State of Wisconsin
Governor Scott Walker

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

DATE: July 9, 2014

TO: Board of Agriculture, Trade and Consumer Protection

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

SUBJECT: **Ch. ATCP 136;** Mobile air conditioners, reclaiming or recycling refrigerant (Scope Statement)

PRESENTED BY: Judy Cardin and Staff

REQUESTED ACTION:

At the June 12, 2014, 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 the promulgation of DATCP permanent rules related to mobile air conditioners; reclaiming or recycling refrigerant. Revision of the rule is necessary to harmonize the rule with recent amendments to s. 100.45 of the Wisconsin Statutes.

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 May 14, 2014, 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 May 31, 2014 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will also begin work to draft the permanent rule. Approval of a scope statement is just 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, completed the legislative review process and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 136, Wis. Adm. Code (Existing)

Relating to: Mobile Air Conditioners; Reclaiming or Recycling Refrigerant

1. Description of the objective of the rule:

This proposed rule would modify current trade and consumer protection rules related to mobile air conditioners. Currently, ch. ATCP 136, Wis. Adm. Code., 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 also requires businesses to register their mobile air service technicians, and for those technicians to successfully complete a department-approved training course or satisfy other training requirements.

2013 Act 312 eliminated the annual registration and modified the technician training requirements to harmonize state policy with federal requirements and reduce the overall regulatory burden on this industry. The statute also eliminated DATCP's authority to establish requirements for mobile air conditioner technician training. This rulemaking will revise the existing rule to implement these statutory changes. The department will also remove references to obsolete Department of Safety and Professional Services (DSPS) licensing requirements and make other minor modifications needed to ensure uniformity between the statute and rule.

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. This rule, along with its enabling statute s. 100.45, Wis. Stats., regulates the sale and distribution of refrigerants used in motor vehicle air conditioners and trailer refrigeration equipment. It also requires businesses (such as automobile repair shops) and technicians who service this equipment to be registered with DATCP. Technicians must also complete a training course or satisfy other training requirements. In 2012, 3122 businesses holding 3602 licenses (160 businesses held more than one location license) and about 11,000 technicians registered with the department.

2013 Act 312 eliminated the annual registration program and modified technician training requirements to harmonize state policy with federal requirements and reduce the overall regulatory burden on this industry. The statutory change also eliminated DATCP authority to establish technician training requirements.

Proposed policies. DATCP proposes to modify the rule to implement the recent changes in state statute, including eliminating rule language related to the annual business registration program

and technician training requirements. DATCP also proposes to modify the rule to removed outdated references and make any other minor revisions that may be necessary to harmonize the statute and rule.

Policy Alternatives. None. The department must modify the rule to be consistent with statutory requirements.

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

Sections 93.07 (1), 100.45 (5)

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.

* * *

S. 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.
3. Fees to cover the costs of administering this section.

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 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, 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:

There are approximately 3600 mobile air conditioning repair and servicing businesses and 11,000 technicians impacted by the statute and rule. The proposed rule will harmonize with existing state law, so the rule change itself will have no effect on the industry.

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:

At the national level, the EPA requires mobile air 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. Wisconsin technicians are required to meet the EPA training requirement.

7. Anticipated economic impact

The proposed rule creates no economic impact.

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Ben Brancel
Secretary
Department of Agriculture, Trade and Consumer Protection

5-2-14
Date Submitted