

Clearinghouse Rule 00-104

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF AGRICULTURE, )  
TRADE AND CONSUMER PROTECTION )

Clearinghouse Rule  
No. 00-104  
Docket No. 00-R-2

CERTIFICATION:

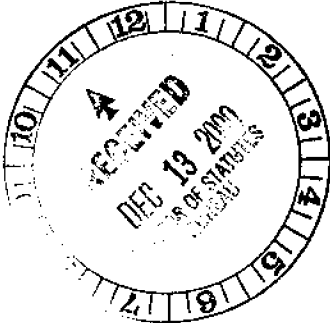
I, Ben Brancel, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the attached rulemaking order amending Chapter ATCP 136, Wis. Admin. Code, related to reclaiming and recycling refrigerant for mobile air conditioners and trailer refrigeration equipment, was signed and adopted by the Department on December 12, 2000.

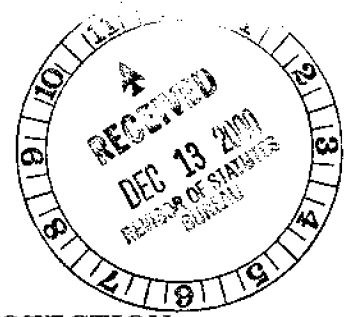
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 12 day of December, 2000.

STATE OF WISCONSIN,  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION.

By Ben Brancel  
Ben Brancel  
Secretary





**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 hereby  
2 adopts 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.

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

Statutory authority: Wis. Stat. §§ 93.07(1), 100.20(2) and 100.45(5) and (5e).  
Statutes interpreted: Wis. Stat. §§ 100.20(2) and 100.45.

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.

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

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

**SECTION 2.** ATCP 136.01(2) is repealed.

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

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

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

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

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

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

**SECTION 6.** 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 ~~\$80~~ \$120 for each business location.

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

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

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

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

**SECTION 10.** ATCP 136.08(1) is repealed and recreated 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). 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 11.** ATCP 136.08(4) is repealed.

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

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

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

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

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

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

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

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

(a)1. A person ~~who holds~~ holding a valid business registration certificate under s. ATCP 136.02, ~~and~~ 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 15.** ATCP 136.10(3)(a)2. is repealed and recreated to read:

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EFFECTIVE DATE.** The rules contained in this order shall take 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 12 day of December, 2000.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel  
Secretary