



Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
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Farmland Preservation Program (ch. 91, Wis. Stats.)

Modification of a Farmland Preservation Agreement

INSTRUCTIONS

What is a Farmland Preservation Agreement?

A *farmland preservation agreement* is a voluntary agreement between the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and a landowner:

- The landowner agrees to preserve land for agricultural use and comply with farm conservation standards.
- In return, the landowner may claim state farmland preservation tax credits on the covered land. The covered land is also exempt from special assessments for sanitary sewers and water.
- A farmland preservation agreement runs with the land and is binding on subsequent owners of the covered land for the term of the agreement.

Law Changes

2009 Wisconsin Act 28 changed the law under which farmland preservation agreements are created. The new law took effect on July 1, 2009. Though the new law limits the creation of new farmland preservation agreements to land located in agricultural enterprise areas, agreements created prior to July 1, 2009, may be modified so that the landowner can take advantage of the enhanced tax credits provided by the new law (Sec. 91.60(3)(c), Wis. Stats.). Such a modification must take the form of a MODIFIED AGREEMENT that references the existing agreement and replaces some of the terms of the prior agreement. The expiration date of the prior agreement remains the same. This document explains the procedure for modifying an existing farmland preservation agreement.

- The expiration date of the MODIFIED AGREEMENT must be the same as that of the original agreement.
- Agreements made under the old law cannot be renewed when they expire. A landowner may enter into a new agreement if the land covered by the agreement is located in an agricultural enterprise area.
- Tax credits are paid as a flat amount per acre of covered land (\$5 per acre or \$10 per acre if the land is also covered by farmland preservation zoning).
- In order for the agreement to be modified, the land must be in compliance with the conservation standards in effect at the time the initial agreement was signed.

- Once an agreement is modified, landowners must comply with state soil and water conservation standards in effect at the time the agreement was modified in order to claim tax credits on the covered land.
- Land covered by a MODIFIED AGREEMENT is restricted to the following uses as defined in Chapter 91, Wis. Stats.:
 - Agricultural uses.
 - Accessory uses.
 - Undeveloped natural resource and open space uses.
 - Minor pre-existing uses.

Applying for a Modification of a Farmland Preservation Agreement

A landowner who wishes to modify a farmland preservation agreement entered into under the old law must complete the attached MODIFICATION OF A FARMLAND PRESERVATION AGREEMENT APPLICATION FORM and submit it to the county land conservation department. All required documentation must be attached to the application. The MODIFIED AGREEMENT must be consistent with the purpose of the original agreement and with ch. 91, 2009 Wis. Stats.

County Review

The county verifies that it has inspected the farm to confirm that it is in compliance with the soil and water conservation standards requirements identified in the existing agreement. The county will also review with each applicant the land use restrictions (agricultural uses, accessory uses, undeveloped natural resource and open space uses and minor pre-existing uses).

DATCP Review

DATCP will review each application for a MODIFIED AGREEMENT. If everything is in order, DATCP may modify an existing farmland preservation agreement. DATCP may decline to modify an existing farmland preservation agreement if any of the following apply:

- The application is incomplete.
- The landowner fails to provide clarifying information or documentation reasonably required by DATCP.
- Any owner of the covered land fails or refuses to sign the modified agreement.

Modified Agreement

DATCP will prepare a MODIFICATION OF A FARMLAND PRESERVATION AGREEMENT, based on the attached application form. An authorized DATCP official and all persons having an ownership interest in the covered land at the time of the modification must sign the MODIFIED AGREEMENT.

The expiration date of the MODIFIED AGREEMENT is the same as that of the original agreement. An existing agreement may not be modified to extend the term of the agreement.

Further Modifying the Modified Agreement

The parties to a MODIFICATION of the AGREEMENT (or their successors in interest) may agree to modify the agreement at any time prior to the expiration of the agreement. Modifications must be consistent with the purpose of the agreement, and with applicable law

(including ch. 91, Wis. Stats.) as it applies at the time of modification. Modifications may not be used to extend the term of an agreement.

Releasing Land from a Modified Agreement

At any time prior to the expiration of a MODIFIED AGREEMENT, DATCP may release land from coverage under the agreement. DATCP may release all or part of the land covered by the MODIFIED AGREEMENT (a complete release terminates the agreement). A request to release land must be made using DATCP form ARM-LWR-510. Before DATCP grants a release:

- DATCP must find that the release will not impair or limit agricultural use of other protected farmland.
- The landowners requesting the release must collectively pay a conversion fee as provided in s. 91.66(1)(c), 2009 Wis. Stats. The amount of the conversion fee is based on the amount of land released. Conversion fee revenues are deposited to the state Working Lands Trust Fund.

If DATCP releases land from coverage under a MODIFIED AGREEMENT prior to the expiration date of the agreement, DATCP must record a copy of the release with the county Register of Deeds (the release takes effect on execution).

These release procedures do *not* apply to the scheduled expiration of a MODIFIED AGREEMENT at the end of its specified term. That expiration occurs automatically, without any further action or recording by the landowner or DATCP, and without any payment of conversion fees.

A landowner who wishes to apply for the release of land from a MODIFIED AGREEMENT, prior to the scheduled expiration date of the agreement, may call 608-224-4633 or send an email to DATCPWorkingLands@wisconsin.gov.

Applicable Law

A MODIFIED AGREEMENT, and the rights and responsibilities of the parties under the agreement, are interpreted in light of the farmland preservation law as it existed at the time of the modified agreement. A MODIFIED AGREEMENT does not exempt a landowner from compliance with zoning ordinances or other applicable law.