

Filed with LRB: July 29, 2014
Publication Date: August 1, 2014
Effective Dates: August 1, 2014 through December 28, 2014
Extension Through: February 26, 2015

Agriculture, Trade, and Consumer Protection

EmR1413

(ATCP # 14-R-09)

DATCP Docket No. 14-R-09

**Emergency Rule
July 10, 2014**

The scope for this rule, SS 049-14, was approved by the Governor on May 14, 2014 published in register No. 701 on May 31, 2014, and approved by the Board of Agriculture, Trade & Consumer Protection on June 12, 2014. This emergency rule was approved by the Governor on July 29, 2014.

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
EMERGENCY RULE**

1 The Wisconsin department of agriculture, trade and consumer protection adopts the following
2 emergency rule *to amend* ATCP 127, subchapter V (Title) and 127.82 (2) *to repeal* ATCP
3 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7); *to repeal and recreate*
4 ATCP 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8); and *to create* ATCP
5 127.80 (6r) *relating to* telephone solicitations and the state do-not-call registry.

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

This rule implements s. 100.52, Stats., which directs the department of agriculture, trade and consumer protection (DATCP) to promulgate rules related to telephone solicitations and the do-not-call registry and s. 100.20, Stats., which regulates fair trade practices in business.

Statutes Interpreted

Statutes Interpreted: 100.20 (1) and 100.52, Stats.

Statutory Authority

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

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2), Stats., to promulgate rules forbidding trade practices which DATCP determines to be unfair, and to prescribe fair trade practices. Section 100.52, Stats., directs DATCP to establish by rule a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

Related Statutes and Rules

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2), Stats., to promulgate rules forbidding trade practices which DATCP determines to be unfair, and to prescribe fair trade practices. Section 100.52, Stats., directs DATCP to establish by rule a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

Section 100.20(1), Stats., requires trade practices in business to be fair. Unfair trade practices are prohibited. DATCP has rulemaking authority under s. 100.20 (2), Stats., to regulate unfair trade practices through administrative rules.

Section 100.52, Stats., governs telephone solicitations. Among other things, it directs DATCP to establish a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

Chapter ATCP 127, Subchapter II, Telephone Solicitations, was promulgated under DATCP's authority to regulate unfair trade practices. Among other things, this subchapter requires telephone solicitors to disclose their name and prohibits them from using fictitious names or misrepresenting their identity, affiliation, location or characteristics.

The existing Chapter ATCP 127, Subchapter V, Telephone Solicitations; No-Call List, implements s. 100.52, Stats. This subchapter establishes mechanisms for telephone customers to enter their numbers onto the no-call list that is compiled by the state and for telephone solicitors to register with DATCP to obtain the list.

Plain Language Analysis

Background

Section 100.52, Stats., established the Wisconsin no-call program in 2001. DATCP promulgated chapter ATCP 127, subchapter V in 2002. This law required the department to create a no-call list and prohibited telephone solicitors from calling residential customers on the list. Residential customers who did not want to receive unsolicited commercial calls provided their telephone number and zip code to DATCP every two years to remain on the non-solicitation list.

The law also required the department to enact a rule that requires solicitors to register with DATCP and pay an annual fee to obtain the no-call list and solicit residential customers located in Wisconsin.

The no-call law provides exceptions to the prohibition against calls made to Wisconsin residents by an unregistered solicitor. For example, calls made to current clients, calls made to persons who have consented to receive the call, and calls made on behalf of non-profit and political organizations, may be made by solicitors who have not registered with the department.

The law also prohibits telephone solicitors from making pre-recorded telephone solicitations to either residential or business customers, and from making telephone calls to business customers who ask them in writing to not make the calls.

The law was amended in 2008 to prohibit telephone solicitors from calling cell phones on the state no-call list. The law was amended in 2012 to prohibit telephone solicitors from sending text messages to residential customers on the state no-call list.

The Federal Trade Commission (FTC) maintains a federal do-not-call registry. Under the federal do-not-call program, Wisconsin residents may permanently register their numbers on that list.

The Wisconsin no-call law was most recently amended by 2013 Act 234 which has eliminated the separate, DATCP-maintained Wisconsin no-call list. As of August 1, 2014, Wisconsin residents who do not want to receive unsolicited telephone calls or texts from telemarketers will only need to sign up on the FTC do-not-call registry without any need to re-register, and all telephone numbers on the existing Wisconsin no-call list will be transferred to that registry. Under the new state law, telephone solicitors must register with the FTC and obtain and follow the Wisconsin portion of the federal do-not-call registry (state do-not-call registry). Telephone solicitors shall continue to register with DATCP, and DATCP shall continue to administer and enforce the Wisconsin no-call law.

Rule Content

General

This emergency rule does all of the following:

- Establishes updated registration requirements for telephone solicitors.
- Repeals portions of the rule made obsolete by 2013 Act 234.

Registration requirements

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

Obsolete rule provisions

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

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

Federal Programs

The Federal Trade Commission (FTC) and Federal Communications Commission (FCC) administer the Telephone Consumer Protection Act (TCPA) which establishes the national do-not-call registry. Residential customers can permanently register their telephone numbers on the federal do-not-call registry.

Surrounding State Programs

Many states have do-not-call programs. Several states maintain their own do-not-call list. Others, including 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. Iowa encourages its residents to sign up on the federal do-not-call registry.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP reviewed federal and state laws related to telephone solicitations, data related to telephone solicitor registration, past enforcement actions, and consumer complaints.

Analysis and Supporting Documents used to Determine Effect on Small Business

The effect on small business was determined by reviewing estimates of costs a business would incur in order to comply with the law.

Effect on Small Business

This rule will, generally, have minimal impact on business. This rule might affect the following businesses in the following ways (many of these businesses are "small businesses"):

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

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

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

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

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

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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Where Comments May Be Submitted

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FINDING OF EMERGENCY

(1) FINDING OF EMERGENCY

1 **(1)** In Wisconsin, businesses wishing to solicit consumers by telephone must register
2 with the department and pay an annual registration fee.

3 **(2)** A recent statutory change eliminated Wisconsin’s separate no-call list and requires
4 telephone solicitors to use the Wisconsin portion of the national do-not-call registry.

5 **(3)** The law also requires the department to create telephone solicitor registration
6 requirements by rule that will show proof that the businesses have registered with the federal
7 trade commission’s do-not-call registry to obtain and use the Wisconsin portion of the national
8 do-no-call registry.

1 **SECTION 6.** ATCP 127.82 (Title) and (1) are repealed and recreated to read:

2 ATCP 127.82 **Do-Not-Call Registry.** (1) OBTAINING THE REGISTRY. Registered
3 telephone solicitors must obtain and use a current state do-not-call registry from the national do-
4 not-call registry website at least once every 31 days.

5 **Note:** The state do-not-call registry can be obtained at this website
6 <https://telemarketing.donotcall.gov/>. Registration with the FTC and a valid Subscriber Access
7 Number are required.

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9 **SECTION 7.** ATCP 127.82 (2) is amended to read:

10 ATCP 127.82 (2) SOLICITATIONS PROHIBITED. No person may make a telephone
11 solicitation, either directly or through an employee or agent, to a covered telephone customer
12 whose telephone number appears on the current ~~no-call-list~~ state do-not-call registry. A
13 telephone solicitation made in violation of this subsection does not, by itself, result in a monetary
14 loss for which a current telephone customer may seek recovery under s. 100.20 (5), Stats., unless
15 that customer sustains an actual monetary loss as a result of another violation of this chapter.

16 **SECTION 8.** ATCP 127.82 (3), (4), (5), (6), and (7) are repealed.

17 **SECTION 9.** ATCP 127.82 (8) is repealed and recreated to read:

18 ATCP 127.82 (8) REGISTRY NOT OPEN TO PUBLIC INSPECTION. The department may not
19 release a state do-not-call registry except that the department may release a state do not call
20 registry as necessary to enforce this subchapter, or to comply with a subpoena or judicial
21 process, subject to any protective orders that may be necessary to ensure the confidentiality of
22 the list.

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1 **SECTION 10. EFFECTIVE DATE:** This emergency rule takes effect upon publication, and
2 remains in effect for 150 days. The department may seek to extend this emergency rule as
3 provided in s. 227.24, Stats.

4 Dated this 11th day of July, 2014.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By:
Ben Brancel
Secretary

5 **Wisconsin Department of Agriculture, Trade and Consumer Protection**

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7 **Initial Regulatory Flexibility Analysis**

8
9 ***Rule Subject:*** **Direct Marketing; Telephone Solicitations; No-Call**
10 **List**
11 ***Adm. Code Reference:*** **ATCP 127**
12 ***Rules Clearinghouse #:*** **Not Applicable**
13 ***DATCP Docket #:*** **14-R-09**

14
15 ***Rule Summary***

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

- Establishes updated registration requirements for telephone solicitors.
- Repeals portions of the rule made obsolete under the statute change.

Registration requirements

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

Obsolete rule provisions

This emergency rule repeals sections of the existing rule that became obsolete as a result of the statutory change. Sections of the rule that are repealed include those requiring consumers to

register for the no-call list with DATCP and DATCP to provide the no-call list to telephone solicitors on a quarterly basis.

1

Small Business Affected

This emergency rule affects businesses in the following ways:

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

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

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

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

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Accommodation for Small Business

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

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

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

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Conclusion

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

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