

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

ATCP 127, Direct Marketing

Subject

Prohibiting text message solicitations to numbers on the Do Not Call list, prohibiting "spoofing".

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

s. 20.115 (1) (im), stats.

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

The Wisconsin no-call program was established by statute in 2001 and DATCP promulgated a rule, ch. ATCP 127, Subchapter V, to implement the program in 2002. Under the previous statute and existing rule, telephone solicitors must register with DATCP and refrain from contacting consumers who have enrolled for the no-call list. Recently enacted 2011 Wisconsin Act 197 extended the no-call provisions to include text messaging. This proposed rule revises ch. ATCP 127 to accommodate the change in statute. For purposes of the no-call program, this rule clarifies that the definition of "telephone solicitation" includes text message solicitations and creates a definition of "text message."

In addition, this rule prohibits the practice known as "spoofing," transmitting misleading or inaccurate call identification information. This proposed prohibition against "spoofing" is similar to the current rule requirements that telephone solicitors disclose the name of the seller, and not misrepresent the seller's identity, location or characteristics.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule, together with 2011 Wisconsin Act 197, may result in some increase to both DATCP's revenues and costs. However, DATCP does not have sufficient data to estimate a dollar amount. There may be new revenue generated from telephone solicitor registration fees from solicitors who specialize in text message solicitations (and therefore must now register for the first time) and from solicitors who are currently registered, but must now pay a supplemental fee for using additional lines. There may be some one-time costs incurred as DATCP makes programmatic changes to accommodate the new rule. These one-time costs include such items as revising hand-outs and brochures, solicitor

registration forms, updating databases, and educating registered solicitors and consumers about the change in law. The additional revenues and costs represent small changes and the costs can be absorbed within DATCP's budget.

DATCP anticipates additional annual costs as a result of new consumer complaints and investigations. Last year, DATCP received approximately 1,200 consumer complaints related to telemarketing practices and the no-call list. Because this rule, along with 2011 Wisconsin Act 197, expands the types of communications to which the no-call list applies, it is likely that the number of complaints will increase. However, there is insufficient data to predict the rate of increase.

Economic Impact Analysis Comments

DATCP posted the proposed rule online and sought comments from businesses and the public about the potential economic impact of the rule. The department did not receive any comments about the potential economic impact of the rule.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementing this proposed rule will bring congruity to existing statutes and rules. Not implementing the rule could lead to confusion because text messaging is now regulated as part of the no-call program (by statute), but is not specifically mentioned in the rule.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit business and consumers by harmonizing the administrative rule with the existing statute.

Compare With Approaches Being Used by Federal Government

The federal CAN-SPAM Act prohibits sending commercial electronic mail messages to wireless devices, including cellular phones and pagers, unless the recipient provided prior authorization to receive such messages. In addition, Federal Communications Commission (FCC) rules prohibit sending unwanted text messages to a wireless phone number if they are sent using an auto dialer. Finally, FCC rules prohibit sending unwanted text messages to a telephone number on the national Do Not Call List.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Many states have do-no call programs. Several states, like Wisconsin, maintain their own do-not call list. Others, including the neighboring states of Illinois, Michigan and Minnesota have laws allowing for state enforcement of do-not call provisions, but rely on the FTC's registry rather than maintaining their own. Under FTC rules, texting is included in the do-not call provisions.

Iowa does not presently have any statutes or rules related to a do-not call program.

Name and Phone Number of Contact Person

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