



ATCP 49: Farmland Preservation

WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

Farmland preservation is covered by Chapter 91 of Wisconsin Statutes, which was repealed and recreated in 2009 in response to growing pressures to convert farmland to nonagricultural use. Under Chapter 91, Wisconsin counties **must** adopt farmland preservation plans by January 1, 2016. Counties and towns **may** also adopt farmland preservation zoning ordinances. Chapter 91 also authorized the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) to write an administrative rule to implement Chapter 91. Wisconsin ATCP 49 is that new administrative rule, which provides details about farmland preservation planning and zoning to help local governments through these processes.

These are the answers to some common questions about ATCP 49. **This is not a legal document.** Please consult the complete text of the rule at https://docs.legis.wisconsin.gov/code/admin_code/atcp/020/49, and of Chapter 91 at <https://docs.legis.wisconsin.gov/statutes/statutes/91>. If you have further questions, please call 608-224-4634 or email alison.volk@wi.gov.

What does ATCP 49 do?

ATCP 49 clarifies Chapter 91 specifically related to farmland preservation planning, farmland preservation zoning, and farmland preservation agreements. Since the statutes were updated in 2009, the department has received questions and concerns from local governments regarding the implementation of the law. This rule addresses those concerns that have raised in the past six years.

How does ATCP 49 affect farmland preservation planning?

ATCP 49 clarifies the plan certification process, specifying when a plan expires, when a county may request an expiration extension, and when an amendment to a plan must be certified. The rule also clarifies that a plan must describe the rationale used to determine which areas the county plans to preserve for agricultural and related uses and specifies that this rationale must be based on objective criteria tied to characteristics of the land itself and not solely the preferences of individual landowners. The rule states that the department may refuse to certify a plan that meets these requirements.

Does ATCP 49 address the idea of consistency between a farmland preservation plan and a comprehensive plan (if there is one)?

Yes. Under s. 91.10(2), a farmland preservation plan must be consistent with a county's comprehensive plan, if there is one. By incorporating the comprehensive planning definition found in s. 66.1001(1)(am), ATCP 49 encourages counties to utilize the same understanding of consistency as required by the comprehensive planning law.

Does ATCP 49 include additional definitions not found in chapter 91?

Under chapter 91, local governments raised some questions regarding the use of certain terms that were either not defined in the statutes or the definitions of terms were somewhat confusing. This confusion primarily affected the ability of local governments to write and administer farmland preservation zoning ordinances. To address these concerns, ATCP adds definitions not previously defined, such as "forest management" and "crop" and further clarifies the difference between an agriculture-related use and an accessory use. The rule also includes a definition of "contiguous," which was previously only defined in the subchapter governing Agricultural Enterprise Areas. The definition in the rule mirrors that found in s. 91.84(1)(e)3, however a note in the rule clarifies that a local government may choose whether contiguity for zoning purposes extends across a road, stream, or section line.

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How does ATCP 49 affect allowable nonfarm residences in farmland preservation zoning districts?

ATCP 49 allows added flexibility for local governments that choose to permit limited residential density within the district. First, the rule adds to the definition of "Base farm tract," enabling a local government to establish the base farm tract boundary on the date that the landowner first creates a new lot or parcel from a farm. Some local governments thought that this alternative definition would make the base farm tract concept easier to administer because the local government would only need to track those parcels being divided.

Another provision in the rule encourages local governments to pursue creative alternatives to the base farm tract concept. Local governments may adopt a different approach to regulating nonfarm density in the farmland preservation district, provided the local government can show that the approach is as restrictive as the statutes. If the approach does not allow for more residences to be built or more farm acreage to be removed than the base farm tract concept, the Secretary of the department will approve that approach.

Does ATCP 49 add any new permitted or conditional uses to the farmland preservation district?

Yes. ATCP 49 allows local governments to include a farm family business as a permitted use in the district. A farm family business is similar to an accessory use as defined by s. 91.01(1)(d), but the rule clarifies that this type of business does not need to count family members towards the maximum allotment of four full-time employees. Local governments may also allow for residences existing before January 1, 2014, to be treated as permitted uses instead of nonconforming uses.

How does ATCP 49 affect farmland preservation agreements?

Chapter 91 does not include an explanation of circumstances wherein the department will deny an application for a farmland preservation agreement. ATCP 49 ensures that any land proposed to be excluded from coverage by a farmland preservation agreement will not interfere with the goals of the agricultural enterprise area. This provision ensures that the exclusion of land from an agreement will not impair or limit agricultural use on other lands within the agricultural enterprise area.