



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: January 8, 2013

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
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The Honorable Robin Vos
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Telephone Solicitations; No-Call and No-Text, ch. ATCP 127
(Clearinghouse Rule #12-036)**

Introduction

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

2011 Wisconsin Act 197 revised s. 100.52, Stats. to include next messages along with telephone calls in the state’s No Call program. This rule updates the existing ch. ATCP 127, Subchapter V – Telephone Solicitations; No-Call List, to align the rule with recently revised statute. In addition, this rule prohibits a telephone solicitation practice known as “spoofing.”

Background

The Wisconsin no-call program was established by statute in 2001 and DATCP promulgated a rule, ch. ATCP 127, to implement the program in 2002. Telephone solicitors are prohibited from calling residential customers on the state no-call list. There are exceptions for calls made to current clients and for calls made on behalf of non-profit and political organizations. Solicitors are required to register with DATCP and to pay an annual or quarterly fee to solicit residential customers located in Wisconsin. A residential customer who does not want to receive unsolicited

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commercial calls must provide his or her telephone number and zip code to DATCP every two years to remain on the no-call and no-text list. In 2008, the statute was amended (by 2007 Wisconsin Act 226) to include cellular phones. In 2012, the statute was further amended (by 2011 Wisconsin Act 197) to include regulation of text messages.

Rule Content

General

This rule does all of the following:

- Defines “caller identification information” and “caller identification service.”
- Prohibits telephone solicitors from transmitting misleading or inaccurate caller identification information.
- For purposes of the no-call list, clarifies that the definition of “telephone solicitation” includes text messages, and creates a definition of “text message.”

“Spoofing”

Under current rules, telephone solicitors are required to disclose the name of the primary seller, and the name of the person making the telephone solicitation, before asking any questions or making any statements other than an initial greeting. Current rules prohibit sellers from using fictitious names or otherwise misrepresenting the seller’s identity, location, or other characteristics.

This rule prohibits telephone solicitors from causing, either directly or indirectly, caller identification services to transmit or display misleading or inaccurate caller identification information. This practice has come to be known as “spoofing.”

No Text

Under s. 100.52, Stats., and current rules, telephone customers may enroll for the Wisconsin no-call list. Telephone solicitors are prohibited from calling telephone numbers on the list, and must register annually with DATCP.

This rule follows recent changes to s. 100.52, Stats., and includes text messaging under the definition of “telephone solicitation.”

Public Hearings

DATCP held one public hearing on the original rule proposal on September 27, 2012. There were no attendees at the hearing. DATCP did, however, receive written comment from one group, Wisconsin Wireless, in favor of the proposed rule.

***DATCP's Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments***

DATCP made minor editorial or technical changes based on suggestions from the Rules Clearinghouse.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Fiscal Impact

There are approximately 2,095,000 phone numbers on the Wisconsin do-not-call list.

Since passage of 2011 Wisconsin Act 197, some previously registered telemarketers have revised their registration statements to include additional phone lines that they use for solicitation via text message. In aggregate, this represents 61 additional lines, or additional registration fees of \$4,575.

Business Impact

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

- ***Direct marketers that conduct both telephone solicitation and text message solicitation.*** Wisconsin's no-call program was established in 2001. Therefore, businesses in this category are already regulated under current law, and will only experience minimal additional regulatory obligations or expenses. Currently, there are approximately 460 telephone solicitors registered for the Wisconsin no-call program.
- ***Direct marketers that conduct text message solicitation but are not currently registered telephone solicitors.*** Under this rule (as well as s. 100.52, Stats., as amended by 2011 Wisconsin Act 197), businesses that send text message solicitations must register with the Wisconsin No Call program and refrain from sending text messages to numbers on the no-call list. The annual registration fees consist of the following; subject to a maximum limit of \$20,000:
 - A basic fee of \$700 for the first year and \$500 each subsequent year.
 - An additional fee of \$75 for each telephone line used for registrants who use four or more lines.
 - An additional \$25 fee for each e-mail address the registrant would like DATCP to transmit the no-call list, in excess of one.
 - An additional \$25 fee for each compact disc set the registrant would like DATCP to mail.

- An additional \$1,000 for each hard-copy the registrant would like DATCP to mail.

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 the existing rule include many provisions that will benefit large and small businesses alike. For example:

- DATCP publishes a fact-sheet for solicitors, explaining the requirements and prohibitions contained in the rule.
- The rule allows solicitors to obtain the no-call list in a variety of formats, so they can use what is most convenient to them.

This new law and proposed rule may result in savings for some consumers on their monthly wireless service bills. On some plans, the provider charges the customer for each text message received. The new no-text provision protects consumers from these charges. DATCP does not have sufficient data to estimate a dollar amount that consumers might save. A complete *business impact analysis* is attached.

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

Federal Programs

The Federal Trade Commission (FTC) and Federal Communications Commission (FCC) administer the Telephone Consumer Protection Act (TCPA). This act established the national Do-Not-Call list. FCC rules prohibit sending unwanted text messages to wireless phone numbers if they are sent using an autodialer, or the number is on the national Do-Not-Call list.

FTC and FCC also administer the CAN-SPAM Act (Controlling the Assault of Non-Solicited Pornography and Marketing). This law (and its associated rules) prohibits sending unwanted commercial email messages to wireless devices without prior permission.

FCC administers the Truth in Caller ID Act of 2009. This act and its associated rules prohibit transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value. It applies to any person or any entity (not just telemarketers).

Pursuant to FCC rules, a registered telemarketer is specifically required to transmit or display its telephone number or the number of the seller on whose behalf the telemarketer is calling, and, if possible, its name or the name of the company for which it is selling products or services. It is also required to display a telephone number that the consumer can call during regular business hours to ask to no longer be called.

Surrounding State Programs

Many states have do-not-call programs. Several states, like Wisconsin, 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. Under FTC rules, texting is included in the do-not-call provisions.

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

Data and Analytical Methodologies

Telemarketing and the No-Call program has constantly been at the top of the list of most consumer complaints since the inception of No-Call program. During calendar year 2011, DATCP received 1,669 written consumer complaints about telemarketing and the no-call list.

Standards Incorporated by Reference

This rule does not incorporate standards by reference.