

Report From Agency**DATCP Docket No. 08-R-01
Rules Clearinghouse 08-038****Final Draft
June 27, 2008****PROPOSED ORDER OF THE
WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

2 The Wisconsin department of agriculture, trade and consumer protection proposes the
3 following order *to create* subch. IV of ch. ATCP 161, *relating to* the “buy local” grant
4 program created under s. 93.48, Stats.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule implements the “buy local” grant program created under s. 93.48, Stats., by 2007 Wisconsin Act 20 (biennial budget act). Under s. 93.48, Stats., the Department of Agriculture, Trade and Consumer Protection (“DATCP”) is authorized to award grants for projects designed to increase local purchases of Wisconsin agricultural products. The budget act appropriated \$225,000 for this grant program in the FY 2007-09 fiscal biennium.

This rule does all of the following:

- Authorizes DATCP to make grant awards and distribute grant funds appropriated for the “buy local” grant program.
- Spells out the procedures and criteria that DATCP will use to evaluate grant proposals, make grant awards and distribute grant payments.
- Spells out the purposes for which grant funds may be used, subject to the terms of the grant contract.

This rule is similar to the emergency rule that DATCP adopted effective February 22, 2008 (there are minor differences).

Statutes Interpreted

Statutes Interpreted: s. 93.48, Stats., and section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act).

Statutory Authority

Statutory Authority: ss. 93.48(1) and 93.07 (1), Stats., and section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act).

Explanation of Statutory Authority

DATCP has general authority under 93.07(1), Stats., to interpret laws under its jurisdiction. Section 93.48(1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program.

Related Rules or Statutes

There are no directly related rules or statutes, other than those cited above. DATCP rules for the “buy local” grant program will be incorporated as a subchapter of ch. ATCP 161, Wis. Adm. Code (agricultural development and market promotion).

Rule Content

The “buy local” grant program is designed to increase local sales of Wisconsin agricultural products. The biennial budget act appropriated \$225,000 in grant funding for the FY 2007-09 fiscal biennium. This rule spells out grant procedures and criteria. Under this rule, the “buy local” grant program will focus mainly on food products, rather than other agricultural products such as timber, feed, fiber or nursery products (it may incidentally benefit those other products).

Grant Purposes

Under this rule, DATCP may award grants for projects that are designed to increase the sale of Wisconsin food products to local purchasers. For example, DATCP may award grants for projects to create, expand, diversify or promote any of the following:

- Local food marketing systems and market outlets.
- Local food and cultural tourism trails.
- Production, processing, marketing and distribution of Wisconsin food products for sale to local purchasers.

Grant Limits

Under this rule, no individual grant award may exceed \$50,000. DATCP may not make more than one grant award to the same person in the same state fiscal biennium. Once DATCP makes a grant award, DATCP may make the actual grant payments over a contract period of up to 2 years. DATCP may extend the contract term for up to one additional year upon request.

Matching Requirement

To qualify for a grant under this rule, a grant recipient must make a matching commitment equal to at least 33% of the grant amount. A matching commitment may include a commitment of capital, land, labor, equipment or cash related to the grant project. Under this rule, matching funds may include grant funds received from sources other than DATCP (this is a change from the temporary “emergency” rule that took effect on February 22, 2008).

Use of Grant Funds

Under this rule, grant funds may be used to reimburse any of the following expenses if those expenses are a reasonable and necessary part of the grant project:

- Operating expenses, including expenses for salaries and wages, contract and consulting services, travel, supplies and public information.
- Real estate and equipment rental.
- The purchase of equipment whose full value is ordinarily depreciable within one year.
- Reasonable depreciation expense incurred, for capital equipment, during the term of the grant contract.

Grant funds may not reimburse any of the following expenses:

- Real estate purchases.
- Repayment of loans or mortgages.
- Rent or contract payments for time periods extending beyond the term of the grant contract.
- Equipment purchases, except for certain equipment purchases and depreciation expenses specifically authorized by this rule.
- Administrative or overhead costs that are not direct costs of the grant project.

Grant Proposals

Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium (DATCP may issue more frequent requests, if it chooses to do so). The request for applications must describe the required form and content of grant proposals, and must specify a deadline for submitting grant proposals. Grant applicants must submit grant proposals to DATCP, in the manner prescribed by DATCP’s request for applications.

Grant Awards

Under this rule, DATCP must evaluate grant proposals and issue its grant awards within 90 days after the grant application deadline. DATCP must clearly identify each award recipient, the amount of the award, and the purposes for which the award is given. DATCP must consider all of the following criteria when evaluating grant proposals and making grant awards:

- The extent to which a proposed project will increase local purchases of Wisconsin food products.
- Whether the proposal complies with DATCP's request for proposals.
- Whether the proposed project meets the standards prescribed in this rule.
- The viability of the proposed project.
- Additional project benefits for Wisconsin agriculture or tourism.
- The management and technical qualifications of the grant applicant.
- The qualifications of the persons who will carry out the project.
- The financial capacity of the grant applicant to complete the project as proposed.
- The adequacy of the project plan and budget.
- Whether the grant proposal adequately identifies the nature of project expenses to be reimbursed under the proposed grant.

Grant Contracts

Under this rule, DATCP must enter into a grant contract with a grant recipient before distributing any grant funds to that recipient. The contract must spell out grant terms and conditions, including performance requirements, reporting requirements and payment terms.

Grant Payments

Under this rule, DATCP may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. The grant contract must describe payment terms and conditions. DATCP may require a grant recipient to file progress reports and submit expense documentation as necessary to support grant payments.

Fiscal Impact

This rule will have a fiscal impact on DATCP operations. Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium for which funding is available. DATCP staff must review grant applications, recommend grant awards, administer grants, and ensure compliance with applicable requirements. DATCP staff will also provide technical assistance to grant recipients, as appropriate.

Program administration will occupy at least 2.0 FTE staff in DATCP's Division of Agricultural Development (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The combined total cost for those 2.0 FTE staff will be \$147,000 per year, including salary, fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year). The biennial budget act authorized 1.0 new FTE staff position, including staff funding of \$42,700 GPR for the current fiscal year and \$64,100 GPR for FY 2008-09. In the short term, DATCP will try to fill remaining staffing needs by shifting current staff from other agricultural development programs.

The budget act also provided funding (but no staff positions) for training, marketing, data tracking and information technology for the "buy local" program. Funding for those purposes is \$110,000 GPR in the current fiscal year and \$165,000 in FY 2008-09. A complete Fiscal Estimate is attached.

Business Impact

The "buy local" grant program will benefit farmers, businesses and communities that participate in production, distribution or marketing of locally produced foods. Grant recipients will benefit directly, while others will benefit indirectly from the creation of stronger local food networks and systems. This rule will establish standards and procedures for the "buy local" grant program to ensure that the program is effective and accountable. A complete Business Impact Analysis is attached.

Federal and Surrounding State Programs

Federal Programs

The United States Department of Agriculture (USDA) administers a farmers' market promotion program. That program offers grants to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs and other direct farmer-to-consumer marketing mechanisms.

USDA also provides food assistance programs for pregnant women, women with infants, children up to 5 years old, and seniors who are at nutritional risk. Those programs provide or promote fresh, locally grown foods to program participants.

Surrounding State Programs

Wisconsin's "buy local" program is the first state program of its kind in the nation. However, surrounding states provide various types and levels of support for local food systems. For example, Michigan's state procurement policy encourages purchases from local farmers and businesses. Iowa provides over \$3 million in annual funding for local food and sustainable agriculture programs at Iowa State University- Extension (Leopold Center).

1 (6) “Individual” means a natural person.

2 (7) “Local purchaser” means a person who buys a Wisconsin food product at a
3 retail location near the place where the food product is produced, or for resale at a retail
4 location near the place where the food product is produced.

5 (8) “Person” means an individual, corporation, cooperative, partnership, limited
6 liability company, trust, governmental entity, academic institution or other legal entity.

7 (9) “Wisconsin food product” means a food product that is one of the following:

8 (a) Grown in this state.

9 (b) Produced from animals kept in this state.

10 (c) Primarily derived from food products that are grown in this state or produced
11 from animals kept in this state.

12 **ATCP 161.42 Grant program; general. (1) GRANT PURPOSES.** The
13 department may award grants under s. 93.48, Stats., for projects that are designed to
14 increase the sale of Wisconsin food products to local purchasers. This may include
15 grants for projects to create, expand, diversify or promote any of the following:

16 (a) Local food marketing systems and market outlets.

17 (b) Local food and cultural tourism routes.

18 (c) Production, processing, marketing and distribution of Wisconsin food
19 products primarily for sale to local purchasers.

20 **(2) GRANT PROPOSALS; EVALUATION.** A grant award under sub. (1) shall be
21 based on a grant proposal under s. ATCP 161.44. The department shall evaluate grant
22 proposals according to s. ATCP 161.45.

1 (3) GRANT AWARDS. A grant award under sub. (1) shall be signed by an
2 authorized department official. The grant award shall clearly identify the person to
3 whom the grant is awarded, the amount awarded, and the purposes for which the grant is
4 awarded. A grant award may not exceed \$50,000. The department may not award more
5 than one grant to the same person in any state fiscal biennium.

6 (4) GRANT TERMS AND CONDITIONS. A grant is subject to the terms and
7 conditions provided in s. ATCP 161.43 and the grant contract. The department may
8 specify terms and conditions to ensure that grant funds are effectively used for the
9 purposes awarded.

10 (5) GRANT CONTRACT. The department may not distribute any grant funds to the
11 recipient of a grant award under sub. (1) until that recipient enters into a grant contract
12 with the department. The contract shall comply with s. ATCP 161.46.

13 **NOTE:** Grant proposals, grant awards, grant contracts, progress reports and other
14 documents are open to public inspection to the extent provided by
15 Wisconsin's open records law, subch. II of ch. 19, Stats.
16

17 **ATCP 161.43 Grant terms and conditions. (1) USE OF GRANT FUNDS.** Grant
18 funds may be used to reimburse any of the following expenses if those expenses are a
19 reasonable and necessary part of the grant project:

20 (a) Operating expenses, including expenses for salaries and wages, contract and
21 consulting services, travel, supplies and public information.

22 (b) Real estate and equipment rental.

23 (c) The purchase of equipment whose full value is ordinarily depreciable within
24 one year.

1 (d) Reasonable depreciation expense incurred, for capital equipment, during the
2 term of the grant contract.

3 (2) PROHIBITED USES OF GRANT FUNDS. Grant funds may not reimburse any of
4 the following expenses:

5 (a) Real estate purchases.

6 (b) Repayment of loans or mortgages.

7 (c) Rent or contract payments for time periods extending beyond the term of the
8 grant contract.

9 (d) Equipment purchases, except as specifically authorized in sub. (2)(c) and (d).

10 (e) Administrative or overhead costs that are not direct costs of the grant project.

11 (3) MATCHING CONTRIBUTIONS. The recipient of a grant award under s. ATCP
12 161.42 shall make a matching contribution to the grant project. The matching
13 contribution shall be equal to at least 33% of the grant award. A matching contribution
14 may include the reasonable value of the grant recipient's direct contribution of capital,
15 land, labor, equipment or cash to the grant project. A matching contribution may include
16 grant funds from sources other than the department.

17 (4) GRANT PAYMENTS. The department may distribute grant funds in one or more
18 payments, based on documented progress toward completion of the grant project. The
19 grant contract shall describe payment terms and conditions. The department may require
20 a grant recipient to file progress reports and submit expense documentation as necessary
21 to support grant payments.

1 **ATCP 161.44 Grant proposals. (1) GENERAL.** To obtain a grant under s.
2 ATCP 161.42(1), a person shall submit a grant proposal in response to a department
3 request for grant proposals under sub. (2).

4 **(2) REQUEST FOR PROPOSALS. (a)** The department may, at any time, issue a
5 request for grant proposals. The department shall issue a request for grant proposals at
6 least once during every state fiscal biennium for which grant funding is appropriated. A
7 request for grant proposals shall be signed by an authorized department official and shall
8 include all of the following:

- 9 1. A deadline date and address for submitting grant proposals.
- 10 2. Format and content requirements for grant proposals.
- 11 3. The name, business mailing address, business email address, and business
12 telephone number of a department representative who can provide more information or
13 answer questions about the request for grant proposals.
- 14 4. Other relevant terms and conditions that the department wishes to include.

15 **(b)** The department shall mail or email each request for grant proposals under
16 par. (a) to persons who have registered with the department to receive that mailing. The
17 department shall also issue a general news release announcing the request for grant
18 proposals.

19 **NOTE:** Persons who wish to register for mailings under par. (b), or who wish to
20 obtain a free copy of a request for grant proposals under par. (a), may
21 contact the department at the following address:

22
23 Wisconsin Department of Agriculture, Trade and Consumer Protection
24 “Buy Local” Grant Program
25 P. O. Box 8911, Madison, WI 53718-8911
26 Email: DATCPBLBW@wi.gov
27 Telephone: (608) 224-5017

1 **ATCP 161.45 Evaluating grant proposals. (1) EVALUATION PERIOD.** The
2 department shall evaluate grant proposals submitted under s. ATCP 161.44(1), and shall
3 announce its grant awards under s. ATCP 161.42(1), within 90 days after the deadline
4 date specified in s. ATCP 161.44(2)(a)1. The department may require a grant applicant
5 to submit additional information, as necessary, to complete a grant proposal.

6 **(2) EVALUATION CRITERIA.** In its evaluation under sub. (1), the department shall
7 consider all of the following criteria:

8 (a) The extent to which a proposed project will increase local purchases of
9 Wisconsin food products.

10 (b) Whether the proposal complies with the department's request for proposals
11 under s. ATCP 161.44(2).

12 (c) Whether the proposed project complies with this subchapter.

13 (d) The viability of the proposed project.

14 (e) Additional project benefits for Wisconsin agriculture or tourism.

15 (f) The management and technical qualifications of the grant applicant.

16 (f) The qualifications of the persons who will carry out the project.

17 (g) The financial capacity of the grant applicant to complete the project as
18 proposed.

19 (h) The adequacy of the project plan and budget.

20 (i) Whether the grant proposal adequately identifies the nature of project
21 expenses to be reimbursed under the proposed grant, consistent with s. ATCP 161.43(1).

1 **ATCP 161.46 Grant contracts. (1) CONTRACT SIGNING.** A grant contract
2 under s. ATCP 161.42(5) may be signed by an authorized department official after the
3 grant recipient signs the contract.

4 **(2) CONTRACT PERIOD.** A grant contract under s. ATCP 161.42(5) takes effect
5 when signed by an authorized department official under sub. (1). The original term of a
6 contract may be for not more than 2 years, but may be extended for up to a third year
7 upon request. The contract term may extend beyond the state fiscal biennium in which
8 funds for the contract are appropriated, provided that the department encumbers those
9 contract funds and signs the contract in that biennium.

10 **(3) CONTRACT TERMS; GENERAL.** A grant contract under s. ATCP 161.42(5) is
11 subject to the terms and conditions in s. ATCP 161.43, and other terms and conditions
12 contained in the contract. A grant contract incorporates commitments made in the grant
13 proposal, except as otherwise provided in the contract.

14 **NOTE:** DATCP will include, in every contract under s. ATCP 161.42(5), general
15 terms and conditions required in state contracts under state law. The
16 department may include other terms and conditions that it considers
17 necessary.
18

19 **(3) PAYMENT TERMS.** Every grant contract shall include payment terms and
20 conditions, including a payment schedule if applicable.

21 **NOTE:** The department may distribute grant funds in one or more payments,
22 based on documented progress toward completion of the grant project.
23 The grant contract will describe payment terms and conditions. Payments
24 are made on a reimbursement basis. The department may require a grant
25 recipient to file progress reports and submit expense documentation as
26 necessary to support grant payments. See s. ATCP 161.43(4).
27

1 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of
2 the month following publication in the Wisconsin administrative register, as provided in
3 s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2008.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary