal year award to each eligible applicant under sub. (1) a payment of 20 cents per
13 gallon for up to 15 million gallons of eligible ethanol produced by the applicant during the
14 production period identified in the producer’s payment application.

15 (3). APPROPRIATION. The department shall make payment from the appropriation under
16 s. 20.115(3)(d), Stats., subject to the availability of funds in the appropriation.

17 (4) ELIGIBLE APPLICANTS. An ethanol producer is eligible for a payment under this
18 section if all the following apply:

19 (a) The ethanol producer produced at least 10 million gallons of eligible ethanol during
20 the production period identified in the producer’s payment application.

21 (b) The department has not previously awarded a payment to the ethanol producer for
22 ethanol produced during the production period identified in the producer’s payment application.

1 (c) The ethanol producer began producing ethanol in this state not more than 60 months
2 before the end of the production period identified in the producer's payment application.

3 **ATCP 161.33 Payment applications.** An ethanol producer applying for a payment
4 under s. ATCP 161.32 shall apply in writing. The application shall specify all the following:

5 (1) The production period for which the applicant seeks a payment.

6 (2) The total gallons of eligible ethanol that the applicant produced during the production
7 period under sub. (1).

8 (3) The name and address of each supplier from whom the applicant purchased a
9 commodity used to produce the eligible ethanol under sub. (2). The applicant shall identify the
10 type and amount of each commodity purchased from each supplier. If the applicant purchased
11 grain from a grain dealer, the applicant shall give the address of the grain facility from which the
12 grain dealer shipped that grain to the applicant.

13 (4) The applicant's federal tax identification number.

14 (5) The date on which the applicant first produced ethanol in this state.

15 (6) Any other information required by the department.

16 **ATCP 161.34 Department action on payment application.** (1) ACTION DEADLINE.

17 By May 1 of each year, the department shall act on applications received by March 1 of that
18 year.

19 **NOTE:** The department will wait until the March 1 application deadline to determine the
20 combined amount of all payment applications from ethanol producers. If eligible
21 payment requests received by March 1 exceed the amount of payment funds
22 available in that fiscal year, the department must prorate annual payment awards
23 under s. ATCP 161.36.

24 (2) NOTICE OF ACTION. The department shall give each applicant written notice of its
25 action under sub. (1). If the department denies all or part of a payment application, or awards a
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1 prorated payment amount under s. ATCP 161.36, the department shall explain its action in
2 writing.

3 (3) ADDITIONAL INFORMATION. The department may require an applicant to provide
4 additional information that is relevant to a payment application. The department may deny a
5 payment application if the applicant fails to honor the department's reasonable request for
6 relevant information.

7 (4) VERIFYING INFORMATION. The department may exercise its authority under ch. 93,
8 Stats., to verify the information contained in a payment application, or to verify the applicant's
9 eligibility for a payment. When verifying the amount of eligible ethanol produced from corn, the
10 department may presume that a bushel of corn yields 2.5 gallons of ethanol unless the producer
11 proves a different conversion rate.

12 (5) MISREPRESENTATIONS. The department may deny a payment application, or recover
13 payments made to an applicant, if the department finds that the applicant has materially
14 misrepresented any information related to a payment application.

15 **ATCP 161.35 Payment deadline.** (1) GENERAL. Except as provided in sub. (2) or s.
16 ATCP 161.36, the department shall pay, by June 30 of each year, the full amount of each
17 payment awarded under s. ATCP 161.32(2) during the state fiscal year ending that June 30.

18 (2) NO PAYMENT TO PRODUCER WHO HAS STOPPED PRODUCTION. The department may
19 not make payment under sub. (1) to an applicant who stops producing ethanol before the
20 department makes payment.

21 **ATCP 161.36 Prorating payment awards.** If the sum of all awards under s. ATCP
22 161.32(2) in any state fiscal year exceeds the total amount appropriated under s. 20.115(3)(d),
23 Stats., for that fiscal year, the department shall prorate each applicant's payment award based on

1 the amount of eligible ethanol that the applicant produced during the production period identified
2 in the applicant's payment application, up to a maximum of 15 million gallons.

3 **NOTE:** See s. 93.75(2), Stats.

4 **ATCP 161.37 Records.** An ethanol producer who applies for payment under this
5 subchapter shall keep all the following records for at least 3 years after the application date, and
6 shall make the records available to the department for inspection and copying upon request.

7 (1) All purchase records, contracts and receipts for commodities purchased from a local
8 source.

9 (2) Records relating to the sale of eligible ethanol.

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16 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day of
17 the month following publication in the Wisconsin administrative register, as provided under s.

18 227.22(2)(intro.), Stats.

19 Dated this _____ day of _____, 2001

20 STATE OF WISCONSIN
21 DEPARTMENT OF AGRICULTURE,
22 TRADE AND CONSUMER PROTECTION

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25
26 By _____
27 James E. Harsdorf, Secretary