

## Chapter ATCP 161

### AGRICULTURAL DEVELOPMENT AND MARKET PROMOTION

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**Note:** Chapter Ag 4 was renumbered chapter ATCP 161 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

#### Subchapter I — Agricultural Diversification and Development Program

**ATCP 161.01 Purpose.** This subchapter establishes procedural requirements for administration of the agricultural diversification and development grant program under s. 93.46, Stats., and the sustainable agriculture program under s. 93.47, Stats.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91; am. Register, March, 1993, No. 447, eff. 4-1-93; am., Register, June, 1999, No. 522, eff. 7-1-99.

#### ATCP 161.02 Definitions.

As used in this subchapter:

(1) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(2) “Individual” means a natural person.

(3) “Organization” means any of the following:

(a) A partnership, firm, association, corporation or other legal entity.

(b) A cooperative organized under ch. 185, Stats., whether or not operated for profit.

(4) “Sustainable agriculture” means agricultural methods, practices or systems that promote the long term viability of agriculture by conserving available resources, minimizing the use of nonrenewable resources, or providing viable alternative uses of available resources.

**Note:** “Sustainable agriculture,” as defined in sub. (4), includes but is not limited to sustainable agriculture as defined in s. 93.47, Stats.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91; am. (intro.); Register, March, 1993, No. 447, eff. 4-1-93; cr. (4), Register, June, 1999, No. 522, eff. 7-1-99.

**ATCP 161.03 Grant requirements.** (1) **GENERAL.** The department may award grants under s. 93.46, Stats., to individuals or organizations to fund demonstration projects, feasibility analyses, and applied research directed toward new products, technologies and practices that will stimulate agricultural development and diversification of economic activity within agriculture.

(2) **ALLOWABLE PURPOSES.** The department may not award a grant under sub. (1) unless the project has at least one of the following purposes:

(a) Creation of jobs in the agricultural industry.

(b) New capital investment and expansion in the agricultural industry.

(c) Agricultural product market development and expansion.

(d) Diversification and expansion of the production, processing, and distribution of agricultural products.

(e) Commercial application of new technologies or practices related to agricultural products.

(f) Increased use of surplus agricultural products.

(g) Improvement of the competitive position of this state’s agricultural industry.

(h) Efficient use of farmland and other agricultural resources.

(i) Fund demonstration projects that will encourage the use of sustainable agriculture.

(3) **PROJECT LIMITATIONS.** The department may not award a grant to any project if the proposed length of the project exceeds 3 years. The total funding to a single project may not exceed \$50,000. Individual applicants may cooperate with any public or private organization in conducting a project.

(4) **PROJECT CONDUCTED IN THIS STATE.** The department may not award a grant under this chapter unless the grant is for a project conducted in this state.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91; cr. (2) (i), Register, June, 1999, No. 522, eff. 7-1-99.

**ATCP 161.04 Grant terms and conditions.** (1) **GENERAL.** The department shall establish appropriate terms and conditions for each grant based on the project for which the grant is awarded. Terms and conditions shall be designed to ensure that grant moneys are effectively used for the purposes awarded. The terms and conditions shall be included in the grant contract under s. ATCP 161.07.

(2) **PERMITTED USES OF GRANT FUNDS.** Permitted uses for grant funds include the following:

(a) Operating expenses including salaries and wages, consulting services, travel, supplies and materials, and public information costs.

(b) Real estate rental payments. Real estate mortgage payments or land contract payments through which a grantee acquires equity in real estate are not a permitted use of grant funds.

(c) Equipment leases.

(d) Purchase of small or low cost equipment items which are normally depreciated within one year.

(e) Purchase of capital equipment. The amount awarded for this purpose in each year of the grant may not exceed the annual straight-line depreciation which would be allowed under generally accepted accounting principles for acquisitions of large capital equipment having a depreciation schedule longer than one year.

(3) **PROHIBITED USES OF GRANT FUNDS.** Grant funds may not be used for any of the following, except as authorized under sub. (2):

(a) Capital acquisitions by the grantee such as the purchase of land, buildings or machinery.

(b) Administrative overhead expense.

(c) Funding for business start-up costs or expansion.

(d) Business loan payments.

**(4) MATCHING CONTRIBUTIONS.** The department may give preference to applicants providing matching funds in the form of capital, land, labor, equipment or other eligible categories of expenses.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**ATCP 161.05 Application procedures. (1) APPLICATION PERIODS.** An individual or organization may file an application for an agricultural diversification or development grant between January 15 and March 15 of each calendar year. Additional application periods may be scheduled at other times at the discretion of the department.

**(2) REQUEST FOR PROPOSALS.** The department shall give notice of the annual and any additional application periods under sub. (1) by issuing a request for grant proposals. The department shall issue its request for grant proposals by mail to county agriculture extension agent offices, vocational, technical and adult education districts, the department of development, the Wisconsin housing and economic development authority, and other persons on its program mailing list compiled from inquiries concerning the grant program. The department shall also issue a press release announcing its request for proposals to news media likely to give notice to the public.

**(3) APPLICATION FORMAT.** An application for a grant under this chapter shall be in the form prescribed by the department in its request for proposals. An application shall include all of the following:

(a) A cover page which includes:

1. The name, address and telephone number of the applicant.
2. The title and brief description of the project.
3. The amount of funding requested.
4. The duration of the proposed project.
5. The name and address of the principal contact person for the proposed project.

(b) A statement identifying the problem or opportunity to be addressed and the importance of the project to Wisconsin agricultural economic development and diversification.

(c) A project summary describing the project's objectives, expected results, economic benefits, the approach to be used in addressing the stated problem or opportunity, and the role the proposed project will play in achieving the objectives of the grant program.

(d) A specific statement of project purposes, which shall be consistent with one or more of the purposes under s. ATCP 161.03 (2).

(e) A discussion of the expected results from the proposed project, how those results relate to the objectives of the grant program, and how they will benefit agriculture.

(f) A work plan which identifies specific project tasks, a timetable for completing the tasks, and the persons responsible for completing the tasks.

(g) The practical or commercial applications of the proposed project, including any economic, environmental or other benefits to agriculture which will result from the project.

(h) Names, addresses, occupations and project-related qualifications of key personnel responsible for carrying out the proposed project.

(i) A budget containing line items for project costs by expenditure category, including supplies and services, facilities and equipment, and personnel costs subdivided by number and type of employees and hourly wages.

**(4) PUBLIC ACCESS TO APPLICATIONS.** All grant applications are open to public inspection after the awarding of grants. The department may withhold access to any application or portion of an application containing information qualifying as a trade secret as defined in s. 134.90 (1) (c), Stats.

**Note:** Grant applicants must identify those portions of an application which contain a trade secret and claim the exemption from public inspection at the time of filing a grant application with the department.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**ATCP 161.06 Grant application review and award determination. (1) REVIEW PERIOD.** The department shall review each grant application submitted under this chapter. The department may require the applicant to provide additional information regarding the application as the department deems necessary. Within 90 days after the close of each application period, the department shall make its grant award decisions.

**(2) AWARD CRITERIA.** The department shall consider all of the following criteria in its review of grant applications:

(a) The extent to which the project will achieve one or more of the purposes in s. ATCP 161.03 (2).

(b) The viability of the proposed project.

(c) The perceived benefit of the project to agriculture or agribusiness.

(d) The management and technical qualifications of the applicant.

(e) The qualifications of the persons who will perform the work in carrying out the project.

(f) The financial capacity of the applicant to complete the project as proposed if the requested funding is granted.

(g) The adequacy of the project plan.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**ATCP 161.07 Grant contracts. (1) CONTRACT REQUIRED.** A successful grant applicant shall enter into a contract with the department before any grant money is distributed to the applicant. No funding commitment is final until the contract is executed.

**(2) CONTRACT PROVISIONS.** A grant contract shall be reasonably designed to ensure that the grant recipient carries out the recipient's obligations with respect to the grant. The contract shall be signed by the secretary of the department and the applicant. The parties may amend the contract by mutual written consent.

**(3) BREACH OF CONTRACT.** The department may void a contract and seek return of any funds released under the contract for failure by the award recipient to perform the recipient's obligations under the contract.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**ATCP 161.08 Reporting.** Every contract under s. ATCP 161.07 shall set forth a schedule of progress reports and payments. Grant payments shall be made in installments, according to the contract payment schedule. A grant recipient shall provide the department with periodic written progress reports throughout the life of the contract. Installment payments shall be conditioned upon the receipt of progress reports, as provided in the contract. All financial and program reports become the property of the department and are open to public inspection.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**ATCP 161.09 Program administration.** The department shall solicit, evaluate, and approve grant applications; enter into contracts; authorize contract payments; monitor compliance with contractual obligations and project activities of grantees; receive and review progress reports submitted under s. ATCP 161.08; and prepare research findings for public dissemination.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

**ATCP 161.10 Application materials.** The department shall provide application materials upon request to any individual or organization who wishes to apply for a grant. The application

materials shall include pertinent instructions, requirements and procedures under this chapter.

**History:** Cr. Register, May, 1991, No. 425, eff. 6-1-91.

## Subchapter II — “Something Special From Wisconsin” Program; Permit and User Fees

**ATCP 161.20 Purpose.** This subchapter regulates use of the department’s “Something Special from Wisconsin” logo and establishes a fee for its use under s. 93.44, Stats.

**History:** Cr. Register, March 1993, No. 447, eff. 4-1-93.

**ATCP 161.21 Definitions.** As used in this subchapter:

(1) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(2) “Gross sales” means a person’s total annual sales of all products and commodities, regardless of whether the logo was affixed to the products or commodities sold.

(3) “Logo” means the certification mark “Something Special from Wisconsin” registered in the U. S. Patent and Trademark Office on March 7, 1989, under Registration No. 1,529,098.

(4) “Packaging or labeling materials” means package labels, stickers, printed display materials or similar items, featuring the logo, which are produced for sale to other persons, and which are designed to be used by other persons in connection with the sale or distribution of their products or commodities. “Packaging or labeling materials” does not include promotional items.

(5) “Person” means any individual, partnership, firm association, corporation or other business or legal entity.

(6) “Product or commodity” means any article of commerce, including any product of agricultural or industrial production. “Product or commodity” does not include either of the following:

(a) Promotional items.

(b) Packaging or labeling materials.

(7) “Promotional item” means clothing, pins, pens, cups, mugs and similar items featuring the logo. “Promotional item” does not include packaging or labeling materials.

**History:** Cr. Register, March, 1993, No. 447, eff. 4-1-93.

**ATCP 161.22 Permit required.** No person may use the logo on any product or commodity, on any promotional item, or on any packaging or labeling materials without an annual permit from the department. An annual permit expires on June 30 of each year. A permit application filed on or before July 1, 1993, expires on June 30, 1994. To obtain a permit, a person shall submit an application under s. ATCP 161.23. The department may deny, suspend or revoke a permit if the applicant or permit holder violates any provision of this chapter, fails to pay any required fee or royalty, or misrepresents any fact in a permit application.

**History:** Cr. Register, March, 1993, No. 447, eff. 4-1-93.

**ATCP 161.23 Permit application. (1) GENERAL.** To obtain a permit under s. ATCP 161.22, a person shall submit a signed written application on a form provided by the department. The application shall include all of the information required under this section. The application shall also be accompanied by the fees required under s. ATCP 161.24 if any.

**Note:** A permit application form may be obtained from the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, Marketing Division, P. O. Box 8911, Madison, WI 53708-8911.

(2) **NAME AND BUSINESS ADDRESS.** Every application shall include the applicant’s name and business address.

(3) **COMPLIANCE AGREEMENT.** Every application shall include a statement that the applicant agrees to comply with all applicable conditions under this subchapter for the use of the logo.

(4) **PRODUCTS OR COMMODITIES.** If the applicant intends to sell any product or commodity bearing the logo, the application shall include all of the following:

(a) An identification of the specific products or commodities on which the logo will be used.

(b) For each product or commodity identified under par. (a), information showing that the product or commodity complies with the eligibility requirements under s. ATCP 161.25.

(c) The applicant’s gross sales of all products and commodities during the applicant’s last complete fiscal year, for purposes of calculating the required fee under s. ATCP 161.25. This information is not required if the applicant is applying for a permit for the first time.

(5) **PROMOTIONAL ITEMS.** If the applicant intends to sell any promotional item bearing the logo, the application shall identify the specific promotional items on which the applicant intends to use the logo.

(6) **PACKAGING OR LABELING MATERIALS.** If the applicant intends to sell packaging or labeling materials bearing the logo, the application shall identify the packaging and labeling materials which the applicant intends to offer for sale.

**History:** Cr. Register, March, 1993, No. 447, eff. 4-1-93; am. (4) (b), Register, February, 1996, No. 482, eff. 3-1-96; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 1999.

**ATCP 161.24 Annual permit fees. (1) AMOUNT OF FEE.**

Except as provided under sub. (2), if a person intends to sell any product, commodity, or promotional item bearing the logo, or sell or use any packaging or labeling materials bearing the logo, that person’s annual permit application under s. ATCP 161.23 shall include a fee based on the applicant’s gross sales during the last complete fiscal year. The amount of the fee is determined as follows:

(a) If the applicant’s gross annual sales are \$10,000 or less, the annual fee is \$10.00.

(b) If the applicant’s gross annual sales are more than \$10,000 but not more than \$50,000, the annual fee is \$35.00.

(c) If the applicant’s gross annual sales are more than \$50,000 but not more than \$100,000, the annual fee is \$50.00.

(d) If the applicant’s gross annual sales are more than \$100,000 but not more than \$250,000, the annual fee is \$100.

(e) If the applicant’s gross annual sales are more than \$250,000 but not more than \$500,000, the annual fee is \$150.

(f) If the applicant’s gross annual sales are more than \$500,000, the annual fee is \$200.

(2) **EXEMPTION.** The fee under sub. (1) does not apply to a person which is a tax exempt organization under the federal internal revenue code, 26 USC 501 (a).

(3) **FAILURE TO PAY.** The department may suspend or revoke a permit if the permit holder fails to pay annual user permit fees on a timely basis, and may bring an action to collect unpaid permit fees.

**History:** Cr. Register, March, 1993, No. 447, eff. 4-1-93.

**ATCP 161.25 Products and commodities; eligibility requirements.** No person may use the logo on any product or commodity unless the product or commodity meets both of the following requirements:

(1) At least 50% of the product’s or commodity’s value added is attributable to Wisconsin ingredients, or to Wisconsin production or processing activities.

(2) The product or commodity is not an imitation of a product or commodity for which there is a standard of identity established under state or federal law.

**History:** Cr. Register, March, 1993, No. 447, eff. 4-1-93.

**ATCP 161.26 Prohibitions.** No person may do any of the following without the department’s written permission:

(1) Use the logo for a different purpose than that described in the person’s permit application under s. ATCP 161.23.

(2) Affix the logo to any item other than those described in the person's permit application under s. ATCP 161.23.

(3) Alter the logo in any way.

**History:** Cr. Register, March, 1993, No. 447, eff. 4-1-93.

### Subchapter III — Payment to Ethanol Producers

**ATCP 161.30 Purpose.** This subchapter establishes standards and procedures for making payments to ethanol producers under s. 93.75, Stats.

**Note:** Section 93.75, Stats., was repealed by 2007 Wis. Act 20.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

**ATCP 161.31 Definitions.** (1) "Commodity" means grain, or another agricultural source of starch or sugar, that can be fermented and distilled to produce ethanol.

(2) "Commodity purchased from a local source" means any of the following:

(a) A commodity that an ethanol producer purchases from a person who produced that commodity in this state.

(b) Grain that an ethanol producer purchases from a grain dealer and receives directly from a grain facility located in this state.

(3) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(4) "Eligible ethanol" means ethanol that an ethanol producer produces in this state from commodities purchased from local sources.

(5) "Ethanol producer" means a person who owns and operates an ethanol production facility in this state.

(6) "Grain" means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flaxseed, milo, sunflower seed and mixed grain as defined in the federal standards act, 7 USC 241 to 271.

(7) "Grain dealer" means a grain dealer as defined in s. 127.01 (19), Stats.

**Note:** 2001 Wis. Act 16 repealed ch. 127, Stats.

(8) "Grain facility" means any building, bin or storage facility, used for receiving, storing, conditioning, shipping or handling grain, whose operator is one of the following:

(a) A warehouse keeper licensed under s. 126.26, Stats., or 7 USC 241 to 271.

(b) A warehouse keeper who has a total of less than 50,000 bushels of grain obligations to others, for all the warehouse keeper's warehouses, at any time.

(9) "Production period" means a consecutive 12 month period of ethanol production designated by the ethanol producer.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01; CR 02-113: am. (8) (a) and (b) Register April 2003 No. 568, eff. 5-1-03.

### ATCP 161.32 Payments to ethanol producers.

(1) **ANNUAL PAYMENT APPLICATION.** An ethanol producer may apply to the department, by March 1 of each year, to receive an ethanol production payment for any production period ending not more than one year prior to that March 1.

(2) **PAYMENT AMOUNT.** Except as provided in s. ATCP 161.36, the department shall in each state fiscal year award to each eligible applicant under sub. (1) a payment of 20 cents per gallon for up to 15 million gallons of eligible ethanol produced by the applicant during the production period identified in the producer's payment application.

(3) **APPROPRIATIONS.** The department shall make payment from the appropriations under ss. 20.115 (1) (d) and (k), Stats., subject to the availability of funds in the appropriations.

**Note:** Section 20.115 (1) (d) and (k), Stats., was repealed by 2007 Wis. Act 20.

(a) The ethanol producer produced at least 10 million gallons of eligible ethanol during the production period identified in the producer's payment application.

(b) The department has not previously awarded a payment to the ethanol producer for ethanol produced during the production period identified in the producer's payment application.

(c) The ethanol producer began producing ethanol in this state not more than 60 months before the end of the production period identified in the producer's payment application.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01; correction in (3) (intro.) made under s. 13.93 (2m) (b) 7., Stats.; CR 02-113: am. (3) (intro.) Register April 2003 No. 568, eff. 5-1-03.

**ATCP 161.33 Payment applications.** An ethanol producer applying for a payment under s. ATCP 161.32 shall apply in writing. The application shall specify all the following:

(1) The production period for which the applicant seeks a payment.

(2) The total gallons of eligible ethanol that the applicant produced during the production period under sub. (1).

(3) The name and address of each supplier from whom the applicant purchased a commodity used to produce the eligible ethanol under sub. (2). The applicant shall identify the type and amount of each commodity purchased from each supplier. If the applicant purchased grain from a grain dealer, the applicant shall give the address of the grain facility from which the grain dealer shipped that grain to the applicant.

(4) The applicant's federal tax identification number.

(5) The date on which the applicant first produced ethanol in this state.

(6) Any other information required by the department.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

**ATCP 161.34 Department action on payment application.** (1) **ACTION DEADLINE.** By May 1 of each year, the department shall act on applications received by March 1 of that year.

**Note:** The department will wait until the March 1 application deadline to determine the combined amount of all payment applications from ethanol producers. If eligible payment requests received by March 1 exceed the amount of payment funds available in that fiscal year, the department must prorate annual payment awards under s. ATCP 161.36.

(2) **NOTICE OF ACTION.** The department shall give each applicant written notice of its action under sub. (1). If the department denies all or part of a payment application, or awards a prorated payment amount under s. ATCP 161.36, the department shall explain its action in writing.

(3) **ADDITIONAL INFORMATION.** The department may require an applicant to provide additional information that is relevant to a payment application. The department may deny a payment application if the applicant fails to honor the department's reasonable request for relevant information.

(4) **VERIFYING INFORMATION.** The department may exercise its authority under ch. 93, Stats., to verify the information contained in a payment application, or to verify the applicant's eligibility for a payment. When verifying the amount of eligible ethanol produced from corn, the department may presume that a bushel of corn yields 2.5 gallons of ethanol unless the producer proves a different conversion rate.

(5) **MISREPRESENTATIONS.** The department may deny a payment application, or recover payments made to an applicant, if the department finds that the applicant has materially misrepresented any information related to a payment application.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

**ATCP 161.35 Payment deadline.** (1) **GENERAL.** Except as provided in sub. (2) or s. ATCP 161.36, the department shall pay, by June 30 of each year, the full amount of each payment awarded under s. ATCP 161.32 (2) during the state fiscal year ending that June 30.

(2) **NO PAYMENT TO PRODUCER WHO HAS STOPPED PRODUCTION.** The department may not make payment under sub. (1) to an appli-

cant who stops producing ethanol before the department makes payment.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.

**ATCP 161.36 Prorating payment awards.** If the sum of all awards under s. ATCP 161.32 (2) in any state fiscal year exceeds the total amount appropriated under s. 20.115 (1) (d), Stats., for that fiscal year, the department shall prorate each applicant's payment award based on the amount of eligible ethanol that the applicant produced during the production period identified in the applicant's payment application, up to a maximum of 15 million gallons.

**Note:** Section 20.115 (1) (d), Stats., was repealed by 2007 Wis. Act 20.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01; correction made under s. 13.93 (2m) (b) 7., Stats., Register April 2003 No. 568.

**ATCP 161.37 Records.** An ethanol producer who applies for payment under this subchapter shall keep all the following records for at least 3 years after the application date, and shall make the records available to the department for inspection and copying upon request.

(1) All purchase records, contracts and receipts for commodities purchased from a local source.

(2) Records relating to the sale of eligible ethanol.

**History:** CR 01-015: cr. Register, July 2001, No. 547 eff. 8-1-01.