



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 02-036

AN ORDER to amend chapter ATCP 127 (note) and ATCP 127.01 (15); and to create ATCP 127.18 (1) (d) 4. and subchapter V of chapter ATCP 127, relating to telephone solicitations and a no-call list.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

03-19-02 RECEIVED BY LEGISLATIVE COUNCIL.

04-16-02 REPORT SENT TO AGENCY.

RNS:MM:ksm;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

a. In light of the Governor's veto of substantially similar language in 2001 Wisconsin Act 16, the analysis to the rule should explain how the department arrived at the definition of "nonprofit organization" which is set forth in s. ATCP 127.80 (2).

b. The analysis to the rule should explain why the definition of "residential telephone customer," set forth in s. ATCP 127.80 (5), is different from the definition of "residential customer" set forth in s. 100.52 (1) (f), Stats. (as created by 2001 Wisconsin Act 16). Specifically, why does the rule not exempt from the definition of "residential telephone customer" an individual who operates a business at his or her residence?

2. Form, Style and Placement in Administrative Code

a. Since s. ATCP 127.81 (2) sets forth the requirements that must be met for registration as a telephone solicitor, "under sub. (1)" should be replaced with "as a telephone solicitor."

b. In s. ATCP 127.81 (3) (e), it appears that a comma was inadvertently deleted from the first occurrence of "\$1,000."

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Should s. ATCP 127.80 (8) (d) be expanded to include a sentence similar to the last sentence in s. 100.52 (6) (b), Stats. (as created by 2001 Wisconsin Act 16), which specifies that the exception that applies to a person making a telephone solicitation to a recipient who is a current client does not apply if the recipient is a current client of an affiliate of the person but not a current client of the person making the telephone solicitation?

b. In s. ATCP 127.81 (2) (b), should "or province" be inserted after "state"?

c. Under s. ATCP 127.81 (2) (f), must an applicant for registration designate a person other than the registrant to respond to department notices and inquiries on behalf of the registrant? If not, "if any" or a similar phrase should be added to that paragraph.

d. If any of the information provided to the department under s. ATCP 127.81 (2) (a) through (i) changes during the annual registration period, must the registrant provide updated information to the department?

e. The content of the second and third sentences of the note following s. ATCP 127.82 (3) are substantive in nature and should be placed in the text of the rule. See s. 1.09 (1), Manual. Also, once the telephone number and web site address have been determined, they should be included in the note.

f. In s. ATCP 127.83 (4), what is meant by an "effective" notice?

**PROPOSED 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
- 2 proposes the following order to amend chapter ATCP 127(note) and s. ATCP 127.01(15);
- 3 and to create ATCP 127.18(1)(d)4. and subchapter V of chapter ATCP 127; relating to
- 4 telephone solicitations and a no-call list.

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

Statutory authority: ss. 100.20(2) and 100.52

Statutes interpreted: ss. 100.20 and 100.52

Background

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules, under ch. ATCP 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices. The Legislature has also directed DATCP, under s. 100.52, Stats., to create a "no-call" list of consumers who do not wish to receive telemarketing calls. ④
as created by
01 ACP 16

Under s. 100.52, Stats., consumers may contact DATCP to sign up for the "no call" list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers. DATCP must adopt rules to implement this program.

This rule creates a telemarketing "no-call" program, as directed by the Legislature. DATCP is adding this rule to DATCP's current telemarketing rules under ch. ATCP 127, Wis. Adm. Code.

“Telephone Solicitations” Covered

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” solely for the benefit of that organization. A “nonprofit organization” means an organization described in section 501(c)(3), (4), (5) or (19) of the United States internal revenue code.
- A telephone call made by the sole individual proprietor of a business, encouraging the call recipient to buy property, goods or services sold by that business.
- A telephone call made in response to the call recipient’s request for that call.
- A telephone call made to a current client of the person selling the property, goods or services promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.

Telemarketers Must Register

This rule requires telemarketers to register annually with DATCP. A registration expires on December 31 of each year. Under this rule:

- No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless that person is currently registered with DATCP.
- No individual may make a telephone solicitation to a residential telephone customer unless one of the following applies:
 - The individual is employed by, or acting as the contract agent of, a person currently registered with DATCP.
 - The individual is currently registered with DATCP.

Telemarketer Registration Form

To register with DATCP, a person must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant's correct legal name, and all trade names under which the registrant does business.
- The registrant's principal business address and telephone number. The business address shall include street address, zip code, state and nation.
- The registrant's federal tax identification (FEIN) number.
- The name and address of the registrant's registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.
- The number of telephone lines used, by individuals acting as employees or agents of the registrant, to make telephone solicitations. The registrant must provide the telephone number associated with each of these lines.
- The number of individuals who make telephone solicitations as employees or agents of the registrant. The registrant must provide the names of the individuals if DATCP requests those names.
- A statement indicating the form in which the registrant wishes to receive "no-call" lists. A registrant may receive "no-call" lists in one or more of the following forms:
 - By e-mail transmission to an e-mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A telemarketer registering with DATCP must pay the following annual fees:

- A basic annual registration fee of \$800 for the first year of registration, and \$600 for each year thereafter.
- A supplementary annual fee of \$100 for each telephone line used by the registrant (or the registrant's employees or individual agents) to make telephone solicitations. This fee does not apply if the registrant uses fewer than 4 telephone lines.
- A supplementary annual fee of \$25 for each e-mail address to which the registrant would like DATCP to send the "no-call" list. This fee does not apply if the registrant asks DATCP to send the "no-call" list to just one e-mail address.

- A supplementary annual fee of \$25 for each address to which the registrant would like DATCP to send the “no-call” list in compact disc form.
- A supplementary annual fee of \$1,000 for each address to which the registrant would like DATCP to send the “no-call” list in hard-copy print form.

The “No-Call” List

DATCP must compile a “no-call” list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no-call list.

A residential telephone customer may contact DATCP by phone, or at DATCP’s website, to sign up for the “no-call” list. A customer’s caregiver may sign up on behalf of the customer. The customer or caregiver shall give DATCP all the following information:

- The customer’s telephone number including area code.
- The customer’s ZIP code.
- The customer’s name and address, if requested by DATCP. *DATCP will not include this information on the “no-call” list, but may request it for verification purposes.*
- The caregiver’s name and address, if a caregiver contacts DATCP on behalf of the customer. *DATCP will not include this information on the “no-call” list, but requires it for verification purposes.*

Distributing the List

DATCP must distribute the “no-call” list to each telemarketer who is currently registered with DATCP. DATCP must distribute the list in the manner specified by the registrant (assuming that the registrant pays the required fees for that method of delivery). A “no-call” list takes effect on a date specified by DATCP, not sooner than 10 days after DATCP distributes the list.

Updating the List

DATCP must compile and distribute an updated “no-call” list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the “no-call” list 2 years after that customer last signed up for inclusion on the list. A customer may renew a sign-up at any time.

No Unauthorized Release

A registered telemarketer may not redistribute any part of a "no-call" list to any other person, except that the registrant may redistribute the list to an individual making telephone solicitations as the registrant's employee or agent. DATCP may not release a "no-call" list, or any information used to compile the list, except that:

- DATCP may release a "no-call" list to telemarketers currently registered with DATCP.
- DATCP may release a "no-call" list as necessary to enforce this rule, or to comply with a subpoena or judicial process, subject to such protective orders as may be appropriate.
- DATCP may release the "no-call" list to the federal trade commission or other federal agency maintaining a national "no-call" list.

Telephone solicitation practices

Telemarketers must comply with current DATCP telemarketing rules under ch. ATCP 127, Wis. Adm. Code. In addition, this rule prohibits telemarketers from doing any of the following:

- Making telephone solicitations to a residential telephone customer, unless the telemarketer is registered with DATCP or working for a registered telemarketer.
- Making a telephone solicitation to a residential telephone customer whose telephone number appears on the current "no call" list.
- Using an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.
- Failing to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer's Wisconsin registration number.
- Making a telephone solicitation to a nonresidential telephone customer (business) if that business has notified the telemarketer by mail that the business does not wish to receive telephone solicitations. A telemarketer must provide a business with the telemarketer's mailing address within 10 days after the business requests it.
- Requiring, instructing or authorizing an employee or agent to make a telephone solicitation in violation of this rule, or facilitating a violation of this rule.
- Using caller-ID blocking when making a telephone solicitation.

Telemarketer Records

Under current DATCP telemarketing rules, telemarketers must keep certain records for at least 2 years and must make those records available to DATCP upon request. Among other things, a telemarketer must keep records related to individuals who make telephone solicitations as employees or agents of the telemarketer, including names, addresses, telephone numbers, job titles, and fictitious names if any (no 2 individuals may use the same fictitious name).

This rule requires telemarketers to comply with current record keeping requirements, and adds one new requirement. Under this rule, a telemarketer must record the time period during which an individual made telephone solicitations as the seller's employee or agent.

1 **SECTION 1.** Chapter ATCP 127 (note) is amended to read:

2 **NOTE:** This chapter is adopted under authority of s. 100.20(2), Stats., and is
3 administered by the Wisconsin department of agriculture, trade and
4 consumer protection. Violations of this chapter may be prosecuted under
5 s. 100.20(6) and s. 100.26(3) and (6), Stats. A person who suffers a
6 monetary loss because of a violation of this chapter may sue the violator
7 directly under s. 100.20(5), Stats., and may recover twice the amount of
8 the loss, together with costs and reasonable attorneys' fees. Subchapter V
9 is also adopted under authority of s. 100.52, Stats.

10
11 **SECTION 2.** Section ATCP 127.01(15) is amended to read:

12 ATCP 127.01(15) "Person" means an individual, corporation, partnership,
13
14 cooperative association, limited liability company, trust, or other organization or legal
15 entity.

16 **SECTION 3.** ATCP 127.18(1)(d)4. is created to read:

17 ATCP 127.18(1)(d)4. The period of time during which the individual made
18 telephone solicitations as the seller's employee or agent.

19 **SECTION 4.** Subchapter V of chapter ATCP 127 is created to read:

1 SUBCHAPTER V

2 TELEPHONE SOLICITATIONS; NO-CALL LIST

3 ATCP 127.80 Definitions. In this subchapter:

4 (1) "Basic local exchange service" has the meaning given in s. 196.01(1g), Stats.

5 (2) "Nonprofit organization" means an organization described in section
6 501(c)(3), (4), (5) or (19) of the United States internal revenue code. *that is exempt ... (4) Coer 100.52(1)(c)*

7 (3) "Nonresidential telephone customer" means a person, other than a residential
8 customer, who receives telecommunications service from a telecommunications utility. *diff from stat def why? (4) 100.52(1)(d)*

9 (4) "No-call list" means a list compiled and distributed according to s. ATCP
10 127.82.

11 (5) "Residential telephone customer" means an individual in this state who
12 receives basic local exchange service from a telecommunications utility. *(4) 100.52(1)(f) - diff from stat person who operates business residence*

13 (6) "Telecommunications service" has the meaning given in s. 196.01(9m), Stats.

14 (7) "Telecommunications utility" has the meaning given in s. 196.01(10).

15 (8) "Telephone solicitation" means an unsolicited telephone call for the purpose
16 of encouraging the call recipient to buy property, goods or services, or that is part of a
17 plan or scheme to encourage the call recipient to buy property, goods or services.

18 "Telephone solicitation" does not include any of the following:

19 (a) A telephone call encouraging the call recipient to buy property, goods or
20 services from a nonprofit organization solely for the benefit of that organization.

(b) A telephone call made by the sole individual proprietor of a business,
encouraging the call recipient to buy property, goods or services sold by that business.

1 (c) A telephone call made in response to the call recipient's request for that call.

2 (d) A telephone call made to a current client of the person selling the property,
3 goods or services promoted by the telephone call. *clarify not appropriate? (5)*
100. 52(6)(b)

4 (e) A telephone call made to a number listed in the current local business
5 telephone directory.

6 **ATCP 127.81 Telephone solicitors; registration. (1) REGISTRATION**

7 **REQUIRED.** (a) No person may employ or contract with any individual to make telephone
8 solicitations to residential telephone customers unless that person is currently registered
9 with the department under sub. (2).

10 (b) No individual may make a telephone solicitation to a residential telephone
11 customer unless one of the following applies:

12 1. The individual is employed by, or acting as the contract agent of, a person
13 currently registered with the department under sub. (2). *Yikes! (2)*

14 2. The individual is currently registered with the department under sub. (2).

15 **(2) ANNUAL REGISTRATION.** To register under sub. (1), a person shall complete
16 an annual registration form provided by the department. The registrant shall file, with the
17 registration form, the annual fees required under sub. (3). The registration form shall
18 include all the following:

19 (a) The registrant's correct legal name, and all trade names under which the
20 registrant does business.

21 (b) The registrant's principal business address and telephone number. The
22 business address shall include street address, zip code, state and nation. *or proving? (5)*

23 (c) The registrant's federal tax identification (FEIN) number.

1 (d) The name and address of the registrant's registered agent in this state, if any.

2 (e) The name and address of a person who will accept service of process on
3 behalf of the registrant, if other than a registered agent under par. (d).

4 (f) The name, address and telephone number of a person who may respond, on
5 behalf of the registrant, to department notices and inquiries.

*is this required? (S)
"if any"?*

6 (g) The number of telephone lines used by any of the following to make
7 telephone solicitations:

8 1. The registrant.

9 2. The registrant's employees.

10 3. Individuals acting as the registrant's agents.

*(S) must info be updated
& changed*

11 (h) The telephone number assigned to each telephone line counted under par. (g).

12 (i) The number of individuals who make telephone solicitations as employees or
13 agents of the registrant. The registrant shall provide the names of the individuals if the
14 department requests those names.

15 (j) A statement indicating the form in which the registrant wishes to receive no-
16 call lists. A registrant may receive no-call lists in one or more of the following forms:

17 1. By e-mail transmission to one or more e-mail addresses provided by the
18 registrant. Each e-mail address shall be that of the registrant, or an individual making
19 telephone solicitations as an employee or agent of the registrant.

20 2. As a compact disc, mailed to one or more addresses provided by the registrant.

21 Each address shall be that of the registrant, or an individual making telephone
22 solicitations as an employee or agent of the registrant. The registrant shall specify the
23 number of compact discs to be included in each mailing.

1 3. In hard-copy printed form, mailed to one or more addresses provided by the
2 registrant. Each address shall be that of the registrant, or an individual making telephone
3 solicitations as an employee or agent of the registrant. The registrant shall specify the
4 number of hard-copy lists to be included in each mailing.

5 (3) FEES. A person registering under sub. (2) shall pay the following annual
6 fees:

7 (a) A basic annual registration fee of \$800 for the first year of registration, and
8 \$600 for each subsequent year.

9 (b) A supplementary annual fee of \$100 for each telephone line identified under
10 sub. (2)(g). This fee does not apply if the registrant identifies fewer than 4 telephone
11 lines under sub. (2)(g).

12 (c) A supplementary annual fee of \$25 for each e-mail address identified under
13 sub. (2)(j)1. This fee does not apply if the registrant identifies only one e-mail address
14 under sub. (2)(j)1.

15 (d) A supplementary annual fee of \$25 for each address identified under sub.
16 (2)(j)2. If the registrant asks the department to send more than one annual set of compact
17 discs to any address, the registrant shall pay an additional fee of \$25 for each additional
18 set of discs sent to that address.

19 (e) A supplementary annual fee of \$1000 for each address identified under sub.
20 (2)(j)3. If the registrant asks the department to send more than one annual set of hard-
21 copy lists to any address, the registrant shall pay an additional fee of \$1,000 for each
22 additional set of hard-copy lists sent to that address.

1 (4) REGISTRATION EXPIRES. A registration under this section expires on
2 December 31 of each year.

3 **ATCP 127.82 No-call list. (1) COMPILING THE LIST.** The department shall
4 compile a no-call list containing the telephone numbers and ZIP codes of residential
5 telephone customers who indicate, according to sub. (3), that they do not wish to receive
6 telephone solicitations.

7 (2) SOLICITATIONS PROHIBITED. No person may make a telephone solicitation,
8 either directly or through an employee or agent, to a residential customer whose
9 telephone number appears on the current no-call list.

10 (3) INDIVIDUALS INCLUDED ON THE LIST. (a) A residential telephone customer or
11 the customer's caregiver may contact the department to have the customer included on
12 the no-call list. The residential telephone customer or caregiver shall give the department
13 all the following information:

- 14 1. The customer's telephone number including area code.
- 15 2. The customer's postal ZIP code.
- 16 3. The customer's name and address, if requested by the department.
- 17 4. The caregiver's name and address, if a caregiver contacts the department on
18 behalf of the customer.

19 **NOTE:** The department will publish a telephone number and website address that
20 residential telephone customers may contact to sign up for the no-call list.
21 The no-call list will include only the customer's telephone number and
22 ZIP code. The department will not accept sign-ups from persons other
23 than residential telephone customers or their caregivers.
24

25 (4) DISTRIBUTING THE LIST. The department shall distribute the no-call list to
26 each person who is currently registered with the department under s. ATCP 127.81. The

*subst.
place in
text
1.09(1)*

1 department shall distribute the no-call list to the addresses, and in the manner, specified
2 by the registrant under s. ATCP 127.81(2)(j). A no-call list takes effect on the date
3 specified by the department. The effective date shall be not sooner than 10 days after the
4 department distributes the list.

(5) clarify whether there is a charge to send

5 (5) UPDATING THE LIST. The department shall compile and distribute an updated
6 no-call list every 3 months. The department shall distribute each updated list in the
7 manner provided under sub. (4). An updated list takes effect on the date specified by the
8 department. The effective date shall be not sooner than 10 days after the department
9 distributes the list.

10 (6) LIST DELETIONS AND RENEWALS. The department shall delete a residential
11 telephone customer from the no-call list 2 years after that customer last applied for
12 listing. The customer or the customer's caregiver may renew the customer's listing at
13 any time, in the manner provided for an original listing under sub. (3).

14 (7) NO RE-DISTRIBUTION BY LIST RECIPIENTS. A person who receives a no-call list
15 may not distribute any part of that list to another person, except that a current registrant
16 under s. ATCP 127.81 may redistribute the list to an individual making telephone
17 solicitations as the registrant's employee or agent.

18 (8) LIST NOT OPEN TO PUBLIC INSPECTION. (a) The department may not release a
19 no-call list, or any information collected under sub. (3), except that:

20 1. The department may release a no-call list to a person currently registered under
21 s. 127.81, or to an individual making telephone solicitations as the registrant's employee
22 or agent, as provided in this section.

1 2. The department may release a no-call list as necessary to enforce this
2 subchapter, or to comply with a subpoena or judicial process, subject to such protective
3 orders as may be appropriate.

4 3. The department may release a no-call list to the federal trade commission or
5 other federal agency maintaining a national no-call list.

6 **NOTE:** See s. 100.52(2)(c), Stats.

7 **127.83 Telephone solicitation practices. (1)** Persons making telephone
8 solicitations shall comply with subchapter II.

9 **(2)** No person may do any of the following:

10 (a) Make a telephone solicitation in violation of s. ATCP 127.81 or 127.82. ^② redundant?

11 (b) Use an electronically prerecorded message in a telephone solicitation to a
12 residential or nonresidential telephone customer without the prior consent of that
13 telephone customer.

14 **NOTE:** See also ss. 100.52(1) and 134.72, Stats. Paragraph (b) does not limit the
15 application of those statutes.

16 (c) Make a telephone solicitation to a nonresidential telephone customer if the
17 nonresidential telephone customer has notified the person by mail that the nonresidential
18 telephone customer does not wish to receive telephone solicitations.

19 (d) Require, instruct or authorize any person to violate this subchapter, or
20 facilitate any person's violation of this subchapter.

21 (e) Use caller-ID blocking when making a telephone solicitation.

22 (f) Falsify any information required under this subchapter.

1 (3) A person making a telephone solicitation to a residential telephone customer
2 shall give the call recipient, at the call recipient's request, the registration number under
3 which the caller or the caller's principal is registered under s. ATCP 127.81.

4 (4) A person making a telephone solicitation to a nonresidential telephone
5 customer shall give the call recipient, at the call recipient's request, a mailing address to
6 which the nonresidential telephone customer can mail an effective notice under sub.
7 (2)(c). The person shall provide the mailing address within 10 days after the call
8 recipient requests it.

9 **127.83 Record keeping.** Persons required to register under s. ATCP 127.81
10 shall comply with record keeping and record production requirements applicable to
11 sellers under s. ATCP 127.18. *OK*

12 **EFFECTIVE DATE.** This rule shall take effect on the first day of the month
13 following publication in the Wisconsin administrative register, as provided in s.
14 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
James E. Harsdorf, Secretary

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

List both LRB No. and Bill/Adm. Rule No. ATCP 127
Amendment No. (If Applicable)

Subject
Telemarketing

Fiscal Effect
 State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local costs: No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Source Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
20.115(8)(jm)

Assumptions Used in Arriving at Fiscal Estimate

This rule creates a telemarketing "no-call" program, as directed by the Legislature. DATCP is adding this rule to DATCP's current telemarketing rules under ch. ATCP 127, Wis. Adm. Code. The legislation, passed as part of the budget bill, creates Section 100.52 of the Wisconsin Statutes which directs DATCP to develop systems to register residential customers who do not wish to be called by telemarketers and, register telemarketers who wish to solicit Wisconsin residents. It also requires DATCP to investigate and seek penalties against violators most of whom are located outside of Wisconsin.

Currently, department rules, Chapter ATCP 127, Wis. Admin. Code, enacted in August 1999 prohibits a telemarketer from soliciting a consumer who has asked the telemarketer to place them on a "do not call" list. The rules also require a telemarketer to maintain systems for ensuring consumers on this list are not called. Under these new rules, DATCP will create a list and registered telemarketers will combine this list into their systems.

Based on experience, and the Department projects that a majority of Wisconsin households will register under this new law. Other states of equal population report nearly one million households are registered on their lists.

The Department assumes consumer registration will be made available through a toll-free telephone system as well as on-line forms. Because of the magnitude of the project, the Department is preparing requests for bids from outside sources. This estimate is based on an assumption that those bids will result in costs of approximately \$400,000 annually.

The Department estimates a workload of 5,000 hours annually to intake and process consumer complaints administer the contracts with the vender to create and distribute the lists. To accomplish this, the Department will require 2.5 positions.

Complaints regarding telemarketing will double to approximately 1000 per year. The Department estimates 100 complaints per year will require assignment to investigative staff for detailed investigation. Typically, these investigations will involve multiple victims and multiple jurisdictions. The Department will require 2.0 FTE investigators for enforcement activities. The Department estimates the additional annual workload to oversee and administer the program and enforce the law will also require 1.0 FTE consumer complaint supervisor.

Based on these assumptions, the department estimates there will be a one-time cost of \$53,400. Ongoing annual costs of \$658,600 would be offset through license fees.

The Department is authorized to set initial registration fees to generate the funding necessary to create the list and renewal fees necessary to administer this program. The Department is proposing an initial registration fee of \$800 plus a supplemental fee of \$100 per each phone line if a business uses more than 3 lines to telemarket. The Department proposes a renewal fee of \$600 plus a supplemental fee of \$100 per each phone line if a business uses more than 3 lines to telemarket.

The Department assumes 375 (62%) telemarketers to register in year one, which will generate \$564,000. An additional 225 new registrations as well as renewals in year two will generate \$731,000. Year three will stabilize at 600 renewals and generate \$677,000. In the first two years the program will create a deficit of \$21,000. In year three the registration fees should begin to generate a small surplus, and if this continues through year 4, the department will have a surplus of \$17,000 which it is assumed will be consumed by inflationary pressures.

Long - Range Fiscal Implications

Registration fees paid by telemarketing firms will offset the annual cost. The Department assumes the annual renewal to generate \$664,000 to offset estimated costs of \$658,600. If these estimates generate a small surplus, the Department proposes to hold the surplus to offset future registration price increases.

Agency/prepared by: (Name & Phone No.) Jim Rabbitt 608/224-4965 DATCP	Authorized Signature/Telephone No. <i>Donald Akamatsu, for</i> Barbara Knapp (608) 224-4746	Date 03/04/02
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FISCAL ESTIMATE WORKSHEET

2001 Session

Detailed Estimate of Annual Fiscal Effect

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Amendment No.

DA-2047 (R10/94)

ATCP 127

Project Telemarketing Solicitation No Call List

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$ 53,400 Office setup, Computers, etc.

II. Annualized Costs:

Annualized Fiscal Impact on State Funds from:

A. State Costs by Category	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ 215,500	
(FTE Position Changes)	5.5	(- FTE)
State Operations - Other Costs	\$443,100	
Local Assistance		
Aids to Individuals and Organizations		
TOTAL State Costs by Category	\$ 658,600	

B. State Costs by Source of Funds

	Increased Costs	Decreased Costs
GPR		
FED		
PRO/PRS	\$658,600	
SEG/SEG-S		

III. State Revenues

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

	Increased Rev.	Decreased Rev.
GPR Taxes		
GPR Earned		
FED		
PRO/PRS	\$667,000	
SEG/SEG-S		
TOTAL State Revenues		

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$658,600

NET CHANGE IN REVENUES

\$667,000

Agency/Prepared by: (Name & Phone No.)

DATCP Jim Rabbitt 224-4965

Authorized Signature/Telephone No.

Date

Memorandum

DATE: March 26, 2002

TO: Gary Poulson, Revisor of Statutes Office
Richard Chandler, State Budget Director, DOA

FROM: Roxy Capelle, Paralegal *RC*

SUBJECT: NOTICE OF HEARING – Wisconsin Administrative Code Chapter ATCP 127;
Relating to Telemarketing "No-Call" list.

Attached is Notice of Hearing for the above-proposed rule, for printing in the next two issues of the Wisconsin Administrative Register.

Please initial and return the attached copy of this memo for our files.

Thank you.

rc

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING
RULES RELATED TO CREATION OF A TELEMARKETING "NO CALL" LIST

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to create ch. ATCP 127, relating to a telemarketing "no call" list. The department will hold twelve hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until May 30, 2002, for additional written comments.

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, or by calling 1-800-422-7128. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for there hearings. Please make reservations for a hearing interpreter by **April 20, 2002**, by writing to Jim Rabbitt, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4965. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Twelve hearings are scheduled:

Monday, May 6, 2002, commencing at 1:00 p.m. and 7:00 p.m.
Prairie Oaks State Office Building, Board Room
2811 Agriculture Drive
Madison, WI 53708
Handicapped accessible

Tuesday, May 7 2002, commencing at 1:00 p.m. and 6:30 p.m.
Havenwood State Forest
6141 N. Hopkins Street
Milwaukee, WI 53209
Handicapped accessible

Wednesday, May 8, 2002, commencing at 2:00 p.m. and 7:00 p.m.
Wausau City Council Chambers
City Hall
407 Grant Street
Wausau, WI 54403
Handicapped accessible

Thursday, May 9, 2002, commencing at 1:00 p.m. and 6:00 p.m.
Brown County Library, Central Library
515 Pine Street
Green Bay, WI 54301
Handicapped accessible

Monday, May 13, 2002, commencing at 1:00 p.m. and 7:00 p.m.
Department of Agriculture, Trade and Consumer Protection , Eau Claire Office
3610 Oakwood Hills Parkway
Eau Claire, WI 54701
Handicapped accessible

Tuesday, May 14, 2002, commencing at 1:00 p.m. and 7:00 p.m.
LaCrosse City Council Chambers
400 LaCrosse Street
LaCrosse, WI 54699
Handicapped accessible

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

Statutory authority: ss. 100.20(2) and 100.52
Statutes interpreted: ss. 100.20 and 100.52

Background

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules, under ch. ATCP 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices. The Legislature has also directed DATCP, under s. 100.52, Stats., to create a “no-call” list of consumers who do not wish to receive telemarketing calls.

Under s. 100.52, Stats., consumers may contact DATCP to sign up for the “no call” list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers. DATCP must adopt rules to implement this program.

This rule creates a telemarketing “no-call” program, as directed by the Legislature. DATCP is adding this rule to DATCP’s current telemarketing rules under ch. ATCP 127, Wis. Adm. Code.

“Telephone Solicitations” Covered

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” solely for the benefit of that organization. A “nonprofit organization” means an organization described in section 501(c)(3), (4), (5) or (19) of the United States internal revenue code.
- A telephone call made by the sole individual proprietor of a business, encouraging the call recipient to buy property, goods or services sold by that business.
- A telephone call made in response to the call recipient’s request for that call.
- A telephone call made to a current client of the person selling the property, goods or services promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.

Telemarketers Must Register

This rule requires telemarketers to register annually with DATCP. A registration expires on December 31 of each year. Under this rule:

- No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless that person is currently registered with DATCP.
- No individual may make a telephone solicitation to a residential telephone customer unless one of the following applies:
 - The individual is employed by, or acting as the contract agent of, a person currently registered with DATCP.
 - The individual is currently registered with DATCP.

Telemarketer Registration Form

To register with DATCP, a person must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant's correct legal name, and all trade names under which the registrant does business.
- The registrant's principal business address and telephone number. The business address shall include street address, zip code, state and nation.
- The registrant's federal tax identification (FEIN) number.
- The name and address of the registrant's registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.
- The number of telephone lines used, by individuals acting as employees or agents of the registrant, to make telephone solicitations. The registrant must provide the telephone number associated with each of these lines.
- The number of individuals who make telephone solicitations as employees or agents of the registrant. The registrant must provide the names of the individuals if DATCP requests those names.
- A statement indicating the form in which the registrant wishes to receive "no-call" lists. A registrant may receive "no-call" lists in one or more of the following forms:
 - By e-mail transmission to an e-mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A telemarketer registering with DATCP must pay the following annual fees:

- A basic annual registration fee of \$800 for the first year of registration, and \$600 for each year thereafter.
- A supplementary annual fee of \$100 for each telephone line used by the registrant (or the registrant's employees or individual agents) to make telephone solicitations. This fee does not apply if the registrant uses fewer than 4 telephone lines.

- A supplementary annual fee of \$25 for each e-mail address to which the registrant would like DATCP to send the “no-call” list. This fee does not apply if the registrant asks DATCP to send the “no-call” list to just one e-mail address.
- A supplementary annual fee of \$25 for each address to which the registrant would like DATCP to send the “no-call” list in compact disc form.
- A supplementary annual fee of \$1,000 for each address to which the registrant would like DATCP to send the “no-call” list in hard-copy print form.

The “No-Call” List

DATCP must compile a “no-call” list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no-call list.

A residential telephone customer may contact DATCP by phone, or at DATCP’s website, to sign up for the “no-call” list. A customer’s caregiver may sign up on behalf of the customer. The customer or caregiver shall give DATCP all the following information:

- The customer’s telephone number including area code.
- The customer’s ZIP code.
- The customer’s name and address, if requested by DATCP. *DATCP will not include this information on the “no-call” list, but may request it for verification purposes.*
- The caregiver’s name and address, if a caregiver contacts DATCP on behalf of the customer. *DATCP will not include this information on the “no-call” list, but requires it for verification purposes.*

Distributing the List

DATCP must distribute the “no-call” list to each telemarketer who is currently registered with DATCP. DATCP must distribute the list in the manner specified by the registrant (assuming that the registrant pays the required fees for that method of delivery). A “no-call” list takes effect on a date specified by DATCP, not sooner than 10 days after DATCP distributes the list.

Updating the List

DATCP must compile and distribute an updated “no-call” list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the “no-call” list 2 years after that customer last signed up for inclusion on the list. A customer may renew a sign-up at any time.

No Unauthorized Release

A registered telemarketer may not redistribute any part of a "no-call" list to any other person, except that the registrant may redistribute the list to an individual making telephone solicitations as the registrant's employee or agent. DATCP may not release a "no-call" list, or any information used to compile the list, except that:

- DATCP may release a "no-call" list to telemarketers currently registered with DATCP.
- DATCP may release a "no-call" list as necessary to enforce this rule, or to comply with a subpoena or judicial process, subject to such protective orders as may be appropriate.
- DATCP may release the "no-call" list to the federal trade commission or other federal agency maintaining a national "no-call" list.

Telephone solicitation practices

Telemarketers must comply with current DATCP telemarketing rules under ch. ATCP 127, Wis. Adm. Code. In addition, this rule prohibits telemarketers from doing any of the following:

- Making telephone solicitations to a residential telephone customer, unless the telemarketer is registered with DATCP or working for a registered telemarketer.
- Making a telephone solicitation to a residential telephone customer whose telephone number appears on the current "no call" list.
- Using an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.
- Failing to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer's Wisconsin registration number.
- Making a telephone solicitation to a nonresidential telephone customer (business) if that business has notified the telemarketer by mail that the business does not wish to receive telephone solicitations. A telemarketer must provide a business with the telemarketer's mailing address within 10 days after the business requests it.
- Requiring, instructing or authorizing an employee or agent to make a telephone solicitation in violation of this rule, or facilitating a violation of this rule.
- Using caller-ID blocking when making a telephone solicitation.

Telemarketer Records

Under current DATCP telemarketing rules, telemarketers must keep certain records for at least 2 years and must make those records available to DATCP upon request. Among other things, a telemarketer must keep records related to individuals who make telephone solicitations as employees or agents of the telemarketer, including names, addresses, telephone numbers, job titles, and fictitious names if any (no 2 individuals may use the same fictitious name).

This rule requires telemarketers to comply with current record keeping requirements, and adds one new requirement. Under this rule, a telemarketer must record the time period during which an individual made telephone solicitations as the seller's employee or agent.

Fiscal Estimate

This rule creates a telemarketing "no-call" program, as directed by the Legislature. DATCP is adding this rule to DATCP's current telemarketing rules under ch. ATCP 127, Wis. Adm. Code. The legislation, passed as part of the budget bill, creates Section 100.52 of the Wisconsin Statutes which directs DATCP to develop systems to register residential customers who do not wish to be called by telemarketers and, register telemarketers who wish to solicit Wisconsin residents. It also requires DATCP to investigate and seek penalties against violators most of whom are located outside of Wisconsin.

Currently, department rules, Chapter ATCP 127, Wis. Admin. Code, enacted in August 1999 prohibits a telemarketer from soliciting a consumer who has asked the telemarketer to place them on a "do not call" list. The rules also require a telemarketer to maintain systems for ensuring consumers on this list are not called. Under these new rules, DATCP will create a list and registered telemarketers will combine this list into their systems.

Based on experience, and the Department projects that a majority of Wisconsin households will register under this new law. Other states of equal population report nearly one million households are registered on their lists.

The Department assumes consumer registration will be made available through a toll-free telephone system as well as on-line forms. Because of the magnitude of the project, the Department is preparing requests for bids from outside sources. This estimate is based on an assumption that those bids will result in costs of approximately \$400,000 annually.

The Department estimates a workload of 5,000 hours annually to intake and process consumer complaints administer the contracts with the vender to create and distribute the lists. To accomplish this, the Department will require 2.5 positions.

Complaints regarding telemarketing will double to approximately 1000 per year. The Department estimates 100 complaints per year will require assignment to investigative staff for detailed investigation. Typically, these investigations will involve multiple victims and multiple

jurisdictions. The Department will require 2.0 FTE investigators for enforcement activities. The Department estimates the additional annual workload to oversee and administer the program and enforce the law will also require 1.0 FTE consumer complaint supervisor.

Based on these assumptions, the department estimates there will be a one-time cost of \$53,400. Ongoing annual costs of \$658,600 would be offset through license fees.

The Department is authorized to set initial registration fees to generate the funding necessary to create the list and renewal fees necessary to administer this program. The Department is proposing an initial registration fee of \$800 plus a supplemental fee of \$100 per each phone line if a business uses more than 3 lines to telemarket. The Department proposes a renewal fee of \$600 plus a supplemental fee of \$100 per each phone line if a business uses more than 3 lines to telemarket.

The Department assumes 375 (62%) telemarketers to register in year one, which will generate \$564,000. An additional 225 new registrations as well as renewals in year two will generate \$731,000. Year three will stabilize at 600 renewals and generate \$677,000. In the first two years the program will create a deficit of \$21,000. In year three the registration fees should begin to generate a small surplus, and if this continues through year 4, the department will have a surplus of \$17,000 which it is assumed will be consumed by inflationary pressures.

Long – Range Fiscal Implications

Registration fees paid by telemarketing firms will offset the annual cost. The Department assumes the annual renewal to generate \$664,000 to offset estimated costs of \$658,600. If these estimates generate a small surplus, the Department proposes to hold the surplus to offset future registration price increases.

Initial Regulatory Flexibility Analysis

Rule Description

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. This rule requires telemarketers to register annually with DATCP. Registered telemarketers will be provided a list that is compiled by DATCP containing the telephone numbers of consumers who do not want to be solicited by telephone. Telemarketers will be prohibited from soliciting by phone any consumer who is on the “no call” list.

“Telephone Solicitations” Covered

A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” solely for the benefit of that organization.
- A telephone call made in response to the call recipient’s request for that call.
- A telephone call made to a current client of the person selling the property, goods or services promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.

Telemarketers Must Register

Registration expires on December 31 of each year. Under this rule:

- No person may employ or contract with any individual to make telephone solicitations to residential telephone customers unless that person is currently registered with DATCP.
- No individual may make a telephone solicitation to a residential telephone customer unless one of the following applies:
 - The individual is employed by, or acting as the contract agent of, a person currently registered with DATCP.
 - The individual is currently registered with DATCP.

Telemarketer Registration Form

To register with DATCP, a person must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant’s correct legal name, and all trade names under which the registrant does business.
- The registrant’s principal business address and telephone number. The business address must include street address, zip code, state and nation.
- The registrant’s federal tax identification (FEIN) number.
- The name and address of the registrant’s registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.

- The number of telephone lines used, by individuals acting as employees or agents of the registrant, to make telephone solicitations. The registrant must provide the telephone number associated with each of these lines.
- The number of individuals who make telephone solicitations as employees or agents of the registrant. The registrant must provide the names of the individuals if DATCP requests those names.
- A statement indicating the form in which the registrant wishes to receive “no-call” lists. A registrant may receive “no-call” lists in one or more of the following forms:
 - By e-mail transmission to an e-mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A telemarketer registering with DATCP must pay the following annual fees:

- A basic annual registration fee of \$800 for the first year of registration, and \$600 for each year thereafter.
- A supplementary fee for each telephone line used by the registrant (or the registrant’s employees or individual agents) to make telephone solicitations. The fee amount is \$100 per telephone line if the registrant (and the registrant’s employees and agents) use more than 3 lines.
- A supplementary fee of \$25 for each additional e-mail address to which the registrant would like DATCP to send the “no-call” list (if more than one e-mail address).
- A supplementary fee of \$25 for each additional copy of the list which the registrant would like DATCP to send in compact disc form.
- A supplementary fee of \$1,000 for each address to which the registrant would like DATCP to send the “no-call” list in hard-copy print form.

Updating the List

DATCP must compile and distribute an updated “no-call” list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the “no-call” list 2 years after that customer last signed up for inclusion on the list. A customer may renew at any time.

Small Businesses Affected by this Rule

This rule affects businesses that solicit residential consumers for the purpose of encouraging the call recipient to buy property, goods or services. The rule will effect "professional" telemarketers who solicit on behalf of others as well as businesses that solicit on their own behalf. The bureau assumes approximately 600 businesses that offer to sell a wide variety of consumer products will be required to register. Many of these businesses are "small businesses" as defined in s. 227.114(1)(a), Stats.

Effects on Small Business

This rule will have an impact on small business. Under current law, all businesses that telemarket must keep a no call list consisting of persons who inform the business that they do not want to be called again. Under this rule the business will have to add the telephone numbers compiled by the State to their no call list. The department will provide the consumer information in a format that is readable by all computer systems. Any Wisconsin business that telemarkets into one of the more than 20 States that currently have do not call laws will already have already implemented systems to fulfill the requirements contained in this rule. Others may have a one-time cost of reprogramming their systems. This one-time cost is expected to have a slight impact on small business.

The cost of administering the program is mandated by statute to be funded through registration fees for businesses that telemarket. The fees are based on the number of lines that are used to solicit so a small business will pay less than a large telemarketer with multiple lines.

Steps to Assist Small Business

The registration fees are based on the number of lines a telemarketer uses to solicit and the first three telephone lines are included under the base fee. The rules also have exceptions for businesses calling their own customers or responding to a request by a consumer for a call. Both of these exceptions should assist small business.

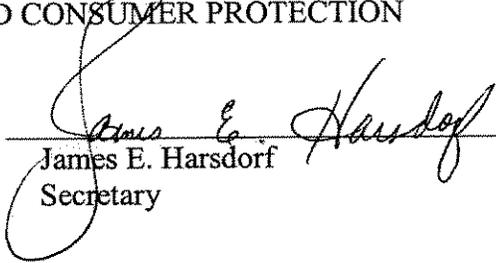
Conclusion

This rule will have a minor impact on small business. Small business will have one-time costs to upgrade existing systems to accept the lists and combine them with current lists. The long term impact of not telemarketing persons who do not wish to be telemarketed are expected to be minor. This rule will have the long term cost of annual fees for registration. The department has taken reasonable steps to share the costs of the program equitably among those who are regulated.

Dated this 26 day of March, 2002

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

✓ By:



James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

PUBLIC NOTICE

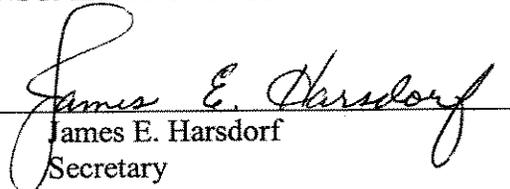
FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: 02-036
SUBJECT: Telemarketing "No Call" List
ADM. CODE REFERENCE: ATCP 127
DATCP DOCKET #: 01-R-07

Dated this 22 day of July, 2002.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By 
James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

DATE: July 22, 2002

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison 53708-8952

FROM: ✓ James E. Harsdorf, Secretary *James E. Harsdorf*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Telemarketing "No-Call" List; Final Draft Rule
(Clearinghouse Rule #02-036)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules under ch. ATCP 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices.

Under s. 100.52, Stats., the Legislature has directed DATCP to create a telemarketing "no call" list. Consumers may contact DATCP to sign up for the "no call" list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers. DATCP must adopt rules to implement this program.

This rule implements the "no call" program mandated by the Legislature. The rule augments DATCP's current telemarketing rules under ATCP 127. DATCP held public "listening sessions" and contacted other states before it started drafting the rule. On March 12, 2002, the DATCP Board approved a draft for public hearing. DATCP held 12 public hearings in Madison, Eau Claire, Green Bay, Milwaukee, Wausau, and LaCrosse. Based on hearing comments, DATCP prepared this final draft rule. The DATCP Board unanimously approved this final draft rule on July 9, 2002.

Honorable Fred Risser
Honorable Scott R. Jensen
July 22, 2002
Page 2

DATCP must register and charge fees to telemarketers to cover the anticipated cost of the "no call" program. DATCP has obtained competitive bids and will contract with a private vendor to handle consumer sign-ups for the "no call" list. DATCP estimates that there are approximately 600 telemarketing firms calling consumers in this state. This rule establishes telemarketer registration fees based on this estimate. DATCP may reduce the fees if revenues significantly exceed expenditures.

Rule Contents

"Telephone Solicitations" Covered

This rule regulates "telephone solicitations" to persons located in this state, regardless of where the calls originate. A "telephone solicitation" means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. "Telephone solicitation" does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a nonprofit organization if sales proceeds are not subject to Wisconsin sales tax or federal income tax.
- A telephone call made in response to the call recipient's request for that call.
- A telephone call made to a current client who has agreed to receive property, goods or services of the type promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.
- One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.
- A telephone call made to determine a former client's level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to buy more property, goods or services.
- A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for another person. This exemption does *not* apply to a caller who does any of the following:
 - Sells or promotes the sale of property, goods or services for others.
 - Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller's sales methods.

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Telemarketers Must Register

This rule requires telemarketers to register annually with DATCP. A registration expires on November 30 of each year. Under this rule:

- A firm must register annually with DATCP if the firm employs or contracts with individuals to make telephone solicitations to residential customers. A firm that sells property, goods or services may register on behalf of another firm that hires individual telemarketers to promote sales by the registering firm.

For example, an insurance company may register on behalf of a local insurance agency whose employees telemarket that company's insurance. But that registration does not cover the local agency's employees when they telemarket another company's insurance.

- No individual may make a telephone solicitation to a residential telephone customer unless the telephone solicitation is covered by a registration under this rule.

Telemarketer Registration Form

To register with DATCP, a firm must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant's correct legal name, and all trade names under which the registrant does business.
- The registrant's principal business address and telephone number. The business address must include street address, zip code, state or province, and nation.
- The registrant's federal tax identification (FEIN) number.
- The name and address of the registrant's registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.
- The number of telephone lines that will be used to make telephone solicitations under the registration. The registrant must provide the telephone number associated with each of the lines.
- The number of individuals who will make telephone solicitations under the registration. The registrant must provide the names of the individuals if DATCP requests those names.

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- A statement indicating the form in which the registrant wishes to receive “no-call” lists. A registrant may receive “no-call” lists in one or more of the following forms:
 - By e-mail transmission to an e-mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A firm registering with DATCP must pay the following annual fees, or an annual fee of \$20,000, *whichever is less*:

- A basic annual registration fee of \$700 for the first year of registration, and \$500 for each year thereafter.
- A supplementary fee of \$75 for each telephone line used to make telephone solicitations under the registration. This fee does not apply if fewer than 4 telephone lines will be used.
- A supplementary fee of \$25 for each e-mail address to which the registrant would like DATCP to send the “no-call” list (if more than one e-mail address).
- A supplementary fee of \$25 for each address to which the registrant would like DATCP to send the “no call” list in compact disc form.
- A supplementary fee of \$1,000 for each address to which the registrant would like DATCP to send the “no-call” list in hard-copy print form.

DATCP may reduce the fees charged to registrants in any registration year (beginning December 1) if DATCP projects that the balance in its fee revenue appropriation at DATCP’s next fiscal-year-end (June 30) will exceed DATCP’s total projected expenditures for the “no call” program in that fiscal year by more than 15%.

The “No-Call” List

DATCP must compile a “no-call” list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no-call list.

A residential telephone customer may contact DATCP by phone, or at DATCP’s website, to sign up for the “no-call” list. A customer’s caregiver may sign up on behalf of the customer. The customer or caregiver must give DATCP all the following information:

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- The customer's telephone number including area code.
- The customer's ZIP code.
- The customer's name and address, if requested by DATCP. *This information is not included on the "no-call" list, but may be requested for verification purposes.*
- The caregiver's name and address, if a caregiver contacts DATCP on behalf of the customer. *This information is not included on the "no-call" list, but is required for verification purposes.*

Distributing the List

DATCP must distribute the "no-call" list to each firm that is currently registered with DATCP. DATCP must distribute the list in the manner specified by the registrant (assuming that the registrant pays the required fees for that method of delivery). A "no-call" list takes effect on a date specified by DATCP, not sooner than 10 business days after DATCP distributes the list.

Updating the List

DATCP must compile and distribute an updated "no-call" list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the "no-call" list 2 years after that customer last signed up for inclusion on the list. A customer may renew at any time.

No Unauthorized Release

A registered telemarketer may not redistribute any part of a "no-call" list to any other person, except that the registrant may redistribute the list to a person covered by the registration. DATCP may not release a "no-call" list, or any information used to compile the list, except that:

- DATCP may release a "no-call" list to firms currently registered with DATCP.
- DATCP may release a "no-call" list as necessary to enforce this rule, or to comply with a subpoena or judicial process, subject to such protective orders as may be necessary to ensure the confidentiality of the list.
- DATCP may release the "no-call" list to the federal trade commission or other federal agency maintaining a national "no-call" list (if any).

Telephone solicitation practices

Telemarketers must comply with current DATCP telemarketing rules under ch. ATCP 127, Wis. Adm. Code. In addition, this rule prohibits telemarketers from doing any of the following:

- Making telephone solicitations to a residential telephone customer, unless the telemarketer is registered with DATCP or covered by a current registration.
- Making a telephone solicitation to a residential telephone customer whose telephone number appears on the current "no call" list.
- Using an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.
- Failing to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer's Wisconsin registration number.
- Making a telephone solicitation to a nonresidential telephone customer (business customer) if the nonresidential telephone customer has notified the telemarketer by mail that the nonresidential telephone customer does not wish to receive telephone solicitations. A telemarketer must provide a nonresidential telephone customer with the telemarketer's mailing address within 10 days after the customer requests it.
- Requiring, instructing or authorizing any person to make a telephone solicitation in violation of this rule, or facilitating a violation of this rule by any person.
- Using caller-ID blocking when making a telephone solicitation.

Telemarketer Records

Under current DATCP telemarketing rules, telemarketers must keep certain records for at least 2 years and must make those records available to DATCP upon request. Among other things, a telemarketer must keep records related to individuals who make telephone solicitations as employees or agents of the telemarketer, including names, addresses, telephone numbers, job titles, and fictitious names if any (no two individuals may use the same fictitious name). This rule requires telemarketers to comply with current record keeping requirements.

Hearings

DATCP held 12 public hearings in Madison, Eau Claire, Green Bay, Milwaukee, Wausau, and LaCrosse to solicit comments and opinions from affected consumers and businesses. 134 people registered at the hearings. DATCP also received written and electronic comments from 143 persons and groups, including two legislators and two sheriff deputies.

52 participants opposed any rules. 91 participants supported the rules and asked DATCP to grant no exemptions from the rules. 119 participants expressed partial support or partial opposition, but sought changes (such as exemptions). 15 other participants sought changes without registering support or opposition. A hearing summary is attached as *Appendix A*.

Changes from Hearing Draft

DATCP made a number of changes in the final draft rule. Although many businesses requested exemptions, DATCP has intentionally limited the number of exemptions in order to protect consumers from unwanted telephone calls and to maintain a "level playing field" between competing businesses.

The final draft rule:

- Clarifies the technical definition of "telephone call" and "telephone line" based, in part, on information provided by the Wisconsin Public Service Commission.
- Removes a restrictive definition of "nonprofit organization." The final draft clarifies that sales solicitations by a nonprofit organization are exempt unless the sale proceeds are subject to Wisconsin sales tax or federal income tax. Bona fide solicitations of charity donations were already exempt, because the "no call" law applies only to telemarketing calls promoting sales of property, goods or services (not charity donations).
- Changes and limits the prior exemption for "sole proprietors." The final draft rule exempts a telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for any other person. This exemption does *not* apply to a caller who does any of the following:
 - *Sells or promotes the sale of property, goods or services for others.* For example, self-employed insurance agents are *not* exempt from this rule when they or their employees telemarket insurance for insurance companies. But an insurance company may register and pay fees on behalf of self-employed insurance agents (and their employees) who telemarket the company's insurance.
 - *Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller's sales methods.*
- Clarifies the prior exemption of calls made to current "clients." The final draft defines a "client" as a person who has a current agreement to receive (from the caller or the person on whose behalf the call is made) property, goods or services of the type promoted by the telephone call. The final draft also clarifies that certain calls to former clients are exempt, unless they are part of a plan or scheme to make new sales.
- Changes the annual registration cycle, so each registration year begins on December 1 rather than January 1. This will make it possible for DATCP to distribute "no-call" lists to current registrants beginning January 1.
- Reduces registration fees to \$700 (from \$800) for the first year and \$500 (from \$600) for each subsequent year. The final draft also reduces the per-line charges to from \$100 to \$75 annually.

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- Places a \$20,000 ceiling on annual registration fees (there was no ceiling on fees in the hearing draft).
- Allows DATCP to reduce annual registration fees in any registration year if DATCP's projected fiscal year end balance exceeds DATCP's projected fiscal year expenditures by more than 15%.
- Requires registrants to notify DATCP of material changes in registration information that occur during the registration year, and pay any additional fees owed for the registration year as a result of the changes.
- Gives telemarketers at least 10 *business* days (not just 10 days) to implement updated "no call" lists received from DATCP. DATCP may set later implementation deadlines as appropriate (all telemarketers must meet the same deadline).
- Eliminates a proposal requiring telemarketing firms to record the time periods during which individuals have engaged in telemarketing activities. Telemarketing firms must still keep other records related to individual telemarketers, including names, addresses and job titles.
- Makes other technical drafting changes.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made several editorial comments on the hearing draft rule. Except as noted below, DATCP modified the final draft rule to address these editorial comments.

- Comment 1.a. The final draft rule modifies the hearing draft definition of "nonprofit organization." (See changes from hearing draft, above.) The final draft is clear, and is consistent with the Governor's veto. No further explanation is needed in the rule analysis.
- Comment 1.b. The rule incorporates the statutory exemptions, but in a different way. The rule exempts telephone solicitations to numbers listed in the local business directory. This provides a clear way to determine whether a telephone is a "business" phone or a "residential" phone. This clarity will facilitate administration and compliance. The provision is explained in the rule analysis.
- Comment 5.a. The rule exempts calls to a "current client" and defines "client." This definition makes it clear that "client" does not include an affiliate of the caller.

Small Business Analysis

This rule will have a fiscal and operational impact on many small businesses involved in telemarketing. This rule prohibits telemarketing calls to consumers who sign up for the "no call" list. With very limited exceptions, telemarketers must register with DATCP and pay fees. Fees are based on the number of telephone lines used, so small businesses will generally pay less than larger businesses. Small businesses with fewer than 4 lines will pay no line fee at all.

Currently, businesses that telemarket must maintain a "no call" list with the names of consumers who have told them not to call again. Under this rule, telemarketers must also refrain from calling consumers identified on DATCP's "no call" list. This may require one-time expenditures for systems to maintain both lists. A complete small business analysis is attached.

DATCP has intentionally limited the number of exemptions provided to businesses, in order to protect consumers from unwanted telephone calls and to maintain a "level playing field" between competing businesses.

Fiscal Estimate

This rule will have a significant fiscal impact on DATCP. DATCP estimates that approximately 1 million consumers will sign up for the "no-call" list. DATCP has obtained competitive bids and will contract with a private vendor to handle consumer sign-ups for the "no call" list. DATCP estimates that these costs, together with costs to administer and enforce the law, will average \$543,900 annually.

DATCP must charge telemarketer registration fees to cover these costs. DATCP estimates that approximately 600 telemarketers (of various sizes) will register each year. Based on this estimate, DATCP has proposed registration fees to cover its anticipated costs. Because the program involves high initial start-up costs, DATCP estimates that the program will run a deficit for the first year, but that fee revenues will subsequently be sufficient to repay the deficit and maintain a (modest) positive annual balance. A complete fiscal estimate is attached.

**PROPOSED 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
2 proposes the following order to amend chapter ATCP 127(note) and s. ATCP 127.01(15);
3 and to create subchapter V of chapter ATCP 127; relating to telephone solicitations and a
4 no-call list.

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

Statutory authority: ss. 100.20(2) and 100.52
Statutes interpreted: ss. 100.20 and 100.52

Background

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules, under ch. ATCP 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices. The Legislature has also directed DATCP, under s. 100.52, Stats., to create a "no-call" list of consumers who do not wish to receive telemarketing calls.

Under s. 100.52, Stats., consumers may contact DATCP to sign up for the "no call" list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers. DATCP must adopt rules to implement this program.

This rule creates a telemarketing "no-call" program, as directed by the Legislature. DATCP is adding this rule to DATCP's current telemarketing rules under ch. ATCP 127, Wis. Adm. Code.

“Telephone Solicitations” Covered

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” unless sale proceeds are subject to Wisconsin sales tax or federal income tax.
- A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for any other person. This exemption does *not* apply to a caller who does any of the following:
 - Sells or promotes the sale of property, goods or services for others.
 - Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller’s sales methods.
- A telephone call made in response to the call recipient’s request for that call.
- A telephone call made to a current client. A current client is a person who has a current agreement to receive, from the caller or the person on whose behalf the call is made, property, goods or services of the type promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.
- One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.
- A telephone call made to determine a former client’s level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to purchase more property, goods or services.

Telemarketers Must Register

This rule requires telemarketers to register annually with DATCP. A registration expires on November 30 of each year. Under this rule:

- A firm must register annually with DATCP if the firm employs or contracts with individuals to make telephone solicitations to residential customers. A firm that sells property, goods or services may register on behalf of another firm that hires individual telemarketers to promote sales by the registrant.

For example, an insurance company may register on behalf of a local insurance agency whose employees telemarket that company's insurance. But that registration does not cover the local agency's employees when they telemarket another company's insurance.

- No individual may make a telephone solicitation to a residential telephone customer unless the telephone solicitation is covered by a registration under this rule.

Telemarketer Registration Form

To register with DATCP, a firm must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant's correct legal name, and all trade names under which the registrant does business.
- The registrant's principal business address and telephone number. The business address shall include street address, zip code, state or province, and nation.
- The registrant's federal tax identification (FEIN) number.
- The name and address of the registrant's registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.
- The number of telephone lines that will be used to make telephone solicitations under the registration. The registrant must provide the telephone numbers associated with each of these lines.
- The number of individuals who will make telephone solicitations under the registration. The registrant must provide the names of the individuals if DATCP requests those names.
- A statement indicating the form in which the registrant wishes to receive "no-call" lists. A registrant may receive "no-call" lists in one or more of the following forms:
 - By e-mail transmission to an e-mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A firm registering with DATCP must pay the following annual fees, or an annual fee of \$20,000, whichever is less:

- A basic annual registration fee of \$700 for the first year of registration, and \$500 for each year thereafter.
- A supplementary annual fee of \$75 for each telephone line used to make telephone solicitations under the registration. This fee does not apply if fewer than 4 telephone lines will be used.
- A supplementary annual fee of \$25 for each e-mail address to which the registrant would like DATCP to send the "no-call" list. This fee does not apply if the registrant asks DATCP to send the "no-call" list to just one e-mail address.
- A supplementary annual fee of \$25 for each address to which the registrant would like DATCP to send the "no-call" list in compact disc form.
- A supplementary annual fee of \$1,000 for each address to which the registrant would like DATCP to send the "no-call" list in hard-copy print form.

DATCP may reduce the fees charged to registrants in any registration year (beginning December 1) if DATCP projects that the balance in its fee revenue appropriation at DATCP's next fiscal-year-end (June 30) will exceed DATCP's total projected expenditures for the "no call" program in that fiscal year by more than 15%.

Updating Registration Information

This rule requires registrants to notify DATCP of material changes in registration information that occur during the registration year, and pay any additional fees owed for the registration year as a result of the change.

The "No-Call" List

DATCP must compile a "no-call" list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no-call list.

A residential telephone customer may contact DATCP by phone, or at DATCP's website, to sign up for the "no-call" list. A customer's caregiver may sign up on behalf of the customer. The customer or caregiver shall give DATCP all the following information:

- The customer's telephone number including area code.

- The customer's ZIP code.
- The customer's name and address, if requested by DATCP. *DATCP will not include this information on the "no-call" list, but may request it for verification purposes.*
- The caregiver's name and address, if a caregiver contacts DATCP on behalf of the customer. *DATCP will not include this information on the "no-call" list, but requires it for verification purposes.*

Distributing the List

DATCP must distribute the "no-call" list to each firm that is currently registered with DATCP. DATCP must distribute the list in the manner specified by the registrant (assuming that the registrant pays the required fees for that method of delivery). A "no-call" list takes effect on a date specified by DATCP, not sooner than 10 business days after DATCP distributes the list.

Updating the List

DATCP must compile and distribute an updated "no-call" list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the "no-call" list 2 years after that customer last signed up for inclusion on the list. A customer may renew a sign-up at any time.

No Unauthorized Release

A registrant may not redistribute any part of a "no-call" list to any other person, except that the registrant may redistribute the list to a person covered by the registration. DATCP may not release a "no-call" list, or any information used to compile the list, except that:

- DATCP may release a "no-call" list to firms currently registered with DATCP.
- DATCP may release a "no-call" list as necessary to enforce this rule, or to comply with a subpoena or judicial process, subject to such protective orders as may be necessary to ensure the confidentiality of the list.
- DATCP may release the "no-call" list to the federal trade commission or other federal agency maintaining a national "no-call" list.

Telephone solicitation practices

Telemarketers must comply with current DATCP telemarketing rules under ch. ATCP 127, Wis. Adm. Code. In addition, this rule prohibits telemarketers from doing any of the following:

- Making telephone solicitations to a residential telephone customer, unless the telemarketer is registered with DATCP or covered by a current registration.
- Making a telephone solicitation to a residential telephone customer whose telephone number appears on the current “no call” list.
- Using an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.
- Failing to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer’s Wisconsin registration number.
- Making a telephone solicitation to a nonresidential telephone customer (business) if that business has notified the telemarketer by mail that the business does not wish to receive telephone solicitations. A telemarketer must provide a business with the telemarketer’s mailing address within 10 days after the business requests it.
- Requiring, instructing or authorizing an employee or agent to make a telephone solicitation in violation of this rule, or facilitating a violation of this rule.
- Using caller-ID blocking when making a telephone solicitation.

Telemarketer Records

Under current DATCP telemarketing rules, telemarketers must keep certain records for at least 2 years and must make those records available to DATCP upon request. Among other things, a telemarketer must keep records related to individuals who make telephone solicitations as employees or agents of the telemarketer, including names, addresses, telephone numbers, job titles, and fictitious names if any (no 2 individuals may use the same fictitious name). This rule requires telemarketers to comply with current record keeping requirements.

1 **SECTION 1.** Chapter ATCP 127 (note) is amended to read:

2 **NOTE:** This chapter is adopted under authority of s. 100.20(2), Stats., and is
 3 administered by the Wisconsin department of agriculture, trade and
 4 consumer protection. Violations of this chapter may be prosecuted under
 5 s. 100.20(6) and s. 100.26(3) and (6), Stats. A person who suffers a
 6 monetary loss because of a violation of this chapter may sue the violator
 7 directly under s. 100.20(5), Stats., and may recover twice the amount of
 8 the loss, together with costs and reasonable attorneys’ fees. Subchapter V
 9 is also adopted under authority of s. 100.52, Stats.

10
 11 **SECTION 2.** Section ATCP 127.01(15) is amended to read: