



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: May 12, 2022

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary

SUBJECT: ATCP 52, Commercial Nitrogen Optimization Pilot Program

PRESENTED BY: Alex Elias, Program Policy Analyst, Division of Agricultural Resource Management

REQUESTED ACTION:

At the May 12, 2022, Board meeting, the department will request approval of the attached scope statement, regarding ch. ATCP 52 (creating a commercial nitrogen optimization pilot program). In addition, the department will request approval to hold a preliminary hearing on the scope statement in the event the Joint Committee for Review of Administrative Rules requests a preliminary hearing on the scope.

SUMMARY:

The department proposes to amend ATCP 52 to create a commercial nitrogen optimization pilot program. As per 2021 Act 223, DATCP shall promulgate rules to implement s. 92.14 (16) stats. 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. The department will consider rule provisions needed to implement the statutory requirements, including the criteria that will be used to prioritize and score applications. Additionally, the department will consider rule provisions that establish the application and award process, identify eligible and ineligible activities and costs, and establish contract and reporting requirements.

The Governor approved the scope statement on May 5, 2022. 2021 Act 223 includes a non-statutory provision that provides authority for the department to promulgate emergency rules to implement s. 92.14 (16), Stats., no later than the 90th day after the effective date. The department is not required to provide a finding of emergency.

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STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: ATCP 52

Relating to: Creating a commercial nitrogen optimization pilot program

Rule Type: Emergency

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

Per 2021 Act 223, the Department of Agriculture Trade and Consumer Protection shall, using the procedure under s. 227.24, Stats., promulgate rules to implement s. 92.14 (16), Stats., no later than the 90th day after the effective date. 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.

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

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.

An agricultural producer receiving a grant must collaborate with a University of Wisconsin System (UWS) institution, which would monitor 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.

The following program requirements are included in statute: (1) collaborate with the agricultural producer and the University of Wisconsin System 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 will consider rule provisions needed to implement the above statutory requirements, including the criteria that will be used to prioritize and score applications. Additionally, the department will consider rule provisions that establish the application and award process, identify eligible and ineligible activities and costs, and establish contract and reporting requirements.

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, Stats. The proposed commercial nitrogen optimization pilot program would be a new program included in the rule.

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

Section 92.14 (16), Stats., authorizes the commercial nitrogen optimization pilot program, including who can be awarded the grant, mandating a partnership with a University of Wisconsin System institution, setting a maximum grant award, and establishing additional grant management information.

Section 92.14 (16), 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), Stats., to agricultural producers and to University of Wisconsin System institutions as provided under this subsection.

2021 Act 223 includes a non-statutory provision that provides authority for the department to promulgate rules to implement s. 92.14 (16), Stats., no later than the 90th day after the effective date and states that the department is not required to provide a finding of emergency.

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 take approximately 80 hours to develop this emergency rule. That calculation includes time required for investigation and analysis, drafting the emergency rule, preparing related documents, coordinating meetings, 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:

- University of Wisconsin System institutions. Applicants must collaborate with a UW System institution to receive funding.
- Farmers and other Landowners. Agricultural producers may apply for the nitrogen optimization grant program.
- Farm-Related Businesses. 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.

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 the nitrogen optimization grant program would provide funds to producers. Participation in the pilot program is voluntary, and any costs to producers should be offset by the grant awards.

Contact Person: Alex Elias (608) 224-6338

Signed this 29th day of April, 2022



Randy J. Romanski

Secretary
State of Wisconsin Department of Agriculture,
Trade and Consumer Protection