

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Direct Marketing; Telephone Solicitations; No-Call List
Adm. Code Reference: ATCP 127
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 14-R-08

Rule Summary

This rule interprets the no-call law administered by the Department of Agriculture, Trade and Consumer Protection (“DATCP”). Among other things, this rule does all of the following:

- Establishes updated registration requirements for telephone solicitors.
- Repeals portions of the rule made obsolete under the statute change.
- Updates recordkeeping requirements.
- Interprets Wisconsin’s consent requirement to harmonize with federal requirements.
- Makes other minor updates and changes including corrections to mistaken citations.

Registration requirements

This rule updates registration requirements for telephone solicitors. This rule requires telephone solicitors to provide DATCP with proof of registration with the FTC and the ability to obtain updated do-not-call registry information. The federal Subscription Account Number (SAN) will serve as proof of registration.

Obsolete rule provisions

This rule repeals sections of the existing rule that became obsolete as a result of the statutory change. Sections of the rule that are repealed include those requiring consumers to register for the no-call list with DATCP and DATCP to provide the no-call list to telephone solicitors on a quarterly basis.

Recordkeeping requirements

The proposed rule extends recordkeeping requirements from two to three years and adds requirements for telephone solicitors to keep records of the numbers called and proof of consent from consumers on the state do-not-call registry to receive calls or texts. These changes will make the rule more consistent with the statute of limitations and enhance investigations of complaints and enforcement of violations of the rule.

Consent requirement

The FTC requires express written consent for telephone solicitors to call or text numbers registered on the federal do-not-call registry. The proposed rule harmonizes Wisconsin's rule with the federal standard.

Other changes

The proposed rule makes other minor clarifying and corrective changes to the rule.

Small Business Affected

This rule affects businesses in the following ways:

Telephone solicitors that are currently registered with DATCP but not with the FTC.

Under s. 100.52, Stats., and this rule, telephone solicitors will be required to register with DATCP and also with the FTC. Most telephone solicitors have been registered with both DATCP and the FTC and will not be impacted by this requirement. The few solicitors who have only registered with DATCP will incur an additional registration fee with the FTC. The first five area codes in a national do-no-call registry subscription are free, so this annual access fee would be \$59 for the 6th Wisconsin area code.

Offsetting this added fee, telephone solicitors will no longer be required to pay the following fees:

- \$25 for each additional email address to receive a compact disc containing the no-call list.
- \$25 for each mailing address to receive a compact disc containing the no-call list.
- \$1,000 for each mailing address to receive the no-call list in a hard-copy printed form.

Recordkeeping requirements

Currently, persons making telephone solicitations, regardless of whether they may be required to register under the Wisconsin no call law, are required under ATCP 127, subchapter II, to keep certain records necessary to enforce the general direct marketing rules. The recordkeeping requirements in this proposed rule may increase the number of records businesses keep and store, which may have some financial cost associated with it.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses.

This rule and DATCP’s administrative efforts related to the rule benefit large and small businesses alike. For example:

- DATCP publishes a fact-sheet for solicitors, clearly explaining the requirements and prohibitions contained in the rule.
- DATCP administers and enforces violations of the rule which ensures a level playing field for all businesses.

Conclusion

This rule will have minimal impact affected businesses, including “small businesses.” Negative effects , if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this _____ day of _____, 20____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sandra Chalmers, Administrator
Division of Trade & Consumer Protection