

Report From Agency

DATCP Docket No. 14-R-07
Rules Clearinghouse No. 05-015

Final Draft Rule
June, 2015

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 136.01 (3) and (4), ATCP 136.02, ATCP 136.04, ATCP 136.10 (2) (c) and (d), and ATCP 136.10 (3) (a) 2. and (b) 4.; *to amend* ATCP 136.01 (1) (Note), ATCP 136.01 (21), ATCP 136.10 (2) (a) (intro), and 3., and (b), (3) (a) 1. and (4) (a) 1., ATCP 136.12 (1) (b) (Note) and (2) (Note), ATCP 136.12 (3) (a) to (d), ATCP 136.14 (1) (a) and (b), ATCP 136.16 (4) (a) 3. and (5) (intro.), and ATCP 136.20 (5); *to repeal and recreate* ATCP 136.08 and ATCP 136.10 (3) (b) 1.; *relating to* mobile air conditioners, reclaiming or recycling refrigerant, and effecting small business.

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 Wisconsin 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 business registration requirement and associated 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of mobile air conditioning businesses, harmonize training requirements with EPA to eliminate duplication, and remove outdated references to statutes that no longer exist. These changes will harmonize the rule with statutory changes made in 2013 Act 312. This rule makes other modifications needed to ensure uniformity between the statute and rule.

Statutes Interpreted

Statutes Interpreted: s. 100.45, Stats.

Statutory Authority

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

Explanation of Statutory Authority

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

DATCP has specific authority under s. 100.45 (5) (a), Stats., to promulgate rules for the administration of this section, including establishing standards for recycled refrigerant based on recognized national industry standards.

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.

Related Statutes and Rules

This proposed rule modifies an existing rule chapter, chapter ATCP 136, Wisconsin Administrative Rules, which regulates the repair or service of motor vehicle air conditioners and trailer refrigeration equipment. This rule relates to Wis. Stat. s. 100.45 Mobile air conditioners.

Plain Language Analysis

Background

The existing chapter ATCP 136, Wisconsin Administrative Rules, 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 DATCP. 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.

2013 Act 312 eliminated DATCP's authority to register businesses that install, repair or service mobile air conditioners. Act 312 also repealed DATCP's authority to establish training requirements for technicians performing those services in Wisconsin.

Rule Content

This rule does all of the following:

- Updates the rule to harmonize with statutory changes made in 2013 Act 312.
- Updates standards for recovery and recycling equipment, and recycled refrigerant to the most recent standards established by the Society of Automotive Engineers ("SAE").

- Eliminates the mobile air conditioner repair business registration and associated fees.
- Modifies mobile air conditioner repair technician training requirements to refer to federal training requirements established by the Environmental Protection Agency (“EPA”).
- Removes references to obsolete Wisconsin Department of Safety and Professional Services (“DSPA”) licensing requirements.

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

At the federal level, the 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 proposed rule, a technician who completes the EPA-approved course would be qualified to install, repair or service mobile air conditioners in Wisconsin.

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 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 2013 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.

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

The DATCP Bureau of Weights and Measures 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 DATCP 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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Where Comments May Be Submitted

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SECTION 1. ATCP 136.01 (1) (Note) is amended to read:

ATCP 136.01 (1) Note: You may obtain a list of approved reclamation facilities by writing to ~~OZONE, Consumer Protection~~ Weights and Measures Bureau, P.O. Box 8911, Madison, WI 53708-8911.

SECTION 2. ATCP 136.01 (3) and (4) are repealed.

SECTION 3. ATCP 136.01 (21) is amended to read:

ATCP 136.01 (21) “Technician” means an individual who ~~personally performs any of the activities identified under s. ATCP 136.02 (1)~~ is properly trained and certified in appropriate programs, as specified by the federal environmental protection agency under 42 USC 7671h.

SECTION 4. ATCP 136.02 is repealed.

SECTION 5. ATCP 136.04 is repealed.

SECTION 6. ATCP 136.08 is repealed and recreated to read:

ATCP 136.08 No person may perform motor vehicle repair that releases or may release refrigerant from a mobile air conditioner or trailer refrigeration equipment or may install or service a mobile air conditioner or trailer refrigeration equipment that contains refrigerant unless that person is properly trained and certified in appropriate programs, as specified by the federal environmental protection agency under 42 USC 7671h.

Note: A list of currently authorized Mobile Air Conditioning Technician Training and Certification programs can be found here:

<http://www.epa.gov/ozone/title6/608/technicians/608certs.html> and here:

<http://www.epa.gov/ozone/title6/609/technicians/609certs.html>.

SECTION 7. ATCP 136.10 (2) (a) (intro.) and 3. are amended to read:

ATCP 136.10 (a) (intro.) A person who sells or resells that refrigerant in its original container, to persons identified under ~~pars. par. (b) to (d)~~. A sale or consignment does not violate this paragraph if the seller or con-signor relies in good faith on a written statement from the buyer or consignee that does all the following:

3. Guarantees that the buyer or consignee will sell or resell the refrigerant only to persons identified in ~~pars. par. (b) to (d)~~.

SECTION 8. ATCP 136.10 (2) (b) is amended to read:

~~ATCP 136.10 (2) (b) A person holding a valid business registration certificate under s. ATCP 136.02 technician.~~

SECTION 9. ATCP 136.10 (2) (c) and (d) are repealed.

SECTION 10. ATCP 136.10 (3) (a) 1. is amended to read:

~~ATCP 136.10 (3) (a) 1. A person holding a valid business registration certificate under s. ATCP 136.02 technician~~ who sells or consigns the recovered refrigerant to the operator of an approved reclamation facility for reclamation at that facility, or who uses approved recycling equipment under s. ATCP 136.12 (3) to recycle the refrigerant for reuse in mobile air conditioners.

SECTION 11. ATCP 136.10 (3) (a) 2. is repealed.

SECTION 12. ATCP 136.10 (3) (b) 1. is repealed and recreated to read:

ATCP 136.10 (3) (b) 1. A technician.

SECTION 13. ATCP 136.10 (3) (b) 4. is repealed.

SECTION 14. ATCP 136.10 (4) (a) 1. is amended to read:

~~ATCP 136.10 (4) (a) 1. A person who holds a valid business registration certificate under s. ATCP 136.02 and technician~~ who sells or consigns the recycled refrigerant to the operator of an approved reclamation facility for reclamation at that facility.

SECTION 15. ATCP 136.12 (1) (b) (Note) and (2) (Note) are amended to read:

ATCP (1) (b) (Note) 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.

(2) (Note) **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 16. ATCP 136.12 (3) (a) to (d) are amended to read:

ATCP 136.12 (3) (a) Equipment used to recover but not recycle R-12 refrigerant shall meet or exceed standards specified by the society of automotive engineers in “CFC-12 Extraction Equipment for Mobile Automotive Air-Conditioning Equipment,” SAE J2209, ~~June 1992~~ August 2011, including the secondary standards incorporated by reference in SAE J2209.

(b) Equipment used to recover but not recycle R134a refrigerant shall meet or exceed the standards specified by the society of automotive engineers in “HFC-134a (R134a) Extraction Equipment for Mobile Automotive Air Conditioning Systems,” SAE J1732, ~~December, 1994~~ November 2011, including the secondary standards incorporated by reference in SAE J1732.

(c) Equipment used to recycle R-12 refrigerant shall meet or exceed the standards specified by the society of automotive engineers in “Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems,” SAE J1990, ~~March 1992~~ May 2011, including the secondary standards incorporated by reference in SAE J1990.

(d) Equipment manufactured prior to January 1, 2008 used to recycle R-134a refrigerant shall meet or exceed the standards specified by the society of automotive engineers in “HFC-R134a Recycling Equipment for Mobile Air Conditioning Systems,” SAE J2210, ~~December 1994~~ November 2010, including the secondary standards incorporated by reference in SAE J2210. Equipment manufactured on or after January 1, 2008 shall meet or exceed the standards specified in SAE J2788, ~~December 2006~~ January 2013.

SECTION 17. ATCP 136.14 (1) (a) and (b) are amended to read:

ATCP (1) (a) R-12 refrigerant shall meet or exceed the standards specified by the society of automotive engineers in “Standard of Purity for Use in Mobile Air Conditioning Systems,” SAE J1991, ~~October 1989~~ August 2011.

(b) R-134a refrigerant shall meet or exceed the standards specified by the society of automotive engineers in "Standard of Purity for Recycled HFC134a For Use in Mobile Air Conditioning Systems," SAE J2099, ~~December, 1991~~ April 2012.

SECTION 18. ATCP 136.16 (4) (a) 3. and (5) (intro.) are amended to read:

ATCP 136.16 (4) (a) 3. The name of the ~~business registered under s. ATCP 136.02, and the technician registered under s. ATCP 136.04, that~~ technician who charged the mobile air conditioner or trailer refrigeration equipment with the substitute refrigerant.

(5) (intro.) **REPAIR OR SERVICE RECORDS.** A ~~person required to hold a business registration certificate under s. ATCP 136.02~~ technician shall keep a record of each repair or service transaction ~~under s. ATCP 136.02 (1).~~ The record shall include the name and address of the owner of the mobile air conditioner or trailer refrigeration equipment. The record shall indicate all of the following:

SECTION 19. ATCP 136.20 (5) is amended to read:

ATCP 136.20 (5) Employ any person, other than a technician ~~registered under s. ATCP 136.04,~~ to remove refrigerant from a mobile air conditioner or trailer refrigeration equipment.

SECTION 20. 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 _____, 2015.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary