

# STATEMENT OF SCOPE

## Department of Agriculture Trade and Consumer Protection

Rule No.: ATCP 52

Relating to: Producer Led Watershed Protection Grants

Rule Type: Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

NA

### 2. Detailed description of the objective of the proposed rule:

#### **Objective No. 1 - create a commercial nitrogen optimization pilot program**

The department proposes to amend ATCP 52 to create a commercial nitrogen optimization pilot program. Under the program, an agricultural producer may apply for a grant to implement a project, for at least two growing seasons, that optimizes the application of commercial nitrogen.

According to Section 92.14 (16), Wis. Stats., an agricultural producer receiving a grant must collaborate with a University of Wisconsin System (UWS) institution, which monitors the grant project on-site. The UWS institution may also receive a grant to implement that monitoring. The total grant to an agricultural producer and a collaborating UWS institution may not exceed \$50,000. Of that amount, up to 20 percent may be awarded to the UWS institution.

Section 92.14 (16)(e), Wis. Stats., sets forth the following program requirements for the department: (1) collaborate with the agricultural producer and the UWS institution; (2) select agricultural producers located in different parts of the state and for projects in areas that have different soil types or geologic characteristics; (3) prioritize projects that are innovative and not currently funded by other state or federal programs; and (4) prioritize agricultural producers that plan to implement projects for longer periods.

The department may consider rule provisions needed to implement the above statutory requirements, such as the application and award process, the criteria that may be used to prioritize and score applications, eligible and ineligible activities and costs, and contract and reporting requirements.

#### **Objective No. 2 - provide crop insurance rebates for cover crops**

The department proposes to amend ATCP 52 to provide crop insurance rebates for cover crops. Under s. 92.14 (17), Wis. Stats., the department may provide a crop insurance premium rebate of \$5 for each acre that is planted with a cover crop. The department may consider rule provisions: to establish the application and award process, to determine eligible cover crops, and to establish procedures to verify that a cover crop is planted on an acre for which a rebate is provided. The department may also consider rule provisions to determine the maximum amount of acres for which an applicant may receive funding in a year, except that the department may impose such a maximum only in years in which the total amount of funding requested by eligible applicants exceeds the total funding available.

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 any of the following:

- The federal Environmental Quality Incentives Program. [16 U.S.C. ss. 3839aa to 3839aa-8.]
- The federal Conservation Stewardship Program. [16 U.S.C. ss. 3839aa-21 to 3839aa-25.]
- A producer-led watershed protection grant. [s. 93.59, Wis. Stats.]

- The Soil and Water Resource Management Program. [s. 92.14, Wis. Stats.]
- A lake management planning grant. [s. 281.68, Wis. Stats.]
- A lake management grant. [s. 281.69, Wis. Stats.]
- A river protection grant. [s. 281.70, Wis. Stats.]

The department may verify that a recipient of a rebate is in compliance with program requirements and may consider what to do if a landowner is found not to be in compliance.

**Objective No. 3 - update, simplify, and clarify existing rule provisions**

Based on industry feedback, the department may assess options to update, simplify, and clarify existing rule provisions related to the producer-led watershed protection grant program. The proposed rule may seek to do the following:

- Update the language and structure of ATCP 52 to incorporate the two new programs mentioned above.
- Update language to simplify, fix errors, or reflect current practice.
- Update definitions.
- Update or clarify eligibility for and eligible use of grant funds.

**3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:**

ATCP 52 currently implements the producer led watershed protection grants program created under s. 93.59, Wis. Stats. The proposed commercial nitrogen optimization pilot program and cover crop insurance rebates may be new programs included in the rule.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 92.14 (16), Wis. Stats., authorizes the commercial nitrogen optimization pilot program, including who can be awarded the grant, mandating a partnership with a UWS institution, setting a maximum grant award, and establishing additional grant management information. The statutory language is as follows:  
Section 92.14 (16), Wis. Stats., Commercial nitrogen optimization pilot program.

(a) In addition to any grants provided under sub. (3), the department shall award grants from the appropriation under s. 20.115 (7) (qf), Wis. Stats., to agricultural producers and to University of Wisconsin System institutions as provided under this subsection.

Section 92.14 (17), Wis. Stats., creates the crop insurance premiums rebate for planting cover crops. The statutory language is as follows:

Section 92.14 (17), Wis. Stats., Crop insurance premium rebates for planting cover crops.

(a) From the appropriation under s. 20.115 (7) (qt), Wis. Stats., 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. In providing crop insurance premium rebates under this subsection, the department may cooperate with the risk management agency of the U.S. department of agriculture, and may cooperate with any related federal agency, state agency, or agricultural organization.

(b) In providing crop insurance premium rebates under this subsection, the department may promulgate the following rules:

1. Rules determining the cover crops for which crop insurance premium rebates are provided under this subsection.
2. Rules establishing procedures for verifying that a cover crop is planted on acres for which a crop insurance premium rebate is provided under this subsection.
3. Rules determining the maximum amount of acres for which an applicant may receive funding in a year, except that the department may impose such a maximum only in years in which the total amount of funding requested by eligible applicants exceeds the total funding available.
4. Rules establishing the application and award process, including the application deadline and grant award schedule.

Section 93.59, Wis. Stats., creates the producer-led watershed protection grant program. The statutory language is as follows:

Section 93.59(1), Wis. Stats., the department shall make grants for nonpoint source pollution abatement activities conducted with the assistance of producer-led groups that comply with sub. (2). The department

shall make a grant directly to the producer-led group, except that, if the group is not a legal entity, the department may only make the grant to a legal entity on behalf of the group.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The department estimates that it will use 0.5 FTE to revise this rule. This anticipates time for investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. The department will use existing staff to develop this rule.

**6. List with description of all entities that may be affected by the proposed rule:**

**Commercial nitrogen optimization pilot program**

- UWS institution. Applicants must collaborate with a University of Wisconsin System institution to receive funding.
- Farmers, landowners, and other agricultural producers may apply for the nitrogen optimization grant program.
- Farm-related businesses that apply commercial nitrogen. Farm supply organizations, nutrient management planners, soil testing laboratories, agricultural engineering practitioners, agricultural engineers, construction contractors and others who provide goods and services to farmers and other landowners may be affected by the grant program depending on the scope of grants awarded.
- Users and beneficiaries of natural resources: This grant program helps farmers implement new land and water conservation strategies to store more nutrients in soil, prevent pollutant leaching and runoff, and improve our knowledge about localized water quality.

**Provide crop insurance rebates for cover crops**

- Farmers and other landowners. Agricultural producers, landowners or a proxy therefor may apply for an insurance premium rebate for lands planted to cover crops.
- USDA Risk Management Agency. The department shall partner with USDA risk management agency to process rebates.
- Crop insurance providers. Applicants of the insurance premium rebate must hold an applicable crop insurance policy.

**Producer-led watershed protection grants program**

- Farmers, landowners and other agricultural producers may apply for the producer-led watershed protection grant program.
- The department of natural resources, county land conservation committees, UWS institution, and nonprofit conservation organizations. Applicants must collaborate with one of the above groups to receive funding.
- Users and beneficiaries of natural resources: This grant program helps farmers implement nonpoint source pollution abatement activities in watersheds.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

NA

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The department anticipates that the proposed rule will have no to minimal economic impact. It is not likely to have a significant economic impact on small businesses since participation in all of the programs mentioned above is voluntary.

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Signed this 9<sup>th</sup> day of April, 2024

Secretary  
State of Wisconsin Department of Agriculture,  
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