

DATCP Docket: 24-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 planting cover crops.

The statement of scope for this rule, SS 044-24, was approved by the Governor on April 25, 2024, published in Register No. 821A2 on May 13, 2024, and approved by the Department of Agriculture, Trade and Consumer Protection Board on June 3, 2024. The emergency rule was approved by the Governor on October 3, 2024.

Finding of Emergency

A finding of emergency is not required. 2021 Wisconsin Act 223 § 4(3) provides that the department shall, using the procedure under s. 227.24, Stats., promulgate rules to implement s. 92.14 (17), Stats. Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), Stats., the department is not required to provide evidence that promulgating a rule under this 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 this subsection.

Analysis

This emergency rule implements the crop insurance premium rebates for planting cover crops program created under s. 92.14 (17), Stats. Under s. 92.14 (17) Stats., the 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 s. 20.115(7) (qf), Stats., the legislature has appropriated \$800,000 for this program in Fiscal Year 2024-2025.

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; establish procedures for verifying that a cover crop is planted on acres for which a crop insurance

premium rebate is provided; determine the maximum amount of acres for which an applicant may receive funding in a year; and establish 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 crop insurance premium rebates for planting cover crops 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. The federal environmental quality incentives program under 16 USC 3839aa to 3839-8.
2. The federal conservation stewardship program under 16 USC 3839aa-21 to 3839aa-25.
3. A producer-led watershed protection grant under s. 93.59, Stats.
4. The Soil and Water Resource Management Programs. 92.14 (3), Stats.
5. A lake management planning grant under s. 281.68, Stats.
6. A lake management grant under s. 281.69, Stats.
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 during that growing season.

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 per applicant.

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.

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

The Pandemic Cover Crop Program (PCCP) was established by USDA to help producers maintain their cover crop systems amid a financially challenging time due to 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. The program ended in 2022.

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, and the department chose not to 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 - Michigan does not offer a similar program.

Minnesota - Minnesota does not offer a similar program.

Summary of Factual Data and Analytical Methodologies

This is the third year this program is being administered via emergency rule. When legislation creating this program was first passed, the department worked with a variety of stakeholders to draft the emergency rule and estimate farmer demand. Feedback was collected from numerous stakeholders ranging from agribusiness organizations, conservation groups, county governments, university entities, the federal government, and other collaborators to develop standards for grant determinations contained in this emergency rule. No comments were received in the public comment period over the past two years. This year the department clarified the "rebate activities" section to reduce confusion.

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

The Crop Insurance Premium Rebates for Planting Cover Crops program is voluntary and thus imposes no costs on businesses. By providing a \$5 rebate to acres planted with a cover crop on eligible acres, this program will benefit farms, agriculture communities, and other agricultural businesses.

Fiscal Impact and 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. A complete Fiscal Estimate is attached.

Effect on Small Business

This emergency rule will have no adverse effect on small businesses. The Crop Insurance Rebates for Planting Cover Crops program is voluntary and thus imposes no costs 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.

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

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

Comments must be received on or before December 28, 2024, to be included in the record of rule-making proceedings. Submit comments:

By mail to:

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P.O. Box 8911
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By email to:

DATCPLandWater@wisconsin.gov

RULE TEXT

SECTION 1. ATCP 52.17, 52.18, 52.19, 52.20, 52.21, 52.22, and 52.23 are created to read:

Subchapter II - Crop Insurance Premium Rebate for Planting Cover Crops Program

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

ATCP 52.18 Definitions. In this subchapter:

- (1) "Applicant" means the insurer that submits an application for a rebate under this subchapter.
- (2) "Cover crop" means a cropland cover of grass, legume, or other forb planted for seasonal vegetative cover, as defined ins. ATCP 50.68 (4) (a).
- (3) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(4) "Insurant" means the individual who has the crop insurance policy.

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

ATCP 52.19 Application requirements and procedures.

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

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

(a) The timing of the application.

(b) Whether cover crops have been planted previously.

(c) Whether the acres have received a rebate previously.

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

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

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

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

ATCP 52.20 Eligibility.

(1) Eligible applicants.

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

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

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

(2) Ineligible acres. The department may not provide a crop insurance premium rebate under this subsection 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 including from any of the following:

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

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

(c) A producer-led watershed protection grant, as defined ins. 93.59, Stats.

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

(e) A lake management planning grant, as defined ins. 281.68, Stats.

(f) A lake management grant, as defined ins. 281.69, Stats.

(g) A river protection grant, as defined iris. 281.70, Stats.

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

ATCP 52.21 Rebate activities. The department may award a \$5 insurance rebate for acres of cover crops installed outside of state and federal program incentives listed ins. ATCP 52.20 (2) which are subsequently planted to an insurable crop the following growing season.

ATCP 52.22 Verification.

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

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

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

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

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

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

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

ATCP 52.23 Payment.

(1) The department shall partner with the USDA risk management agency to process rebates.

Awarded applications will be forwarded to the USDA risk management agency for processing incentives on crop insurance premium invoices.

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

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

(END OF RULE TEXT)

Dated this _____ day of _____, 2024.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary