

Clearinghouse Rule 98-117

STATE OF WISCONSIN)
) ss. Clearinghouse Rule
DEPARTMENT OF AGRICULTURE,) No. 98-117
TRADE & CONSUMER PROTECTION) Docket No. 97-R-8

CERTIFICATION:

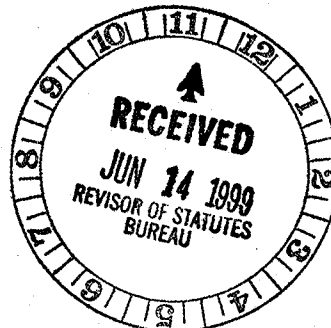
I, Ben Brancel, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to direct marketing was signed and adopted by the department on June 11, 1999.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 11th day of June, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary



8-1-99

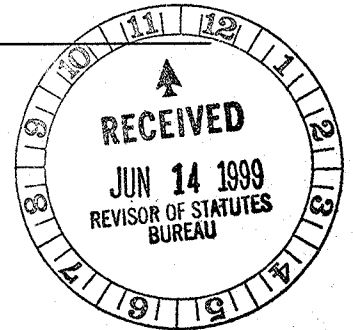
**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
2 the following rulemaking order to repeal and recreate chapter ATCP 127 relating to direct
3 marketing.

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

Statutory authority: s. 100.20(2), Stats.

Statutes interpreted: s. 100.20, Stats.



Introduction

This rule protects Wisconsin consumers against unfair and deceptive direct marketing practices. Direct marketing includes telemarketing, direct mail and face-to-face selling away from the seller's regular place of business.

This rule updates and strengthens the department's current rules under ch. ATCP 127, Wis. Adm. Code. This rule expands the current rules to cover direct mail solicitations (the current rule applies to telephone and face-to-face solicitations). This rule also addresses new direct marketing practices and technologies.

This rule is based, in part, on Federal Trade Commission telemarketing rules under 16 CFR 310, which took effect on December 31, 1995. However, this rule also protects consumers in other transactions, including direct mail and face-to-face transactions. It also goes beyond FTC telemarketing rules to cover intrastate transactions and new electronic sales methods such as fax and e-mail.

This rule is consistent with federal rules, but incorporates other state law requirements related to direct marketing. By adopting this rule under Wisconsin's "Little FTC Act," s. 100.20, Stats., the department will provide more effective redress to Wisconsin consumers.

Violations of this rule may be prosecuted under state law in Wisconsin courts. Consumers who suffer a monetary loss because of a violation of this rule may also sue the violator directly, and may recover double damages, costs and reasonable attorney fees.

Coverage

This rule applies to the direct marketing of consumer goods or services by any of the following methods:

- Telephone solicitations (including telephone, video conferencing or other interactive electronic voice communications).
- Mail solicitations (including e-mail and fax solicitations).
- Face-to-face solicitations (e.g., door-to-door solicitations) at a place other than the seller's regular place of business.

This rule does not apply to any of the following:

- Mass advertisements (such as newspaper, television or radio ads, or internet home pages) which are not addressed to individual consumers or consumer residences.
- Transactions at a seller's regular place of business, or at an established public market (e.g., a farmer's market).
- Catalog sales.
- Telephone, mail or electronic communications initiated by a consumer, unless prompted by the seller's direct marketing solicitation to the consumer.
- Mail solicitations that merely invite consumers to the seller's regular place of business.
- Transactions at public markets, such as a farmers market.
- The delivery of goods or services which the consumer purchased in a transaction which was not a direct marketing transaction covered by this rule.
- Persons (such as homeowners holding occasional "garage sales") who are not in the "business" of selling.

- Business-to-business sales.
- Banks, savings and loan associations, credit unions, insurance companies, public utilities or telecommunications carriers whose activities are exempt under s. 93.01(1m), Stats.
- Real estate sales, other than sales of cemetery lots and "time shares" as defined in s. 707.02(24), Stats.
- Securities sold in compliance with ch. 551, Stats., or franchise investments sold in compliance with ch. 553, Stats.
- Pay-per-call services sold in compliance with s. 196.208, Stats.
- A newspaper subscription that a consumer can cancel at any time without penalty.

As a convenience to readers, this rule has separate subchapters for telephone, mail and face-to-face solicitations. The rules for telephone, mail and face-to-face solicitations are nearly identical. However, there are some differences reflecting different selling methods and technologies.

Telemarketing

Opening Disclosures

Under this rule, a telemarketer must disclose all of the following to a consumer before asking any questions or making any statements other than an initial greeting:

- The name of the principal seller. For example, a telemarketing firm making solicitations on behalf of the ABC company must disclose the name of the ABC Company.
- The name of the individual making the telephone solicitation. For example, if Mary Smith makes telephone solicitations for the ABC Company, she must disclose her name to the consumer. Smith may disclose a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.
- That the seller is offering or promoting the sale of consumer goods or services.

- The kind of goods or services which the seller is offering or promoting.

Disclosures Prior to Sale

A telemarketer must disclose all of the following before the consumer enters into any purchase contract, and before the telemarketer takes the consumer's credit card number or accepts any payment from the consumer:

- The nature and quantity of the consumer goods or services included in the sale.
- The total cost to purchase and receive the consumer goods or services.
- All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any. (Cost disclosures in consumer credit transactions must comply with applicable requirements under ch. 422, Stats., and federal law.)
- The name of the principal seller and at least one of the following:
 - * The principal seller's mailing address.
 - * A local or toll-free telephone number, answered during normal business hours, at which the consumer may contact the principal seller and obtain the principal seller's address.
- The seller's policy related to refunds, cancellations, exchanges and repurchases if any of the following apply:
 - * The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
 - * The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

A telemarketer may make these pre-sale disclosures orally (rather than in writing) if at least one of the following applies:

- The seller confirms the oral disclosures in writing at or before the time the seller first delivers the goods or services to the consumer, and before the seller submits any credit card sales draft for payment or accepts any other payment from the consumer.
- The seller does both of the following in writing at or before the time the seller first delivers consumer goods or services to the consumer:
 - * Confirms the oral disclosures.
 - * Discloses, in substance, that the consumer may cancel the sale after the first delivery and obtain a full refund. The seller may specify a cancellation deadline, provided that the deadline is at least 7 days after the first delivery.

Language Other Than English

If the primary language used in a telemarketing transaction is not English, the telemarketer must make the pre-sale disclosures in the language primarily used. Any written agreement signed by the consumer must be written both in English and the language primarily used.

Prize Promotions

This rule prohibits a telemarketer from using a prize promotion that violates s. 945.02(3), Stats. (lottery law) or s. 100.71, Stats. (prize notice law). This rule also prohibits a telemarketer from misrepresenting the material terms of a prize promotion.

Unauthorized Payment

Under this rule, no telemarketer may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. The following authorizations are considered verifiable:

- An express written authorization. Express written authorization may include the consumer's signature on the check, draft or negotiable instrument.
- An express oral authorization if all of the following apply:
 - * The oral authorization is tape recorded and made available upon request to the consumer's bank.

- * The oral authorization clearly authorizes payment for the goods and services offered to the consumer.
- * The oral authorization clearly indicates that the consumer received information specifying all of the following:
 - The date and amount of the check, draft or instrument.
 - The payor's name.
 - The number of payments, if more than one.
 - A telephone number for consumer inquiries that is answered during normal business hours.
 - The date of the consumer's oral authorization.
- An authorization which the seller confirms in writing, provided that all of the following apply:
 - * The seller sends the written confirmation to the consumer before submitting the check, draft or other negotiable instrument for payment.
 - * The written confirmation includes all of the following information:
 - The date and amount of the check, draft or instrument.
 - The payor's name.
 - The number of payments, if more than one.
 - A telephone number for consumer inquiries that is answered during normal business hours.
 - The date of the consumer's authorization.
 - A procedure by which the consumer can obtain a refund from the seller if the written confirmation is inaccurate.

Credit Card Laundering

This rule prohibits "credit card laundering" related to telemarketing transactions. In "credit card laundering" schemes, unscrupulous sellers gain access to the credit card system (from which they would normally be excluded) by processing credit card transactions under the name of another merchant.

This rule prohibits a merchant from presenting for payment, to a credit card system, any credit card sales draft generated by a telemarketing transaction that is not a sale by that

merchant to that credit card holder. No seller may obtain access to a credit card system under the name of another merchant unless that access is authorized by that merchant's written agreement with the credit card system operator, or with an acquirer licensed by the credit card system operator.

Misrepresentations

This rule prohibits a telemarketer from doing any of the following:

- Misrepresenting the seller's identity, affiliation, location or characteristics.
- Misrepresenting the nature, purpose or intended length of a solicitation.
- Misrepresenting the nature or terms of a telemarketing transaction, or any document related to that transaction.
- Misrepresenting the cost of goods or services offered or promoted by the seller, or failing to disclose material costs payable by the consumer.
- Misrepresenting the nature, quantity, material characteristics, performance or efficacy of the goods or services offered or promoted by the seller.
- Misrepresenting or failing to disclose material restrictions, limitations or conditions on the purchase, receipt, use or return of goods or services offered or promoted by the seller.
- Misrepresenting the material terms of a seller's refund, cancellation, exchange, repurchase or warranty policies.
- Misrepresenting that a seller is offering consumer goods or services free of charge or at a reduced price.
- Misrepresenting that a seller is affiliated with, or endorsed by, any government or 3rd-party organization.
- Misrepresenting that the seller has specially selected the consumer, or is making a special offer to the consumer.

- Representing that the seller is participating in a contest or conducting a survey unless the representation is true and all of the following apply:
 - * The seller first makes all of the opening disclosures required by this rule.
 - * The seller discloses the name of the contest or survey sponsor, and the specific terms of the contest or survey.
 - * The seller discloses that the seller is attempting to sell goods or services, or to identify sales prospects, if that is the case.
- Misrepresenting any material aspect of an investment opportunity, including risk, liquidity, earnings potential or profitability.
- Failing to disclose, in connection with every purported offer of free goods or services, any costs which the consumer must incur and any conditions which the consumer must meet in order to receive those free goods or services.
- Making any false, deceptive or misleading representation to a consumer.

Prohibited Practices

This rule prohibits a telemarketer from doing any of the following:

- Threatening, intimidating or harassing a consumer.
- Repeatedly or continuously causing a consumer's telephone to ring, or repeatedly or continuously engaging any consumer in telephone conversation, with intent to annoy, abuse or harass a consumer.
- Initiating a telephone solicitation to a consumer before 8:00 AM or after 9:00 PM without the prior consent of the consumer.
- Making a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from that seller.
- Requesting or receiving payment for "loan finder" services until the consumer actually receives the promised loan.

- Failing to give or honor a 3-day right to cancel notice, if required under s. 423.203, Stats.

Recordkeeping

This rule requires a seller to keep copies of the following records for at least 2 years:

- All telemarketing scripts, and all sales and promotional materials used in telemarketing transactions.
- The following records related to each prize which the seller offers or awards to consumers if the seller represents, to any consumer, that the prize has a value of \$25 or more:
 - * An identification of the prize.
 - * The name and last known address of every consumer who received the prize.
- The name and last known address of every consumer who purchased goods or services in a telemarketing transaction, the purchase date, the date on which the seller provided those goods or services to the consumer, and the amount paid.
- The following information related to every individual who has made telephone solicitations for the seller:
 - * The individual's name, last known address and telephone number.
 - * Every fictitious name which the individual has used when making telephone solicitations. No other individual may use the same fictitious name.
 - * The individual's job title or titles.
- Verifiable authorizations for all checks, drafts or other negotiable instruments drawn on a consumer's account.

Mail Solicitations

This rule regulates "mail solicitations," including traditional mail, e-mail and fax solicitations.

Opening Disclosures

Under this rule, a mail solicitation must disclose all of the following in writing:

- The name of the principal seller.
- That the seller is offering or promoting the sale of consumer goods or services.
- The kind of goods or services which the seller is offering or promoting.

Disclosures Prior to Sale

In a mail transaction, a seller must disclose all of the following in writing before the consumer enters into any purchase contract, and before the seller takes the consumer's credit card number or accepts any payment from the consumer:

- The nature and quantity of the consumer goods or services included in the sale.
- The total cost to purchase and receive the consumer goods or services.
- All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any. (Cost disclosures in consumer credit transactions must comply with applicable requirements under ch. 422, Stats., and federal law.)
- The name and mailing address of the principal seller.
- The seller's policy related to refunds, cancellations, exchanges and repurchases if any of the following apply:

- * The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
- * The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

Language Other Than English

If the primary language used in a mail transaction is not English, the seller must make the pre-sale disclosures in the language primarily used.

Prize Promotions

This rule prohibits deceptive and illegal prize promotions in mail transactions, just as it does in telemarketing transactions (see above).

Unauthorized Payment

In a mail transaction, no seller may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, verifiable authorization. An express, verifiable authorization in a mail transaction is the same as for a telemarketing transaction (see above).

Delivering Ordered Goods

This rule incorporates, by reference, timely mail order delivery requirements contained in s. 100.174, Stats. This state law is consistent with Federal Trade Commission rules under 16 CFR 435.

Credit Card Laundering

This rule prohibits "credit card laundering" in mail transactions, just as it does in telemarketing transactions (see above).

Misrepresentations

This rule prohibits misrepresentations in mail transactions, just as it does in telemarketing transactions (see above).

Prohibited Practices

This rule prohibits a seller, in a mail transaction, from doing any of the following:

- Threatening, intimidating or harassing a consumer.
- Requesting or receiving payment for "loan finder" services until the consumer actually receives the promised loan.
- Failing to give or honor a 3-day right to cancel notice, if required under s. 423.203, Stats.

Recordkeeping

Under this rule, a seller engaged in mail transactions must keep copies of the following records for at least 2 years:

- Mail solicitations and other documents provided to consumers in mail transactions.
- The following records related to each prize which the seller offers or awards to consumers if the seller represents, to any consumer, that the prize has a value of \$25 or more:
 - * An identification of the prize.
 - * The name and last known address of every consumer who received the prize.
- The name and last known address of every consumer who purchased goods or services in a mail transaction, the purchase date, the date on which the seller provided those goods or services to the consumer, and the amount paid.
- Documentation that the seller has systems and procedures in place to ensure compliance, in the ordinary course of business, with the timely delivery requirements under this rule and s. 100.174, Stats.

Face-to-Face Solicitations

This rule regulates "face-to-face solicitations," such as door-to-door sales, in which a seller personally solicits the consumer at a place other than the seller's regular place of business.

Opening Disclosures

Under this rule, a face-to-face seller must make oral and written disclosures to a consumer before asking any questions or making any statements other than an initial greeting. The seller must disclose:

- The name of the principal seller. For example, if Mary Smith makes door-to-door solicitations on behalf of the ABC Company, Smith must disclose the name of the ABC Company.
- The name of the individual making the face-to-face solicitation. For example, if Mary Smith makes door-to-door solicitations for the ABC Company, she must disclose her name to the consumer. Smith may disclose a fictitious name which uniquely identifies her if the ABC Company keeps a record of that uniquely identifying fictitious name.
- That the seller is offering or promoting the sale of consumer goods or services.
- The kind of goods or services which the seller is offering or promoting.

Disclosures Prior to Sale

A face-to-face seller must disclose all of the following in writing before the consumer enters into any purchase contract, and before the telemarketer takes the consumer's credit card number or accepts any payment from the consumer:

- The nature and quantity of the consumer goods or services included in the sale.
- The total cost to purchase and receive the consumer goods or services.
- All material terms and conditions affecting the sale, receipt or use of the consumer goods or services, including credit terms if any. (Cost disclosures in consumer credit transactions must comply with applicable requirements under ch. 422, Stats., and federal law.)

- The name, mailing address and telephone number of the principal seller.
- The seller's policy related to refunds, cancellations, exchanges and repurchases if any of the following apply:
 - * The seller has a policy that prevents or substantially limits refunds, cancellations, exchanges or repurchases.
 - * The seller makes any claim or representation regarding refunds, cancellations, exchanges or repurchases.

Copies of Sales Agreements

Whenever a consumer signs a written agreement in a face-to-face transaction, the seller must provide the consumer with a true copy of that agreement.

Language Other Than English

If the primary language used in a face-to-face transaction is not English, the seller must make the required pre-sale disclosures in the language primarily used. Any written agreement signed by the consumer must be written both in English and the language primarily used.

Prize Promotions

This rule prohibits deceptive and illegal prize promotions in face-to-face transactions, just as it does in telemarketing and mail transactions (see above).

Unauthorized Payment

Under this rule, no face-to-face seller may obtain or submit for payment any check, draft or other negotiable instrument drawn on a consumer's account without that consumer's express, written authorization. Express written authorization may include the consumer's signature on the check, draft or negotiable instrument.

Credit Card Laundering

This rule prohibits "credit card laundering" in face-to-face transactions, just as it does in telemarketing and mail transactions (see above).

Misrepresentations

This rule prohibits misrepresentations in face-to-face transactions, just as it does in telemarketing and mail transactions (see above).

Prohibited Practices

This rule prohibits a face-to-face seller from doing any of the following:

- Threatening, intimidating or harassing a consumer.
- Failing to leave a consumer's premises upon request.
- Requesting or receiving payment for "loan finder" services until the consumer actually receives the promised loan.
- Failing to give or honor a 3-day right to cancel notice, if required under s. 423.203, Stats.

Recordkeeping

This rule requires a face-to-face seller to keep copies of the following records for at least 2 years:

- All advertising, brochures, sales scripts, seller training materials, sales and promotional materials, and documents provided to consumers in face-to-face transactions.
- The following records related to each prize which the seller offers or awards to consumers if the seller represents, to any consumer, that the prize has a value of \$25 or more:
 - * An identification of the prize.
 - * The name and last known address of every consumer who received the prize.
- The name and last known address of every consumer who purchased goods or services in a face-to-face transaction, the purchase date, the date on which the seller provided those goods or services to the consumer, and the amount paid.

- The following information related to every individual who has made face-to-face solicitations for the seller:
 - * The individual's name, last known address and telephone number.
 - * Every fictitious name which the individual has used when making face-to-face solicitations. No other individual may use the same fictitious name.
 - * The individual's job title or titles.
- Written authorizations for all checks, drafts or other negotiable instruments drawn on the customer's account.

SECTION 1. Chapter ATCP 127 is repealed and recreated to read:

CHAPTER ATCP 127

DIRECT MARKETING

NOTE: This chapter is adopted under authority of s. 100.20(2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20(6) and s. 100.26(3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20(5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

SUBCHAPTER I

GENERAL DEFINITIONS

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5

ATCP 127.01 Definitions. In this chapter:

1 (1) "Acquirer" means a financial institution or other person who, under a license or
2 authorization granted by a credit card system operator, authorizes merchants to honor
3 credit cards and submit credit card sales drafts for payment through the credit card system.

4 (2) "Consumer" means an individual to whom a seller advertises, offers to sell, sells
5 or promotes the sale of consumer goods or services. "Consumer" does not include an
6 individual who purchases consumer goods or services in a business capacity, or for resale
7 to others.

8 (3) "Consumer goods or services" means goods or services typically used for
9 personal, family or household purposes. "Consumer goods or services" includes personal
10 investment opportunities, personal business opportunities and personal training courses but
11 does not include any of the following:

12 (a) Investment opportunities, business opportunities and training courses when
13 offered to a business, rather than a consumer.

14 (b) Real estate, other than cemetery lots or timeshares as defined in s. 707.02(24),
15 Stats.

16 (c) Pay-per-call services sold in compliance with s. 196.208, Stats.

17 (d) A newspaper subscription that the consumer may cancel at any time without
18 penalty.

19 (4) "Credit" means the right granted by a creditor to a debtor to defer payment of debt
20 or to incur debt and defer its payment.

1 (5) "Credit card" means any card or other device which entitles an authorized holder
2 to obtain goods, services or other things of value on credit.

3 (6) "Credit card sales draft" means any record or evidence of a credit card transaction.

4 (7) "Credit card system" means the system through which credit card transactions,
5 using credit cards issued or licensed by the credit card system operator, are processed for
6 payment.

7 (8) "Credit card system operator" means a person who operates a credit card system,
8 or who licenses others to operate a credit card system.

9 (9) "Department" means the state of Wisconsin department of agriculture, trade and
10 consumer protection.

11 (10) "Disclose" means to make a clear and conspicuous statement which is reasonably
12 designed to be noticed and readily understood by the consumer.

13 (11) "Individual" means a natural person.

14 (12) "Investment opportunity" means anything, tangible or intangible, that is offered,
15 sold or traded based wholly or in part on representations, either express or implied, about
16 past, present or future income, profit or appreciation. "Investment opportunity" does not
17 include a security sold in compliance with ch. 551, Stats., or a franchise investment sold in
18 compliance with ch. 553, Stats.

19 (13) "Mass advertisement" means a solicitation which a seller publishes or makes
20 accessible to an unrestricted mass audience. "Mass advertisement" includes a solicitation

1 published in a newspaper, magazine, radio broadcast, television broadcast or internet home
2 page. "Mass advertisement" does not include a solicitation which a seller addresses to an
3 individual consumer, to a consumer's residence, or to a gathering of consumers invited by
4 means of telephone, mail or face-to-face solicitations under this chapter.

5 (14) "Merchant" means a person who is authorized, under a written agreement with an
6 acquirer, to honor credit cards and submit credit card sales drafts to the acquirer for
7 payment and processing through the credit card system.

8 (15) "Person" means an individual, corporation, partnership, cooperative association,
9 limited liability company, trust, or other organization or entity.

10 (16) "Prize promotion" means any of the following:

11 (a) A sweepstakes or other game of chance.

12 (b) A seller's express or implied representation that a consumer has won, has been
13 selected to receive, may be eligible to receive, or may have a chance to receive a prize.

14 (c) Any communication from a seller to a consumer in which the seller is required to
15 give the consumer a prize notice under s. 100.171, Stats.

16 (17) "Purchase" means to buy or lease consumer goods or services.

17 (18) "Purchase contract" means an agreement to purchase consumer goods or
18 services, regardless of whether that agreement is subject to a later right of cancellation.

19 "Purchase contract" does not include the following agreements, but does include a

1 purchase commitment which arises under any of those agreements as a result of the
2 consumer's subsequent action or omission:

3 (a) An agreement authorizing the trial delivery of consumer goods or services which
4 the consumer has not yet agreed to purchase, provided that the agreement includes no
5 minimum purchase requirement.

6 (b) A negative option plan that is covered by and complies with 16 CFR 425.

7 **NOTE:** Some direct marketers offer trial delivery plans in which the consumer agrees
8 to receive trial deliveries of goods which the consumer has not yet agreed to
9 purchase. Under these agreements, a consumer is typically free to reject or
10 return any trial delivery without purchasing that delivery. But under the
11 trial delivery agreement, the seller may bill the consumer for the delivered
12 goods if the consumer fails to reject or return the delivery within a specified
13 time. Although the consumer's initial agreement to receive trial deliveries is
14 not itself a "purchase contract" (unless it includes a minimum purchase
15 commitment), the consumer effectively enters into a "purchase contract" for
16 a particular delivery when the consumer fails to return or reject that delivery
17 according to the trial delivery agreement.
18

19 (19) "Sale" means the passing of an ownership or leasehold interest in consumer
20 goods or services to a consumer for a price.

21 (20) "Sell" means to engage in the sale of consumer goods or services, or to accept
22 payment pursuant to a purported sale of consumer goods or services.

23 (21) "Seller" means a person, other than a bank, savings bank, savings and loan
24 association, credit union, insurance company, public utility or telecommunications carrier
25 engaged in exempt activities under s. 93.01(1m), Stats., who is engaged in the business of

1 selling, offering to sell, or promoting the sale of consumer goods or services to consumers.

2 "Seller" includes all of the following:

3 (a) A person who accepts payment for a purported sale of consumer goods or services
4 to a consumer.

5 (b) An employee or agent of a seller.

6 (c) A person who makes home solicitations under arrangement with a seller.

7 **NOTE:** For example, a telemarketing firm that makes telephone solicitations on
8 behalf of a "seller" is also a "seller" for purposes of this chapter. Individual
9 employees of the telemarketing firm are also "sellers," for purposes of this
10 chapter, when making telephone solicitations to consumers.
11

12 (22) "Solicitation" means a communication received by a consumer at a place other
13 than the seller's regular place of business, in which a seller offers or promotes the sale of
14 consumer goods or services to a consumer, or which is part of a seller's plan or scheme to
15 sell consumer goods or services to a consumer. "Solicitation" does not include any of the
16 following:

17 (a) A mass advertisement.

18 (b) A telephone, mail or electronic communication initiated by the consumer, unless
19 prompted by the seller's prior solicitation to the consumer.

20 **NOTE:** Paragraph (b) does not except a face-to-face communication.
21

1 (c) A written communication that invites a consumer to the seller's regular place of
2 business.

3 (d) A communication initiated by a consumer at an established public market, unless
4 that communication was prompted by the seller's prior solicitation to the consumer.

5 **NOTE:** For example, a routine transaction at a farmers market is not a "solicitation"
6 under this chapter, even though it occurs at a place other than the seller's
7 "regular place of business."

8 (e) The delivery, to a consumer, of goods or services sold to the consumer in a transaction
9 other than a telephone, mail or face-to-face transaction under this chapter.

10 **NOTE:** A "solicitation" under sub. (22) is covered by this rule even though it is not
11 the first communication between the seller and the consumer.
12

13 (23) "Written" or "in writing," as applied to a seller's disclosure to a consumer, means
14 legibly printed on paper or another tangible nonelectronic medium that is delivered to the
15 consumer, or legibly printed in an electronic form that the consumer can electronically
16 retrieve, store or print for future reference.

1 (c) That the seller is offering or promoting the sale of consumer goods or services.

2 (d) The nature of the goods or services which the seller is offering or promoting.

3 (2) FICTITIOUS NAMES. (a) A seller may not use any fictitious name under sub. (1)(a)
4 or s. ATCP 127.06(1)(d), except that a seller may use a trade name if all of the following
5 apply:

6 1. The seller is widely known by and consistently does business under that name.

7 2. The name does not have the tendency or capacity to confuse or mislead the
8 consumer as to the seller's true identity.

9 (b) An individual making a telephone solicitation as an employee or agent of a seller
10 may disclose a fictitious individual name under sub. (1)(b) if all of the following apply:

11 1. No other individual making telephone solicitations for the same seller uses the
12 same fictitious name.

13 2. The seller for whom the individual is making the telephone solicitation keeps
14 records under s. ATCP 127.18(1)(d) which correlate the fictitious name with the actual
15 name and address of the individual seller.

16 **NOTE:** Subsection (2)(b) balances the needs of consumers against the privacy
17 interests of individuals employed to make solicitations on behalf of a seller.
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1 **ATCP 127.06 Disclosures prior to sale.** (1) DISCLOSURES REQUIRED. In a
2 telephone transaction, a seller shall disclose all of the following to a consumer before the
3 consumer enters into any purchase contract, and before the seller takes the consumer's
4 credit card number or accepts any payment from the consumer:

5 (a) The nature and quantity of consumer goods or services included in the sale.

6 (b) The total cost to purchase and receive the consumer goods or services.

7 (c) All material terms and conditions affecting the sale, receipt or use of the consumer
8 goods or services, including credit terms if any.

9 **NOTE:** Consumer credit disclosures under par. (c) must comply with applicable
10 requirements under ch. 422, Stats., and federal law.

11
12 (d) The name of the principal seller.

13 **NOTE:** For example, a telemarketing firm making solicitations on behalf of another
14 company must disclose the name of the company for which it is acting as
15 agent.

16
17 (e) At least one of the following:

18 1. The principal seller's mailing address.

19 2. A local or toll-free telephone number, answered during normal business hours, at
20 which the consumer may contact the principal seller and obtain the principal seller's
21 address.

22

23

1 (f) The seller's policy related to refunds, cancellations, exchanges or repurchases if
2 any of the following apply:

3 1. The seller has a policy that prevents or substantially limits refunds, cancellations,
4 exchanges or repurchases.

5 2. The seller makes any claim or representation regarding refunds, cancellations,
6 exchanges or repurchases.

7 (2) FORM OF DISCLOSURE. A seller shall make the disclosures under sub. (1) in
8 writing, except that a seller may make the disclosures orally if at least one of the following
9 applies:

10 (a) The seller confirms the disclosures in writing at or before the time the seller first
11 delivers the consumer goods or services to the consumer, and before the seller submits any
12 credit card sales draft for payment or takes any other payment from the consumer.

13 (b) The seller does both of the following in writing at or before the time the seller first
14 delivers consumer goods or services to the customer:

15 1. Confirms the oral disclosures.

16 2. Discloses, in substance, that the consumer may cancel the sale after the first
17 delivery and obtain a full refund. The seller may specify a cancellation deadline, provided
18 that the deadline is at least 7 days after the first delivery.

1 (3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a telephone
2 solicitation is not English, the seller shall make the disclosures under sub. (1) in the
3 language primarily used.

4 (b) If the primary language used in a telephone transaction is not English, every
5 written agreement signed by the consumer shall be in English and the language primarily
6 used.

7 **ATCP 127.08 Prize promotions.** (1) ILLEGAL LOTTERIES. In a telephone
8 transaction, no seller may use a prize promotion that violates s. 945.02(3), Stats.

9 (2) PRIZE NOTICE; REQUIREMENTS. In a telephone transaction, no seller may use a
10 prize promotion that violates s. 100.171, Stats.

11 (3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the
12 material terms of a prize promotion used in a telephone transaction.

13 **ATCP 127.10 Unauthorized payment.** No seller in a telephone transaction may
14 obtain or submit for payment any check, draft or other negotiable instrument drawn on a
15 consumer's account without that consumer's express, verifiable authorization. The
16 following authorizations are considered verifiable:

17 (1) An express written authorization. Express written authorization may include the
18 consumer's signature on the check, draft or negotiable instrument.

19 (2) An express oral authorization if all of the following apply:

1 (a) The oral authorization is tape recorded and made available upon request to the
2 consumer's bank.

3 (b) The oral authorization clearly authorizes payment for the goods and services
4 offered to the consumer.

5 (c) The oral authorization clearly indicates that the consumer received information
6 specifying all of the following:

7 1. The date and amount of the check, draft or instrument.

8 2. The payor's name.

9 3. The number of payments, if more than one.

10 4. A telephone number for consumer inquiries that is answered during normal
11 business hours.

12 5. The date of the consumer's oral authorization.

13 (3) An authorization which the seller confirms in writing, provided that all of the
14 following apply:

15 (a) The seller sends the written confirmation to the consumer before the seller submits
16 the check, draft or other negotiable instrument for payment.

17 (b) The written confirmation includes all of the following information:

18 1. The date and amount of the check, draft or instrument.

19 2. The payor's name.

20 3. The number of payments, if more than one.

1 4. A telephone number for consumer inquiries that is answered during normal
2 business hours.

3 5. The date of the consumer's authorization.

4 6. A procedure by which the consumer can obtain a refund from the seller if the
5 written confirmation is inaccurate.

6 **ATCP 127.12 Credit card laundering.** (1) No merchant may present to or deposit
7 into a credit card system for payment, or cause another person to present to or deposit into
8 a credit card system for payment, any credit card sales draft generated by a telephone
9 transaction that is not a sale by that merchant to the holder of that credit card.

10 (2) No person may employ, solicit or cause a merchant to violate sub. (1).

11 (3) No seller engaged in a telephone transaction may, by means of a business
12 relationship or affiliation with a merchant, obtain access to a credit card system unless that
13 access is authorized by that merchant's written agreement with the credit card system
14 operator, or with an acquirer licensed or authorized by the credit card system operator.

15 **ATCP 127.14 Misrepresentations.** No seller may do any of the following, directly
16 or by implication, in a telephone transaction:

17 (1) Misrepresent a seller's identity, affiliation, location or characteristics.

18 (2) Misrepresent the nature, purpose or intended length of a solicitation.

19 (3) Misrepresent the nature or terms of a telephone transaction, or any document
20 related to that transaction.

- 1 (4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail
2 to disclose material costs payable by the consumer.
- 3 (5) Misrepresent the nature, quantity, material characteristics, performance or efficacy
4 of the goods or services offered or promoted by a seller.
- 5 (6) Misrepresent or fail to disclose material restrictions, limitations or conditions on
6 the purchase, receipt, use or return of goods or services offered or promoted by a seller.
- 7 (7) Misrepresent the material terms of a seller's refund, cancellation, exchange,
8 repurchase or warranty policies.
- 9 (8) Misrepresent that a seller is offering consumer goods or services free of charge or
10 at a reduced price.
- 11 (9) Misrepresent that a seller is affiliated with, or endorsed by, any government or
12 3rd-party organization.
- 13 (10) Represent that the seller has specially selected the consumer unless the
14 representation is true and the seller concurrently discloses to the consumer the specific
15 basis on which the seller makes the representation. The seller may not misrepresent that
16 basis.
- 17 (11) Represent that the seller is conducting a special sales promotion, is making a
18 special offer limited to a few persons, is making a special offer for a limited period of time,
19 or is authorized to place the offered goods or services in a limited number of homes, unless

1 the representation is true and the seller concurrently discloses to the consumer the specific
2 basis on which the representation is made. The seller may not misrepresent that basis.

3 (12) Represent that the seller is participating in a contest or conducting a survey
4 unless the representation is true and all of the following apply:

5 (a) The seller first makes all of the opening disclosures under s. ATCP 127.04.

6 (b) The seller concurrently discloses the name of the contest or survey sponsor, and
7 the specific terms of the contest or survey.

8 (c) The seller concurrently discloses that the seller is attempting to sell goods or
9 services, or to obtain information to identify sales prospects, if that is the case.

10 (13) Misrepresent any material aspect of a personal investment opportunity offered to
11 the consumer, including any aspect such as risk, liquidity, earnings potential or
12 profitability.

13 (14) Fail to disclose, in connection with every purported offer of free goods or
14 services in a telephone transaction, any costs which the consumer must incur and any
15 conditions which the consumer must meet in order to receive those free goods or services.

16 This does not prohibit a combination offer that is covered by, and complies with, s.
17 100.18(2), Stats.

18 (15) Make any false, deceptive or misleading representation to a consumer.

19 **ATCP 127.16 Prohibited practices.** No seller may do any of the following in a
20 telephone transaction:

1 (1) Threaten, intimidate or harass a consumer.

2 (2) Repeatedly or continuously cause a consumer's telephone to ring, or repeatedly or
3 continuously engage a consumer in telephone conversation, if the seller knows or
4 reasonably should know that those actions will have the effect of annoying, abusing or
5 harassing the consumer.

6 (3) Initiate a telephone solicitation to a consumer before 8:00 AM or after 9:00 PM
7 without the prior consent of the consumer. Time, for purposes of this section, is the local
8 time at the place where the consumer resides.

9 (4) Initiate a telephone solicitation to a consumer who has previously stated that he or
10 she does not wish to receive telephone solicitations from the seller for whom the
11 solicitation is being made. A seller does not violate this subsection if all of the following
12 apply:

13 (a) The seller has established and implemented clear written procedures that are
14 reasonably designed to prevent violations.

15 (b) The seller has trained its personnel in the procedures under par. (a).

16 (c) The seller maintains a recorded list of persons who have stated that they do not
17 wish to be called by the seller for whom solicitations are being made.

18 (d) The repeat call is the result of a good faith error, and is not the result of an
19 intentional or systematic disregard of the prohibition under this subsection.

1 (5) Request or receive payment for seeking or arranging a loan or extension of credit
2 until the consumer actually receives that loan or extension of credit, if the seller has
3 represented that efforts to obtain a loan or extension of credit would likely be successful.

4 (6) Fail to do either of the following if the transaction qualifies as a consumer
5 approval transaction under s. 423.201, Stats., and is not subject to s. 423.202(4), Stats.:

6 (a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

7 (b) Honor the consumer's right to cancel under s. 423.202, Stats.

8 **NOTE:** Under s. 423.202, Stats., a consumer may cancel a consumer approval
9 transaction until midnight of the 3rd business day after the seller gives the
10 consumer a required written notice of cancellation rights under s. 423.203,
11 Stats. The consumer's cancellation rights under s. 423.202, Stats., are in
12 addition to any other cancellation rights which the consumer may have
13 under contract law.
14

15 **ATCP 127.18 Recordkeeping.** (1) RECORDS REQUIRED. A seller engaged in
16 telephone transactions shall keep all of the following records related to those transactions:

17 (a) Copies of all telephone solicitation scripts, and all sales and promotional materials
18 used in telephone transactions. This paragraph does not require a seller to keep duplicate
19 copies of substantially identical documents.

20 (b) The following records related to each prize which the seller offers or awards to
21 consumers if the seller represents to any consumer, directly or by implication, that the prize
22 has a value of \$25 or more:

23 1. An identification of the prize.

1 2. The name and last known address of every consumer who received the prize.

2 (c) The name and last known address of every consumer who purchased goods or
3 services in a telephone transaction with the seller, the date on which the consumer
4 purchased those goods or services, the date on which the seller provided those goods or
5 services to the consumer, and the amount which the consumer paid for those goods or
6 services.

7 (d) The following information related to every individual who has made telephone
8 solicitations as the seller's employee or agent:

9 1. The individual's name, last known address and telephone number.

10 2. Every fictitious name which the individual has used when making telephone
11 solicitations. No seller may permit more than one employee or contract agent to use the
12 same fictitious name.

13 3. The individual's job title or titles.

14 (e) All verifiable authorizations required under s. ATCP 127.10.

15 (2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for
16 at least 2 years after the seller creates that record.

17 **NOTE:** A seller may keep records required under sub. (1) in the form, manner,
18 format and place in which the seller would normally keep those records in
19 the ordinary course of business.

20
21 (b) The department, pursuant to an investigation of possible violations of this
22 subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably

1 relevant to that investigation. The seller shall provide the requested copies within a
2 reasonable time specified by the department.

3 **NOTE:** See ss. 93.15 and 93.16, Stats.
4

5 (c) An agent engaged in telephone transactions on behalf of a principal seller need not
6 keep duplicate copies of records which that principal seller keeps according to this section.
7 A principal seller who contracts to have an agent keep records for the principal seller need
8 not keep duplicate copies of records which that agent keeps according to that contract and
9 this section. An employee need not keep duplicate copies of records that his or her
10 employer keeps according to this section.

11 **ATCP 127.20 Assisting violations.** No person may knowingly assist any seller to
12 engage in any activity or practice in violation of this subchapter.

13

1 relevant to that investigation. The seller shall provide the requested copies within a
2 reasonable time specified by the department.

3 *NOTE:* See ss. 93.15 and 93.16, Stats.
4

5 (c) An agent engaged in telephone transactions on behalf of a principal seller need not
6 keep duplicate copies of records which that principal seller keeps according to this section.
7 A principal seller who contracts to have an agent keep records for the principal seller need
8 not keep duplicate copies of records which that agent keeps according to that contract and
9 this section. An employee need not keep duplicate copies of records that his or her
10 employer keeps according to this section.

11 **ATCP 127.20 Assisting violations.** No person may knowingly assist any seller to
12 engage in any activity or practice in violation of this subchapter.

13

1 **ATCP 127.32 Opening disclosures.** (1) DISCLOSURES REQUIRED. A mail

2 solicitation shall disclose all of the following in writing:

3 (a) The name of the principal seller.

4 **NOTE:** For example, a firm making mail solicitations on behalf of another
5 company must disclose the name of the company for which it is acting as
6 agent. The firm may also disclose its own identity, but is not required to do
7 so.

8 (b) That the seller is offering or promoting the sale of consumer goods or services.

9 (c) The nature of the goods or services which the seller is offering or promoting.

10 (2) FICTITIOUS NAMES. A seller may not use any fictitious name under sub. (1)(a) or
11 s. ATCP 127.34(1)(d), except that a seller may use a trade name if all of the following

12 apply:

13 (a) The seller is widely known by and consistently does business under that name.

14 (b) The name does not have the tendency or capacity to confuse or mislead the
15 consumer as to the seller's true identity.

16 **ATCP 127.34 Disclosures prior to sale.** (1) DISCLOSURES REQUIRED. In a mail
17 transaction, a seller shall disclose all of the following to a consumer, in writing, before the
18 consumer enters into a purchase contract and before the seller takes the consumer's credit
19 card number or accepts any payment from the consumer:

20 (a) The nature and quantity of consumer goods or services included in the sale.

21 (b) The total cost to purchase and receive the consumer goods or services.

1 (c) All material terms and conditions affecting the sale, receipt or use of the consumer
2 goods or services, including credit terms if any.

3 **NOTE:** Consumer credit disclosures under par. (c) must comply with applicable
4 requirements under ch. 422, Stats., and federal law.
5

6 (d) The name and mailing address of the principal seller.

7 (e) The seller's policy related to refunds, cancellations, exchanges or repurchases if
8 any of the following apply:

9 1. The seller has a policy that prevents or substantially limits refunds, cancellations,
10 exchanges or repurchases.

11 2. The seller makes any claim or representation regarding refunds, cancellations,
12 exchanges or repurchases.

13 (2) LANGUAGE OTHER THAN ENGLISH. If the primary language used in a mail
14 solicitation is not English, the seller shall make the disclosures under sub. (1) in the
15 language primarily used.

16 **ATCP 127.36 Prize promotions. (1) ILLEGAL LOTTERIES.** In a mail transaction, no
17 seller may use a prize promotion that violates s. 945.02(3), Stats.

18 (2) PRIZE NOTICE; REQUIREMENTS. In a mail transaction, no seller may use a prize
19 promotion that violates s. 100.171, Stats.

20 (3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the
21 material terms of a prize promotion used in a mail transaction.

1 **ATCP 127.38 Unauthorized payment.** No seller in a mail transaction may obtain or
2 submit for payment any check, draft or other negotiable instrument drawn on a consumer's
3 account without that consumer's express, verifiable authorization. The authorization shall
4 comply with s. ATCP 127.10.

5 **ATCP 127.40 Delivering ordered goods.** A seller in a mail transaction shall comply
6 with s. 100.174, Stats.

7 **ATCP 127.42 Credit card laundering.** (1) No merchant may present to or deposit
8 into a credit card system for payment, or cause another person to present to or deposit into
9 a credit card system for payment, any credit card sales draft generated by a mail transaction
10 that is not a sale by that merchant to the holder of that credit card.

11 (2) No person may employ, solicit or cause a merchant to violate sub. (1).

12 (3) No seller engaged in a mail transaction may, by means of a business relationship
13 or affiliation with a merchant, obtain access to a credit card system unless that access is
14 authorized by that merchant's written agreement with the credit card system operator, or
15 with an acquirer licensed or authorized by the credit card system operator.

16 **ATCP 127.44 Misrepresentations.** No seller may do any of the following, directly
17 or by implication, in a mail transaction:

18 (1) Misrepresent a seller's identity, affiliation, location or characteristics.

19 (2) Misrepresent the nature or purpose of a mail solicitation.

1 (3) Misrepresent the nature or terms of a mail transaction, or any document related to
2 that transaction.

3 (4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail
4 to disclose material costs payable by the consumer.

5 (5) Misrepresent the nature, quantity, material characteristics, performance or efficacy
6 of the goods or services offered or promoted by a seller.

7 (6) Misrepresent or fail to disclose material restrictions, limitations or conditions on
8 the purchase, receipt, use or return of goods or services offered or promoted by a seller.

9 (7) Misrepresent the material terms of a seller's refund, cancellation, exchange,
10 repurchase or warranty policies.

11 (8) Misrepresent that a seller is offering consumer goods or services free of charge or
12 at a reduced price.

13 (9) Misrepresent that a seller is affiliated with, or endorsed by, any government or
14 3rd-party organization.

15 (10) Misrepresent that the seller has specially selected the consumer.

16 (11) Misrepresent that the seller is conducting a special sales promotion, is making a
17 special offer limited to a few persons, is making a special offer for a limited period of time,
18 or is authorized to place the offered goods or services in a limited number of homes.

19 (12) Represent that the seller is participating in a contest or conducting a survey
20 unless the representation is true and all of the following apply:

1 (a) The seller first makes all of the opening disclosures under s. ATCP 127.32.

2 (b) The seller concurrently discloses the name of the contest or survey sponsor, and
3 the specific terms of the contest or survey.

4 (c) The seller concurrently discloses that the seller is attempting to sell goods or
5 services, or to obtain information to identify sales prospects, if that is the case.

6 (13) Misrepresent any material aspect of a personal investment opportunity offered to
7 the consumer, including any aspect such as risk, liquidity, earnings potential or
8 profitability.

9 (14) Fail to disclose, in connection with every purported offer of free goods or
10 services in a mail transaction, any costs which the consumer must incur and any conditions
11 which the consumer must meet in order to receive those free goods or services. This does
12 not prohibit a combination offer that is covered by, and complies with, s. 100.18(2), Stats.

13 (15) Make any false, deceptive or misleading representation to a consumer.

14 **ATCP 127.46 Prohibited practices.** No seller may do any of the following in a mail
15 transaction:

16 (1) Threaten, intimidate or harass a consumer.

17 (2) Request or receive payment for seeking or arranging a loan or extension of credit
18 until the consumer actually receives that loan or extension of credit, if the seller has
19 represented that efforts to obtain a loan or extension of credit would likely be successful.

1 (3) Fail to do either of the following if the transaction qualifies as a consumer
2 approval transaction under s. 423.201, Stats., and is not subject to s. 423.202(4), Stats.:

3 (a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

4 (b) Honor the consumer's right to cancel under s. 423.202, Stats.

5 **NOTE:** Under s. 423.202, Stats., a consumer may cancel a consumer approval
6 transaction until midnight of the 3rd business day after the seller gives the
7 consumer a required written notice of cancellation rights under s. 423.203,
8 Stats. The consumer's cancellation rights under s. 423.202, Stats., are in
9 addition to any other cancellation rights which the consumer may have
10 under contract law.

11
12 **ATCP 127.48 Recordkeeping.** (1) RECORDS REQUIRED. A seller engaged in mail
13 transactions shall keep all of the following records related to those transactions:

14 (a) Copies of all mail solicitations and other documents provided to consumers in
15 mail transactions. This paragraph does not require a seller to keep duplicate copies of
16 substantially identical documents.

17 (b) The following records related to each prize which the seller offers or awards to
18 consumers if the seller represents to any consumer, directly or by implication, that the prize
19 has a value of \$25 or more:

20 1. An identification of the prize.

21 2. The name and last known address of every consumer who received the prize.

22 (c) The name and last known address of every consumer who purchased goods or
23 services in a mail transaction with the seller, the date on which the consumer purchased

1 those goods or services, the date on which the seller provided those goods or services to the
2 consumer, and the amount which the consumer paid for those goods or services.

3 (d) Documentation that the seller has systems and procedures which assure
4 compliance, in the ordinary course of business, with s. 100.174, Stats.

5 (2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for
6 at least 2 years after the seller creates that record.

7 **NOTE:** A seller may keep records required under sub. (1) in the form, manner,
8 format and place in which the seller would normally keep those records in
9 the ordinary course of business.

10
11 (b) The department, pursuant to an investigation of possible violations of this
12 subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably
13 relevant to that investigation. The seller shall provide the requested copies within a
14 reasonable time specified by the department.

15 **NOTE:** See ss. 93.15 and 93.16, Stats.

16
17 (c) An agent engaged in mail transactions on behalf of a principal seller need not keep
18 duplicate copies of records which that principal seller keeps according to this section. A
19 principal seller who contracts to have an agent keep records for the principal seller need not
20 keep duplicate copies of records which that agent keeps according to that contract and this
21 section. An employee need not keep duplicate copies of records that his or her employer
22 keeps according to this section.

1 **ATCP 127.50 Assisting violations.** No person may knowingly assist any seller to
2 engage in any activity or practice in violation of this subchapter.

1 (d) The nature of the goods or services which the seller is offering or promoting.

2 (2) MAKING THE DISCLOSURES. A seller shall make the disclosures under sub. (1)
3 before asking any questions or making any statements to a consumer, other than an initial
4 greeting. The seller shall make the disclosures orally and in writing.

5 (3) FICTITIOUS NAMES. (a) A seller may not use any fictitious name under sub. (1)(a)
6 or s. ATCP 127.64(1)(d), except that a seller may use a trade name if all of the following
7 apply:

- 8 1. The seller is widely known by and consistently does business under that name.
- 9 2. The name does not have the tendency or capacity to confuse or mislead the
10 consumer as to the seller's true identity.

11 (b) An individual making face-to-face solicitations as an employee or agent of
12 another seller may disclose a fictitious individual name under sub. (1)(b) if all of the
13 following apply:

- 14 1. No other individual making face-to-face solicitations for the same seller uses the
15 same fictitious name.
- 16 2. The seller for whom the individual is making the face-to-face solicitation keeps
17 records under s. ATCP 127.76(1)(d) that correlate the fictitious name with the actual name
18 and address of the individual seller.

19 **NOTE:** Subsection (3)(b) balances the needs of consumers against the privacy
20 interests of individuals employed to make face-to-face solicitations on
21 behalf of a seller.

1
2 **ATCP 127.64 Disclosures prior to sale. (1) DISCLOSURES REQUIRED.** In a face-to-
3 face transaction, a seller shall disclose all of the following to a consumer, in writing, before
4 the consumer enters into any purchase contract and before the seller takes the consumer's
5 credit card number or accepts any payment from the consumer:

6 (a) The nature and quantity of consumer goods or services included in the sale.

7 (b) The total cost to purchase and receive the consumer goods or services.

8 (c) All material terms and conditions affecting the sale, receipt or use of the consumer
9 goods or services, including credit terms if any.

10 **NOTE:** Consumer credit disclosures under par. (c) must comply with applicable
11 requirements under ch. 422, Stats., and federal law.

12
13 (d) The name, mailing address and telephone number of the principal seller.

14 **NOTE:** For example, an individual making face-to-face solicitations on behalf of
15 the ABC company must disclose the name, address and telephone number
16 of that company.

17
18 (e) The seller's policy related to refunds, cancellations, exchanges or repurchases if
19 any of the following apply:

20 1. The seller has a policy that prevents or substantially limits refunds, cancellations,
21 exchanges or repurchases.

22 2. The seller makes any claim or representation regarding refunds, cancellations,
23 exchanges or repurchases.

1 (2) COPIES OF SALES AGREEMENTS. Whenever a consumer signs any written
2 agreement in a face-to-face transaction, the seller shall provide the consumer with a true
3 copy of that agreement.

4 (3) LANGUAGE OTHER THAN ENGLISH. (a) If the primary language used in a face-to-
5 face solicitation is not English, the seller shall make the disclosures under sub. (1) in the
6 language primarily used.

7 (b) If the primary language used in a face-to-face transaction is not English, every
8 written agreement signed by the consumer shall be in English and the language primarily
9 used.

10 **ATCP 127.66 Prize promotions.** (1) ILLEGAL LOTTERIES. In a face-to-face
11 transaction, no seller may use a prize promotion that violates s. 945.02(3), Stats.

12 (2) PRIZE NOTICE; REQUIREMENTS. In a face-to-face transaction, no seller may use a
13 prize promotion that violates s. 100.171, Stats.

14 (3) PRIZE PROMOTIONS; MISREPRESENTATIONS. No seller may misrepresent the
15 material terms of a prize promotion used in a face-to-face transaction.

16 **ATCP 127.68 Unauthorized payment.** No seller in a face-to-face transaction may
17 obtain or submit for payment any check, draft or other negotiable instrument drawn on a
18 consumer's account without that consumer's express, written authorization. Express
19 written authorization may include the customer's signature on the check, draft or negotiable
20 instrument.

1 **ATCP 127.70 Credit card laundering.** (1) No merchant may present to or deposit
2 into a credit card system for payment, or cause another person to present to or deposit into
3 a credit card system for payment, any credit card sales draft generated by a face-to-face
4 transaction that is not a sale by that merchant to the holder of that credit card.

5 (2) No person may employ, solicit or cause a merchant to violate sub. (1).

6 (3) No seller engaged in a face-to-face transaction may, by means of a business
7 relationship or affiliation with a merchant, obtain access to a credit card system unless that
8 access is authorized by that merchant's written agreement with the credit card system
9 operator, or with an acquirer licensed or authorized by the credit card system operator.

10 **ATCP 127.72 Misrepresentations.** No seller may do any of the following, directly
11 or by implication, in a face-to-face transaction:

12 (1) Misrepresent a seller's identity, affiliation, location or characteristics.

13 (2) Misrepresent the nature, purpose or intended length of a face-to-face solicitation.

14 (3) Misrepresent the nature or terms of a face-to-face transaction, or any document
15 related to that transaction.

16 (4) Misrepresent the cost of goods or services offered or promoted by a seller, or fail
17 to disclose material costs payable by the consumer.

18 (5) Misrepresent the nature, quantity, material characteristics, performance or efficacy
19 of the goods or services offered or promoted by a seller.

1 (6) Misrepresent or fail to disclose material restrictions, limitations or conditions on
2 the purchase, receipt, use or return of goods or services offered or promoted by a seller.

3 (7) Misrepresent the material terms of a seller's refund, cancellation, exchange,
4 repurchase or warranty policies.

5 (8) Misrepresent that a seller is offering consumer goods or services free of charge or
6 at a reduced price.

7 (9) Misrepresent that a seller is affiliated with, or endorsed by, any government or
8 3rd-party organization.

9 (10) Represent that the seller has specially selected the consumer unless the
10 representation is true and the seller concurrently discloses to the consumer the specific
11 basis on which the seller makes the representation. The seller may not misrepresent that
12 basis.

13 (11) Represent that the seller is conducting a special sales promotion, is making a
14 special offer limited to a few persons, is making a special offer for a limited period of time,
15 or is authorized to place the offered goods or services in a limited number of homes, unless
16 the representation is true and the seller concurrently discloses to the consumer the specific
17 basis on which the representation is made. The seller may not misrepresent that basis.

18 (12) Represent that the seller is participating in a contest or conducting a survey
19 unless the representation is true and all of the following apply:

20 (a) The seller first makes all of the opening disclosures under s. ATCP 127.62.

1 (b) The seller concurrently discloses the name of the contest or survey sponsor, and
2 the specific terms of the contest or survey.

3 (c) The seller concurrently discloses that the seller is attempting to sell goods or
4 services, or to obtain information to identify sales prospects, if that is the case.

5 (13) Misrepresent any material aspect of a personal investment opportunity offered to
6 the consumer, including any aspect such as risk, liquidity, earnings potential or
7 profitability.

8 (14) Fail to disclose, in connection with every purported offer of free goods or
9 services in a face-to-face transaction, any costs which the consumer must incur and any
10 conditions which the consumer must meet in order to receive those free goods or services.

11 This does not prohibit a combination offer that is covered by, and complies with, s.
12 100.18(2), Stats.

13 (15) Make any false, deceptive or misleading representation to a consumer.

14 **ATCP 127.74 Prohibited practices.** No seller may do any of the following in a
15 face-to-face transaction:

16 (1) Threaten, intimidate or harass a consumer.

17 (2) Fail to leave a consumer's premises upon request.

18 (3) Request or receive payment for seeking or arranging a loan or extension of credit
19 until the consumer actually receives that loan or extension of credit, if the seller has
20 represented that efforts to obtain a loan or extension of credit would likely be successful.

1 (4) Fail to do either of the following if the transaction qualifies as a consumer
2 approval transaction under s. 423.201, Stats., and is not subject to s. 423.202(4), Stats.:

3 (a) Provide a notice under s. 423.203, Stats., of the consumer's right to cancel.

4 (b) Honor the consumer's right to cancel under s. 423.202, Stats.

5 **NOTE:** Under s. 423.202, Stats., a consumer may cancel a consumer approval
6 transaction until midnight of the 3rd business day after the seller gives the
7 consumer a required written notice of cancellation rights under s. 423.203,
8 Stats. The consumer's cancellation rights under s. 423.202, Stats., are in
9 addition to any other cancellation rights which the consumer may have
10 under contract law.

11
12 **ATCP 127.76 Recordkeeping.** (1) RECORDS REQUIRED. A seller engaged in face-
13 to-face transactions shall keep all of the following records related to those transactions:

14 (a) Copies of all advertising, brochures, sales scripts, seller training materials, sales
15 and promotional materials, and documents provided to consumers in face-to-face
16 transactions. This paragraph does not require a seller to keep duplicate copies of
17 substantially identical documents.

18 (b) The following records related to each prize which the seller offers or awards to
19 consumers if the seller represents to any consumer, directly or by implication, that the prize
20 has a value of \$25 or more:

21 1. An identification of the prize.

22 2. The name and last known address of every consumer who received the prize.

1 (c) The name and last known address of every consumer who purchased goods or
2 services in a face-to-face transaction with the seller, the date on which the consumer
3 purchased those goods or services, the date on which the seller provided those goods or
4 services to the consumer, and the amount which the consumer paid for those goods or
5 services.

6 (d) The following information related to every individual who has made face-to-face
7 solicitations as the seller's employee or agent:

8 1. The individual's name, last known address and telephone number.

9 2. Every fictitious name which the individual has used when making face-to-face
10 solicitations. No seller may permit more than one employee or contract agent to use the
11 same fictitious name.

12 3. The individual's job title or titles.

13 (e) All written authorizations required under s. ATCP 127.68.

14 (2) KEEPING RECORDS. (a) A seller shall keep each record required under sub. (1) for
15 at least 2 years after the seller creates that record.

16 **NOTE:** A seller may keep records required under sub. (1) in the form, manner,
17 format and place in which the seller would normally keep those records in
18 the ordinary course of business.

19
20 (b) The department, pursuant to an investigation of possible violations of this
21 subchapter, may ask a seller to provide copies of records under sub. (1) that are reasonably

1 relevant to that investigation. The seller shall provide the requested copies within a
2 reasonable time specified by the department.

3 **NOTE:** See ss. 93.15 and 93.16, Stats.
4

5 (c) An agent engaged in face-to-face transactions on behalf of a principal seller need
6 not keep duplicate copies of records which that principal seller keeps according to this
7 section. A principal seller who contracts to have an agent keep records for the principal
8 seller need not keep duplicate copies of records which that agent keeps according to that
9 contract and this section. An employee need not keep duplicate copies of records that his
10 or her employer keeps according to this section.

11 **ATCP 127.78 Assisting violations.** No person may knowingly assist any seller to
12 engage in any activity or practice in violation of this subchapter.

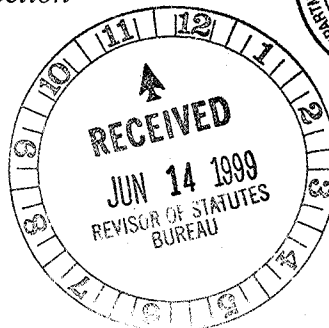
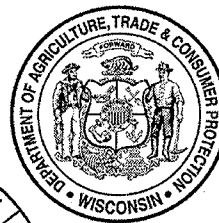
13
14 **EFFECTIVE DATE.** The rules contained in this rulemaking order shall take effect
15 on the first day of the month following publication in the Wisconsin administrative
16 register, as provided under s. 227.22(2)(intro.), Stats.

17 Dated this 11 day of June, 1999.
18
19

20 STATE OF WISCONSIN
21 DEPARTMENT OF AGRICULTURE,
22 TRADE AND CONSUMER PROTECTION
23

24 By Ben Brancel
25 Ben Brancel, Secretary
26

State of Wisconsin
CORRESPONDENCE/MEMORANDUM
Department of Agriculture, Trade and Consumer Protection
Division of Trade and Consumer Protection



Date: June 11, 1999

To: Gary Poulson - Revisor of Statutes Office
131 West Wilson Street, Suite 800

From: Ben Brancel, Secretary *Ben Brancel*

Subject: **Clearinghouse Rule No. 98-117, Chapter ATCP 127 Relating to Direct Marketing**

The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing with the above rule.

Final Regulatory Flexibility Analysis

Direct Marketing

This rule regulates businesses that solicit and sell consumer goods by mail, telephone, other electronic means such as e-mail or facsimile, or in face-to-face transactions away from the seller's regular place of business. The rule provides methods whereby buyers can be informed of the conditions of their agreements in a manner that is meaningful and available to the consumer after the transaction is done and the seller no longer available.

These requirements should have little if any impact on small business. It is general business practice to inform potential customers who you are and the product you are selling an to produce invoices following the sale. It is also general practice to retain business records for a period of time for tax and other purposes. The practices regulated by the prize promotion, unauthorized payment, telephone solicitation, and credit card laundering sections have been identified at federal rules hearings as practices which have led to abuse of consumers and are already in effect for any business that solicits on an interstate scale. Businesses' recordkeeping requirements are necessary for meaningful enforcement of the rules and should already be the norm for most businesses.

Scope

This rule modernizes the restrictions on small business created by the current ch. ATCP 127, Wis. Adm. Code, which was promulgated in 1972./ This rule also incorporates the provisions of the Federal trade Commission telemarketing rules, and clarifies and expands its scope to include other electronic communications such as e-mail and telefax, and direct mail.

This rule does not apply to sales at the sellers' regular place of business, catalog sales, mass advertising, an established public market such as a farmers' market, or business-to-business sales. This rule does not apply to financial institutions, insurance companies, utilities, or real estate sales (other than cemetery lots and "time shares").

Opening Disclosures

This rule requires initial disclosures such as the seller's correct name, other name of the individual making the solicitation, the fact that the seller is offering or promoting a sale of goods or services, and the kind of goods or services the seller is offering or promoting.

These disclosures must be made orally, if the direct marketing involves an oral or face-to-face communication and in writing, if the direct marketing involves a written or face-to-face solicitation.

These requirements should have no significant impact on small business. Most sellers, as a matter of preference, leave written information about their company and products with the consumer whenever engaged in a home solicitation.

Disclosures Prior to Sale

Before the sale or acceptance of payment, a seller must disclose the material terms and conditions of sale. These requirements add no additional cost to legitimate small business who already provide this information to consumers.

Unauthorized Payment

Under this rule, no seller may obtain or submit any negotiable instrument drawn on a consumer's account without express, verifiable authorization. Authorizations may be written or oral, and must be verifiable by writing or tape recording. Honest businesses should have no objection to these provisions. Businesses that wish to tape record oral authorizations may find it necessary to make a one-time purchase of equipment.

Credit Card Laundering

This rule prohibits "credit card laundering" schemes by which unscrupulous sellers gain access to the credit card system by processing credit card transactions under the name of another

merchant. This section targets only those sellers engaged in unscrupulous practices and should have no impact on legitimate small businesses.

Misrepresentations

This rule prohibits the seller from misrepresenting any of the following:

- The seller's identity, affiliation, location or characteristics or the nature, purpose or intended length of a home solicitation.
- The cost, nature or terms of purchase, including restrictions, limitations or conditions on the receipt, use or return of goods or services. This rule requires affirmative disclosure of key sales terms.
- The nature, quantity, or material characteristics of the goods or services.
- That the seller has specifically chosen the consumer or is making a special sales promotion limited to a few individuals, unless this is true and the basis for the representation is revealed.
- That the seller is participating in a contest or conducting a survey unless it is true and the seller describes the contest or survey.
- That a seller is affiliated with, or endorsed by, any government or 3rd-party organization or has specially selected the consumer.
- Any material aspect of an investment opportunity, including risk, liquidity, earnings potential or profitability.

These prohibitions should pose no problem for honest businesses, and should place no additional burden on small businesses. For the most part, they merely continue prohibitions contained in current rules.

Prohibited Practices; General

This rule prohibits a seller from doing any of the following in a direct marketing transaction:

- Threatening, intimidating, or harassing a consumer.
- Failing to leave a consumer's premises upon request.
- Requesting or receiving payment for "loan finder" services until the consumer actually receives the promised loan.

These prohibitions should pose no problem for honest businesses, and should place no additional burden on small businesses. For the most part, they merely continue prohibitions contained in current rules.

Prohibited Telephone Solicitation Practices

This rule prohibits a direct marketing seller from doing any of the following:

- Initiating a telephone solicitation to a consumer who has previously stated that he or she does not wish to receive telephone solicitations from the seller.
- Repeatedly causing a consumer's telephone to ring, or repeatedly engaging a consumer in telephone conversation, with intent to annoy, abuse or harass a consumer.
- Initiating a telephone solicitation before 8:00 am or after 9:00 PM without the prior consent of the consumer.

These prohibitions are consistent with FTC rule provisions, and should pose no problem for legitimate telemarketers.

Recordkeeping

This rule requires a direct marketing seller to keep copies of all solicitation scripts and documents, transaction receipts, a description of each prize offered and the name and address of every consumer who received a prize. The rule also requires a seller to keep the real names, any fictitious name(s) used, address and telephone number, and job title or titles of individual solicitors acting on the seller's behalf.

This section is similar to the federal telemarketing rule requirements. Additionally, the records to be kept are generally held by small business for other purposes. Therefore, there should be no fiscal impact to most small businesses. There will be some limited fiscal impact to small businesses who do not otherwise come under the federal rules and do not otherwise keep the required documentation.

Small Business Impact; Summary

The impact on small business should be limited to those who are not already covered by federal telemarketing rules or current DATCP rules under ch. ATCP 127, Wis. Adm. Code. Some small businesses may need to purchase equipment to tape record telephone authorizations from consumers. Most other requirements can be met by adhering to normal good business and recordkeeping practices. This rule will not ordinarily require small businesses to retain additional professional services.

Comments from Legislative Committees

On March 17, 1999, this department transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Judiciary and Consumer Affairs on March 25, 1999, and to the Assembly Committee on Consumer Affairs on March 30, 1999.

On May 6, 1999, a hearing was held on the rule by the Assembly Committee on Consumer Affairs. Both committees recommended a modification to the proposed rule which would exempt credit unions from the definition of "seller."

On May 19, 1999, the department submitted a letter to both legislative committees informing them that the department agreed to make the following modification to the rule:

- On page 20, at line 24, add the words "credit union" as follows:

"association, credit union, insurance company, public utility or telecommunications carrier"

The department also informed the committees on May 19, 1999, that it was adding the two following notes to the rule:

- On page 21, after line 19:

NOTE: Paragraph (b) does not except a face-to-face communication.

- On page 22, after line 9:

NOTE: A "solicitation under sub. (22) is covered by this rule even though it is not the first communication between the seller and the consumer.

Neither legislative committee took any action on the rule during its review period.