



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: 11/3/2023

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary

SUBJECT: Creating a Commercial Nitrogen Optimization Pilot Program (ATCP 52); Emergency Rule

This is to inform you that the Department of Agriculture, Trade, and Consumer Protection (“department”) has adopted the emergency rule related to commercial nitrogen optimization pilot program. The emergency rule will take effect November 13, 2023 and remain in effect until April 11, 2024.

Related Rules or Statutes

Wisconsin statute s. 92.14 (16), Stats. authorizes the Department of Agriculture, Trade, and Consumer Protection (“department”) to award grants as part of the commercial nitrogen optimization pilot program. Under 92.14 (16) (g), Stats., the department shall, using the procedure under s. 227.24, Stats., promulgate rules to implement s. 92.14 (16), Stats. An administrative rule is needed in order to administer this program and award grants from the appropriation in 20.115(7) (qf), Stats. for this program in Fiscal Year 2023-2024.

Background

Section 93.07 (1), Stats., directs the department to make such regulations as are necessary for the discharge of all the powers and duties of the department. While granting the authority to make grants to agricultural producers and to the University of Wisconsin System (UWS) institutions as provided under this subsection, the budget language does not specify the bases for grant determinations. The agency considers it necessary to adopt rules to establish the bases for grant determinations in order to effectuate the purposes of s. 92.14 (16), Stats. This temporary emergency rule implements the commercial nitrogen optimization pilot program on an interim basis, pending the adoption of permanent rules.

The commercial nitrogen optimization pilot program is designed to encourage agricultural producers to develop innovative approaches to optimize the application of commercial nitrogen. Agricultural producers will implement a project, for at least two growing seasons, to optimize the application of commercial nitrogen. The producer must collaborate with a UWS institution, which will monitor the grant project on-site. The total grant award to a producer and collaborating UWS institution cannot exceed \$50,000. Up to 20 percent of the total amount awarded to all grant applicants may be awarded to the UWS institution.

Under this emergency rule, the department may award grants for projects that focus on commercial nitrogen optimization through reduction of nitrates in groundwater and surface water, collection of data to ascertain the balance of providing the appropriate amount of nitrogen to a crop at the right time while reducing nitrogen loss to the atmosphere, groundwater or surface water, installation of conservation practices to assist with nitrogen optimization coupled with monitoring runoff and testing soils, and optimization of commercial nitrogen use through a variety of agronomic methods and techniques.

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The department worked with a variety of stakeholders to invite their input on the emergency rule and to estimate farmer demand for this program. 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.

Rule Change

This emergency rule implements the commercial nitrogen optimization pilot project program. The department is authorized to make grants for commercial nitrogen optimization pilot projects conducted in collaboration with a University of Wisconsin System institute.

Fiscal Impact

The legislature has appropriated \$1 million for this program in Fiscal Year 2023-2024. This emergency rule will have a fiscal impact on department operations. Under this emergency rule, the department must issue at least one request for grant proposals in each state fiscal biennium. Department staff must review grant applications, recommend grant awards, administer grants, and ensure compliance with applicable requirements. Department staff will also provide technical assistance to grant applicants and recipients, as appropriate.

Program administration will occupy at least 0.25 FTE staff in the department's Division of Agricultural Resource Management (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The cost for the 0.25 FTE staff will be at least \$30,000 per year, including salary, fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year).

Effect on Small Business

The commercial nitrogen optimization pilot project is voluntary and thus imposes no cost on businesses. Some small businesses may indirectly benefit as collaborators in the projects.

Federal and Surrounding State Programs

There are currently no similar federal programs.

Surrounding State Programs

Illinois - There is no State sponsored nitrogen optimization programing (adjacent or direct) in Illinois.

Iowa - Iowa does not have a formal commercial nitrogen optimization program; however, it does make nitrogen optimization tools and strategies available to its producers. These tools and strategies include the Corn Nitrogen Rate Calculator, which is a tool to estimate potential N-nitrate loss by estimating optimal nitrogen based on fertilizer and corn prices.

Michigan - There is no State sponsored nitrogen optimization programing (adjacent or direct) in Michigan.

Minnesota - Minnesota has different nitrogen optimization programs available to producers, including a farmer educational outreach program focused on how nitrogen behaves in the environment. The Minnesota Nitrogen Fertilizer Management Plans include groundwater nitrate testing and evaluation, targeting sensitive areas in the state. This program includes voluntary testing private wells. Finally, the Minnesota Groundwater Protection rule minimizes potential sources of nitrate pollutions to the state's groundwater and protects drinking water by restricting application of nitrogen fertilizer in the fall and on frozen soils in areas vulnerable to contamination, and outlines steps to reduce the severity of the problem in areas where nitrate in public water supply wells is already elevated.

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