

DATCP Docket: 23-R-02

**THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ORDER TO ADOPT EMERGENCY RULE**

ORDER

The Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts the following emergency rule *to create* ss. ATCP 52.17, 52.18, 52.19, 52.20, 52.21, 52.22, and 52.23, *relating to* providing crop insurance rebates for cover crops.

The statement of scope for this rule, SS 070-23, was approved by the Governor on September 7, 2023, published in the Register No. 813A3 on September 18, 2023, and approved by the Department of Agriculture, Trade and Consumer Protection on September 21, 2023. The emergency rule was approved by the Governor on November 2, 2023.

Finding of Emergency

Wisconsin statute s. [92.14 \(17\)](#), Stats. authorizes that the Department of Agriculture, Trade and Consumer Protection (“department”) may provide crop insurance premium rebates for planting cover crops. Under s. [92.14 \(17\) \(b\)](#), Stats., the department may, using the procedure s. [227.24](#), Stats., promulgate rules to implement s. [92.14 \(17\)](#), Stats. An administrative rule is needed in order to administer this program and provide rebates from the appropriation in 20.115(7) (qf), Stats. for this program in Fiscal Year 2023-2024.

Analysis

This emergency rule implements the crop insurance premium rebates for planting cover crop program created under s. 92.14 (17) Stats. Under s. 92.14 (17) Stats., the Department of Agriculture, Trade and Consumer Protection (department) is authorized to provide rebates in the amount of \$5 for each acre of a cover crop planted for crop insurance premiums paid on those acres. Under 20.115(7) (qf), Stats. the legislature has appropriated \$800,000 for this program in Fiscal Year 2023-2024.

Statutes Interpreted: s. 92.14 (17), Stats.

Statutory Authority: s. 92.14 (17), Stats.

Explanation of Agency Authority

Section 92.14 (17), Stats., directs that the department is explicitly authorized to: promulgate rules to determine eligibility for which crop insurance premiums are provided for planting cover

crops; establishing procedures for verifying that a cover crop is planted on acres for which a crop insurance premium rebate is provided; determining the maximum amount of acres for which an applicant may receive funding in a year; and establishing the application and award process, including the application deadline and grant award schedule.

Related Statutes and Rules

There are no other directly related rules or statutes, other than those cited above.

Plain Language Analysis

The Cover Crop Insurance Rebate Program is offered for acres of cover crops installed outside of state and federal program incentives (e.g., EQIP, CSP and state cost share). Interested participants may enroll acres planted to cover crops in the fall which will be planted to an insurable crop in the following growing season. Eligible applicants will receive a \$5 per acre insurance premium discount on the following year's crop insurance invoice for every acre of cover crop enrolled and verified in the program. Applications will be due to the department in January and must be completed in full for eligibility.

Application requirements include applicant contact information, current USDA Farm Service Agency form FSA-578 with verified cover crop acres, crop insurance policy number(s), acres of cover crops seeded to each field, farm, tract, common land unit (CLU)/Field #, and legal description of fields/acres seeded to cover crops.

The department may not provide a rebate for the planting of a cover crop on an acre for which funding for planting a cover crop is provided from a federal or state grant or incentive program, including from any of the following:

- 1 1. The federal environmental quality incentives program under [16 USC 3839aa to 3839-8.]
- 2 2. The federal conservation stewardship program under [16 USC 3839aa-21 to 3839aa-25.]
- 3 3. A producer-led watershed protection grant under [s. 93.59, Stats.]
- 4 4. The Soil and Water Resource Management Program [s. 92.14 (3) Stats.]
- 5 5. A lake management planning grant under [s. 281.68, Stats.]
- 6 6. A lake management grant under [s. 281.69, Stats.]
- 7 7. A river protection grant under [s. 281.70, Stats.]

Applicants will self-certify that the land they are enrolling in the rebate program has not received funding from any of the above sources.

Rebates will be funded on a first come, first served basis. If requests exceed available funding, the department may prioritize rebates based on the timing of the application, whether this is the first time a cover crop has been planted on the field, whether the acres have received a rebate previously, and the number of acres for which a rebate is requested. The department may place a limit on how many acres can be awarded the rebate from each application.

The department will verify applications and respective acreage. The department may contact applicants for additional clarifying information. Applicants must maintain documentation on cover crops that have been seeded (e.g., seed bills) and follow seed recommendations related to seeding dates, appropriate seeding rates and seed mixes to ensure objectives of the cover crop are being met. To ensure the practice achieves the desired results, no full width tillage/termination of the cover crop in the fall is allowed. Management/termination of the cover crops must be done in the spring in accordance with the USDA Natural Resources Conservation Service Cover Crop Termination Guidelines and Conservation Practice Standard 340. This guidance not only informs proper management of cover crops but must also be followed to maintain eligibility for federal crop insurance.

Only acres in cover crops (absent other state or federally-incentivized cover crops) will be eligible for the premium discount. Confirmed applications will be forwarded to USDA-Risk Management Agency (RMA) for processing premium discounts on crop insurance premium invoices. Applicants must certify that by signing up for this program, they give the department permission to share the information provided to the USDA-RMA for administering the benefit to the beneficiary as documented on the application. Applicants also convey permission to the department or county representative(s) access to the property enrolled, if necessary, to verify cover crop establishment.

Rebate Awards

Under this emergency rule, the department must evaluate rebate applications. If the total amount of funding requested is below total funding available, all complete applications will be funded. If the total amount of funding requested by eligible applicants exceeds the total funding available, the department will evaluate the applications on the following criteria:

- The timing of the application.
- Whether this is the first time a cover crop has been planted on the field.
- Whether the acres have received a rebate previously.
- The number of acres for which a rebate is requested.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The Pandemic Cover Crop Program (PCCP) was a program established by USDA to help producers maintain their cover crop systems amid a financially challenging time because of the COVID-19 pandemic. PCCP was part of USDA's Pandemic Assistance for Producers initiative, through which USDA established programs and efforts to bring financial assistance to farmers, ranchers, and producers who felt the impact of COVID-19 market disruptions.

PCCP provided premium support to eligible producers who insured their spring crop with most insurance policies and planted on acreage where a qualifying cover crop was planted after June 15, 2021, of the 2021 crop year, or during the 2022 crop year. The premium support was up to \$5 per acre, but no more than the full premium owed.

Funding was available until May 31, 2022. In 2022, Wisconsin farmers received rebates of \$1,657,722 for their crop insurance. This program did not have the same restriction on providing a rebate for acres enrolled in state and federal program incentives.

***If Held, Summary of Comments Received during Preliminary Comment Period
and at Public Hearing on Statement of Scope***

The Joint Committee for Review of Administrative Rules did not request a preliminary hearing on the scope; thus, the department did not hold a preliminary hearing on the scope.

Comparison with Rules in Adjacent States

Illinois - The Illinois Department of Agriculture runs a Cover Crop Premium Discount Program for acres of cover crops installed outside of state and federal program incentives (e.g., EQIP, CSP and state cost share) in partnership with USDA-RMA. Interested participants may enroll acres planted to cover crops in the fall which will be planted to an insurable crop in the following growing season. Eligible applicants will receive a \$5/acre insurance premium discount on the following year's crop insurance invoice for every acre of cover crop enrolled and verified in the program.

Iowa - The Iowa Department of Agriculture and Land Stewardship provides up to \$5/acre for cover crops to eligible applicants. Funding will be provided through USDA-RMA as an additional insurance premium discount through normal crop insurance processes. The premium reduction will be available for fall-planted cover crops with a spring-planted cash crop. The program is offered for acres of cover crops installed outside of state/federal program incentives (WQI, IFIP, state cost share, EQIP, CSP, etc.). Participating farmers must follow all existing good farming practices required by their policy and work with their insurance agent to maintain eligibility.

Michigan –Farmers for Soil Health offer an incentive program where farmers would receive \$50 per acre over a 3-year period.

Minnesota – Minnesota does not offer a similar program

Summary of Factual Data and Analytical Methodologies

The department utilized feedback from representatives of the agriculture industry, staff from neighboring state agencies, and collaborators to develop this emergency rule.

***Analysis and Supporting Documents used to Determine Effect on Small Business or in
Preparation of an Economic Impact Analysis***

This emergency rule will have a fiscal impact on the department's operations. Under this emergency rule, the department may provide rebates in the amount of \$5 for each acre of a cover crop planted for crop insurance premiums paid on those acres. Department staff will review applications, process data, and work with USDA-RMA to ensure successful payments.

Additionally, the department may need to conduct inspections to verify that recipients of a crop insurance premium rebate are in compliance with the program requirements.

Fiscal Impact and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

This emergency rule will have no adverse effect on small businesses. The Program is voluntary and thus imposes no cost on businesses. By providing cover crop rebates to agricultural producers, the Program will benefit agricultural producers, other agricultural businesses, and communities that participate in the program. Rebate recipients will benefit directly, while others will benefit indirectly from the creation of a stronger agricultural industry and improved water quality. The department plans to use procedures that will make the cost of applying insignificant.

The Department's Regulatory Review Coordinator may be contacted by:

Email at Bradford.Steine1@wisconsin.gov

Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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Place Where Comments are to Be Submitted and Deadline for Submission:

Comments must be received on or before _____ to be included in the record of rule-making proceedings. Submit comments:

By mail to:

Susan Mockert

Division of Agriculture Resource Management

Department of Agriculture, Trade and Consumer Protection

P.O. Box 8911

Madison, WI 53708-8911

By email to:

DATCPLandWater@wisconsin.gov

RULE TEXT

1 SECTION 1. ATCP 52.17, 52.18, 52.19, 52.20, 52.21 and 52.22 are created to read:

2 **Subchapter II – Crop Insurance Premium Rebate for Planting Cover Crops Program**

3 **ATCP 52.17 Purpose.** The purpose of this subchapter is to implement the crop insurance premium
4 rebate for planting cover crops program created under s. 92.14 (17), Stats.

5 **ATCP 52.18 Definitions.** In this subchapter:

6 (1) “Applicant” means the insurant that submits an application for a rebate under this subchapter.

7 (2) “Cover crop” means a cropland cover of grass, legume, or other forb planted for seasonal
8 vegetative cover, as defined in s. ATCP 50.68 (4) (a).

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

11 (4) “Insurant” means the individual who has the crop insurance policy.

12 (5) “Proxy applicant” means a person who may submit an application on behalf of the applicant.

13 **ATCP 52.19 Application requirements and procedures.**

14 (1) The department will open at least one application period in each fiscal biennium if funding is
15 available. The application instructions shall describe the required form and content of rebate
16 applications and a deadline for submitting applications, as well as any restrictions or limitations
17 on how the rebate funding may be spent. The department shall publish the application instructions
18 and application form on its webpage. The department shall also issue a press release announcing
19 the application period to news media likely to give notice to the public.

20 (2) The department shall accept applications until the application deadline. If applications exceed
21 available funding, applications may be evaluated on the following criteria:

22 a. The timing of the application.

23 b. Whether cover crops have been planted previously.

24 c. Whether the acres have received a rebate previously.

25 d. The number of acres for which a rebate was requested.

26 **(3)** An eligible applicant, as defined under s. ATCP 52.20 (1) may apply for a rebate under this
27 subchapter.

28 **(4)** The department shall evaluate completed applications to determine which applicants will
29 receive rebates.

30 **(5)** Awarded applications will be forwarded to the USDA risk management agency for processing.

31 **ATCP 52.20 Eligibility**

32 **(1) Eligible applicants.**

33 a. Any individual insurant, or their proxy applicant, holding crop insurance may apply for the
34 rebate.

35 b. Any land planted with cover crops not ineligible under sub (2) is eligible for the rebate.

36 c. No field may receive more than one rebate per calendar year.

37 **(2) Ineligible acres.** The department may not provide a crop insurance premium rebate under this
38 subsection for the planting of a cover crop on an acre for which funding for planting a cover crop
39 is provided from a federal or state grant or incentive including from any of the following:

40 a. The federal environmental quality incentives program, as defined in 16 USC 3839aa to 3839- 8.

41 b. The federal conservation stewardship program, as defined in 16 USC 3839aa-21 to 3839aa-25.

42 c. A producer-led watershed protection grant, as defined in s. 93.59, Stats.

43 d. A basic allocation to counties grant, as defined in s. 92.14 (3), Stats.

44 e. A lake management planning grant, as defined in s. 281.68, Stats.

45 f. A lake management grant, as defined in s. 281.69, Stats.

46 g. A river protection grant, as defined in s. 281.70, Stats.

47 (3) The applicant is responsible for self-certifying that acres enrolled in this program are not
48 enrolled in any of the programs listed in s. ATCP 52.20 (2).

49 **ATCP 52.21 Rebate activities.** The department may award a \$5 insurance rebate for acres of
50 cover crops installed outside of state and federal program incentives listed in s. ATCP 52.20 (2).

51 **ATCP 52.22 Verification.**

52 (1) The department may reserve up to 10 percent of the total rebate fund for verification processes.

53 (2) The department may verify acres in cover crops applied for through this program.

54 (a) Applications may be reviewed for overlap of enrollment in other federal and state programs.

55 (b) Applicants may be asked to provide documentation to confirm applied fields were seeded to
56 cover crops.

57 (c) Cover crops may be verified via a site visit.

58 (3) Applicants shall convey permission to the department or a representative from the department
59 access to the property enrolled if necessary to verify cover crop establishment.

60 (4) The department may contract with agency partners to verify cover crop establishment.

61 **ATCP 52.23 Payment**

62 (1) The department shall partner with USDA risk management agency to process rebates. Awarded
63 applications will be forwarded to USDA risk management agency for processing incentives on
64 crop insurance premium invoices.

65 (2) Applicants must certify that by signing up for this program, they give the department
66 permission to share the information provided to the USDA risk management agency for
67 administering the benefit to the beneficiary as documented on the application.

68 SECTION 2. EFFECTIVE DATE. This rule takes effect upon publication in the state newspaper
69 and shall remain in effect for 150 days, as provided in s. 227.24 (1) (c), Stats., subject to extensions
70 under s. 227.24 (2), Stats.

(END OF RULE TEXT)

Dated this ____ day of October 2023.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary