

**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 adopts the
2 following order to amend chapter ATCP 127(note) and s. ATCP 127.01(15); and to create
3 subchapter V of chapter ATCP 127; relating to telephone solicitations and a no-call list.
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**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.
- A telephone call, made to a party to an existing contract, that is necessary to complete the contract.

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.

A registrant must pay fees in quarterly installments. DATCP may reduce or waive one or more quarterly installments 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 knowingly 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 consumer
4 protection. Violations of this chapter may be prosecuted under s. 100.20(6) and s.
5 100.26(3) and (6), Stats. A person who suffers a monetary loss because of a
6 violation of this chapter may sue the violator directly under s. 100.20(5), Stats.,
7 and may recover twice the amount of the loss, together with costs and reasonable
8 attorneys’ fees. Subchapter V is also adopted under authority of s. 100.52, Stats.
9 A telephone solicitation to a residential telephone customer included on the “no-
10 call” list under subch. V does not, by itself, result in a monetary loss for which the
11 customer may seek recovery under s. 100.20(5), Stats., unless the residential
12 telephone customer sustains an actual monetary loss as a result of another
13 violation of this chapter.

1 the telecommunications provider has initiated a “telephone call” as that term is
2 used in this subchapter.

3
4 (7) “Telephone line” means a circuit or channel, including a voice grade equivalent
5 channel, that is derived from a line, cable or digital facility, and that may be used to make a
6 telephone call.

7 (8) “Telecommunications service” has the meaning given in s. 196.01(9m), Stats.

8 (9) “Telecommunications utility” has the meaning given in s. 196.01(10), Stats., and
9 includes an “alternative telecommunication utility” as defined in s. 196.01(1d), Stats.

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

14 (a) A telephone call encouraging the call recipient to buy property, goods or services
15 from a nonprofit organization if all the following apply:

- 16 1. The nonprofit organization complies with subch. III of ch. 440, Stats., if applicable.
- 17 2. Sale proceeds, if any, are exempt from Wisconsin sales tax and federal income tax.

18 **NOTE:** The definition of “telephone solicitation” applies to phone calls promoting
19 *sales*, not charity donations. But it may cover charity solicitations that are really
20 part of a plan or scheme to *sell* property, goods or services. Subchapter III of ch.
21 440, Stats., regulates charitable solicitations.

22
23 Telephone calls promoting sales by nonprofit organizations are exempt *if* the sale
24 proceeds are exempt from Wisconsin sales tax and federal income tax. Section
25 77.54(7m), Stats., defines the scope of the Wisconsin sales tax exemption for
26 sales by nonprofit organizations. Federal income tax laws require an otherwise
27 exempt nonprofit organization to pay income tax on “unrelated business taxable
28 income” as defined in 26 CFR
29 1.512(a)-1.
30

1 (b) A telephone call made by an individual acting on his or her own behalf, and not as an
2 employee or agent for any other person. This exemption does not apply to a caller who does any
3 of the following:

4 1. Sells or promotes the sale of property, goods or services for another person.

5 **NOTE:** For example, self-employed insurance agents are not exempt from this
6 subchapter when they or their employees make telephone calls to promote the sale
7 of insurance policies offered by insurance companies. But an insurance company
8 may register under s. ATCP 127.81(1)(b) on behalf of self-employed insurance
9 agents and their employees who telemarket the company's insurance.
10

11 2. Sells or promotes the sale of goods that the caller buys from another person who
12 controls or limits the caller's sales methods.

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

15 **NOTE:** A failure to respond to a negative option ("we will call unless you say no") is
16 not an "affirmative request" under par. (c).
17

18 (d) A telephone call made to a current client.

19 **NOTE:** See definition of "client" under sub. (2).
20

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

23 (f) One telephone call to determine whether a former client mistakenly allowed a
24 contractual relationship to lapse.

25 (g) A telephone call made to determine a former client's level of satisfaction, unless the
26 call is part of a plan or scheme to encourage the former client to purchase property, goods or
27 services.

28 (i) A telephone call, made to a party to an existing contract, that is necessary to complete
29 that contract.

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

2 No person may employ or contract with any individual to make telephone solicitations to
3 residential telephone customers unless one of the following applies:

4 1. That person is currently registered with the department under this section. This
5 registration covers telephone solicitations made by individuals acting as employees or agents of
6 the registrant.

7 2. The telephone solicitations are covered by a registration under par. (b).

8 (b) A person who sells property, goods or services may register under this section on
9 behalf of a person who employs or contracts with individuals to make telephone solicitations
10 promoting the purchase of property, goods or services from the registrant. This registration
11 covers telephone solicitations that those individuals make for that purpose. It does not cover
12 telephone solicitations promoting the purchase of property, goods or services from persons other
13 than the registrant.

14 **NOTE:** For example, an insurance company may register under par. (b) on behalf of a
15 self-employed insurance agent whose employees telemarket that company's
16 insurance. But that registration does not cover the agent's employees when they
17 telemarket another company's insurance.
18

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

21 **(2) ANNUAL REGISTRATION.** To register under this section, a person shall complete an
22 annual registration form provided by the department. The registrant shall file, with the
23 registration form, all quarterly fee installments required under sub. (3m). The registration form
24 shall include all the following:

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

1 (b) The registrant's principal business address and telephone number. The business
2 address shall include street address, zip code, state or province, and nation.

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

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

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

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

9 (g) The number of telephone lines that will be used to make telephone solicitations under
10 the registration.

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

12 (i) The number of individuals who will make telephone solicitations under the
13 registration. The registrant shall provide the names of the individuals if the department requests
14 those names. A person who registers under sub. (1)(b) on behalf of another person shall identify
15 that other person.

16 (j) A statement indicating the form in which the registrant wishes to receive no-call lists.

17 A registrant may receive no-call lists in one or more of the following forms:

18 1. By e-mail transmission to one or more e-mail addresses provided by the registrant.

19 Each e-mail address shall be that of the registrant, or a person covered by the registration.

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

21 address shall be that of the registrant, or a person covered by the registration. The registrant

22 shall specify the number of compact discs to be included in each mailing.

1 **(3m) QUARTERLY INSTALLMENTS.** A registrant shall pay the annual fees under sub. (3)
2 in quarterly installments, as follows:

3 (a) The first quarterly installment is due by the first day of the registration year, or on the
4 date of initial registration, whichever is later.

5 (b) The second quarterly installment is due on March 1 of the registration year, or on the
6 date of initial registration, whichever is later.

7 (c) The third quarterly installment is due on June 1 of the registration year, or on the date
8 of initial registration, whichever is later.

9 (d) The fourth quarterly installment is due on September 1 of the registration year, or on
10 the date of initial registration, whichever is later.

11 **(4) REGISTRATION EXPIRES.** A registration under this section expires on November 30 of
12 each year.

13 **(5) REDUCTION OR WAIVER OF QUARTERLY INSTALLMENTS.** The department may reduce
14 or waive one or more quarterly installments under sub. (3m) if the department's projected fiscal-
15 year-end cash balance in the appropriation under s. 20.115(8)(jm), Stats., exceeds the
16 department's projected fiscal year expenditures from that appropriation during that fiscal year by
17 at least 15%. A reduction or waiver, if any, shall apply to all registrants. A reduction, if any,
18 shall be a uniform percentage reduction in the quarterly installment that a registrant would
19 otherwise pay. A reduction or waiver of a quarterly installment reduces, by the amount of that
20 reduction or waiver, the annual fee required under sub. (3).

21 **(6) UPDATED INFORMATION.** A registrant shall do all the following whenever there is a
22 material change in the information provided under sub. (2) during a registration year:

23 (a) Notify the department of the change.

1 (b) Pay any additional fees owed for that registration year as a result of the change.

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

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

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

15 1. The customer's telephone number including area code.

16 2. The customer's postal ZIP code.

17 3. The customer's name and address, if requested by the department. The department
18 may not include the customer's name or address on the no-call list.

19 4. The caregiver's name and address, if a caregiver contacts the department on behalf of
20 the customer. The department may not include the caregiver's name or address on the no-call
21 list.

22 **NOTE:** The department will publish a telephone number and website address that
23 residential telephone customers may contact to sign up for the no-call list. The
24 no-call list will include only the customer's telephone number and ZIP code.
25

1 (b) No person, other than a residential telephone customer or the customer’s caregiver,
2 may ask the department to include the customer on the no-call list.

3 (4) DISTRIBUTING THE LIST. The department shall distribute the no-call list to each
4 person who is currently registered with the department under s. ATCP 127.81. The department
5 shall distribute the no-call list to the addresses, and in the manner, specified by the registrant
6 under s. ATCP 127.81(2)(j). A no-call list takes effect on the date specified by the department.
7 The effective date shall be not sooner than 10 business days after the department distributes the
8 list.

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

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

17 (7) NO RE-DISTRIBUTION BY LIST RECIPIENTS. A person who receives a no-call list may
18 not distribute any part of that list to another person, except that a current registrant under s.
19 ATCP 127.81 may redistribute the list to persons covered by that registration.

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

22 1. The department may release a no-call list to a person currently registered under s.
23 127.81, or to persons covered by that registration, as provided in this section.

1 2. The department may release a no-call list as necessary to enforce this subchapter, or to
2 comply with a subpoena or judicial process, subject to any protective orders that may be
3 necessary to ensure the confidentiality of the list.

4 3. The department may release a no-call list to the federal trade commission or other
5 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 solicitations
8 shall comply with applicable requirements in 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.

11 (b) Use an electronically prerecorded message in a telephone call for the purpose of
12 encouraging a residential or nonresidential telephone customer to purchase property, goods or
13 services, without the prior consent of that telephone customer. This paragraph does not apply if
14 the person meets the provisions of ss. ATCP 127.80(10)(a) or (b).

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

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

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

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

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

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

8 **127.84 Record keeping.** Persons who employ or contract individuals to make telephone
9 solicitations shall comply with record keeping and record production requirements applicable to
10 sellers under s. ATCP 127.18.

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

13

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
James E. Harsdorf, Secretary