PUBLIC REGULATION
Public regulation at any level of government—federal, state, or local—touces a company's marketing department more than any other phase of the company's operations. This does not imply that regulation of nonselling activities is unimportant. The Securities and Exchange Commission affects corporate financing, minimum-wage legislation influences several aspects of personnel and labor relations, various measures establish safety regulations for offices and factories, local zoning laws affect plant location, and so on. However, the various regulatory measures that affect areas of marketing—such as pricing, advertising, and *Personal Selling*, are the ones that will have the greatest impact on the behavior of salespeople and their managers.

As established by the Federal Sentencing Commission for Organizations in 1991, both the employee and the employee's company are responsible for compliance with federal regulations. That is, the government holds the company responsible for preventing misconduct on the part of its employees. It must establish and communicate standards of behavior to employees, monitor employee conduct, allow employees to report criminal activity, punish those who violate the standards, and take steps to prevent further criminal conduct. Sales managers must ensure that their salespeople are aware of their legal responsibilities. To do this, they must provide training with regard to their legal responsibilities and routinely provide updates concerning the most recent legislation and court decisions.

If a manager believes that the behavior of a particular salesperson may lead to legal problems, the sales manager should take action immediately to make the rep cease the questionable behavior.

There are four areas in which sales executives are affected by government regulation of business: price discrimination, unfair competition, the Green River type of municipal ordinance, and cooling-off laws.

**Price Discrimination**

The Clayton Antitrust Act (1914) and its Robinson-Patman Amendment (1936) are federal laws that generally restrict *price discrimination*. Sales administrators, for example, cannot allow members of their sales force to indiscriminately grant price concessions. Some customers may demand larger discounts than are normally allowed and threaten to take their business elsewhere if their demands are not met. A seller who grants the unusual discount, assuming no corresponding cost differential to justify the transaction, may (along with the buyer) be violating the Robinson-Patman Act.

In another situation, in order to make a sale, it may be necessary for a seller to absorb some or all of the freight ordinarily paid by the buyer. Care must be taken to ensure that the move is made in good faith to meet an equally low price of a competitor. Firms normally cannot make price guarantees to some customers without making the same guarantees to other competing customers. Let's assume that a firm wants to grant allowances to customers for such things...
as cooperative advertising or demonstrators. These attractions also must be offered to all competing customers on a proportionately equal basis.

**Unfair Competition**

Unfair trade practices that may injure a competitor or the consumer are generally illegal under the Federal Trade Commission Act and its Wheeler-Lea Amendment. No specific examples of unfair competition are spelled out in these laws. However, a large body of illustrations has built up through the years as the Federal Trade Commission has administered these legislative acts. Offering bribes and providing misleading information to customers have been the focus of many FTC legal actions against firms and their employees.

**Bribes**

Using bribes—the payment of money or gifts to gain or retain a customer—is illegal. Using bribes to gain information about competitors is also illegal. Bribery in selling is an unpleasant fact of life that apparently has existed, in varying degrees, since time immemorial. Blatant bribes, payoffs, or kickbacks may be easy to spot—and they are patently wrong. Unfortunately, today much bribery is done in a sophisticated manner that is not easy to identify. Sometimes the lines are blurred between a bribe, a gift to show appreciation, and a reasonable commission for services rendered.

In sales, the bribe offer may be initiated by the salesperson, or the request may come from the buyer. Usually, the buyer’s request is stated in a veiled fashion, and it takes a perceptive sales rep to understand what is going on.

Undoubtedly, bribery will continue to put sales managers and salespeople to the ethical test. If nothing else, sales executives should realize that “everyone else is doing it” is not a valid excuse. The penalties can be stiff for those found guilty of taking or giving bribes.

**Misleading Information**

It is illegal to make false, deceptive, or misleading claims about a product or about the services that accompany that product. If a salesperson makes exaggerated claims about a product and those claims lead to misuse of the product, the seller also may be sued for any property damages or personal injuries arising out of a customer’s misuse of the product. Merck & Company has been accused of training its sales representatives to avoid questions about whether Vioxx had the potential to increase blood pressure. It is now facing litigation concerning the drug’s role in causing heart attacks.

Making false, deceptive, or disparaging statements about a competitor or its products is also illegal. Yet such practices are prevalent. The lies may run from fibs about the competitor’s financial stability to personal attacks on its salespeople. Regardless of their nature, these actions all have the same purpose of discrediting the competitor. This is illegal and can lead to prosecution, fines, and imprisonment.
The following guidelines help sales managers and salespeople minimize the probability of legal proceedings and increase their chances of defending themselves if a legal complaint is brought against them:

- Always make accurate, understandable, and verifiable statements about the product and its use.
- Avoid making exaggerated claims.
- Ensure that customers have the necessary knowledge and skills needed to use the product in the proper manner.
- Caution (in writing) customers against using the product in an improper manner.
- Review sales literature, warnings, and labels to be sure they are accurate and complete.
- Remind customers to read warning labels.
- Be able to verify any statements made about competitors.

Green River Ordinances

Many cities have enacted Green River Ordinances, which restrict the activities of salespeople who represent firms located outside the city. These representatives may sell door-to-door (in-home), or they may call on retailers or other business establishments. Ostensibly, most of these laws were passed to protect local consumers and businesses from the fraudulent, high-pressure, and otherwise unethical selling practices of outlanders. Such measures not only serve this purpose but also tend to insulate local firms from external competition. Generally, these ordinances require salespeople to have a local license to do business in the town. But it often is difficult for representatives from some types of outside firms to get the necessary license. While the constitutionality of these laws is highly questionable, they do serve as a deterrent to unethical sales activity.

Cooling-Off Laws

Legislation at the federal, state, and local levels protects consumers against the sometimes unethical sales activities of door-to-door salespeople. Much of the state legislation and Federal Trade Commission (FTC) administrative rulings are of the “cooling-off” type. That is, the regulations provide for a cooling-off period (usually three days) during which the buyer in a door-to-door (in-home) sale may cancel the contract, return any merchandise, and obtain a full refund.

The 1972 FTC rulings apply to all sales of $25 or more. They require the salesperson to inform the customer orally and in writing about the opportunity to “say no to the company even after you have said yes to the salesperson.” By 1973, nearly 40 states, as well as several cities, had passed some type of
cooling-off law. This poses real problems of compliance for national direct-selling companies, which must deal with many different laws and sales contracts.