State of Wisconsin
Governor Scott Walker

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

DATE: December 4, 2012

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Sandy Chalmers, Administrator, Division of Trade and Consumer Protection

SUBJECT: **Reclaiming or Recycling Refrigerant from Mobile Air Conditioners, and Various Minor and Technical Rule Chapters; Amending chs. ATCP 136, 90, 91, 92, and 113; Scope Statement**

TO BE PRESENTED BY: Kevin LeRoy

REQUESTED ACTION:

At the December 18, 2012 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for amendments chs. ATCP 136, 90, 91, 92 and 113 related to reclaiming or recycling refrigerant from mobile air conditioners, and various minor and technical rule chapters.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for permanent rule changes on November 8, 2012, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the November 15, 2012, issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved

by the DATCP Board, approved by the Governor, reviewed by the Legislature, and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 136, Ch. ATCP 90, Ch. ATCP 91, Ch. ATCP 92, and Ch. ATCP 113, Wis. Adm. Code (Existing)

Relating to: Reclaiming or recycling refrigerant from mobile air conditioners, and various minor and technical rule changes.

1. Description of the objective of the rule:

Chapter ATCP 136 prohibits the sale or purchase of refrigerants in containers holding less than 15 pounds of refrigerant. This prohibition is sometimes informally referred to as "the small can ban." Since the passage of 2011 Wisconsin Act 187, however, this rule is now in direct conflict with s. 100.45 (5e) (b), Stats. DATCP intends to amend ch. ATCP 136 to resolve this conflict.

Chapter ATCP 136 also requires persons who recover or recycle refrigerant or any substance used as a substitute for a refrigerant to use equipment that meets industry standards referenced in the rule. On March 29, 2011, the United States Environmental Protection Agency ("EPA") updated the Federal Register (77 FR 47768) to include HFO-1234yf as an acceptable substitute for ozone-depleting refrigerants. DATCP intends to amend the rule to reference the industry standards for equipment used to recover or recycle HFO-1234yf.

DATCP regulates sales of a number of products through its Weights & Measures program in the following existing Administrative Rule Chapters: ATCP 90 – Fair Packaging and Labeling; ATCP 91 – Selling Commodities by Weight, Measure or Count; and ATCP 92 - Weights and Measures. In addition, existing ch. ATCP 113 prohibits sellers of gasoline from misrepresenting the octane rating or other qualities of the gasoline.

DATCP proposes to make minor, technical changes to these rules to keep them current and consistent with statutory language and standards from organizations such as the National Institute of Standards and Technology (NIST) and the Society of Automotive Engineers (SAE).

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. Chapter ATCP 136 interprets and implements s. 100.45, Stats. Together, the statute and rule regulate mobile air conditioners. The legislature originally enacted the statute in 1989 and the department promulgated ch. ATCP 136 in 1990.

Section 100.45, Stats., prohibits the sale of mobile air conditioners that contain ozone-depleting refrigerants (defined by reference to EPA rules), prohibits the sale of ozone-depleting refrigerants in containers of less than 15 pounds, and regulates servicing of mobile air

conditioners and trailer refrigeration equipment. Section 100.45, Stats., requires DATCP to promulgate rules administering the statute, identify approved recovery and recycling equipment, and issue registration certificates to mobile air conditioner and trailer refrigeration technicians.

Chapter ATCP 136 specifies registration requirements for businesses that install or service mobile air conditioners or trailer refrigeration equipment, registration requirements for technicians, minimum training requirements for registered technicians, regulations relating to equipment and practices for the recovery and recycling of used refrigerants.

The regulations related to recycling of used refrigerants prohibit a person from recovering or recycling a refrigerant unless that person uses equipment that meets certified standards identified in the rule. The EPA, as part of its Significant New Alternatives Policy Program under section 612 of the Clean Air Act Amendments, evaluates alternatives to ozone-depleting substances and regularly updates lists of acceptable and non-acceptable substances in the Federal Register. On March 29, 2011, the EPA added HFO-1234yf to its list of acceptable alternatives to ozone-depleting refrigerants under 77 FR 47768. Subsequently, the Society of Automotive Engineers has published standards for equipment that may be used for removing and recycling HFO-1234yf.

Chapter ATCP 90 regulates fair packaging and labeling for a variety of products. It conforms to the federal standards adopted under the Fair Packaging and Labeling Act and the Nutrition Labeling and Education Act.

Chapter ATCP 91 regulates the selling of commodities by weight, measure or count. Generally, it requires that liquids be sold by liquid measure, and non-liquids be sold by weight.

Chapter ATCP 92 regulates weighing and measuring of products. It establishes a system for testing scales, meters, and other devices used in the delivery a wide variety of commodities.

Chapter ATCP 113 prohibits sellers of gasoline from representing that gasoline is of higher octane value than its actual octane rating, as measured by ASTM standards.

Proposed policies. DATCP proposes to replace the provision in ch. ATCP 136 that bans all refrigerants in containers of 15 pounds or less with a less restrictive ban that would apply only to ozone-depleting refrigerants. This change will bring the rule into alignment with recent changes to the existing state statute.

DATCP proposes to update portions of ch. ATCP 136 that refer to products approved by EPA or standards specified by the Society of Automotive Engineers to allow for the new HFO-1234yf refrigerant. DATCP may also make other minor technical revisions to ch. ATCP 136, but these other revisions would not represent any change in existing policy.

DATCP proposes to make technical changes to chs. ATCP 90, 91, 92, and 113. These changes are technical in nature (mostly to keep these rules in conformance with NIST standards) and do not represent any change in existing policies.

Policy Alternatives. Do nothing. If the department does not alter the existing rule, the small can ban will be unenforceable because it conflicts with a Wisconsin statute. Equipment standards for repairing cars equipped with currently used auto refrigerants would not be current. Several references to national standards would not accurately identify the most recent versions of those standards.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1), 97.09 (1) and (4), 97.42 (4) (j), 98.03 (2), 98.07 (3) and (4), 98.16 (4), 98.18 (2), 98.224 (4), 98.245 (9), 100.20 (2), and 100.45 (5) (a) and (e), Stats.

Section 93.07 Department duties. It shall be the duty of the department:
(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

Section 97.09 Rules
(1) Definitions and standards of identity, composition, quality and fill of container for foods, and amendments thereto, now or hereafter adopted under the federal act or this chapter are definitions and standards of identity, composition, quality and fill of container under s. 97.03. However, when such action will promote honesty and fair dealing in the interest of consumers, the department may amend, stay or reject such federal regulations or make rules establishing definitions and standards of identity, composition, quality and fill of container for foods where no federal regulations exist, or which differ from federal regulations.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

Section 97.42 Compulsory inspection of animals, poultry and carcasses.
(4) RULE. The department may issue reasonable rules requiring or prescribing any of the following:

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

Section 98.03 State standards; specifications and tolerances.
(2) The department may issue rules governing the construction, installation and use of commercial weights and measures and prescribing tolerances therefor. The specifications, tolerances and regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules.

Section 98.07 Declaration of quantity
(3) With respect to commodities packaged prior to sale, the department shall issue rules permitting reasonable variations from declared quantity which unavoidably occur in good packaging and distribution practices.
(4) In order to prevent consumer deception, the department shall prescribe, by rule, standards for determining and declaring weight, measure, or count, including the conspicuousness of quantity declarations.

Section 98.16 Vehicle scale operators; scale installation and testing.
(4) RULES. The department shall promulgate rules to regulate the construction, operation, testing, and maintenance of vehicle scales, including a rule specifying the amount of the fee under sub. (2) (cm) 1. The department may promulgate rules to adjust fees and surcharges under subs. (2) (cm) 2. and (2m) (a) and (b) and to impose a testing surcharge upon a vehicle scale operator if the operator fails to file a vehicle scale test report as required by a rule promulgated by the department under this subsection.

Section 98.18 Installing and servicing weights and measures.
(2) RULES. The department may promulgate rules to establish license fees under sub. (1h) and to regulate the installation, servicing, testing and certification of weights and measures. The rules may include record-keeping and reporting requirements.

Section 98.224 Vehicle tank meters
(4) RULES (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (2) (c).
2. Standards for the testing, reporting, and record keeping required under sub. (3)).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of vehicle tank meters.

Section 98.245 Liquefied petroleum gas sales.
(9) RULES (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (7m) (c).
2. Standards for the testing, reporting, and record keeping required under sub. (8).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of liquefied petroleum gas meters.

Section 100.20 Methods of competition and trade practices
(2)(a). The department, after public hearing, may issue general orders forbidding methods of competition in business or trade practices in business which are determined by the department to be unfair. The department, after public hearing, may issue general orders prescribing methods of competition in business or trade practices in business which are determined by the department to be fair.

Section 100.45 Mobile air conditioners
(5) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. A standard of purity for recycled refrigerant from mobile air conditioners that is based on recognized national industry standards.
2. Qualifications, which may include training or certification requirements, for individuals who use approved refrigerant recycling equipment or approved refrigerant recovery equipment to ensure that those individuals use procedures for containment of ozone-depleting refrigerant.
3. Fees to cover the costs of administering this section.

(5e) DEPARTMENT POWERS

(a) Except as provided in par. (b), the department may promulgate rules providing that any portion of sub. (3) or (4) applies with respect to a substance used as a substitute for an ozone-depleting refrigerant.

(b) 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.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.1 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

Existing Administrative Code chs. ATCP 90, 91, 92, 113, and 136 directly impact wholesale and retail businesses that sell packaged products, commodities by weight, measure or count, use devices such as flow meters and scales, sell gasoline, and service mobile air conditioners. These existing rules also indirectly impact the customers of these businesses. However, the changes envisioned under this proposed rulemaking are mostly technical in nature and, therefore, will have minimal impact on any of these businesses or consumers.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

EPA maintains a list of acceptable substitute refrigerants that are non-ozone-depleting. FDA enforces federal laws and rules regarding packaging and labeling of a number of products regulated by DATCP administrative rules.

7. Anticipated economic impact

DATCP expects the proposed rule to have minimal to no economic impact statewide and locally. The changes envisioned are mostly technical in nature and would have minimal practical impact.

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Secretary
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