

Report From Agency

DATCP Docket No. 09-R-11
Rules Clearinghouse No. 10-045

Proposed Final Draft
August 11, 2010

PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING AND AMENDING RULES

2 The Wisconsin department of agriculture, trade and consumer protection proposes the following
3 order *to renumber* ATCP 127.80(4) and 127.80(7) and (8); *to renumber and amend* ATCP
4 127.80(3), 127.80(5), 127.80(6), and 127.80(9); *to amend* ATCP 127.81(1)(a) and (c), 127.82(1),
5 (2), (3)(a) and (note), (3)(b), and (6) and ATCP 127.83(2)(b) and (c), (3) and (4); and *to create*
6 ATCP 127.80(1)(note) and 127.80(3); *relating to* the addition of cell phone numbers to the
7 Wisconsin No Call law.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers the Wisconsin's telemarketing "No Call" law, s. 100.52, Stats. The "No Call" law authorizes DATCP to create a list of telephone numbers of Wisconsin residents who do not want to receive telemarketing calls.

The law prohibits telemarketers from calling the listed numbers. Telemarketers must register with DATCP, and receive copies of the periodically-updated "No Call" list. DATCP has adopted rules to interpret and administer the "No Call" law, and prohibit unfair telemarketing practices. The rules are contained in ch. ATCP 127, Wis. Adm. Code.

When first enacted, the "No Call" law only authorized DATCP to include residential "land line" numbers on the "No Call" list. 2007 Act 226 changed the law to allow the inclusion of commercial mobile service numbers (cell phone numbers) on the "No Call" list. DATCP has already implemented that law change. This rule merely updates current rules to reflect current law and practice.

Statutes Interpreted

Statutes Interpreted: ss. 100.20(2) and 100.52, Wis. Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 100.20(2) and 100.52, Wis. Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.52, Stats., to create a list of the telephone numbers of residential consumers with landline service and consumers with cell phone service who do not want to receive telemarketing calls and prohibit telemarketing calls made to telephone numbers on the list. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

Related Rules or Statutes

Chapter ATCP 127, subchapter II, Wis. Adm. Code, which is promulgated under the authority of s. 100.20(2), Wis. Stats., regulates the sales practice of persons who solicit consumers over the telephone.

Rule Background

The current rule does the following:

- Creates a list of telephone numbers of consumers covered by the No Call law who do not want to receive telemarketing calls.
- Describes a consumer covered by the No Call law as a “residential telephone customer” and defines this term to mean “an individual in this state who receives basic local service from a telecommunications utility.”
- Prohibits solicitors from placing telemarketing calls to consumers whose telephone numbers are on the list.
- Requires persons who solicit goods and services through telemarketing to register with the department.
- Provides the registrants with a copy of the No Call list.

Since DATCP adopted the current rules, the legislature changed the statutory definition of persons covered by the No Call law to include individuals who are provided commercial mobile service by a telephone utility. This rule updates and clarifies current rule coverage to include individuals who are provided commercial mobile service to the persons who may add their telephone numbers to the No Call list.

Rule Content

This rule does all of the following:

- Changes the definition of “residential telephone customer” to “covered telephone customer” and defines this term to mean “an individual in this state who receives basic local exchange service or commercial mobile service from a telecommunications utility.”
- Changes the definition of “nonresidential telephone customer” to “noncovered telephone customer” and defines this term to mean “a person, other than a covered customer, who receives telecommunications service from a telecommunications utility.”
- Amends the definition of “telephone call” to include a voice communication “through the use of commercial mobile service.”
- Clarifies that the definition of “telecommunications utility” includes a person who provides commercial mobile service.
- Renumbers the definitions and amends other parts of the rule to reflect changes in the definitions.

Fiscal Impact

This rule will have no significant fiscal impact on DATCP or local units of government. A complete fiscal estimate is attached.

Business Impact

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to reflect law changes already enacted by the Legislature and implemented by DATCP. A complete *business impact analysis* is attached.

Federal and Surrounding State Regulations

Federal Regulations

Congress, the federal communications commission, and the federal trade commission have created a federal “No Call” list that includes cell phone numbers as well as land line numbers. The federal “No Call” regulations are not identical to Wisconsin regulations, and in some cases would allow calls that Wisconsin prohibits. However, the federal regulations do not preempt the more protective Wisconsin regulations.

Surrounding State Regulations

Surrounding states, including Minnesota, Iowa, Illinois and Michigan have all adopted the federal “No Call” list as the state list. Indiana, like Wisconsin, maintains its own “No Call” list (the Indiana list, like the federal and Wisconsin lists, includes cell phone as well as land line numbers).

Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule merely updates current law to address the addition of individuals who are furnished commercial mobile service.

DATCP Contact

Questions related to this rule may be directed to:

Michelle Reinen, Director
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5160
E-Mail: michelle.reinen@wi.gov

1 **SECTION 1.** Section ATCP 127.80(1) (note) is created to read:

2 **NOTE:** Under s. 196.01(1g), Stats., a “basic local exchange service” only includes
3 service provided to residential customers.

4
5 **SECTION 2.** Section ATCP 127.80(3) is renumbered (6) and amended to read:

6 **(6)** “~~Nonresidential~~ Noncovered telephone customer” means a person, other than a
7 ~~residential~~ covered customer, who receives telecommunications service from a
8 telecommunications utility.

9 **SECTION 3.** Section ATCP 127.80(3) is created to read:

10 ATCP 127.80(3) “Commercial mobile service” has the meaning given in s. 196.01 (2i),
11 Stats.

1 **SECTION 4.** Section ATCP 127.80(4) is renumbered (5).

2 **SECTION 5.** Section ATCP 127.80(5) is renumbered (4) and amended to read:

3 (4) “~~Residential~~ Covered telephone customer” means an individual in this state who
4 receives basic local exchange service or commercial mobile service from a telecommunications
5 utility.

6 **SECTION 6.** Section ATCP 127.80(6) is renumbered (7) and amended to read:

7 (7) “Telephone call” means a voice communication over any part of the electromagnetic
8 spectrum to customer premises equipment or through the use of commercial mobile service.

9 **SECTION 7.** Sections ATCP 127.80(7) and (8) are renumbered (8) and (9).

10 **SECTION 8.** Section ATCP 127.80(9) is renumbered (10) and amended to read:

11 (10) “Telecommunications utility” has the meaning given in s. 196.01(10), Stats., ~~and~~
12 “Telecommunications utility” includes an “alternative telecommunication utility” as defined in s.
13 196.01(1d), Stats., and a commercial mobile radio service provider as defined in s. 196.01(2g),
14 Stats.

15 **SECTION 9.** Section ATCP 127.81(1)(a) and (c) are amended to read:

16 ATCP 127.81 (1)(a) No person may employ or contract with any individual to make
17 telephone solicitations to ~~residential~~ covered telephone customers unless one of the following
18 applies:

19 (c) No individual may make a telephone solicitation to a ~~residential~~ covered telephone
20 customer unless the telephone solicitation is covered by a registration under this section.

21 **SECTION 10.** Section ATCP 127.82(1), (2), (3)(a) and (note), (3)(b), and (6) are amended
22 to read:

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

4 (2) SOLICITATIONS PROHIBITED. No person may make a telephone solicitation, either
5 directly or through an employee or agent, to a ~~residential~~ covered telephone customer whose
6 telephone number appears on the current no-call list. A telephone solicitation made in violation
7 of this subsection does not, by itself, result in a monetary loss for which a ~~residential~~ current
8 telephone customer may seek recovery under s. 100.20(5), Stats., unless that customer sustains
9 an actual monetary loss as a result of another violation of this chapter.

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

13 **NOTE:** The department will publish a telephone number and website address that
14 ~~residential~~ covered telephone customers may contact to sign up for the no-call list.
15 The no-call list will include only the customer's telephone number and ZIP code.
16

17 (b) No person, other than a ~~residential~~ covered telephone customer or the customer's
18 caregiver, may ask the department to include the customer on the no-call list.

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

23 **SECTION 11.** Section ATCP 127.83(2)(b) and (c), (3) and (4) are amended to read:

24 ATCP 127.83(2)(b) Use an electronically prerecorded message in a telephone call for the
25 purpose of encouraging a ~~residential~~ covered or ~~nonresidential~~ noncovered telephone customer to

1 purchase property, goods or services, without the prior consent of that telephone customer. This
2 paragraph does not apply if the person meets the provisions of ss. ATCP 127.80(10)(a) or (b).

3 (c) Make a telephone solicitation to a ~~nonresidential~~ noncovered telephone customer if
4 the ~~nonresidential~~ noncovered telephone customer has notified the person by mail that the
5 ~~nonresidential~~ noncovered telephone customer does not wish to receive telephone solicitations.

6 (3) A person making a telephone solicitation to a ~~residential~~ covered telephone customer
7 shall give the call recipient, at the call recipient's request, the number of the registration under s.
8 ATCP 127.81 that covers the telephone solicitation.

9 (4) A person making a telephone solicitation to a ~~nonresidential~~ noncovered telephone
10 customer shall give the call recipient, at the call recipient's request, a mailing address to which
11 the ~~nonresidential~~ noncovered telephone customer may mail a notice under sub. (2)(c). The
12 person shall provide the mailing address within 10 days after the call recipient requests it.

13 **SECTION 12. EFFECTIVE DATE.** This rule shall take effect on the first day of the
14 month following publication in the Wisconsin administrative register, as provided in s.
15 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2010.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Randy Romanski, Deputy Secretary