

atcp161_EmR0804.pdf **Agriculture, Trade and Consumer Protection – Affects Ch. ATCP 161 - EmR0804**
WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
EMERGENCY RULE

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to create* subch. IV of ch. ATCP 161, *relating to* the “buy local” grant program created under s. 93.48, Stats.

This emergency 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 emergency 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.

Statutes Interpreted

Statute 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. Section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act) authorizes DATCP to adopt temporary emergency rules without the normal “finding of emergency,” pending the adoption of “permanent” rules. This temporary emergency rule implements the “buy local” grant program on an interim basis, pending the adoption of “permanent” rules.

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).

Plain Language Analysis

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 emergency rule spells out grant procedures and criteria. Under this emergency 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 emergency 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 emergency 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 term of up to 2 years. DATCP may, upon request, extend the contract term for up to one more year.

Matching Requirement

To qualify for a grant under this emergency 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.

Use of Grant Funds

Under this emergency 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 emergency 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 proposals 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 proposals.

Grant Awards

Under this emergency 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 emergency 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 emergency 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 emergency 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 emergency rule will have a fiscal impact on DATCP operations. Under this emergency rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium. 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).

DATCP Contact

Questions and comments related to this rule may be directed to:

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SECTION 1. Subchapter IV of ch. ATCP 161 is created to read:

Subchapter IV "Buy Local" Grant Program

ATCP 161.40 Purpose. This subchapter implements the "buy local" grant program created under s. 93.48, Stats.

ATCP 161.41 Definitions. In this subchapter:

- (1) "Authorized department official" means the department secretary, deputy secretary or executive assistant.
- (2) "Department" means the Wisconsin department of agriculture, trade and consumer protection.
- (3) "Grant applicant" means a person who submits a grant proposal under s. ATCP 161.44.
- (4) "Individual" means a natural person.
- (5) "Person" means an individual, corporation, cooperative, partnership, limited liability company, trust, governmental entity, academic institution or other legal entity.
- (6) "Food product" means an unprocessed commodity or processed product that is used for food or drink by humans. "Food product" includes a food product ingredient.
- (7) "Wisconsin food product" means a food product that is one of the following:
 - (a) Grown in this state.
 - (b) Produced from animals kept in this state.
 - (c) Primarily derived from food products that are grown in this state or produced from animals kept in this state.
- (8) "Local purchaser" means a consumer who buys a Wisconsin food product at a location near the place where the food product is produced, or a person who buys a Wisconsin food product for resale at a location near the place where the food product is produced.

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

- (a) Local food marketing systems and market outlets.
 - (b) Local food and cultural tourism routes.
 - (c) Production, processing, marketing and distribution of Wisconsin food products primarily for sale to local purchasers.
- (2) GRANT PROPOSALS; EVALUATION. A grant award under sub. (1) shall be based on a grant proposal under s. ATCP 161.44. The department shall evaluate grant proposals according to s. ATCP 161.45.
- (3) GRANT AWARDS. A grant award under sub. (1) shall be signed by an authorized department official. The grant award shall clearly identify the person to whom the grant is awarded, the amount awarded, and the purposes for which the grant is awarded. A grant award may not exceed \$50,000. The department may not award more than one grant to the same person in any state fiscal biennium.
- (4) GRANT TERMS AND CONDITIONS. A grant is subject to the terms and conditions provided in s. ATCP 161.43 and the grant contract. The department may specify terms and conditions to ensure that grant funds are effectively used for the purposes awarded.
- (5) GRANT CONTRACT. The department may not distribute any grant funds to the recipient of a grant award under sub. (1) until that recipient enters into a grant contract with the department. The contract shall comply with s. ATCP 161.46.

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

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

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

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

- (a) Real estate purchases.
- (b) Repayment of loans or mortgages.
- (c) Rent or contract payments for time periods extending beyond the term of the grant contract.
- (d) Equipment purchases, except as specifically authorized in subs. (1)(c) and (d).
- (e) Administrative or overhead costs that are not direct costs of the grant project.

(3) MATCHING CONTRIBUTIONS. The recipient of a grant award under s. ATCP 161.42 shall make a matching contribution to the grant project. The matching contribution shall be equal to at least 33% of the grant award. A matching contribution may include the reasonable value of the grant recipient's direct contribution of capital, land, labor, equipment or cash to the grant project. Grant funds received under other government grant programs do not count as matching contributions.

(4) GRANT PAYMENTS. The department may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. The grant contract shall describe payment terms and conditions. The

department may require a grant recipient to file progress reports and submit expense documentation as necessary to support grant payments.

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

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

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

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

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

Wisconsin Department of Agriculture, Trade and Consumer Protection
"Buy Local" Grant Program
P. O. Box 8911, Madison, WI 53718-8911
Email: amy.brunerzimmerman@wi.gov.
Telephone: (608) 224-5017

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

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

- (a) The extent to which a proposed project will increase local purchases of Wisconsin food products.
- (b) Whether the proposal complies with the department's request for proposals under s. ATCP 161.44(2).
- (c) Whether the proposed project complies with this subchapter.
- (d) The viability of the proposed project.
- (e) Additional project benefits for Wisconsin agriculture or tourism.
- (f) The management and technical qualifications of the grant applicant.
- (f) The qualifications of the persons who will carry out the project.
- (g) The financial capacity of the grant applicant to complete the project as proposed.
- (h) The adequacy of the project plan and budget.
- (i) Whether the grant proposal adequately identifies the nature of project expenses to be reimbursed under the proposed grant, consistent with s. ATCP 161.43(1).

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

(2) CONTRACT TERM. A grant contract under s. ATCP 161.42(5) takes effect when signed by an authorized department official under sub. (1). The term of the contract may not exceed 2 years except that, upon request of the grant recipient at any time during the contract term, the department may for good cause extend the contract term for up to one more year. The contract term may extend beyond the state fiscal biennium in which funds for the contract are appropriated, provided that the department encumbers those contract funds and signs the contract in that biennium.

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

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

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

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

SECTION 2. EFFECTIVE DATE AND DURATION: This emergency rule takes effect upon publication. Pursuant to section 9103(3i) of 2007 Wisconsin Act 20, this emergency rule remains in effect until May 1, 2009 or the date on which permanent rules promulgated under s. 93.48(1), Stats., take effect, whichever is sooner.