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FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-104

AN ORDER to repeal ATCP 136.01 (2), 136.06, 136.08 (4), 136.10 (3) (b) 2., (4) (a) 2. and (b) and 136.16 (4) Note; to amend ATCP 136.01 (19), 136.02 (4) (d) and (7), 136.08 (5), 136.10 (3) (a) (intro.) 1. and (b) (intro.), (4) (a) (intro.) 1., (7) (a) and (8) (a) and 136.16 (4) (intro.); to repeal and recreate ATCP 136.04 (1), 136.08 (1), 136.10 (2) (intro.) and (a) and (3) (a) 2. and 136.16 (4) (a) to (c); and to create chapter ATCP 136 Note and ATCP 136.10 (5) (d), relating to reclaiming and recycling refrigerant for mobile air conditioners.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

- 06-09-00 RECEIVED BY LEGISLATIVE COUNCIL.
- 07-10-00 REPORT SENT TO AGENCY.

RNS:SPH:jal;ksm

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CLEARINGHOUSE RULE 00-104

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The last sentence of s. ATPC 136.01 (19), which is proposed as an additional definition of the term "refrigerant," is redundant. The expanded first sentence of the definition includes "*any substance*" that is "... *used*, or designed or intended to be used, in a mobile air conditioner or trailer refrigeration equipment to transfer heat out of the space being cooled." [Emphasis added.] This language encompasses "any substance that is sold or intended as a substitute for a refrigerant," which is referenced in the last sentence. Although the second sentence of the definition, which references specific provisions of federal law, may also be viewed as redundant, it is arguably helpful to the reader to include these references. However, a better approach might be to include these federal law references in a note to the definition section.

b. Section ATPC 136.04 (1) should not be repealed and recreated in SECTION 6. Because the introduction and par. (a) are unchanged from the current rule, the revision should show the repeal and recreation of only par. (b) and the repeal of par. (c). Also note that the introduction, as redrafted, does not end with a colon.

c. In s. ATPC 136.10 (5) (d), "s. 100.45 (1) (d), Stats." should replace "s. 100.45 (1)." Also, "s." should be inserted before the rule provision cited.

d. In s. ATPC 136.16 (4) (a) 3., "ATPC" should be inserted before the rule provisions cited.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING AND AMENDING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
2 the following order to repeal ATCP 136.01(2), 136.06, 136.08(4), 136.10(3)(b)2., (4)(a)2.
3 and (4)(b), and 136.16(4)(note); to amend ATCP 136.01(19), 136.02(4)(d), 136.02(7),
4 136.08(5), 136.10(3)(a)(intro.) and 1., 136.10(3)(b)(intro.), 136.10(4)(a)(intro.) and 1.,
5 136.10(7)(a), 136.10(8)(a), and 136.16(4)(intro.); to repeal and recreate ATCP 136.04(1),
6 136.08(1), 136.10(2)(intro.), (2)(a) and (3)(a)2., and 136.16(4)(a) to (c); and to create ch.
7 ATCP 136(note) and 136.10(5)(d); relating to reclaiming and recycling refrigerant for
8 mobile air conditioners.

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

Statutory authority: ss. 93.07(1), 100.20(2) and 100.45(5) and (5e), Stats.
Statutes interpreted: ss. 100.20(2) and 100.45, Stats.

The department of agriculture, trade and consumer protection (DATCP) currently regulates businesses that service mobile air conditioners that use ozone-depleting refrigerants. This rule increases annual registration fees for regulated businesses, and makes other changes to DATCP's current rules.

Background

In 1990, the Wisconsin legislature enacted comprehensive legislation regulating the sale, handling and use of ozone-depleting refrigerants. The legislature has adopted several amendments since 1990. The Wisconsin legislation is based, in part, on federal regulations adopted by the U.S. environmental protection agency under title VI of the federal clean air act amendments of 1990.

Among other things, the Wisconsin legislation created s. 100.45, Stats. That statute directs DATCP to adopt rules regulating the servicing of mobile air conditioners and the sale and use of ozone-depleting refrigerants. It also directs DATCP to establish fees for regulated businesses, to cover the cost of the program.

Current Rules

DATCP has adopted rules related to mobile air conditioners. The rules are contained in ch. ATCP 136, Wis. Adm. Code. DATCP adopted the rules in 1991, and revised them in 1996. The current rules:

- Regulate sales of ozone-depleting refrigerants and refrigerant substitutes.
- Regulate the servicing of mobile air conditioners and trailer refrigeration equipment.
- Prohibit the venting of refrigerants.
- Require regulated businesses to register with DATCP. Registered businesses must have approved recovery and recycling equipment. Technicians must be trained, tested and certified under a DATCP-approved training program.
- Require regulated businesses to capture and recycle refrigerants removed from mobile air conditioners and trailer refrigeration equipment. Recycled refrigerants must meet industry-developed purity standards.
- Prohibit regulated businesses from "topping off" leaky mobile air conditioners or trailer refrigeration equipment. Technicians must inspect for leaks, and make proper repairs, before adding refrigerant.
- Prohibit sales of refrigerant in small containers (less than 15 pounds), and restrict sales of other refrigerants to certified technicians and state-licensed businesses.
- Establish annual license fees for regulated businesses.

Rule Changes

Fee Increase

This rule increases the annual registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment. This rule increases the annual fee from \$80 to \$120. DATCP has not adjusted the current fee since 1991 when the program began. A fee increase is needed to maintain the current level of program operations.

DATCP currently registers more than 3,100 businesses under the mobile air conditioner program. A registration year expires annually at the end of February. Program staff inspect an average of 1,400 businesses each year. They also investigate complaints and take compliance actions, as necessary.

Sales of Recovered Refrigerant

Current rules require on-site recovery, recycling and reuse of refrigerant for motor vehicle air conditioners. This rule relaxes current prohibitions against the sale or transfer of recovered refrigerant, consistent with 1997 Wis. Act 165 and recent changes in federal regulations. This rule permits salvagers and others to sell recovered refrigerant to registered mobile air conditioner repair businesses for recycling and reuse.

This rule removes current references to "used refrigerant brokers," including broker registration requirements. The legislature and DATCP originally anticipated that brokers would purchase used refrigerant from repair businesses, for resale to EPA-approved reclamation facilities. But repair businesses have generally recycled and reused recovered refrigerant, or sold it directly to reclamation facilities. To date, the department has never issued a registration for a "used refrigerant broker." The legislature recently eliminated statutory references to "used refrigerant brokers."

Substitute Refrigerants

Under current law, DATCP may regulate refrigerants used as substitutes for ozone-depleting refrigerants in mobile air conditioners and trailer refrigeration equipment. This rule regulates the use of substitute refrigerants, consistent with federal EPA regulations under 40 CFR 82 Subpart G.

Under this rule, a person installing an EPA-accepted substitute refrigerant must completely remove the original refrigerant, install unique fittings, and meet other retrofitting requirements. These requirements are designed to prevent costly cross-contamination of refrigerant supplies and potential damage to recycling equipment and air conditioners.

This rule prohibits deceptive advertising and sales claims for substitute refrigerants. A seller may not claim that a refrigerant is an effective substitute for an ozone-depleting refrigerant, if that claim is not true. The seller must disclose any use restrictions and installation restrictions that apply.

1 **SECTION 5.** ATCP 136.02(7) is amended to read:

2 ATCP 136.02(7) RENEWING A REGISTRATION CERTIFICATE. A person holding a
3 business registration certificate may annually renew that certificate by submitting a renewal
4 application on a form provided by the department. The renewal application shall include all
5 of the information required under sub. (4), and shall include a renewal fee of ~~\$80~~ \$120 for
6 each business location.

7 **SECTION 6.** ATCP 136.04(1) is repealed and recreated to read:

8 ATCP 136.04(1) REQUIREMENT. A business operator shall register each technician
9 who, as an operator or employee of that business, is personally engaged in performing any
10 activity under s. ATCP 136.02(1). To register a technician, a business operator shall submit
11 all the following information to the department.

12 (a) The name of the technician.

13 (b) Documentation showing that the technician meets applicable requirements under
14 s. ATCP 136.08(1). If the business operator claims that the technician has successfully
15 completed a required training course, the business operator shall identify the course provider
16 and the date on which the technician successfully completed the course. If the business
17 operator claims that the technician has serviced mobile air conditioners or trailer
18 refrigeration equipment in another state, the business operator shall provide the name and
19 address of the business that employed the technician to perform that work in the other state.

20 **SECTION 7.** ATCP 136.06 is repealed.

21 **SECTION 8.** ATCP 136.08(1) is repealed and recreated to read:

1 ATCP 136.08(1) TRAINING REQUIRED. A business operator may not register a
2 technician under s. ATCP 136.04 unless the technician has successfully completed a
3 department-approved training program under sub. (2). This training requirement does not
4 apply if the technician meets the following applicable requirements:

5 (a) The technician has done all of the following if the technician will be servicing
6 mobile air conditioners:

- 7 1. Serviced mobile air conditioners in another state within the previous 5 years.
8 2. Successfully completed a training course approved by the United States
9 environmental protection agency under 40 CFR 82.40.
10 3. Successfully completed an open book examination administered by the
11 department.

12 (b) The technician has done all of the following if the technician will be servicing
13 trailer refrigeration equipment:

- 14 1. Serviced trailer refrigeration equipment in another state within the previous 5
15 years.
16 2. Successfully completed a training course approved by the United States
17 environmental protection agency under 40 CFR 82.161.
18 3. Successfully completed an open book examination administered by the
19 department.

20 **SECTION 9.** ATCP 136.08(4) is repealed.

21 **SECTION 10.** ATCP 136.08(5) is amended to read:

1 ATCP 136.08(5) DEPARTMENT AUDIT OF TRAINING PROGRAMS. The department may
2 audit a training program and may periodically review training program materials to assess
3 compliance with this chapter, s. 100.45, Stats., and the representations made under sub. (3).

4 **SECTION 11.** ATCP 136.10(2)(intro.) and (a) are repealed and recreated to read:

5 ATCP 136.10(2)(intro.) No person may sell or consign new or reclaimed refrigerant,
6 except to one of the following:

7 (a) A person who sells or resells that refrigerant in its original container, to persons
8 identified under pars. (b) to (d). A sale or consignment does not violate this paragraph if the
9 seller or consignor relies in good faith on a written statement from the buyer or consignee
10 that does all the following:

- 11 1. Contains the legal name and business address of the buyer or consignee.
- 12 2. Guarantees that the buyer or consignee will sell or resell the refrigerant only in its
13 original container.
- 14 3. Guarantees that the buyer or consignee will sell or resell the refrigerant only to
15 persons identified in pars. (b) to (d).

16 **SECTION 12.** ATCP 136.10(3)(a)(intro.) and 1. are amended to read:

17 ATCP 136.10(3)(a)(intro.) No person may sell or consign recovered refrigerant, ~~in~~
18 ~~this state, except to any but one of the following persons:~~

19 (a)1. A person ~~who holds~~ holding a valid business registration certificate under s.
20 ATCP 136.02, ~~and~~ who sells or consigns the recovered refrigerant to the operator of an
21 approved reclamation facility for reclamation at that facility, or who uses approved recycling

1 equipment under s. ATCP 136.12(3) to recycle the refrigerant for reuse in mobile air
2 conditioners.

3 **SECTION 13.** ATCP 136.10(3)(a)2. is repealed and recreated to read:

4 ATCP 136.10(3)(a)2. A person who is registered with the state of Wisconsin,
5 department of commerce under s. Comm 5.70, and who sells or consigns the recovered
6 refrigerant to the operator of an approved reclamation facility for reclamation at that facility.

7 **SECTION 14.** ATCP 136.10(3)(b)(intro.) is amended to read:

8 ATCP 136.10(3)(b)(intro.) ~~No person, other than one of the following.~~ Only the
9 following persons may sell or consign recovered refrigerant to ~~any other~~ a person in this
10 state:

11 **SECTION 15.** ATCP 136.10(3)(b)2. is repealed.

12 **SECTION 16.** ATCP 136.10(4)(a)(intro.) and 1. are amended to read:

13 ATCP 136.10(4)(a)(intro.) No person may sell or consign recycled refrigerant, ~~in~~
14 ~~this state,~~ except to any but one of the following persons:

15 1. A person who holds a valid business registration certificate under s. ATCP
16 136.02, and who sells or consigns the recycled refrigerant to the operator of an approved
17 reclamation facility for reclamation at that facility. ~~A sale or consignment does not violate~~
18 ~~this paragraph if the seller or consignor relies in good faith on a written statement from the~~
19 ~~buyer or consignee which guarantees that the buyer or consignee will sell the refrigerant to~~
20 ~~the operator of an approved reclamation facility for reclamation at that facility.~~

21 **SECTION 17.** ATCP 136.10(4)(a)2. is repealed.

22 **SECTION 18.** ATCP 136.10(4)(b) is repealed.

Handwritten notes:
No person may represent!

1 **SECTION 19.** ATCP 136.10(5)(d) is created to read:

2 ATCP 136.10(5)(d) That a substitute refrigerant may be used as a replacement for an
3 ozone-depleting refrigerant as defined in s. 100.45(1), unless the person discloses the special
4 repair and service requirements under ATCP 136.16(4).
(d) state

5 **SECTION 20.** ATCP 136.10(7)(a) is amended to read:

6 ATCP 136.10(7)(a) The legal name and complete address of the person from whom
7 that person purchased or received that refrigerant.

8 **SECTION 21.** ATCP 136.10(8)(a) is amended to read:

9 ATCP 136.10(8)(a) The legal name and complete address of the person to whom the
10 refrigerant was sold or consigned.

11 **SECTION 22.** ATCP 136.16(4)(intro.) is amended to read:

12 ATCP 136.16(4)(intro.) **SUBSTITUTING REFRIGERANT.** A person who charges a
13 mobile air conditioner or trailer refrigeration equipment with a type of refrigerant not
14 originally used in that mobile air conditioner or trailer refrigeration equipment shall affix to
15 ~~that air conditioner or equipment a prominent label which identifies~~ do all of the following:

16 **SECTION 23.** ATCP 136.16(4)(a) to (c) are repealed and recreated to read:

17 ATCP 136.16(4)(a) Affix to the air conditioner or equipment a prominent label that
18 identifies all the following:

- 19 1. The date on which the air conditioner or equipment was charged with the
20 substitute refrigerant.
- 21 2. The name of the substitute refrigerant.

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1 3. The name of the business registered under s. 136.02, and the technician registered
2 under s. 136.04, that charged the mobile air conditioner or trailer refrigeration equipment
3 with the substitute refrigerant.

4 (b) Install service fittings that are specifically designed by the refrigerant
5 manufacturer to mechanically prevent the refrigerant from cross-charging with another
6 refrigerant. The fittings shall be installed on all refrigerant containers, charging and recovery
7 equipment, and on all mobile air conditioner service ports.

8 (c) Comply with other applicable regulations of the United States environmental
9 protection agency under s. 40 CFR Part 82 Subpart G.

10 **SECTION 24.** ATCP 136.16(4)(note) is repealed.

11 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first
12 day of the month following publication in the Wisconsin administrative register, as provided
13 in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel
Secretary

Docket No. 00-R-2

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 00-104 to the presiding officer of each house of the legislature for standing committee review. The proposed rule repeals ss. ATCP 136.01(2), 136.04(1)(c), 136.06, 136.08(4), 136.10(3)(b)2., (4)(a)2. and (4)(b), and 136.16(4)(note); amends ss. ATCP 136.01(19), 136.02(4)(d), 136.02(7), 136.08(5), 136.10(3)(a)(intro.) and 1., 136.10(3)(b)(intro.), 136.10(4)(a)(intro.) and 1., 136.10(7)(a), 136.10(8)(a) and 136.16(4)(intro.); repeals and recreates ATCP 136.04(1)(b), 136.08(1), 136.10(2)(intro.), (2)(a) and (3)(a)2., and 136.16(4)(a) to (c); and creates ch. ATCP 136(note), 136.02(2)(c) and 136.10(5)(d); relating to reclaiming and recycling refrigerant for mobile air conditioners.

Dated this 11 day of October, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By



Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: October 6, 2000 DATCP Docket 00-R-2

TO: The Honorable Fred A. Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, WI 53707

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, WI 53708

FROM: Ben Brancel, Secretary *Ben Brancel*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Ozone-Depleting Refrigerants; Proposed Rule (Clearinghouse Rule No. 00-104)

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review, pursuant to ss. 227.19(2) and (3), Stats. We are enclosing 3 copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, as required by s. 227.19(2), Stats.

Background

In 1990, the Wisconsin Legislature enacted comprehensive legislation regulating the sale, handling and use of ozone-depleting refrigerants. This program is intended to reduce emissions of ozone-depleting substances contributing to global warming. DATCP administers this program in cooperation with the Wisconsin Department of Commerce, the Wisconsin Department of Natural Resources, and the U.S. Environmental Protection Agency.

Under s. 100.45, Stats., DATCP regulates the servicing of mobile air conditioners and trailer refrigeration equipment. DATCP also regulates the sale and use of ozone-depleting refrigerants and substitute refrigerants. In 1998, the Legislature revised the state law to conform to new federal regulations.

Businesses that repair and service mobile air conditioners and trailer refrigeration equipment must register with DATCP and pay a fee. Registration fees are the sole source of funding for this program. DATCP sets registration fees by rule. DATCP has not increased the fees since 1991, when the program was first implemented.

Rule Summary

Fee Increase

This rule increases the annual registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment. This rule increases the annual fee from \$80 (current fee) to \$120 (proposed fee). DATCP has not adjusted the current fee since 1991 when the program began. A fee increase is needed to maintain the current level of program operations and to avoid a negative account balance in 2001.

Current fees generate approximately \$260,000 each year. The program now costs approximately \$300,000 per year, and is financed solely by fees. A growing annual deficit is reducing the accumulated balance in the program revenue account. Without a fee increase, a negative account balance is projected for the 2001 license year beginning on March 1. By raising the annual business registration fee from \$80 (current fee) to \$120 (proposed fee), the Department will generate an estimated \$112,000 in additional fee revenues each year.

Sales of Recovered Refrigerant

Current rules require on-site recovery, recycling and reuse of refrigerant for motor vehicle air conditioners. This rule relaxes current prohibitions on the sale or transfer of recovered refrigerant, consistent with 1997 Wis. Act 165 and recent changes in federal regulations. This rule permits salvagers and others to sell recovered refrigerant to registered mobile air conditioner repair businesses for later recycling and reuse.

This rule removes current references to "used refrigerant brokers," including broker registration requirements. Repair businesses normally recycle and reuse their own recovered refrigerant, or sell it directly to reclamation facilities, without any involvement by brokers. DATCP has never issued a registration for a "used refrigerant broker," and the Legislature recently eliminated all statutory references to "used refrigerant brokers."

Substitute Refrigerants

Under current law, DATCP may regulate refrigerants that are used as substitutes for ozone-depleting refrigerants in mobile air conditioners and trailer refrigeration equipment. This rule regulates the use of substitute refrigerants, consistent with federal EPA regulations.

Under this rule, a person installing an EPA-accepted substitute refrigerant must completely remove the original refrigerant, install specially designed fittings, and meet other retrofitting requirements. These requirements are designed to prevent costly cross-contamination of refrigerant supplies, and potential damage to recycling equipment and air conditioners.

This rule also prohibits deceptive advertising and sales claims for substitute refrigerants. A seller may not claim that a refrigerant is an effective substitute for an ozone-depleting refrigerant if that claim is not true. A seller must also disclose any use restrictions and installation requirements that apply to the substitute refrigerant.

Other Rule Changes

This rule also makes several minor changes to current rules. These changes:

- Clarify training requirements for technicians who service mobile air conditioners and trailer refrigeration equipment.
- Eliminate expiration dates for DATCP-approved technician training programs, and clarify DATCP's authority to audit training programs and review training materials for compliance with current rules.
- Clarify recordkeeping requirements for persons buying and selling refrigerant, so that DATCP can track purchases and sales more effectively.
- Exempt, from business registration requirements, persons who are solely engaged in providing DATCP-approved training programs.

Public Hearings

DATCP held five public hearings in Eau Claire (July 12), Madison (July 14), Milwaukee (July 18), Green Bay (July 24) and Wausau (July 26). Hearings included evening sessions to accommodate all interested parties. DATCP also accepted written comments until August 15, 2000. DATCP solicited comments from trade associations including the WI Automobile and Truck Dealers Assn., the WI Automotive Trades Assn., the WI Auto Collision Technicians Assn., Concerned Auto Recyclers (CARS) of Wisconsin, and each of the DATCP-approved technician training program sponsors. DATCP received the following hearing comments:

Testifying in Favor of the Rule

- None.

Registering in Favor of the Proposal

- Mike Borlee, Mike's Service Center, Green Bay WI, representing himself and the Wisconsin Automotive Trades Assn.

Written Comments in Favor of the Proposal

- Richard B. Northrup, Associate Dean, Northeast Wisconsin Technical College, Green Bay, WI.

Testifying in Opposition to the Proposal

- None

Registering in Opposition to the Proposal

- None

Rule Modifications After Public Hearings

In response to written comments from the Northeast Wisconsin Technical College, DATCP modified the final rule to exempt, from business registration requirements, persons who are solely engaged in providing DATCP-approved technician training programs. DATCP also made minor changes in response to comments from the Legislative Council Rules Clearinghouse (see below).

Response to Rules Clearinghouse Comments

In response to comments from the Legislative Council Rules Clearinghouse, DATCP modified the rule's definition of "refrigerant." DATCP believes that the change addresses the Rules Clearinghouse concern. DATCP did not create a "note," as suggested by the Rules Clearinghouse, because the proposed "note" would have included substantive material that must remain in the body of the rule.

The final rule makes other minor changes in response to Rules Clearinghouse comments. These changes have no substantive effect, and relate only to form, style and placement in the Administrative Code.

Fiscal Estimate

This program is funded entirely by fee revenues totaling approximately \$260,000 per year. The program is currently running an annual deficit and, at current expenditure rates, will incur an overall deficit by the 2001 license year. This rule will increase fee revenues by approximately \$112,000 per year. A fiscal estimate is attached.

Honorable Fred A. Risser
Honorable Scott R. Jensen
October 6, 2000
Page 5

Small Business Analysis

DATCP currently licenses approximately 3,100 businesses under the mobile air conditioning program. Many of these businesses "small businesses." This rule will increase annual registration fees from \$80 (current fee) to \$120 (proposed fee). Regulated businesses did not oppose the fee increase, which is needed to finance this program. A small business analysis ("final regulatory flexibility analysis") is attached.

Final Regulatory Flexibility Analysis

Proposed Amendments to Chapter ATCP 136, Wis. Adm. Code

Mobile Air Conditioners; Reclaiming or Recycling Refrigerant.

The proposed changes to Ch. ATCP 136, Wis. Adm. Code, will have a minimal fiscal impact on small businesses.

Businesses Affected

The department currently licenses more than 3,100 businesses that service and repair motor vehicle air conditioners and trailer refrigeration equipment. Most of these businesses are small businesses, as defined in s. 227.114(1)(a), Stats.

Business Registration Fee Increase

The proposed amendments increase the annual registration fee from \$80 to \$120 for each business that repairs or services mobile air conditioners or trailer refrigeration equipment. The division does not expect this \$40 per year registration fee increase to have a significant impact on small business.

Sales of Refrigerants—Record-keeping

The proposed rule requires buyers and sellers of refrigerants to keep sales records that clearly identify the legal name and complete address of the buyer and seller. This is a minor change to the current record-keeping requirements. This change should have no impact on small business.

Substitute Refrigerants

The proposed rule expands the definition of "refrigerants" covered by the rule to include all substitute refrigerants. This change clarifies that the rule applies to ozone-depleting substitute refrigerants, as well as substitutes that are not ozone-depleting. This change should have no impact on small business.

The current rule requires businesses to disclose certain information when they replace the existing refrigerant in a motor vehicle air conditioner or trailer refrigeration equipment with a substitute refrigerant. The proposed rule adds a few more disclosures to those already required and requires the business to comply with EPA installation restrictions. These changes should have minimal impact on small business.

The proposed rule prohibits deceptive advertising and sales claims for substitute refrigerants. A seller may not claim that a refrigerant is an effective substitute for an ozone-depleting refrigerant, if that claim is not true. This change should have no impact on small business.

Flexibility

Small businesses continue to have flexibility under the current rule and the proposed amendments. Auto repair businesses are not required to service or repair mobile air conditioners or trailer refrigeration equipment. In fact, many auto repair businesses do not service air conditioners or refrigeration equipment themselves. Rather, they contract out repairs related to refrigerant recovery, recycling and recharging air conditioners or refer customers to businesses registered to perform these kinds of repairs.

Dated this 22nd day of August, 2000.

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE
TRADE & CONSUMER PROTECTION

By William L. Oemichen
William L. Oemichen, Administrator
Division of Trade & Consumer Protection

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

List both LRB No. and Bill/Adm. Rule No.
Ch. ATCP 136 Revisions
Amendment No. (If Applicable)

Subject
Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs – May be possible to Absorb Within Agency's Budget
 Yes No
 Decrease Costs

Local: No local gov't costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations s. 20.115(1)(hm)

Assumptions Used in Arriving at Fiscal Estimate

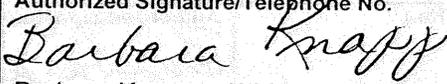
The department regulates the sale and use of refrigerant used in mobile air conditioning and trailer refrigeration systems under s. 100.45, Stats. Businesses which engage in repair and servicing activities are licensed and inspected by the department to ensure that technicians are trained and certified, approved refrigerant recovery and recycling equipment is properly utilized, and other required practices are followed. Both private businesses and public entities engaged in commercial repair and servicing activities are subject to current registration requirements. These include municipal and county fleet maintenance and transit operations, as well as various technical colleges in the state.

Section 100.45(5)(a), Stats., authorizes the department to adopt rules for the administration of these responsibilities, including fees to cover the costs of the program. Revenues generated by the program result from an annual registration fee of \$80, a statutory late payment penalty of \$16 (20% of the annual registration fee), and a statutory registration fee surcharge of \$160 for operating without a valid registration.

The department registers an estimated 3,100 businesses under the mobile air conditioning program. This number fluctuates only slightly in any given year. An average of 120 late payment penalties and 25 registration fee surcharges are also collected each year. Total program revenues under the current fee structure average \$260,000. This compares to annual program expenditures of \$300,000.

Proposed revisions to ch. ATCP 136 will increase the annual business registration fee from \$80 to \$120, and make a number of technical and minor policy changes to current program regulations. Total estimated revenues generated by the proposed fee are estimated at \$372,000. In addition, late payment penalties (which increase to \$24) and registration fee surcharges are projected to generate an additional \$7,400.

Long - Range Fiscal Implications
None projected

Agency/prepared by: (Name & Phone No.) DATCP Tom Stoebig 608-224-4944	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 8-16-00
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FISCAL ESTIMATE WORKSHEET

1999 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

List both Law No. and Bill/Adm. Rule No., Ch. ATCP 136 Revisions

Amendment No.

Subject		
Relating to reclaiming and recycling refrigerant for mobile air conditioners		
I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):		
None		
II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations – Salaries and Fringes	\$ - 0	\$ - 0
(FTE Position Changes)	(-0- FTE)	(-0- FTE)
State Operations – Other Costs	- 0	- 0
Local Assistance	- 0	- 0
Aids to Individuals or Organizations	- 0	- 0
TOTAL State Costs by Category	\$ - 0	\$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ - 0	\$ - 0
FED	- 0	- 0
PRO/PRS	- 0	- 0
SEG/SEG-S	- 0	- 0
III. State Revenues -	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$ - 0	\$ - 0
GPR Earned	- 0	- 0
FED	- 0	- 0
PRO/PRS	120,000	- 0
SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 120,000	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 120,000	\$ 0

Agency Prepared by: (Name & Phone No.) DATCP Tom Stoebig 224-4944	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 8 - 16 - 00
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**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING AND AMENDING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
2 the following order to repeal ATCP 136.01(2), 136.04(1)(c), 136.06, 136.08(4),
3 136.10(3)(b)2., (4)(a)2. and (4)(b), and 136.16(4)(note); to amend ATCP 136.01(19),
4 136.02(4)(d), 136.02(7), 136.08(5), 136.10(3)(a)(intro.) and 1., 136.10(3)(b)(intro.),
5 136.10(4)(a)(intro.) and 1., 136.10(7)(a), 136.10(8)(a), and 136.16(4)(intro.); to repeal and
6 recreate ATCP 136.04(1)(b), 136.08(1), 136.10(2)(intro.), (2)(a) and (3)(a)2., and
7 136.16(4)(a) to (c); and to create ch. ATCP 136(note), 136.02(2)(c) and 136.10(5)(d);
8 relating to reclaiming and recycling refrigerant for mobile air conditioners.

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

Statutory authority: ss. 93.07(1), 100.20(2) and 100.45(5) and (5e), Stats.
Statutes interpreted: ss. 100.20(2) and 100.45, Stats.

The department of agriculture, trade and consumer protection (DATCP) currently regulates businesses that service mobile air conditioners that use ozone-depleting refrigerants. This rule increases annual registration fees for regulated businesses, and makes other changes to DATCP's current rules.

Background

In 1990, the Wisconsin legislature enacted comprehensive legislation regulating the sale, handling and use of ozone-depleting refrigerants. The legislature has adopted several amendments since 1990. The Wisconsin legislation is based, in part, on federal regulations adopted by the U.S. environmental protection agency under title VI of the federal clean air act amendments of 1990.

Among other things, the Wisconsin legislation created s. 100.45, Stats. That statute directs DATCP to adopt rules regulating the servicing of mobile air conditioners and the sale and use of ozone-depleting refrigerants. It also directs DATCP to establish fees for regulated businesses, to cover the cost of the program.

Current Rules

DATCP has adopted rules related to mobile air conditioners. The rules are contained in ch. ATCP 136, Wis. Adm. Code. DATCP adopted the rules in 1991, and revised them in 1996. The current rules:

- Regulate sales of ozone-depleting refrigerants and refrigerant substitutes.
- Regulate the servicing of mobile air conditioners and trailer refrigeration equipment.
- Prohibit the venting of refrigerants.
- Require regulated businesses to register with DATCP. Registered businesses must have approved recovery and recycling equipment. Technicians must be trained, tested and certified under a DATCP-approved training program.
- Require regulated businesses to capture and recycle refrigerants removed from mobile air conditioners and trailer refrigeration equipment. Recycled refrigerants must meet industry-developed purity standards.
- Prohibit regulated businesses from "topping off" leaky mobile air conditioners or trailer refrigeration equipment. Technicians must inspect for leaks, and make proper repairs, before adding refrigerant.
- Prohibit sales of refrigerant in small containers (less than 15 pounds), and restrict sales of other refrigerants to certified technicians and state-licensed businesses.
- Establish annual license fees for regulated businesses.

Rule Changes

Fee Increase

This rule increases the annual registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment. This rule increases the annual fee from \$80 to \$120. DATCP has not adjusted the current fee since 1991 when the program began. A fee increase is needed to maintain the current level of program operations.

DATCP currently registers more than 3,100 businesses under the mobile air conditioner program. A registration year expires annually at the end of February. Program staff inspect an average of 1,400 business each year. They also investigate complaints and take compliance actions, as necessary.

Sales of Recovered Refrigerant

Current rules require on-site recovery, recycling and reuse of refrigerant for motor vehicle air conditioners. This rule relaxes current prohibitions against the sale or transfer of recovered refrigerant, consistent with 1997 Wis. Act 165 and recent changes in federal regulations. This rule permits salvagers and others to sell recovered refrigerant to registered mobile air conditioner repair businesses for recycling and reuse.

This rule removes current references to "used refrigerant brokers," including broker registration requirements. The legislature and DATCP originally anticipated that brokers would purchase used refrigerant from repair businesses, for resale to EPA-approved reclamation facilities. But repair businesses have generally recycled and reused recovered refrigerant, or sold it directly to reclamation facilities. To date, the department has never issued a registration for a "used refrigerant broker." The legislature recently eliminated statutory references to "used refrigerant brokers."

Substitute Refrigerants

Under current law, DATCP may regulate refrigerants used as substitutes for ozone-depleting refrigerants in mobile air conditioners and trailer refrigeration equipment. This rule regulates the use of substitute refrigerants, consistent with federal EPA regulations under 40 CFR 82 Subpart G.

Under this rule, a person installing an EPA-accepted substitute refrigerant must completely remove the original refrigerant, install unique fittings, and meet other retrofitting requirements. These requirements are designed to prevent costly cross-contamination of refrigerant supplies and potential damage to recycling equipment and air conditioners.

This rule prohibits deceptive advertising and sales claims for substitute refrigerants. A seller may not claim that a refrigerant is an effective substitute for an ozone-depleting refrigerant, if that claim is not true. The seller must disclose any use restrictions and installation restrictions that apply.

Other Rule Changes

This rule makes the following minor changes to current rules:

- It clarifies that a person who installs or services mobile air conditioners solely for instructional purposes, as part of a DATCP-approved technician training program, is not required to obtain a business registration certificate.
- It clarifies training requirements for technicians who service mobile air conditioners and trailer refrigeration equipment.
- It eliminates expiration dates for DATCP-approved technician training programs. It also clarifies DATCP's authority to audit training programs and review training materials for compliance with DATCP rules.
- It clarifies recordkeeping requirements for persons buying and selling refrigerant, so that purchases and sales can be tracked more effectively.

1 **SECTION 1.** Ch. ATCP 136 (note) is created to read:

2 *NOTE:* This chapter is adopted under authority of ss. 93.07(1), 100.20(2),
3 and 100.45(5) and (5e), Stats. Violations of this chapter are subject
4 to the penalties and remedies provided under ss. 93.06(7) and (8),
5 100.26(3) or (6), and 100.45(6).

6 **SECTION 2.** ATCP 136.01(2) is repealed.

7 **SECTION 3.** ATCP 136.01(19) is amended to read:

8 ATCP 136.01(19) "Refrigerant" means any substance ~~that is designed or intended to~~
9 ~~be used, or that has been used, sold for use, or designed or intended for use~~ in a mobile air
10 conditioner or trailer refrigeration equipment to transfer heat out of the space being cooled.
11 "Refrigerant" includes a class I substance as defined in 42 USC 7671(3), a class II substance
12 as defined in 42 USC 7671(4), and any substance used, sold for use, or designed or intended
13 for use as a substitute for a refrigerant.

14 **SECTION 4.** ATCP 136.02(2)(c) is created to read:

1 ATCP 136.02(2)(c) A person who engages in activities under sub. (1) solely for
2 instructional purposes as part of an approved training program under s. ATCP 136.08.

3 **SECTION 5.** ATCP 136.02(4)(d) is amended to read:

4 (d) For each business location identified under par. (b), a nonrefundable registration
5 fee of ~~\$80~~ \$120.

6 **SECTION 6.** ATCP 136.02(7) is amended to read:

7 ATCP 136.02(7) RENEWING A REGISTRATION CERTIFICATE. A person holding a
8 business registration certificate may annually renew that certificate by submitting a renewal
9 application on a form provided by the department. The renewal application shall include all
10 of the information required under sub. (4), and shall include a renewal fee of ~~\$80~~ \$120 for
11 each business location.

12 **SECTION 7.** ATCP 136.04(1)(b) is repealed and recreated to read:

13 ATCP 136.04(1)(b) Documentation showing that the technician meets applicable
14 requirements under s. ATCP 136.08(1). If the business operator claims that the technician
15 has successfully completed a required training course, the business operator shall identify
16 the course provider and the date on which the technician successfully completed the course.
17 If the business operator claims that the technician has serviced mobile air conditioners or
18 trailer refrigeration equipment in another state, the business operator shall provide the name
19 and address of the business that employed the technician to perform that work in the other
20 state.

21 **SECTION 8.** ATCP 136.04(1)(c) is repealed.

22 **SECTION 9.** ATCP 136.06 is repealed.

1 **SECTION 10.** ATCP 136.08(1) is repealed and recreated to read:

2 ATCP 136.08(1) TRAINING REQUIRED. A business operator may not register a
3 technician under s. ATCP 136.04 unless the technician has successfully completed a
4 department-approved training program under sub. (2). This training requirement does not
5 apply if the technician meets the following applicable requirements:

6 (a) The technician has done all of the following if the technician will be servicing
7 mobile air conditioners:

8 1. Serviced mobile air conditioners in another state within the previous 5 years.

9 2. Successfully completed a training course approved by the United States
10 environmental protection agency under 40 CFR 82.40.

11 3. Successfully completed an open book examination administered by the
12 department.

13 (b) The technician has done all of the following if the technician will be servicing
14 trailer refrigeration equipment:

15 1. Serviced trailer refrigeration equipment in another state within the previous 5
16 years.

17 2. Successfully completed a training course approved by the United States
18 environmental protection agency under 40 CFR 82.161.

19 3. Successfully completed an open book examination administered by the
20 department.

21 **SECTION 11.** ATCP 136.08(4) is repealed.

22 **SECTION 12.** ATCP 136.08(5) is amended to read:

1 ATCP 136.08(5) DEPARTMENT AUDIT OF TRAINING PROGRAMS. The department may
2 audit a training program and may periodically review training program materials to assess
3 compliance with this chapter, s. 100.45, Stats., and the representations made under sub. (3).

4 **SECTION 13.** ATCP 136.10(2)(intro.) and (a) are repealed and recreated to read:

5 ATCP 136.10(2)(intro.) No person may sell or consign new or reclaimed refrigerant,
6 except to one of the following:

7 (a) A person who sells or resells that refrigerant in its original container, to persons
8 identified under pars. (b) to (d). A sale or consignment does not violate this paragraph if the
9 seller or consignor relies in good faith on a written statement from the buyer or consignee
10 that does all the following:

- 11 1. Contains the legal name and business address of the buyer or consignee.
- 12 2. Guarantees that the buyer or consignee will sell or resell the refrigerant only in its
13 original container.
- 14 3. Guarantees that the buyer or consignee will sell or resell the refrigerant only to
15 persons identified in pars. (b) to (d).

16 **SECTION 14.** ATCP 136.10(3)(a)(intro.) and 1. are amended to read:

17 ATCP 136.10(3)(a)(intro.) No person may sell or consign recovered refrigerant, ~~in~~
18 ~~this state, except to any but one of the following persons:~~

19 (a)1. A person ~~who holds~~ holding a valid business registration certificate under s.
20 ATCP 136.02, ~~and~~ who sells or consigns the recovered refrigerant to the operator of an
21 approved reclamation facility for reclamation at that facility, or who uses approved recycling

1 equipment under s. ATCP 136.12(3) to recycle the refrigerant for reuse in mobile air
2 conditioners.

3 **SECTION 15.** ATCP 136.10(3)(a)2. is repealed and recreated to read:

4 ATCP 136.10(3)(a)2. A person who is registered with the state of Wisconsin,
5 department of commerce under s. Comm 5.70, and who sells or consigns the recovered
6 refrigerant to the operator of an approved reclamation facility for reclamation at that facility.

7 **SECTION 16.** ATCP 136.10(3)(b)(intro.) is amended to read:

8 ATCP 136.10(3)(b)(intro.) ~~No person, other than one of the following,~~ Only the
9 following persons may sell or consign recovered refrigerant to ~~any other~~ a person in this
10 state:

11 **SECTION 17.** ATCP 136.10(3)(b)2. is repealed.

12 **SECTION 18.** ATCP 136.10(4)(a)(intro.) and 1. are amended to read:

13 ATCP 136.10(4)(a)(intro.) No person may sell or consign recycled refrigerant, ~~in~~
14 ~~this state, except to any but~~ one of the following persons:

15 1. A person who holds a valid business registration certificate under s. ATCP
16 136.02, and who sells or consigns the recycled refrigerant to the operator of an approved
17 reclamation facility for reclamation at that facility. ~~A sale or consignment does not violate~~
18 ~~this paragraph if the seller or consignor relies in good faith on a written statement from the~~
19 ~~buyer or consignee which guarantees that the buyer or consignee will sell the refrigerant to~~
20 ~~the operator of an approved reclamation facility for reclamation at that facility.~~

21 **SECTION 19.** ATCP 136.10(4)(a)2. is repealed.

22 **SECTION 20.** ATCP 136.10(4)(b) is repealed.

1 **SECTION 21.** ATCP 136.10(5)(d) is created to read:

2 ATCP 136.10(5)(d) That a substitute refrigerant may be used as a replacement for a
3 class I substance as defined in 42 USC 7671(3), or a class II substance as defined in 42 USC
4 7671(4), unless the person discloses the special repair and service requirements under s.
5 ATCP 136.16(4).

6 **SECTION 22.** ATCP 136.10(7)(a) is amended to read:

7 ATCP 136.10(7)(a) The legal name and complete address of the person from whom
8 that person purchased or received that refrigerant.

9 **SECTION 23.** ATCP 136.10(8)(a) is amended to read:

10 ATCP 136.10(8)(a) The legal name and complete address of the person to whom the
11 refrigerant was sold or consigned.

12 **SECTION 24.** ATCP 136.16(4)(intro.) is amended to read:

13 ATCP 136.16(4)(intro.) **SUBSTITUTING REFRIGERANT.** A person who charges a
14 mobile air conditioner or trailer refrigeration equipment with a type of refrigerant not
15 originally used in that mobile air conditioner or trailer refrigeration equipment shall ~~affix to~~
16 ~~that air conditioner or equipment~~ a prominent label which identifies do all of the following:

17 **SECTION 25.** ATCP 136.16(4)(a) to (c) are repealed and recreated to read:

18 ATCP 136.16(4)(a) Affix to the air conditioner or equipment a prominent label that
19 identifies all the following:

- 20 1. The date on which the air conditioner or equipment was charged with the
21 substitute refrigerant.
- 22 2. The name of the substitute refrigerant.

1 3. The name of the business registered under s. ATCP 136.02, and the technician
2 registered under s. ATCP 136.04, that charged the mobile air conditioner or trailer
3 refrigeration equipment with the substitute refrigerant.

4 (b) Install service fittings that are specifically designed by the refrigerant
5 manufacturer to mechanically prevent the refrigerant from cross-charging with another
6 refrigerant. The fittings shall be installed on all refrigerant containers, charging and recovery
7 equipment, and on all mobile air conditioner service ports.

8 (c) Comply with other applicable regulations of the United States environmental
9 protection agency under s. 40 CFR Part 82 Subpart G.

10 **SECTION 26.** ATCP 136.16(4)(note) is repealed.

11 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first
12 day of the month following publication in the Wisconsin administrative register, as provided
13 in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Memorandum

DATE: June 9, 2000

TO: Gary Poulson, Deputy Revisor of Statutes
Richard Chandler, State Budget Director, DOA

FROM: Carolyn Gallagher, Office of Legal Counsel *COG*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: NOTICE OF HEARING - Chapter ATCP 136 Wisconsin Administrative Code
Relating to the Ozone-Depleting Refrigerants in Mobile Air Conditioners

Attached is a Notice of Hearing for the above proposed rule, for printing in the next two issues of the Wisconsin Administrative Register.

Please initial and return the attached copy of this memo for my files.

Thank you.

COG

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARINGS

RULES RELATING TO RECLAIMING AND RECYCLING REFRIGERANT FOR
MOBILE AIR CONDITIONERS

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on proposed rule changes to Chapter ATCP 136, Wis. Adm. Code. The hearings will be held at the times and places shown below. The public is invited to attend and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until **August 15, 2000** for submittal of additional written comments. Please submit written comments to the attention of Eileen Pierce, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911.

A copy of the proposed rule may be obtained free of charge from DATCP, Division of Trade and Consumer Protection, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708 or by calling 608-224-4944. Copies will also be available at the public hearing.

Handicap access is available at all hearing locations. An interpreter for the hearing impaired will be available on request for the hearing. Please make reservations for a hearing interpreter at least ten days prior to the hearing date by writing Holly Heggestad, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708 or by contacting the message relay system (TDD) at 608-224-5058.

Hearing Information:

• **Eau Claire area**

July 12, 2000, 1:00 – 3:00 p.m. and 6:00 – 8:00 p.m.
DATCP Regional Office, 1st Floor Conference Room
3610 Oakwood Hills Parkway
Eau Claire, Wisconsin

• **Madison area**

July 14, 2000, 10:00 a.m. – 12:00 p.m. and 2:00 – 4:30 p.m.
Prairie Oak State Office Building, DATCP Board Room
2811 Agriculture Drive
Madison, Wisconsin

- **Milwaukee area**

July 18, 2000, 10:00 a.m. – 12:00 p.m. and 2:00 – 4:30 p.m.
Milwaukee Regional DATCP Office, 1st Floor Conference Room
10930 W. Potter Road, Suite C
Milwaukee, Wisconsin

- **Green Bay area**

July 24, 2000, 1:00 – 3:00 p.m. and 6:00 – 8:00 p.m.
Northeast Wisconsin Technical College, Room 6201
2740 West Mason Street
Green Bay, Wisconsin

- **Wausau area**

July 26, 2000, 1:00 – 3:00 p.m. and 6:00 – 8:00 p.m.
Marathon Public Library, Wausau Room (3rd Floor)
300 First Street
Wausau, Wisconsin

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

Statutory Authority: ss. 93.07(1), 100.20(2) and 100.45(5) and (5e), Stats.
Statutes Intepreted: ss. 100.20(2) and 100.45, Stats.

Background: Current Rules

In 1990, the Wisconsin legislature enacted comprehensive legislation regulating the sale, handling and use of ozone-depleting refrigerants. The legislature has adopted several amendments since 1990. Current law is based, in part, on federal regulations adopted by the U.S. environmental protection agency under Title VI of the federal clean air act amendments of 1990. Among other things, this legislation created s. 100.45, Stats., which directs DATCP to adopt rules regulating the servicing of mobile air conditioners and the sale and use of ozone-depleting refrigerants. Current law also directs DATCP to establish fees for regulated businesses to cover the cost of the program.

DATCP adopted rules related to mobile air conditioners in 1991 as ch. ATCP 136, Wis. Adm. Code. The rules were most recently revised in 1996. The current rules:

- Regulate sales of ozone-depleting refrigerants and refrigerant substitutes, and the servicing of mobile air conditioners and trailer refrigeration equipment

- Require regulated businesses to register with DATCP. Registered businesses must have approved recovery and recycling equipment. Technicians employed by the business must also be trained, tested and certified under a DATCP-approved training program.
- Require regulated businesses to recover, recycle or reclaim refrigerants used in mobile air conditioners and trailer refrigeration equipment. Recycled refrigerants must meet industry-developed purity standards.
- Prohibit venting of refrigerants and “topping off” of leaky mobile air conditioners or trailer refrigeration equipment. Technicians must inspect for leaks, and make proper repairs, before adding refrigerant.
- Prohibit sales of refrigerant in small containers (less than 15 pounds), and restrict other refrigerant sales to certified technicians and state-licensed businesses.
- Establish annual license fees for regulated businesses.

Proposed Rule Changes

This rule increases the annual registration fee for businesses engaged in repairing and servicing mobile air conditioners and trailer refrigeration equipment. This rule increases the annual fee from \$80 to \$120. DATCP has not adjusted the fee since start-up of the program in 1991. A fee increase is needed to maintain the current level of program operations.

Current rules require on-site recovery, recycling and reuse of refrigerant for motor vehicle air conditioning systems. This rule relaxes current prohibitions against the sale or transfer of recovered refrigerant, consistent with 1997 Wis. Act 165 and recent changes in federal regulations, by permitting auto salvagers and others to sell recovered refrigerant to DATCP-registered repair businesses for recycling and reuse.

This rule removes current obsolete references to “used refrigerant broker”, including broker registration requirements.

Under current law, DATCP may regulate refrigerants used as substitutes for ozone-depleting refrigerants in mobile air conditioners and trailer refrigeration equipment. This rule more closely regulates the use of substitute refrigerants, consistent with federal EPA regulations under 40 CFR Part 82, Subpart G. The proposed changes require a person installing an EPA-accepted substitute refrigerant to completely remove the original refrigerant, install unique fittings, and meet other retrofitting requirements. These requirements are designed to prevent costly cross-contamination of refrigerant supplies and potential damage to recycling equipment and mobile air conditioning systems.

This rule prohibits deceptive advertising and sales claims for substitute refrigerants and requires sellers to disclose all use restrictions and installation requirements associated with the product.

This rule also makes the following minor changes to ch. ATCP 136, Wis. Adm. Code, by (1) clarifying training requirements for new resident technicians who were previously certified under a federal technician training program, (2) eliminating expiration dates for DATCP-approved technician training programs and clarifying DATCP's authority to audit training programs and review training materials for compliance with DATCP rules, and (3) clarifying recordkeeping requirements for persons buying and selling refrigerant to more effectively track purchases and sales.

Fiscal Estimate

The department regulates the sale and use of refrigerant used in mobile air conditioning and trailer refrigeration systems under s. 100.45, Stats. Operations which engage in repair and servicing activities are licensed and inspected by the department to ensure that technicians are trained and certified, approved refrigerant recovery and recycling equipment is properly utilized, and other required practices are followed. Both private businesses and public entities engaged in commercial repair and servicing activities are subject to current registration requirements. These include a handful of municipal and county fleet maintenance and transit operations, as well as various technical colleges in the state.

Section 100.45(5)(a), Stats., authorizes the department to adopt rules for the administration of these responsibilities, including fees to cover the costs of the program. Revenues generated by the program result from an annual business registration fee of \$80, a statutory late payment penalty of \$16 (20% of the annual registration fee), and a statutory registration fee surcharge of \$160 for operating without a valid registration.

The department registers an estimated 3,100 businesses under the mobile air conditioning program. This number fluctuates only slightly in any given year. An average of 120 late payment penalties and 25 registration fee surcharges are also collected each year. Program revenues under the current fee structure totalled \$260,000 during the 1999 licensing year. This compares to annual program expenditures of \$300,000.

Proposed revisions to ch. ATCP 136, Wis. Adm. Code, will increase the annual business registration fee from \$80 to \$120. Total revenues generated by the proposed fee increase are estimated at \$372,000. In addition, late payment penalties (which increase to \$24) and registration fee surcharges (which remain unchanged) are projected to generate an additional \$7,400. New revenue resulting from the fee increase is estimated at \$120,000.

Initial Regulatory Flexibility Analysis

Most of the businesses licensed by the department to service and repair motor vehicle air conditioners and trailer refrigeration equipment are small businesses, as defined in s. 227.114(1)(a). The proposed changes to ch. ATCP 136, Wis. Adm. Code, will have minimal fiscal and administrative impact on these businesses.

Initial Regulatory Flexibility Analysis

Proposed Amendments to Chapter ATPC 136, Wis. Adm. Code

Mobile Air Conditioners; Reclaiming or Recycling Refrigerant.

The proposed changes to ATPC 136, Wis. Adm. Code, will have a minimal fiscal impact on small businesses.

Businesses Affected

The department currently licenses more than 3,100 businesses that service and repair motor vehicle air conditioners and trailer refrigeration equipment. Most of these businesses are small businesses, as defined in s. 227.114(1)(a), Stats.

Business Registration Fee Increase

The proposed amendments increase the annual registration fee from \$80 to \$120 for each business that repairs or services mobile air conditioners or trailer refrigeration equipment. The division does not expect this \$40 per year registration fee increase to have a significant impact on small business.

Sales of Refrigerants—Record-keeping

The proposed rule requires buyers and sellers of refrigerants to keep sales records that clearly identify the legal name and complete address of the buyer and seller. This is a minor change to the current record-keeping requirements. This change should have no impact on small business.

Substitute Refrigerants

The proposed rule expands the definition of "refrigerants" covered by the rule to include all substitute refrigerants. This change clarifies that the rule applies to ozone-depleting substitute refrigerants, as well as substitutes that are not ozone-depleting. This change should have no impact on small business.

The current rule requires businesses to disclose certain information when they replace the existing refrigerant in a motor vehicle air conditioner or trailer refrigeration equipment with a substitute refrigerant. The proposed rule adds a few more disclosures to those already required and requires the business to comply with EPA installation restrictions. These changes should have minimal impact on small business.

The proposed rule prohibits deceptive advertising and sales claims for substitute refrigerants. A seller may not claim that a refrigerant is an effective substitute for an ozone-depleting refrigerant, if that claim is not true. This change should have no impact on small business.

Flexibility

Small businesses continue to have flexibility under the current rule and the proposed amendments. Auto repair businesses are not required to service or repair mobile air conditioners or trailer refrigeration equipment. In fact, many auto repair businesses do not service air conditioners or refrigeration equipment themselves. Rather, they contract out repairs related to refrigerant recovery, recycling and recharging air conditioners or refer customers to businesses registered to perform these kinds of repairs.

Dated this 8 day of June, 2000.

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE
TRADE & CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

List both LRB No. and
 Bill/Adm. Rule No.
 Ch. ATCP 136 Revisions
 Amendment No. (If Applicable)

Subject

Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs – May be possible to Absorb Within Agency's Budget
 Yes No

Decrease Costs

Local: No local gov't costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
 s. 20.115(1)(hm)

Assumptions Used in Arriving at Fiscal Estimate

The department regulates the sale and use of refrigerant used in mobile air conditioning and trailer refrigeration systems under s. 100.45, Stats. Operations which engage in repair and servicing activities are licensed and inspected by the department to ensure that technicians are trained and certified, approved refrigerant recovery and recycling equipment is properly utilized, and other required practices are followed. Both private businesses and public entities engaged in commercial repair and servicing activities are subject to current registration requirements. These include a handful of municipal and county fleet maintenance and transit operations, as well as various technical colleges in the state.

Section 100.45(5)(a), Stats., authorizes the department to adopt rules for the administration of these responsibilities, including fees to cover the costs of the program. Revenues generated by the program result from an annual registration fee of \$80, a statutory late payment penalty of \$16 (20% of the annual registration fee), and a statutory registration fee surcharge of \$160 for operating without a valid registration.

The department registers an estimated 3,100 businesses under the mobile air conditioning program. This number fluctuates only slightly in any given year. An average of 120 late payment penalties and 25 registration fee surcharges are also collected each year. Program revenues under the current fee structure totalled \$260,000 during the 1999 licensing year. This compares to annual program expenditures of \$300,000.

Proposed revisions to ch. ATCP 136 will increase the annual business registration fee from \$80 to \$120, and make a number of technical and minor policy changes to current program regulations. Total revenues generated by the proposed fee increase are estimated at \$372,000. In addition, late payment penalties (which increases to \$24) and registration fee surcharges (which remain unchanged) are projected to generate an additional \$7,400. Thus, the proposal will produce about \$120,000 in new revenue.

Long - Range Fiscal Implications

None projected

Agency/prepared by: (Name & Phone No.)

DATCP
 Tom Stoebig 608-224-4944

Authorized Signature/Telephone No.

Barbara Knapp
 Barbara Knapp (608) 224-4746

Date

5-10-00

FISCAL ESTIMATE WORKSHEET

1999 SESSION

Detailed Estimate of Annual Fiscal Effect
 DOA-2047 (R10/94) ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

List both LRB No. and Bill/Adm.Rule No, Ch. ATCP 136 Revisions	Amendment No.
----------------------------------------------------------------	---------------

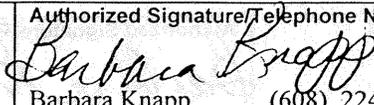
Subject
 Relating to mobile air conditioners: reclaiming or recycling refrigerant

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None

II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ - 0	\$ - 0
(FTE Position Changes)	(-0- FTE)	(-0- FTE)
State Operations - Other Costs	- 0	- 0
Local Assistance	- 0	- 0
Aids to Individuals or Organizations	- 0	- 0
TOTAL State Costs by Category	\$ - 0	\$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ - 0	\$ - 0
FED	- 0	- 0
PRO/PRS	- 0	- 0
SEG/SEG-S	- 0	- 0
III. State Revenues -	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$ - 0	\$ - 0
GPR Earned	- 0	- 0
FED	- 0	- 0
PRO/PRS	120,000	- 0
SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 120,000	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 120,000	\$ 0

Agency Prepared by: (Name & Phone No.) DATCP Tom Stoebig 224-4944	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 5-10-00
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