

Report From Agency

DATCP Docket No. 13-R-11
Rules Clearinghouse No. 13-107

Proposed Final Draft Rule
January 29, 2014

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

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to repeal* ATCP 136.02 (4) (d), ATCP 136.10 (2) (c), (3) (a) 2., and (3) (b) 4., *to amend* ATCP 136.02 (4) (g) (Note), (5), (7), (8) (a), ATCP 136.08 (1) and (7) (Note), ATCP 136.12 (1) (b) (Note) and (2) (Note); *relating to* mobile air conditioners, reclaiming or recycling refrigerant.

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

This rule makes changes to an existing rule, ATCP 136, Mobile Air Conditioners; Recycling and Reclaiming of Refrigerants, administered by the department of Agriculture, Trade and Consumer Protection (“DATCP”). The existing rule contains environmental protections related to allowable refrigerants and their handling and disposal and registration and training requirements for business operators and technicians. This rule will eliminate the \$120 annual registration fee for operators of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist.

Statutes Interpreted

Statutes Interpreted: s. 100.45, Wis. Stats.

Statutory Authority

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

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction.

DATCP has broad authority under s. 100.20 (2), Stats., to write general orders to forbid methods of competition in business or trade practices in business which are determined by the department to be unfair or to prescribe methods of competition in business or trade practices in business which are determined by the department to be fair.

DATCP has specific authority under s. 100.45 (5) (a), Stats., to promulgate rules establishing standards for recycled refrigerant based on recognized national industry standards and qualifications for individuals and businesses that service mobile air conditioners.

DATCP has specific authority under s. 100.45 (5e), Stats., to promulgate rules providing that any portion of s. 100.45 (3) or (4) applies with respect to a substance used as a substitute for an ozone-depleting refrigerant. However, the department may not promulgate rules prohibiting the sale or offering for sale of any substance used as a substitute for an ozone-depleting refrigerant in a container holding less than 15 pounds of the substance or regulating an individual's noncommercial use of such a substance that is sold in such a container.

Related Statutes and Rules

This proposed rule modifies an existing rule chapter, Chapter ATCP 136, which regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to s. 100.45, Stats., Mobile Air Conditioners.

Plain Language Analysis

Background

The existing ATCP 136 establishes requirements for buying, selling, reclaiming and recycling ozone depleting refrigerants. The requirements are consistent with those under federal law. The rule also requires businesses that install, repair or service mobile air conditioners to pay an annual registration fee and obtain an annual registration certificate from the department. The rule requires businesses to register their mobile air service technicians and technicians to successfully complete a department approved training course or satisfy other training requirements.

Prior to 2011, Wisconsin was the only state where the sale of the small cans of substitute, non-ozone depleting refrigerant was prohibited. In 2011, the Legislature modified s. 100.45, Stats., to allow the sale of these products. One result of the law change was that the Wisconsin specific training became redundant with the EPA required training. Mobile air conditioner repair businesses also report they have lost business to do it yourselfers who can now purchase supplies to make the repairs themselves.

Rule Content

This rule does all of the following:

- Eliminates the mobile air conditioner repair business \$120 annual registration fee. Surcharge fees are maintained.
- Modifies mobile air conditioner repair technician training requirements.
- Removes references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements.

DATCP proposes to eliminate the \$120 annual registration fee and streamline the training requirements currently required under this rule. These modifications will harmonize DATCP's rule with federal law and reduce overall regulatory burdens. The proposed rule also removes references to obsolete DSPS licensing requirements and makes other minor modifications needed to ensure uniformity between the statute and rule. Surcharge fees for operating without a registration are required under s. 100.45 (5m), Stats., and are not affected by this rule change.

Summary of, and comparison with, existing or proposed federal statutes and regulations.

At the federal level, the Environmental Protection Agency (EPA) requires technicians to be trained and certified by an EPA approved organization. The training must cover specific content areas, and technicians must pass a test demonstrating competency to be certified. Under the existing rule, the EPA approved course does not automatically meet the DATCP training standards. Therefore, a technician seeking certification in Wisconsin who has already successfully completed the EPA approved course must also (in most circumstances) complete a DATCP approved course. Under the proposed rule, a technician who completes the EPA approved course would meet the DATCP training requirements.

This rule is consistent with federal laws related to buying, selling, reclaiming, and recycling ozone-depleting refrigerants.

Comparison with rules in adjacent states

The EPA administers the mobile air conditioner regulations used in adjacent states. Wisconsin has adopted EPA's regulations into state law to improve the ability to enforce the regulations. The existing ATCP 136 exceeds the EPA training requirements. The proposed rule brings Wisconsin's training requirements into conformity with the EPA training regulations used in neighboring states.

Summary of Factual Data and Analytical Methodologies

This rule does not depend on a complex analysis of data. The 2011 Legislative change to the statute prompted the change to this rule. This rule harmonizes Wisconsin's training requirements with federal law and improves consistency with surrounding states. The department has determined it has adequate revenues to administer the program with the fee reduction.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The DATCP Weights and Measures Bureau administers Wisconsin's mobile air conditioning registration program. In 2013, 3500 operators of mobile air conditioning repair businesses

registered with DATCP. At a cost of \$120 per registration, the cumulative cost for these businesses to register with the state was \$420,000. In addition, the DATCP collected another \$7000 in statutorily required surcharge fees on late registrations. These businesses also registered and submitted Wisconsin required training credentials for 11,000 mobile air conditioning repair technicians.

Effect on Small Business

This proposed rule eliminates registration fees and modifies training requirements. Businesses will benefit from the reduction in fee and training expenses. The rule would save approximately 3,500 businesses a \$120 annual registration fee for a total savings of about \$420,000 each year. In addition, the 11,000 technicians who register annually with the department would be able to use their EPA approved training course to meet Wisconsin's training requirements. This cost savings is indeterminate, but would save technicians and businesses both training registration fees and time away from their jobs. This rule will not have a negative effect on small business.

Environmental Impact

The proposed rule changes do not have an environmental impact.

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SECTION 1. ATCP 136.02 (4) (d) is repealed.

SECTION 2. ATCP 136.02 (4) (g) (Note) is amended to read:

Note: You may obtain an application form by writing to OZONE, ~~Consumer Protection Bureau,~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

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

ATCP 136.02 (5) SURCHARGE FOR OPERATING WITHOUT A REGISTRATION CERTIFICATE. An applicant for a business registration certificate shall pay a ~~registration~~ surcharge fee ~~surcharge~~ if the department determines that, within one year before submitting the application, the applicant

operated in violation of sub. (1). The applicant shall pay a surcharge of \$160 for each location at which the applicant operated in violation of sub. (1), regardless of whether the applicant still operates at that location.

SECTION 4. ATCP 136.02 (7) is amended to read:

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

SECTION 5. ATCP 136.02 (8) (a) is amended to read:

ATCP 136.02 (8) (a) Failing to pay a ~~registration~~ surcharge fee, or paying with a worthless check.

SECTION 6. ATCP 136.08 (1) is amended to read:

ATCP 136.08 (1) TRAINING REQUIRED. A business operator may not register a technician under s. ATCP 136.04 unless the technician has successfully completed a department approved training program under sub. (2) or a training program approved by the federal environmental protection agency under 40 CFR 82.40 or 40 CFR 82.161. ~~This training requirement does not apply if the technician meets the following applicable requirements:~~

~~(a) The technician has done all of the following if the technician will be servicing mobile air conditioners.~~

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

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

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

SECTION 7. ATCP 136.08 (7) (Note) is amended to read:

Note: You may obtain a list of approved training programs by writing to OZONE, ~~Consumer Protection Bureau,~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

SECTION 8. ATCP 136.10 (2) (c) is repealed.

SECTION 9. ATCP 136.10 (3) (a) 2. is repealed.

SECTION 10. ATCP 136.10 (3) (b) 4. is repealed.

SECTION 11. ATCP 136.12 (1) (b) (Note) is amended to read:

Note: You may obtain a list of approved recovery and recycling equipment by writing to OZONE, ~~Consumer Protection Bureau~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

SECTION 12. ATCP 136.12 (2) (Note) is amended to read:

Note: You may obtain a list of approved independent testing organizations by writing to OZONE, ~~Consumer Protection Bureau~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

SECTION 13. EFFECTIVE DATE: This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2014.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary