



State of Wisconsin
Governor Scott Walker

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

DATE: January 21, 2015

TO: The Honorable Mary Lazich
President, Wisconsin State Senate
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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: Direct Marketing: Telephone Solicitations; No-Call List, ch. ATCP 127; Final Draft Rule (Clearinghouse Rule #14-050)

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. This rule amends ch. ATCP 127, Wis. Adm. Code., which addresses direct marketing and the No-Call List to comply with changes made by 2013 Act 234.

Background

Section 100.52, Stats., established the Wisconsin no call program in 2001. DATCP promulgated Wisconsin Administrative Code chapter ATCP 127, subchapter V, in 2002 to enable administration of this law.

Prior to the most recent amendment, the no call 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 numbers and ZIP codes to DATCP once every two years to remain on the non-solicitation list.

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The no call law provides some 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 not to make the calls.

The no call law requires 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 to solicit residential customers located in Wisconsin.

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

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

The Wisconsin no call law was most recently amended by 2013 Act 234. This amendment 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 now only sign up on the FTC do-not-call registry without any need to re-register. All telephone numbers on the existing Wisconsin no-call list were 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"). Solicitors must also continue to register with DATCP, and DATCP will continue to administer and enforce the Wisconsin no call law.

Rule Content

General

This rule does all of the following:

- Establishes updated registration requirements for telephone solicitors by requiring telephone solicitors to provide DATCP with proof of registration with the FTC and the ability to obtain updated do-not-call registry information.

- Repeals portions of the rule made obsolete under the statute change including those requiring consumers to register for the Wisconsin no call list with DATCP and DATCP to provide the no call list to telephone solicitors on a quarterly basis.
- Updates recordkeeping requirements by extending recordkeeping requirements from two to three years and adds requirements for telephone solicitors to keep records of the numbers called and proof of consent from consumers on the state do-not-call registry to receive calls or texts.
- Interprets Wisconsin's consent requirement to harmonize with the federal requirement that a telephone solicitor must obtain an express written consent from the recipient to call or text numbers registered on the federal do-not-call registry.
- Makes other minor updates and changes including corrections to mistaken citations.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The effect on small business was determined by reviewing estimates of costs 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 both DATCP and the FTC. Most telephone solicitors have registered with both DATCP and the FTC and will not be impacted. 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 Wisconsin 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.

Recordkeeping requirements

Currently, persons making telephone solicitations, regardless of whether they may be required to register under the Wisconsin no call law, are required under ATCP 127, subchapter II, to keep certain records necessary to enforce the general direct marketing rules. The recordkeeping requirements in this proposed rule may increase the number of records businesses keep and store, which may have some financial cost associated with it.

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.

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.

Small Business Regulatory Review Report

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

Public Hearings

DATCP held a public hearing on this rule on September 15, 2014. There were no attendees at the hearing, and no written comments were received during the two-week comment period that followed the hearing.

Changes from Hearing Draft

DATCP made a few minor editorial or technical changes based on September 10, 2014, suggestions from the Wisconsin Legislative Council Rules Clearinghouse.

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.