



# Farmland Preservation Program

## Soil and Water Conservation Compliance and Related Frequently Asked Questions

### Basic Requirements

6/18/2014

What soil and water **conservation standards** are required to claim the Farmland Preservation Program (FPP) tax credit?

*Answer:* Landowners with land covered by a certified FPP zoning ordinance who wish to claim the FP tax credit must be in compliance with the soil and water conservation standards incorporated into ATCP 50, Wis. Admin. Code, at the time the credit is claimed. The current standards required for compliance can be found in the model farm inspection publication available at:

[http://datcp.wi.gov/Environment/Working\\_Lands\\_Initiative/Soil\\_Water\\_Compliance/index.aspx](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Soil_Water_Compliance/index.aspx).

Landowners with land covered by a FPP agreement who wish to claim the FP tax credit must be in compliance with the soil and water conservation standards in place on the effective date of the agreement. Landowners who have modified an agreement signed prior to 2009 must meet the standards in place at the time the agreement was modified. For questions regarding which standards apply for a specific agreement, contact the department.

To claim the farmland preservation tax credits under s. 71.613 Stats. of \$5, \$7.50, \$10 per acre, landowners can only certify that they are in compliance on their tax return if the farm either:

1) Complies with the state agricultural performance standards incorporated into ATCP 50, Wis. Admin. Code found in the model farm inspection publication available at:

[http://datcp.wi.gov/Environment/Working\\_Lands\\_Initiative/Soil\\_Water\\_Compliance/index.aspx](http://datcp.wi.gov/Environment/Working_Lands_Initiative/Soil_Water_Compliance/index.aspx).

Some standards have a delayed implementation date of January 1, 2016.

**Or**

2) Is covered by a performance schedule that enables the landowner to comply with state conservation standards by a specific deadline set by the county. The performance schedule, including amendments or extensions, may not allow the landowner more than 5 years from the time they are informed of their compliance obligations to achieve compliance with all applicable conservation standards. These requirements do not apply if you have a farmland preservation agreement signed prior to 2004 that has not been amended to require the new state conservation compliance standards. If your farmland preservation agreement has been amended, you will need to meet the terms identified in your agreement in order to claim the farmland preservation tax credit.

Who is considered a “**continuous claimant**”?

*Answer:* Eligible participants who have been claiming since tax year 2009 are considered continuing participants. Therefore, they do not immediately need a certificate of compliance and can use a performance schedule to help move them into compliance over a timeframe of up to 5 years.

Do all landowners receive a **Certificate of Compliance**?

*Answer:* Based on the new ATCP 50 effective May 1, 2014 all landowners who claim tax credits of \$5, \$7.50, \$10 per acre under s. 71.613, Stats., and are determined to be in compliance with all applicable soil and water conservation standards must be given a *Certificate of Compliance*. County land conservation staff can accomplish this as farms are inspected every four years. New participants must obtain a *Certificate of Compliance* prior to claiming the tax credit. A *Certificate of Compliance* is not required for landowners with agreements signed prior to 2002 that use Schedule FC and claim credits based on income. These landowners are required to follow the performance standards in effect at the time the agreement is effective.

If a landowner meets the 2002 standards by 12/31/2015, but has a process wastewater issue to address, should the county issue a **Certificate of Compliance** or wait until the process wastewater issue has been addressed?

*Answer:* If a landowner meets all of the 2002 standards before 2016, then the county should issue a *Certificate of Compliance*. If the 2012 performance standards require practices be added, such as process wastewater, counties should work with landowners through a performance schedule to implement the 2012 performance standards. The 2012 performance standards are not required for FPP participants until January 1, 2016 and must be completed by January 1, 2021 according to deadlines set by the county and ideally in collaboration with the landowner. If the performance schedule is not followed, then the county could issue a *Notice of Noncompliance* to the landowner which notifies the Department of Revenue that the farm is not in compliance with requirements.

If a pasture is determined to have a Phosphorus Index (PI) value above 6, what can be done to reduce this?

*Answer:* Pastures, like crop fields can reduce their PI by reducing erosion and runoff. Managing pastures at a stocking rate that will maintain sod cover is important because bare pastures are likely to have and release more phosphorus.

When does a landowner with a FPP agreement or under zoning **have to be in compliance in order to claim the tax credit**?

*Answer:* A landowner who has not claimed in the previous year must have a *Certificate of Compliance* at the time they attempt to claim the tax credit, or have a performance schedule if they are a continuing claimant.

For nutrient management, if the farmer obtains soil tests before 2016 and proceeds to develop a 590 compliant NM plan that includes real data from the 2015 previous crop year and future years, then the county can consider the nutrient management plan in compliance. Farmers need a completed *NM Plan Checklist* signed by a qualified planner or trainer when the county requires it. The county should continue to monitor the NM plan by requesting a *NM Plan Checklist* each year, or at a minimum during the every 4 year check of the farm.

## Tracking Compliance

Can DATCP release the **names of landowners** who are claiming FPP tax credits to the county LCD?

*Answer:* DATCP cannot release the names of landowners who claim under zoning due to privacy restrictions from the WI Department of Revenue. DATCP can share the names of landowners with agreements signed prior to July 1, 2009. The location of agreements signed after 2009 will be tracked by parcel number and not by landowner name.

Given the limitations on sharing the names of landowners participating in the farmland preservation program, what options exist to **aid the counties in tracking landowner** compliance for the farmland preservation program?

*Answer:* Unless there is a statutory change to allow the sharing of landowner information with the counties, this will continue to be a challenge. DATCP will work with interested counties to send letters to known claimants encouraging them to contact the county for assistance with compliance related issues. Through these contacts, the counties may develop a more complete list of current farmland preservation participants.

Counties may want to consider other methods to keep track of participating landowners and changing parcel ownership. For example, counties could consider adjusting the annual self-certification form to ask landowners whether they bought or sold acres in the past year. Change identified by the landowners can help identify new landowner claimants.

If all landowners need to receive a Certificate of Compliance at some point under ATCP 50, how will landowners and tax preparers learn that they will need to include the certificate when they complete Schedule FC-A?"

*Answer:* DATCP and county conservation staff will work with landowners and tax preparers to alert them of the change to Wis. Admin. Code, ATCP 50.16(4) effective in May 2014 which states that "the county land conservation committee shall issue a certificate of compliance to a landowner claiming tax credits under s. 71.613, Stats., if the landowner meets the soil and water conservation standards..." The Department of Revenue is aware of this code change.

Should a county be checking compliance with landowners who have land in multiply counties?

*Answer:* Landowners usually pick one county to work with if their land is in more than one county. Counties should talk with other conservation offices to be sure the farm is covered and share the farm assessment information. The landowner needs one *Certificate of Compliance* that lists all of their parcels. Counties can include multiple municipalities on the new *Certificate of Compliance*.

On the certificate of compliance under the certification section when would the box for other demonstration of compliance be marked? Please provide a few examples of what the county could fill in for the explanation portion that DATCP would accept.

*Answer:* You would use this checkbox if you were not out on the farm for the inspection and instead reviewed other records or photos to determine compliance. A good example might be the NMP review that is not done on the farm, but could show a compliance issue; or if you used aerial photos to determine if concentrated flow channels exist and waterways are in place. Generally speaking it will be difficult to conduct a thorough review for FPP compliance without some level of physical review on farm.

Can a landowner challenge a **compliance determination**?

*Answer:* Yes. Under ATCP 50, Wis. Admin. Code, a landowner may request a meeting with the land conservation committee to contest or discuss the violation preventing the landowner from being issued a *Certification of Compliance*.

Is a **Notice of Noncompliance** (NON) required to be signed by the noncompliant participant?

*Answer:* No, the only situation requiring the landowner's signature is if the landowner wishes to waive the right for a hearing and farm inspection, and agrees to voluntarily refrain from collecting tax credits under subch. IX of ch. 71, Stats. The waiver is only available to a landowner whose land is covered by a certified zoning district. The County Land Conservation Committee may issue a *Notice of Noncompliance* for any of the following:

1. Landowner failed to comply with applicable land and water conservation standards required under s. 91.80, Wis. Stats.
2. Landowner failed to comply with a performance schedule under s. ATCP 50.16(3), Wis. Stats.
3. Landowner failed to permit a reasonable inspection under s. 91.82(1)(c)1., Wis. Stats.
4. Landowner failed to certify compliance as required under s. 91.82(1)(c)2., Wis. Stats.
5. Property described above is not subject to a farmland preservation agreement or covered by a certified farmland preservation zoning district and therefore is ineligible for eligibility for farmland preservation tax credits.
6. Landowner signed the voluntary waiver of rights. No voluntary waiver rights exist under an FP agreement.

Should an NON be issued to a farmer with an agreement signed before 2002 who is not meeting tolerable soil loss ("T") and who does not want to work with the county to comply with "T"?

*Answer:* Yes, if after trying to help the landowner address the problem, they reject assistance then the county should issue the landowner a NON.

If a farmer was issued a **Certificate of Compliance** in 2014, but is not meeting the same standards at the time of the 2018 farm inspection, should the county issue a **Notice of Noncompliance**?

*Answer:* Yes, if after trying to help the landowner address the problem, they reject assistance then the county should issue the landowner a NON.

On the *Certificate of Compliance*, can the land conservation committee (LCC) designate land and water conservation department staff to sign on their behalf?

*Answer:* The LCC designates who is authorized to approve FPP items. Many LCCs designate conservation department staff to sign on their behalf.

The FPP Model Farm Inspection Report states that "facilities constructed or substantially altered after 2002 meet the NRCS 313 standard", but what if the facility was constructed before 2002? Do we mark does not apply? If a facility was built before 2002 does it have to meet any standards or do we just have to visually look at the pit and indicate that there are no visible signs of leakage or failure?

*Answer:* Regardless of the age of the storage pit DATCP suggest staff to look for visible signs of leakage or overflow. Counties may have a manure storage ordinance or other ordinance that requires compliance for storage and NMPs prior to the changes to the performance standards approved in 2002 – Marathon County for example.

On the FPP Model Farm Inspection Report the last item states that “There are no channels or other visible signs of significant discharge from a feedlot or stored manure into waters of the state.” What about road ditches? We have discussed waters of the state with our local DNR runoff coordinator in regards to road ditches but what is DATCP’s interpretation?

*Answer:* Under the definitions in NR 151 – “waters of the state” is defined in NR283.01 (20) which states “Waters of the state” means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

If manure is being discharged into a road ditch, then it is a problem because once channeled, the discharge is likely to make its way to water. Livestock operators may consider low cost options for removing “significant” direct feedlot runoff such as:

1. Grazing cattle on nearby fields.
2. Collecting lot manure on a consistent basis and field applying in accordance with a nutrient management plan, or
3. Removing channels with roof gutters, clean water diversions, or rock spreader diversions with harvested vegetative runoff filters.

In regard to the tillage setback performance standard, NR 151.03, are road ditches required to have a tillage setback?

*Answer:* The purpose of this standard is to prevent tillage operations from destroying stream banks and depositing soil directly in surface waters. In this section, "surface water" has the meaning given in s. [NR 102.03 \(7\)](#). “Surface waters” means all natural and artificial named and unnamed lakes and all naturally flowing streams within the boundaries of the state, but not including cooling lakes, farm ponds and facilities constructed for the treatment of wastewaters (the term waters as used in this chapter means surface waters).

At a minimum this standard applies to perennial waters. The WDNR is working to develop guidance for implementation of the tillage setback standard and will address this issue then.

## Ownership

What acres need to be in compliance with all applicable soil and water conservation standards?

*Answer:* Landowners claiming farmland preservation tax credits of \$5, \$7.50, \$10 per acre under s. 71.613 Stats., and using Schedule FC-A, must be in compliance with all applicable soil and water conservation

standards on all land under common ownership, regardless of whether those acres are eligible for the credit. “Common ownership” exists when multiple parcels are owned by the same entity.

What are the **ownership and compliance** requirements if two farmers, Gary and Roman, own some land together and some land separately, but only Gary wants to claim the tax credit under zoning?

*Answer:* The land owned solely by Roman does not need to be in compliance for Gary to claim on his land or the co-owned land. For Gary to claim the tax credit on his land, he would be required to meet all of the soil and water conservation standards. For Gary to claim the tax credit on the land he co-owns with Roman, that land would also need to be in compliance with the soil and water conservation standards, however the co-owned land would not be required to meet the conservation standards if Gary chooses not to claim the tax credit on the co-owned land. The tax credits related to the land owned together would be paid based on the ownership percentage.

Would the county need to issue three separate **Certificates of Compliance** if ownership of three separate parcels is as follows?

Parcel 1. John Smith sole ownership

Parcel 2. Smith, John and wife, Karen

Parcel 3. Smith Living trust ownership with mother

*Answer:* Since WI is a marital property state the parcel he owns with his wife would be considered common ownership with one *Certificate of Compliance*, although, you could issue them separately. The land owned by the trust would be a separate ownership. However, if Karen Smith was John’s sister, there would be three separate ownerships and each parcel would need a *Certificate of Compliance*.

In a similar case, two uniquely titled parcels such as the Haas Irrevocable Family trust 2006 and the Roger & Joan Haas Living Trust dated 1996, both are the same people, but set up at different times would be two separate entities established at different times, so this would be two separate *Certificates of Compliance*. They could decide to do one nutrient management plan to cover all the properties. Or, they could manage the two properties separately with two different nutrient management plans. It is the responsibility of DOR to ensure they do not “double claim” on the same acres.

## Compliance Deadlines

If a FPP participant received a TRM grant for manure storage in the past, but now doesn't want to construct the storage because he or she plans on renting out land in a couple years, can he or she still claim the tax credit?

*Answer:* The landowner could claim the tax credit as long as they are able to meet all of the performance standards, including following a 590 NM plan that demonstrates there is adequate land to apply all of the manure they generate even without the manure storage. If the landowner could not meet the 590 standard due to lack of fields for spreading during certain seasons of the year, or had a significant discharge from a feedlot – either of which would be a reason to require manure storage – then the landowner could not be deemed in compliance and therefore could not claim the credit. If the landowner could find additional land for manure spreading or reduce the discharge to a non-significant level to

comply, then the landowner can continue claiming the tax credit. DATCP would not want to support spending limited cost share dollars on an engineered practice that will soon be abandoned.

Does the county have any flexibility with participants who are currently working to achieve compliance, but have not yet finished their 590 or reached other compliance obligation by December 31, 2015?

*Answer:* Counties should use the following guidance when making decisions about issuing a NON to those who have not achieved full compliance with the 2002 performance standards by December 31, 2015.

- Engineered Practices - If the landowner cannot meet their compliance obligations to install engineered practices due to lack of financial or technical assistance or because of extenuating circumstances like weather delays, DATCP would encourage the county to rely on a performance schedule to meet those obligations.
- 590 Nutrient Management Plan (NMP) Requirement – As long as the landowner has taken soil samples that comply with the soil sampling requirements for a 590 NMP (1 sample per 5 acres and analyzed by a DATCP certified testing lab) on all of their owned cropland by the end of 2015 and is working to complete their 590 during the winter of 2015-16, then the county should not issue the landowner a *Notice of Noncompliance*. The county should follow up with the landowner the following spring to ensure they completed their 590 NMP. A *Certificate of Compliance* may be issued when the landowner is found to be in full compliance with all applicable soil and water conservation standards.

## Eligibility Requirements

If a landowner is **renting** their land to an operator, can that land still be eligible for FPP credits?

*Answer:* Yes, as long as the landowner meets the eligibility requirements including that the land must meet gross farm revenue requirements in which the agricultural use of the land produces \$6,000 in gross farm revenue the previous year or \$18,000 over the previous three years. Claimants renting their land can claim the tax credits based on gross farm revenue produced by the renter. The actual rent received by the landowner is not counted toward gross farm revenue. However, other payments received, such as payments for enrolling land in the federal conservation reserve program (CRP), and other state and federal programs, can be used to meet the gross farm revenue requirement. If a landowner wishes to claim the tax credit on the land they rent to an operator, then that land must also meet the soil and water conservation standards, including being covered by a 590 NM Plan.

If a landowner is **renting** their land to an operator, but their land does not meet the **gross farm revenue requirement**, might they still be eligible for FPP credits if the land owned by the operator meets the income required?

*Answer:* No, the gross farm revenue relates only to the landowner's common ownership, not the operator's owned land.

Can a farmer that **sells deer** periodically count the 'value' of the hay fed toward the \$6,000/\$18,000 **gross farm revenue** requirement, or is it just the sale of the deer that counts?

*Answer:* The landowner is not eligible for the FPP tax credit if she doesn't have gross farm revenues of \$6,000 of gross farm profits in the tax year or \$18,000 over the last 3 years. The definition of gross farm revenue, included below, does not include the value of crops grown and not sold. Importantly, it is not the county's job to determine if she meets this or not. She should consult her tax adviser/accountant to determine this part of her eligibility status.

"Gross farm revenues" means gross receipts from agricultural use of a farm, excluding rent receipts, less the cost or other basis of livestock or other agricultural items purchased for resale which are sold or otherwise disposed of during the taxable year. "Gross farm profits" do not include the fair market value of crops grown but not sold during the year, fuel tax credits or refunds, or a previous year's farmland preservation or farmland tax relief credit. If you rent out your farmland, gross farm profits are those of your renter, produced from your farmland.

A landowner interested in signing a FPP agreement isn't sure his land in the AEA will meet the gross farm revenue eligibility requirement. He owns more land under common ownership in a township adjacent to the AEA. Can he count farm income from that adjacent land toward the **gross farm revenue requirement** to be eligible?

*Answer:* Yes, the Department of Revenue looks at all the land under common ownership when they evaluate the gross farm revenue requirement, so land outside the AEA may be included in the calculation.

Is land under the **Managed Forest Law (MFL)** eligible for the tax credit?

*Answer:* Land under the Managed Forest Law (MFL) that is also under either FPP zoning or a new/modified FPP agreement is eligible for the tax credit using Schedule FC-A if the other minimum requirements, including gross farm revenue, state residency, and conservation standards compliance are met. Landowners with old FPP agreements who must use Schedule FC and who own land in MFL are not eligible to claim the tax credit on the MFL land.

What happens **when a landowner acquires new land**?

*Answer:* The landowner has 1 year to update their nutrient management plan to include these acres. In order to maintain eligibility for the tax credit, the landowner must be in compliance on all acres under common ownership, regardless of whether the landowner can claim on all of these acres.

If the landowner has an agreement and the land is not under zoning, the landowner cannot claim on the new acres until they have a new agreement in place to cover those acres.

If the landowner's new land is under zoning and the person has an agreement on other land, the landowner can claim on the new acres, but only at the \$7.50 per acre tax credit rate until they get an agreement in place on those new acres.

The Department of Revenue performs program audits and some landowners who claimed the credit on newly acquired acres received a letter asking for confirmation that the new acres are eligible for the tax credit. In these cases, the county, town, city, or village zoning authority can help the landowner by providing a letter confirming that the acres are eligible. A *Certificate of Compliance* may also be used to show that the land is in a certified zoning district.

If a FPP participant **sold some, but not all of their acreage** this past year, and the real estate tax bills still reflect the old parcels and acreage, how should the **Certificate of Compliance** be filled in?

*Answer:* Often the land sale will prorate the property taxes and that will determine eligibility for the credit. You will probably need to list the parcel numbers and say that the certificate pertains to "part of parcel # 002-0000-0000000-000-0-202019-00-130B". Update the Certificates of Compliance when the new parcel number is determined. When farmland is sold during the year see s. 71.613(3) (c), Stats., "If a person acquires or transfers ownership of a farm during a taxable year for which a claim may be filed under this section, the person may file a claim under this section based on the person's liability for the property taxes levied on the person's qualifying acres for the taxable year to which the claim relates."

What are the compliance obligations under a FPP **agreement once the land is sold**?

*Answer:* The agreement goes with the land, therefore when land is sold the new owner is obligated to continue to comply with the terms of the agreement, including compliance with the soil and water conservation standards. These obligations must be met, regardless of whether the new owner is eligible to claim the farmland preservation tax credit.