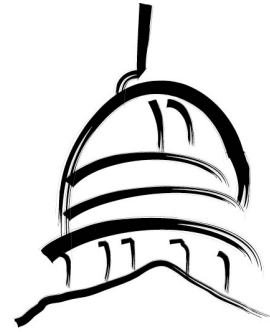


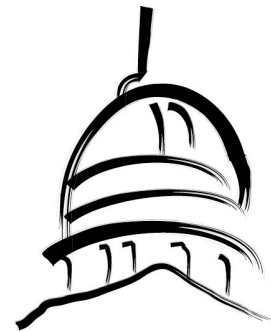
Consumer Protection Programs



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*Prepared by
Christopher Pollek*

*Wisconsin Legislative Fiscal Bureau
One East Main, Suite 301
Madison, WI 53703*

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Consumer Protection Programs

This paper describes the consumer protection activities carried out by the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Justice (DOJ). The two agencies provide services that relate to individual consumer complaints and consumer education. Other state regulatory programs also assist consumers; however, this paper focuses primarily on consumer protection programs that relate to consumer complaints of unfair or unlawful treatment or provide information and education to assist consumers in future transactions.

The paper is divided into four sections: (1) the statutory authority governing consumer protection activities of DATCP and DOJ; (2) the consumer protection program and operations of DATCP; (3) the consumer protection program and operations of DOJ; and (4) appendices which briefly describe the consumer protection activities of other state agencies (Appendix I) and the trade and consumer protection administrative rules of DATCP (Appendix II).

Consumer Protection Statutory Authority

Prior to the 1995 biennial budget act, both DATCP and DOJ were provided broad authority under state trade practice statutes to regulate and prosecute fraudulent advertising and representations and unfair trade practices. DATCP was also provided authority to regulate product safety. On July 1, 1996, most of the state's consumer protection

authority was consolidated in DATCP.

Prior to 1996, the statutes authorized either or both of the Departments to enforce violations of consumer protection laws, including those related to: (1) fraudulent drug and food advertising; (2) the substantiation of energy savings or safety claims; (3) fitness center and weight reduction contracts; (4) unfair mail order sales practices; (5) motor vehicle rustproofing warranties; (6) time share and campground ownership; (7) prepaid maintenance liens; (8) unsolicited prize notices; (9) "900" telephone number abuses; (10) ticket refunds; (11) cable television subscriber rights; (12) charitable solicitation; (13) dating services contracts; (14) telecommunications services; (15) the sale of cleaning agents and water conditioners containing phosphorous; and (16) products containing ozone-depleting substances.

The Department of Justice retains much of its concurrent authority to determine violations of and initiate prosecutorial proceedings on, cases relating to fraudulent representation, unfair trade practices and telecommunications trade practices. However, DOJ can only commence an action in circuit court under this authority after consulting with DATCP. As the state's attorney, DOJ can also represent the state in court on consumer protection cases referred for adjudication by DATCP or other state agencies.

Fraudulent Advertising and Representations

DATCP, and DOJ after consulting with DATCP, may commence an action in circuit court under s. 100.18 of the statutes, (originally adopted in 1913)

to prohibit advertising and other representations that are "untrue, deceptive or misleading." This statute, often referred to as the Fraudulent Representations Law, prohibits fraudulent advertising or representations made by businesses. Specific actions which are prohibited under this statute include: (1) inadequate price or condition of sale disclosures related to the sale of products or services which are conditioned upon the purchase of any other product or service, referred to as combination sales; (2) false representation by a business to be a private party; (3) deceptive close-out sales; (4) failure of business owners to properly identify their business; (5) inadequate gasoline price disclosures; (6) bait and switch advertising; (7) misrepresentation of local energy resource systems (such as wind or solar power); and (8) deception in the use of terms such as wholesaler or manufacturer for price advertising.

DATCP, district attorneys and DOJ, after consulting with DATCP, may commence actions in circuit court to bring an action on behalf of the state and receive a temporary or permanent injunction. An injunction is an order issued by a circuit court to restrain a business' untrue, deceptive or misleading practices. (Although DATCP is authorized to bring actions, DATCP requests that court actions be taken by district attorneys or the Department of Justice due to DOJ's general role in representing the state in court.) Through such a court order, in addition to putting a halt to the fraudulent actions for most infringements, the court can order a civil forfeiture of not less than \$50 nor more than \$200 for each violation and require restitution be paid to the victim of the business' fraudulent activities.

DATCP, any district attorney and DOJ, after consulting with DATCP, have authority to commence an action to recover a civil forfeiture to the state for each violation of a court ordered injunction issued under the state's fraudulent advertising statutes. In lieu of an injunction, DATCP or any district attorney may attempt to

obtain a voluntary assurance of discontinuance of fraudulent or deceptive consumer practices from the businesses involved in such activities. Such assurances are not filed in court and may take the simple form of a letter or the more official form of a contract. In any case, the assurance is made in writing and specifies that, from that point forward, the conduct in question will be stopped.

A voluntary assurance differs from an injunction in that such agreements are not admissible as evidence of a previous violation should the business later be brought to court on the same charges of fraudulent representation. However, a violation of the assurance is treated as a violation of state fraudulent representation statutes and subject to the remedies and penalties associated with such violations.

In comparison, if the conditions of an injunction are violated, there are additional civil penalties that may be sought. For each violation of an injunction, the prosecutor (DOJ or a district attorney) may bring an action to recover additional civil forfeitures of not less than \$100 nor more than \$10,000 for each violation.

Unfair Trade Practices

Under s. 100.20 of the statutes, adopted in 1921, DATCP requires business methods of competition and trade practices to be "fair." DATCP is provided broad authority to define fair methods and practices, including the authority to: (1) specify, by administrative rule, unfair business methods and practices; and (2) issue special orders enjoining unfair business practices.

The statutory requirement for businesses to use fair methods and practices is intended to promote free and open competition. Under the unfair trade statute, the Department also regulates many forms of advertising and sales claims. This law is often termed the "Little FTC Act" by DATCP, in reference to its similarity to the Federal Trade Commission

Act, on which it was based.

Administrative Rules

Generally, DATCP exercises its rulemaking authority to govern unfair business practices that have become common. The consumer issues regulated by DATCP rules (the general unfair trade practices statute) and administered by its Consumer Protection Bureau are listed in Appendix II.

The 1995-97 budget act eliminated DOJ's rulemaking authority in the area of consumer protection. However, in areas related to unfair business practices where no DATCP rule exists, DOJ may: (a) file a written complaint with DATCP relating to allegations of unfair methods of competition in business or unfair trade practices in business or both; (b) require DATCP to proceed, after proper notice, to the hearing and adjudication of the allegations; (c) permit a representative of DOJ, designated by the Attorney General, to appear before DATCP in such proceedings; and (d) entitle DOJ to judicial review of the decisions and orders of DATCP.

Special Orders

The unfair trade practices statute also authorizes DATCP to issue special orders enjoining unfair practices and requiring a business to adopt business practices specified by the Department. The special order authority represents significant administrative power to prohibit business practices not otherwise regulated by specific statutes or rules. A special order applies to a single party named in the order; however, the Department may follow special orders with the adoption of administrative rules affecting the entire industry if the unfair practice is found to be common. In 2001-02, the Department issued 11 special orders.

Penalties

DATCP or any district attorney has authority to

commence an action in the name of the state to recover civil forfeitures for each violation of a DATCP rule or order issued under the state unfair trade practices statutes. DOJ, after consulting DATCP or at the request of DATCP, has authority to commence an action to recover a civil forfeiture for each violation of a court ordered injunction issued under the state's unfair trade practices statutes. However, DOJ does not have the authority to recover a civil forfeiture for violation of an injunction issued under a DATCP rule or order.

Violators of the unfair trade practices statute are subject to: (1) criminal penalties for each violation of not less than \$25 nor more than \$5,000 and imprisonment in a county jail for not more than one year, or both; or (2) civil penalties of not less than \$100 nor more than \$10,000 per violation, in addition to the potential for an order to be issued requiring restitution to be paid to the consumer. Criminal prosecutions are brought by district attorneys; civil prosecutions have generally been brought by DOJ for cases having statewide impact.

In addition, the statutes provide authority to private parties to take legal actions in any court with jurisdiction to recover losses due to violations of administrative rules or special orders. Private parties may recover twice the amount of damages plus costs, including attorney fees.

Telecommunications Services

DATCP, DOJ and district attorneys regulate the advertising, sales representations and practices related to telecommunication services. Telecommunication service, as defined by section 196.01 of the Wisconsin Statutes, includes the sale of services related to the conveyance of voice, data or other information at any frequency over any electromagnetic spectrum including sale of service for the collection, storage, forwarding and switching of the regulated service as well as any needed equipment. A telecommunications service does not include cable television or broadcast services.

The statutes specifically prohibit advertising and sales representations that in any manner make false, misleading or deceptive statements or representations in regard to the provision of telecommunication services, including the rates, terms or conditions for service. In addition, persons may not engage in "negative option billing" or negative enrollment for telecommunication services. That is, a person may not bill anyone for any telecommunication service that person did not affirmatively order, unless the service is required to be provided by law, the Federal Communication Commission or the state Public Service Commission. Further, a person's failure to refuse another person's proposal to provide a telecommunication service is not considered an affirmative request for that telecommunication service. Lastly, a person must provide written confirmation of any services ordered through oral solicitation and a person may not charge a customer for any services that customer has canceled.

DATCP, in consultation with DOJ, has the authority to promulgate rules related to the provision of telecommunication services in the state. ATCP 123 regulates subscription and billing practices related to cable and telecommunication services provided to consumers primarily for personal, household or family use. DOJ is required to consult with DATCP prior to commencing a court action to restrain, by temporary or permanent injunction, any violation of consumer protection statutes related to telecommunication services. A district attorney, upon informing DATCP, may also commence such actions.

Any person who violates the consumer protection statutes related to telecommunication services shall be required to forfeit not less than \$25 nor more than \$5,000 for each offense. Such forfeitures are enforced by DOJ, after consulting DATCP, or by any district attorney, after informing DATCP. DOJ may only commence such an action in court after consulting with DATCP. Also,

persons adversely affected by such violations have a claim for appropriate relief and to recover any costs and disbursements that occur related to such violations.

Telemarketing No-call List

The 2001-03 biennial budget act (2001 Act 16) created a program to register telemarketers and prohibit them from calling consumers who had their residential phone number listed on a no-call directory. The Department, under administrative rule ATCP 127, administers the program. Telemarketers pay initial fees of \$700 per year and annual renewal fees of \$500 plus \$75 per phone line over three (capped at \$20,000) thereafter. Other possible fees include \$25 for each additional e-mail or compact disc copy of the no-call list, and \$1,000 for each additional hard copy of the no-call list. Annual revenues are estimated at \$550,000. Consumers must renew their listing every two years, but are charged no fee.

The first no-call list was published on December 1, 2002, and contained over one million residential telephone numbers. The list will be updated and published quarterly by DATCP. Most telemarketers are prohibited from calling these numbers beginning January 1, 2003. Violations are punishable by forfeitures of up to \$100 per violation.

Product Safety

DATCP is also responsible for the identification and regulation of consumer products that may present an unreasonable risk of injury to the public. In addition, the Department establishes packaging standards for household products to prevent hazards such as poisoning. Under s. 100.42, DATCP has general authority to ban the sale or distribution of any consumer product determined to present an unreasonable risk or imminent hazard to the public health, welfare or safety. In addition, specific statutory responsibilities relate to the following issues.

- Hazardous household substances
- Flammable fabrics
- Poison prevention packaging

DATCP Consumer Protection Program

Consumer Protection Bureau activities rely significantly on the administrative rules adopted under the authority of the unfair trade practices statute. The administrative rules provide detailed, industry-wide standards of conduct related to specific consumer protection issues. In addition the Department practices progressive enforcement of the state's consumer protection laws through the use of warning letters, assurances of compliance, special orders and formal prosecutions, when necessary.

The Department uses a program of prevention, education, mediation and enforcement to maintain compliance with DATCP rules. In addition, administrative rules are intended to reduce the possibility of arbitrary or inconsistent state regulation of businesses. Generally, rules have been adopted for those consumer issues for which unfair business activities had, at one time, become common. The Department adopts new rules and modifies current rules in response to new practices.

Program Funding and Staffing

DATCP implements its consumer protection duties through the Bureau of Consumer Protection within the Division of Trade and Consumer Protection. Funding is provided from general purpose revenues (GPR), program revenues (PR) and segregated (SEG) revenues. In 2002-03 the Bureau is provided \$4,635,400 in funding and 75.8 staff (\$2,718,500 GPR and 46.85 GPR positions, \$1,756,600 PR and 22.95 PR positions, \$160,300 SEG and 6.0 SEG positions). The Bureau consists of a director and central administrative staff that includes a consumer information center made up

of consumer hotline and consumer information staff. The Bureau also operates regional offices in Eau Claire, Green Bay, Madison and Milwaukee. Table 1 categorizes DATCP's consumer protection staff.

Table 1: DATCP Consumer Protection Staff (2002-03)

Central Office:	
Director, Administrative and Legal	3.75
Consumer Information Center	11.65
Regulation and Safety Section	14.25
Regional Offices	<u>46.15</u>
Total	<u>75.80</u>

Bureau of Consumer Protection program revenue is derived from various fees collected from: (a) weights and measures inspections; (b) automobile repair shops conducting mobile air conditioner installation, removal or repair work; and (c) a consumer protection 25% surcharge on all fines and forfeitures for consumer protection violations. Segregated funding is provided from the petroleum inspection fund for enforcement of the unfair sales act and weights and measures activities related to fuel dispensing facilities.

DATCP also has a Trade Practices Bureau that handles some of the workload related to the Unfair Sales Act and unfair trade practices. The Trade Practices Bureau is primarily concerned with complaints related to unfair industry competition or practices (that is, "business on business" complaints as opposed to "consumer on business" complaints). Examples of Trade Practice Bureau programs include regulation of product pricing practices (minimum mark-up laws) and the dairy plant security program, which attempts to ensure that dairy plants have enough financial security, in the event of default or other financial pressure, to meet their contractual obligations with individual milk producers. Administrative rules related to trade practices are found in Appendix II.

Central Office Staff

Central office staff total 29.65, which includes a director, legal staff allocated from the Department's legal services office and a public information officer from the Department's office of information and education. The remaining 25.90 central office staff are located within the Bureau's consumer information center, regulation and safety section, and telemarketing no-call list administration.

Consumer Information Center (CIC)

The CIC consists of a supervisor and 10.65 staff. 7.65 of these staff consist of two units, the hotline unit and the special projects unit. Hotline staff are primarily responsible for responding to consumer complaints via the toll-free hotlines, and working with the Department's automated telephone response system, known as an interactive voice response (IVR) system, and complaint tracking database to retrieve information on complaints. The other 3.0 staff are no-call list administrators for the telemarketing no-call list program, and while the 5.5 no-call staff currently work separately from the rest of the consumer protection staff, these 3.0 administrators are supervised by the Consumer Information Center supervisor.

One of the primary functions of the CIC is to respond to potential violations of the state's consumer protection laws by out-of-state businesses (those that do not have a physical presence in the state). Prior to 1996, DATCP referred most out-of-state complaints to DOJ. Now, the special projects unit staff is responsible for providing advice, mediating complaints, making recommendations for warnings letters, compliance assurances, or more in-depth investigations and making referrals for DATCP special orders or formal litigation to DOJ on out-of-state business activities.

The CIC is also responsible for:

- Education and compliance activities
- Market research and trend analysis
- Enhancement and maintenance of the automated complaint tracking system

Consumer Protection also provides information through an Internet web page. This page contains consumer information, services, fact sheets and publications as well as extensive lists of resource and referral information used by DATCP hotline staff when responding to inquiries and complaints. It also provides links to other web sites and electronic complaint forms. In 2002, through November, DATCP's consumer protection web site had 102,276 visitors.

Regulation and Safety Section

The Bureau's regulation and safety section enforces a number of laws and Department rules related to environmental regulation of consumer products and product safety as well as providing rulemaking, educational, training and technical support to the Department's weights and measures staff. The regulation and safety section combines the former environmental and product safety section with the weights and measures technical section. The new combined section consists of a supervisor and 13.25 staff who carry out Department responsibilities related to the following statutes:

- Labeling of Bedding (s. 100.2095)
- Dry Cell Batteries Containing Mercury (s. 100.27)
- Sale of Detergents Containing Phosphorus (s. 100.28)
- Reductions of Toxics in Packaging (s. 100.285)
- Sale of Nonrecyclable Materials (s. 100.29)
- Labeling of Recycled, Recyclable or Degradable Consumer Products (s. 100.295)
- Plastic Container Recycled Content and Labeling (s. 100.297 and s. 100.33)
- Hazardous Substances (s. 100.37)
- Antifreeze Content (s. 100.38)
- Flammable Fabrics (s. 100.41)
- Product Safety (s. 100.42)
- Poison Prevention Packaging (s. 100.43)

Table 2: Regional Consumer Protection Staff

Eau Claire	Green Bay	Madison*	Wauwatosa
1.0 Supervisor	1.0 Supervisor	1.5 Supervisor	1.0 Supervisor
3.0 Investigators	3.0 Investigators	5.65 Investigators	4.0 Investigators
1.5 Cons. Specialists	2.0 Cons. Specialist	2.0 Cons. Specialist	3.0 Cons. Specialists
1.0 Program Asst.	1.5 Program Asst.	1.0 Program Asst.	1.0 Program Asst.
4.0 Weights and Measures Insp.	3.0 Weights and Measures Insp.	3.0 Weights and Measures Insp.	3.0 Weights and Measures Insp.
10.5	10.5	13.15	12.0

*Madison staff are located in the same building as DATCP's central office.

- Recycling of Mobile Air Conditioner refrigerants (s. 100.45)
- Energy Efficiency Standards (100.46)
- Products Containing or Made with Ozone Depleting Substances (s. 100.50)

In addition, the Department is responsible for assisting municipalities and other governmental agencies and private sector service organizations in conducting weights and measures regulatory work under Chapter 98 of the statutes. Further, this section maintains and staffs the state's metrology lab (a lab that deals with the calibration of scales and other measuring devices) and motor vehicle testing equipment. The Department estimates testing and certifying the accuracy of about 8,000 standard weights and measures annually.

Regional Offices

DATCP's four regional office staff respond to consumer complaints and conduct investigations or other inspection-related work within their geographic areas that may have been received through local consumer complaint lines or referred from the Department's centrally located toll-free hotline. In addition, regional staff are assigned to certain statewide and national complaint areas. Investigations of complaints that may require further action are initiated by regional staff and then referred to central office staff for formal

action. In 2003, the four regional offices have 46.15 staff (61% of total bureau staff), as outlined in Table 2. Included in this total is 2.5 staff (2.0 investigators and 0.5 supervisor) that, are assigned to the Madison regional office, but work in a group made up of the 5.5 no-call staff (the other 3.0 are assigned to the consumer information center in the central office).

Telemarketer No-Call List

2001 Act 16 provided DATCP with 5.5 staff and \$230,900 in program revenues in a new, continuing appropriation to administer the telemarketer no-call program. Since then, DATCP indicated costs have increased for the Wisconsin no-call program to a total of approximately \$462,000 for 2002-03 and about \$527,000 annually thereafter. Revenues under administrative rule ATCP 127 are estimated at approximately \$470,000 in 2002-03 and \$550,000 annually thereafter. The Department has contracted out the maintenance of the residential no-call phone listing at a cost of about \$214,000 annually. DATCP registers telemarketers, handles consumer complaints relating to telemarketing and enforces the provisions of the no-call law.

Complaint Intake and Response

The primary function of the consumer protection staff is to review and respond to consumer inquiries

and complaints received through the DATCP toll-free hotline, telephone calls to regional offices, written complaints or referrals from other state agencies. In 2001-02, the Department received 94,548 initial inquiries and complaints, including 77,506 consumer telephone inquiries and "walk-in" complaints, and 17,042 written complaints.

Consumer Information Center

DATCP uses an automated telephone response system known as an interactive voice response (IVR) system, which was transferred from DOJ in 1996. The Department also has a complaint tracking system, updated in 1998, to track consumer inquiries and requests for assistance, as well as written and verbal complaints, investigations, DATCP administrative authorities invoked and DOJ, District Attorney or Federal court actions.

The database provides current data to assist the Department in making programmatic decisions and in compiling reports on types of complaints. DATCP staff use the information available on the complaint tracking database to identify trends and emerging issues in the marketplace and to establish program priorities and direction.

Generally, the contact with the consumer on the toll-free hotline involves a short telephone conversation in which the consumer receives a description of their rights in the matter of concern, or the complainant is referred to another state agency with jurisdiction on the subject of the complaint. DATCP estimates that in half of the calls received on the hotline and at regional offices, the consumer's questions are answered with the initial telephone call.

If a violation is apparent, the consumer is encouraged to either: (1) pursue the resolution of the complaint privately based on a better understanding of their rights and the responsibilities of the business, which is provided by Department

staff; or (2) submit a written complaint form provided by DATCP which will initiate a written response by the Department to both the consumer and the affected business, and possible investigatory or enforcement actions, if warranted. If no violation of current rules is apparent, the consumer is provided information on private actions that he or she could pursue, such as small claims court. Department officials indicate, where appropriate, they attempt to complete their role in the consumer complaint at the stage of the initial telephone contact with the consumer, avoiding more time-consuming, subsequent written correspondence.

Written Complaints

Consumer complaints received by mail are initially handled through mediation, with most complaints where no violation of the law exists being initially answered with standard letters informing the consumer and the affected business of their rights or responsibilities and proposing possible solutions to both parties. The Department also requests a consumer to file an official complaint form for complaints which: (1) do not involve violations of current rules or specific statutes, but involve recurring and serious complaints which DATCP wishes to review for potential further actions; or (2) upon review by an investigator, a series of similar complaints is identified warranting further investigation.

Investigations

In some instances, further investigative work is performed on consumer complaints to determine whether a violation of DATCP rules has occurred and what the relative significance of the violation is. The Department is authorized significant investigative authority under general agency powers provided by Chapter 93 in addition to specific authority in the unfair trade practices (s. 100.20) and deceptive advertising (s. 100.18) laws. These include the authority to subpoena documents and testimony, conduct investigative hearings, collect and analyze

samples, and inspect and copy business records.

Typically, the majority of complaints are handled through mediation. However, an estimated 20% of all complaints require investigation, including interviews, data collection, case evaluations and, at times, undercover investigation. DATCP officials have instituted a "tier" system where potential investigations are rated.

Tier 1: Issues of statewide/national importance that have a significant level of impact to Wisconsin consumers and/or businesses.

Tier 2: Issues of statewide/regional importance that are routine in nature and impact a large number of Wisconsin consumers and/or businesses.

Tier 3: Issues that are routine in nature and impact an individual complainant and/or business.

The use of staff for these investigations occurs for serious violations having a significant impact on affected consumers. Generally, in-depth investigations are made when numerous unresolved complaints about a single business or issue are received over a short period of time. Investigations and studies are also begun as a Department initiative based on consumer protection issues identified by staff.

Investigations generally result in a complete investigative report and supporting evidence that are used by the prosecuting attorney to draft the court complaint documents and file the court case.

Information and Education

The Bureau of Consumer Protection conducts a consumer and business information program to assist in achieving voluntary compliance with consumer protection laws by businesses and to reduce the likelihood that consumers will subject themselves to harmful situations. The Department's consumer protection educational and informational activities include: (1) press releases including

information regarding new and current consumer fraud schemes and seasonal consumer issues; (2) presentations and speeches regularly made by staff to consumers and businesses; (3) educational and training programs for consumers, in cooperation with consumer groups, educational institutions, and state and local agencies; (4) informational brochures describing consumer rights and businesses' responsibilities (The most widely distributed brochure describes landlord and tenant rights and is available in Spanish and English.); and (5) requests that television stations provide the consumer protection hotline telephone number before broadcasting advertisements for business opportunity plans, such as work-at-home schemes. The Department provides information to local law enforcement agencies to increase their knowledge of consumer protection laws and rules, and lectures at technical school law enforcement classes on a regular basis.

Complaint Mediation

DATCP has stated that its primary statutory mission is to identify and prevent unfair business practices, not to represent individual consumers. However, as a result of its handling of consumer complaints, many complaints are resolved to the satisfaction of consumers. For example, the Department believes that providing information on the rights and responsibilities of the parties in a dispute may facilitate the resolution of a complaint. In 2001, DATCP estimates that approximately 82% of written complaints were mediated by the Department.

Surveys

The Department conducts on-site inspections, called "surveys," to measure compliance with administrative rules. In 2002, through November, 5,387 surveys were performed by DATCP. As part of this process, DATCP may inspect business premises, copy records, or sample and analyze consumer products. DATCP staff may perform the

following types of surveys:

1. Inspections of auto repair businesses are completed on a regular basis to determine compliance with ATCP 132, the motor vehicle repair rule.
2. Surveys of retail stores to check for hazardous household substances or products.
3. Surveys of retail stores for scanner accuracy and price verification.
4. Review of advertisements, employment offers and residential leases on a random basis to identify possible law violations.
5. Mail surveys to monitor price comparison advertising, initiated due to consumer complaints and Department monitoring.

Enforcement Actions

The Department employs different methods to rectify identified violations of consumer protection rules or statutes, including: (1) warning letters; (2) assurances of compliance; (3) special orders; and (4) formal prosecutions.

Warning Letters

Warning letters are issued to businesses under the authority of s. 93.06(10) for minor violations of rules or statutes, or in cases involving more significant violations but for which there is no previous history of violations by the business. Each letter specifies the violation that has occurred and indicates an expectation that such violations will cease. Approximately 2,486 warning letters were issued to businesses in 2001-02. If further enforcement actions are not warranted, the warning letter is usually the final step in a consumer complaint by the Department; possible noncompliance is generally identified through subsequent complaints received or by Department

surveys.

Assurance of Compliance

The Department requires an assurance of compliance by a business when the severity of the violation or the history of the violator indicates that a warning letter may not be adequate to achieve compliance, but for which formal prosecution is not considered to be warranted. The violating business is required to sign a statement assuring compliance, which can be subsequently used to facilitate compliance by other means, if necessary. The process of issuing an assurance of compliance typically involves an in-person meeting with the affected business. DATCP obtained approximately 152 assurances of compliance in 2001-02.

Special Orders

Special orders are used to achieve compliance of fair business practices that are not specifically addressed by current law or rules. The special order is generally viewed by DATCP as a precursor to a new administrative rule. The Department exercised special order authority in 17 cases in 2001-02.

The process of issuing a special order generally occurs over a six- to eight-month period and usually involves the following process. First, a business practice that is not regulated by specific rules or statutes would be identified as a potentially unfair practice. If, upon review by DATCP, DOJ or both agencies, the practice appears to be unfair, the case would be brought before an independent hearing examiner in a quasi-judicial proceeding for a ruling on whether the practice is unfair. Finally, the DATCP Secretary would issue the special order enjoining the unfair business practice.

Formal Prosecutions

The Department prepares cases for formal prosecution by district attorneys or DOJ attorneys.

Violations of consumer protection statutes and rules are prosecuted if they are considered to be serious, have a major adverse impact on consumers or are recurring by the business. The Department referred approximately 156 cases for prosecution in 2001-02, of which 90 were referred to district attorneys, 41 to DOJ, four to the Milwaukee Corporation Counsel and 21 to U.S. attorneys.

Telecommunications, automotive repair, home improvement and telemarketing cases represent the majority of investigations. Consumer protection related prosecutions initiated by DATCP may result in civil forfeitures, penalties and restitution to Wisconsin consumers. The Department assisted in obtaining eight criminal convictions in 2001-02 resulting in prison sentences. These cases primarily involved home improvement.

Product Safety Activity

Ensuring safe products for consumers is a key element of the Department's consumer protection mission. As the principal product safety agency in the state, the Department attempts to protect consumers from unreasonable risk of illness or injury from consumer products by:

- Identifying product hazards
- Eliminating unsafe products or reducing risks of exposure to them
- Providing the public with information they need to identify product hazards
- Providing the public with information they need to compare and use products safely

The Department has various compliance tools at its disposal. The Department may require special labels, order recalls or other corrective actions, restrict the method of sale for products or summarily ban particularly hazardous products.

Administrative rule ATCP 139 regulates the labeling of hazardous household products, sets standards for toys and other articles intended for use by children and establishes standards to ban the sale of certain products.

DATCP officials indicate that their most powerful compliance tool is public information. The Department collects information from consumer complaints, news reports, and other public and professional contracts. The Department also disseminates product safety information through the news media, information technology and presentations to other organizations that further spread the information. In keeping with the Department's regulatory philosophy of voluntary compliance and progressive enforcement, staff work with manufacturers and retailers to identify and correct problems without formal enforcement where possible or practical and often mediate between consumers and companies.

The Department works closely with the United States Consumer Product Safety Commission (CPSC). The agencies cooperate in hazard identification, marketplace monitoring, investigations, research, compliance actions and public information. DATCP has a memorandum of understanding with CPSC and performs a number of functions for CPSC on a cooperative contract basis as described below.

- *In-depth Investigations.* In-depth investigations provide basic information for CPSC to use in assessing product safety hazards. The investigations are simple and factual with no interpretation. CPSC analyzes these investigations from around the country in making their own determinations regarding product hazards. The Department carried out 175 such investigations in 2000, 220 investigations in 2001 and conducted approximately 210 more in 2002.
- *Recall Effectiveness Checks.* DATCP staff inspect retail stores on assignment from CPSC to

gather information on the effectiveness of CPSC recalls. The Department averages 10 recall effectiveness checks per year. Recent recall effectiveness checks have been conducted for such products as bicycle components, ski components, plush toys, children's socks and a baby walker.

- *ATV Dealer Monitoring/Undercover Inspections.* DATCP staff perform undercover surveillance of ATV dealers to ensure compliance with a consent decree regarding sales of ATVs for use by children. Department staff perform approximately seven to 10 undercover checks annually.

- *Consumer Product Safety Surveys.* In 1999, DATCP staff surveyed records at 30 fire departments located throughout the state. Information was collected about fires caused by consumer products, and then shared with CPSC. In 2002, under contract with CPSC, DATCP conducted a survey on cigarette lighters. This survey collected information on the presence of required child safety mechanisms on cigarette lighters.

In recent years, DATCP has initiated a significant cooperative planning effort aimed at strengthening its relationship with CPSC and other state and local agencies. For example, DATCP works with local fire departments on fire prevention and the Department of Health and Family Services on investigations and outreach concerning products such as siding, air purifiers and portable heaters. Department staff also participate in local safety organizations. In addition, staff work with trade associations to disseminate information about product safety regulations. For example, the national association representing resale shops recently agreed to publish an article in their newsletter to inform their constituents about Wisconsin's ban on the sale of children's clothing with drawstrings.

The Department receives CPSC press releases, consumer alerts, research articles and other information via e-mail. Approximately 30 states

actively share information on their state programs through a system coordinated by CPSC. The Department regularly uses e-mail to alert CPSC to serious product hazards or incidents so that state and federal agencies can respond quickly in a coordinated fashion. The product safety section also electronically distributes directly to 400 recipients a monthly newsletter that summarizes and highlights all of the recalls related to children called "Keep Your Kids Safe".

Department staff have been involved in the establishment of the International Consumer Product Health and Safety Organization (ICPHSO). ICPHSO was established to provide an international forum for the exchange of information on consumer product health and safety programs, policies and issues. Its members include manufacturers and distributors of consumer products from around the world, product liability experts and government officials from the Americas, Asia and Europe. One DATCP representative serves on the Board of Directors and another serves as Chair of the Rapid Information Exchange Committee.

**Department of Justice
Consumer Protection Program**

Following the 1996 transfer of most consumer protection functions to DATCP, DOJ retained a small consumer protection group in its Division of Legal Services. In 2002-03 this function consisted of 3.75 full-time equivalent (FTE) attorneys, 2.0 FTE consumer investigators, 2.0 FTE legal secretaries, 0.8 FTE paralegal, and two part-time staff equivalent to a 0.45 FTE consumer aide. This staff commences actions and conducts limited investigations relating to violations of the state's fraudulent advertising and deceptive trade practices laws and recovers civil forfeitures for violations of injunctions under the state's fraudulent advertising, drug pricing and unfair trade practices statutes. DOJ is required to consult

with DATCP prior to commencing a court action relating to these practices. In addition, DOJ has certain federal authority to join the Federal Communications Commission and the Federal Trade Commission in bringing actions in federal court.

Funds received by Wisconsin through multi-state settlements in consumer protection cases are distributed under several different procedures, in accordance with the statutes or the court orders involved. (The Attorney General may have discretion to determine the distribution of multi-state settlement dollars in a given case, depending on the statute(s) and court order(s) governing the case.)

Most often funds are distributed as restitution to consumers and victims. Sometimes a multi-state settlement results in a state-specific judgment, whereby restitution is granted to Wisconsin citizens. Forfeitures and reimbursement of the state's legal costs may also be awarded. In other multi-state cases, judgment results in a third party

directly administering restitution to consumers. Forfeitures, by statute, are deposited to the common school fund. If a judgment includes cost recovery, by law all of the cost recovery amount is deposited to the general fund.

Under state law, DOJ has the authority to participate with other states in an out-of-court settlement called an "assurance of voluntary compliance", which results in funds being distributed to the states, usually in case-specific amounts available to each state for reimbursement for costs and other investigation and litigation expenses.

Finally, in a small number of cases, where the state sues on behalf of individuals who have been overcharged by businesses, and it is not practical to distribute the funds to individuals, the funds are required by law to be distributed in a manner that resembles restitution as closely as possible. Distribution of these funds is generally governed by court order.

APPENDIX I

Summary of State Agency Programs Providing Consumer Protection Services

A number of state agencies perform functions that may be viewed as ensuring that products and services are provided to consumers in a safe, fair and lawful manner. Consumer protection, for the purposes of this informational paper, has generally focused on the response of the state to consumer complaints relating to dissatisfaction with products or services. In addition to the DATCP and DOJ consumer protection programs, a variety of state agencies respond to consumer complaints and provide information to consumers. The following is a listing of these agencies and a brief description of each agency's consumer protection activities.

Department of Administration--Energy Issues. The Department of Administration's Energy Bureau provides general consumer education on energy matters, through its Focus on Energy program. Focus on Energy distributes a monthly business newsletter on energy issues to approximately 8,000 subscribers and maintains a website and toll-free number to provide information on energy saving rebates, home energy programs, commercial and industrial energy improvements, environmental research and development and renewable energy activities. The Department also publishes more than 80 fact sheets, brochures and case studies on energy programs. These publications are mailed, upon request, to about 14,500 consumers annually.

Board on Aging and Long-Term Care. The Board on Aging and Long-Term Care monitors federal, state, and local long-term care policy, offers recommendations to the Governor, the Legislature, and the Wisconsin congressional delegation, advocates for the interests of individuals who need long-term care, and provides information to the general public.

In federal fiscal year 2001, regional ombudsmen responded to 6,071 complaints, counseled 15,356 individuals, and made 126 public presentations. The Board's ombudsman staff and trained volunteers made 3,651 unannounced visits to nursing homes (3,389) and community care facilities (262). The Board provides consumers with information and assistance on insurance policies through printed materials, a website, and the toll-free Medigap helpline. In calendar year 2001, the helpline received 10,116 calls.

Educational Approval Board. The Educational Approval Board (EAB) licenses and oversees all for-profit postsecondary schools (other than schools of cosmetology), all out-of-state nonprofit colleges and universities and in-state nonprofit postsecondary institutions incorporated after December 31, 1991. The EAB also approves and oversees all programs under federal Veterans Administration regulations for the education and training of veterans and war orphans at any Wisconsin institution. The EAB monitors and periodically reviews approved institutions and programs and investigates consumer complaints regarding facilities, quality of instruction, course content, financial practices and misrepresentations by a school. The Board attempts to resolve complaints through mediation and may also hold hearings, suspend or revoke a school's license, make a demand upon a school's surety bond or bring action in any court in Wisconsin. The Board manages student and financial records in the event of a school closing.

Department of Financial Institutions. The Department of Financial Institutions (DFI) was created as part of the 1995-97 biennial budget to

consolidate regulatory functions related to financial institutions. DFI consists of four divisions: the Division of Corporate and Consumer Services; the Division of Banking; the Division of Savings Institutions; and the Division of Securities. While formally still a separate division, the staffing and program functions of the Division of Savings Institutions have been integrated with the Division of Banking. The Office of Financial Education administers the Wisconsin Consumer Act. The Office of Credit Unions is attached to the Department for administrative purposes.

DFI serves as the public custodian of charter documents creating Wisconsin corporations and other business entities, the annual reports and other documents submitted by those entities, and of liens filed under the Uniform Commercial Code (UCC). Beginning July 1, 2001, DFI became the sole filing office for uniform commercial code lien filings for personal property. Previously, approximately half of the UCC filings were processed at county register of deeds offices. The number of filings processed by the Department increased from 83,600 in fiscal year 2001 to 208,900 in fiscal year 2002.

The Department regulates state-chartered banks (233), savings and loan associations (5) and savings banks (16). The Department also licenses approximately 9,800 adjustment service companies, collection agencies, community currency exchanges, insurance premium finance companies, loan companies, sales finance companies, sellers of checks, and mortgage banking professionals. DFI administers the Wisconsin Consumer Act, which governs consumer credit transactions. The Department provides financial education to the public on matters of personal finance. The Department is also responsible for regulating the offer and sale of securities, franchise investment offerings and corporate takeovers. It does this by requiring registration of securities and franchise offerings (or by allowing certain exemptions from registration), and by licensing and monitoring

broker-dealers, securities agents and investment advisers. The Office of Credit Unions is responsible for regulating credit unions chartered by the state (326).

In carrying out its regulatory duties, DFI conducts safety and soundness and compliance examinations, informs the public and regulated industries of their rights and obligations under the law, and responds to complaints filed against firms and individuals regulated by DFI. During 2001, the Wisconsin Consumer Act Section received approximately 7,100 consumer complaints or inquiries. The Section's subsequent investigations revealed 137 compliance problems under the Wisconsin Consumer Act, resulting in orders requiring merchants to correct their violations. In some cases, refunds were also made to consumers. In 2001, the Division of Securities responded to 271 complaints, associated with both licensed and unlicensed entities, and investigated 88 matters involving licensees as a follow-up to customer complaints or staff concerns. As a result of those investigations, 12 warning letters were issued to licensees, while 16 cases were referred to the Legal Unit for formal enforcement action.

Department of Health and Family Services. The Department of Health and Family Services (DHFS) licenses and regulates certain types of health care facilities and providers (such as nursing homes, hospitals, community-based residential facilities, adult family homes, home health agencies and hospices), and child care facilities. As part of its regulatory function, DHFS conducts surveys of certain types of facilities to ensure that they meet health and safety standards. In addition, DHFS investigates complaints it receives regarding the operation of these types of facilities. Violations can result in DHFS assessing forfeitures, issuing correction orders, and other disciplinary actions.

DHFS develops and distributes health-related information that is used primarily by consumers. For example, DHFS has created a variety of

consumer guides that can be used by individuals who are considering long-term care options. The DHFS Division of Public Health produces consumer information on topics ranging from communicable diseases, injury prevention and environmental health resources. This type of information is available on the DHFS web site. Under the DHFS sport fish consumption program, DHFS staff examine the health effects of consuming chemical contaminants in sport fish and, together with the Department of Natural Resources, issues fish consumption advisories.

The DHFS Bureau of Health Information collects and makes available health statistics, demographic and vital records information for public and private users. The Bureau produces data files that may be purchased by the public. For example, the Bureau collects information on physician visits, including information on the types of services physicians provide, physicians' charges, and patient demographics.

Office of the Commissioner of Insurance. The Office of the Commissioner of Insurance (OCI) regulates insurance companies and agents. OCI protects the public by ensuring that insurance companies are solvent and by enforcing insurance consumer protection laws. Each year, OCI's Bureau of Market Regulation receives over 9,200 formal complaints concerning insurance companies and agents. Most complaints involve claim handling, although the Bureau also receives other types of complaints, such as complaints about service to policyholders, marketing and sales practices and underwriting. Following its investigation of a complaint, OCI may order license disciplines, demand restoration of benefits or rights to policyholders and levy forfeitures.

As part of its public information activities, OCI develops and distributes separate brochures on selected insurance topics, buyer's guides and other materials in response to requests from citizens, agents and insurers. These publications are also

available through OCI's Internet web site. In calendar year 2001, OCI distributed over 226,800 copies of brochures, pamphlets and booklets that addressed various insurance topics.

Office of Lawyer Regulation. The Office of Lawyer Regulation (OLR) investigates alleged violations of the rules of professional conduct for attorneys licensed to practice law in Wisconsin. The Supreme Court, after a comprehensive review of the lawyer regulation system, revised the rules for lawyer regulations and discipline, effective October 1, 2000. As part of the revisions, the OLR was created to replace the staff of the Board of Attorneys Professional Responsibility. In addition, the responsibilities of the now-defunct Board were divided between the Board of Administrative Oversight, and the Preliminary Review Committee. The Board of Administrative Oversight, a 12-person board composed of eight lawyers and four non-lawyers, is responsible for monitoring the fairness, effectiveness, and efficiency of the attorney regulation system, while the Preliminary Review Committee, a 14-person committee composed of nine lawyers and five non-lawyers, determines whether there is cause to file a complaint with the Supreme Court concerning lawyer misconduct, following the procedures outlined below.

The inquiry and grievance process concerning attorney conduct is designed to: (a) make the lawyer regulation process more accessible to the general public; (b) quickly address grievant concerns and, where possible, resolve them; (c) offer lawyers who have minor practice problems alternatives designed to enhance the quality of their services; and (d) promptly refer for full investigation those matters that may involve serious misconduct. The OLR is responsible for receiving, screening, investigation and prosecuting grievances that include allegations of such things as neglect, lack of communication, dishonesty and conflicts of interest. The OLR has established a central intake unit, which receives inquiries and

grievances concerning the conduct of an attorney in writing or by telephone. Intake staff take information about the alleged conduct, check for other grievances against the attorney, and inform the grievant that the matter will be assigned to an intake investigator who will contact the grievant within a few days to discuss the matter further.

After screening, a grievance may be closed if: (a) the allegations are not within the OLR's jurisdiction; (b) the grievance can be reconciled between the grievant and attorney if it is a minor dispute; or (c) the grievance is diverted to an alternatives to discipline program.

Grievances that cannot be resolved are referred for investigation, conducted by the OLR staff or with the assistance of 16 regionally-based Court-appointed committees. After an investigation is completed, the grievance may be: (a) dismissed for lack of sufficient evidence to proceed; (b) diverted to an alternatives to discipline program; (c) disposed through a consensual reprimand; or (d) presented to the Preliminary Review Committee for a determination of whether there is a cause to file a complaint with the Supreme Court, which makes the final disposition.

On July 1, 2001, 1,127 matters were pending disposition in the OLR. The OLR received 2,423 new grievances in the 2001-02 fiscal year. In 2001-02, 28 attorneys were publicly disciplined. In addition, 21 attorneys received private reprimands. Private reprimands are generally imposed for an isolated act of misconduct, which causes relatively minor harm. These reprimands may be used as aggravating factors in future disciplinary matters. Further, 103 attorneys entered the alternatives to discipline program. Finally, 84 cases were dismissed with an advisory letter. On June 30, 2002, 1,313 matters were still pending disposition in the OLR.

The OLR has offices in Madison and Milwaukee and total staff of 26.5 positions: 1.0 director, 2.0

deputy directors (one for each office), 11.5 investigators, 10.0 administrative and support staff, 1.0 litigation counsel, and 1.0 Assistant Litigation Counsel. Total expenditures for the OLR were \$1,962,100 PR in 2001-02 and are budgeted at \$1,733,400 PR in 2002-03. Funding for the OLR is generated from assessments on attorney members of the State Bar of Wisconsin, costs recovered from attorneys disciplined under formal proceedings, and fees on attorney petitions for reinstatement.

Public Service Commission. The Commission regulates public utilities to ensure the reasonable and adequate delivery of service to the public. The Commission's consumer protection activities are the responsibility of the Division of Water, Compliance and Consumer Affairs. The Division's consumer services section reported 11,701 complaints during calendar year 2001 and projects that 10,500 complaints will be received during calendar year 2002. Most complaints concern adequacy of service, installation, disconnection and billing issues.

Currently, approximately 71% of all complaints involve telecommunications service, 16% involve electric service, 11% involve natural gas service, and 2% involve water and sewerage service matters. Actions taken by the Division to resolve complaints include investigation, mediation, and the issuance of binding decisions by investigators. Decisions by investigators may be appealed to the Commission, which may issue cease and desist orders or refer a matter to the Department of Justice for civil prosecution. This Division monitors large gas and electric utilities' early identification programs for customers facing energy hardships and seeks to resolve such hardships before they become heating crises in winter. All consumer matters are handled through the Commission's offices in Madison.

Department of Regulation and Licensing. The Department's Division of Enforcement provides centralized investigative and prosecutorial services

relating to the licensed professions under the jurisdiction of 25 regulatory boards or the Department's direct licensing authority. The Department and its boards license and regulate an estimated 300,000 credential holders in 100 different professions, occupations and businesses. The Department receives approximately 2,150 complaints annually involving regulated persons or entities. Outcomes of a complaint investigation may include dismissal of the complaint, informal resolution or formal disciplinary action. The Department and its regulatory boards have the authority to limit, suspend or revoke any credential. The Department has one state office, located in Madison.

Department of Transportation. The Division of Motor Vehicles of the Department is responsible for the licensing of new and used motor vehicle dealers, recreational vehicle dealers, motor vehicle manufacturers and distributors, and salvage dealers. The Department investigates approximately 1,600 written complaints annually related to sales and lease practices, warranties, product quality and the lemon law; most involve insufficient disclosure of used vehicle condition. The Department's investigations may result in informal mediation, formal warnings requiring a written assurance that the business will discontinue a practice, license suspension or revocation, or the administrator of the Division of Hearings and Appeals may issue a special order against specific licensee practices. The Department conducts public appearances, publishes brochures and provides videos on car purchasing. The agency employs regional investigators, has one state office and operates a consumer assistance hotline.

Department of Workforce Development. The Equal Rights Division of the Department enforces both civil rights and labor standards law. Under civil rights the division enforces anti-discrimination laws affecting housing, employment and public accommodations. The Department receives approximately 4,900 discrimination complaints in 2001-02, most of which involved allegations of discrimination in employment (approximately 90% of the discrimination cases are employment related). Cases are investigated and may be conciliated or brought before an administrative law judge for a formal hearing. Although the family and medical law (FMLA) is not technically a discrimination statute FMLA is enforced by the Civil Rights Bureau.

Under labor standards the division enforces the labor standards laws, including laws governing minimum wage, overtime and child labor. The Department receives approximately 4,800 cases during 2001-02 most of which involved unpaid wage claims from employees (about 4,000 cases). Labor standards also annually determines the prevailing wage rates and hours of labor for local and state building construction projects, and requires the department to investigate any alleged violations of such wage rates and hours of labor.

The Department conducts a public awareness program regarding anti-discrimination and labor standards laws that includes publishing brochures and conducting public information presentations. The Equal Rights Division also has a website that can be access that provides information related to both civil rights and labor standards programs and laws. The Equal Rights Division has five offices located throughout the state.

APPENDIX II

Summary of DATCP Trade and Consumer Protection Administrative Rules

Consumer Protection Administrative Rules

Academic Material Unfair Trade Practices (ATCP 128). Prohibits the sale of academic material (such as term papers) purchased to be submitted as original work for the purpose of fulfilling requirements of any learning institution in the state.

Art Prints and Multiple Art; Sales Practices (ATCP 117). Prohibits the misrepresentation of multiple artwork (artwork produced from a master in multiple copies), including: its status as an original reproduction; bearing of the artist's signature; status as a limited edition; the methods of reproduction; other elements of the artwork affecting the buyer's evaluation; the market value of the artwork; disclosure and warranty statements; and required records. The rule requires a disclosure and warranty statement for multiple artwork sold at a price exceeding \$800.

Basement Waterproofing Practices (ATCP 111). Prohibits contractors from using the pressure pumping method to waterproof basements without a seller's and engineer's analysis, and regulates the guarantee of basement waterproofing services.

Car Rentals; Notice of Renter Liability (ATCP 118). Specifies the form and content of a notice which car rental companies that offer and sell damage waivers are required to provide to customers.

Chain Distributor Schemes (ATCP 122). Prohibits chain distributor schemes, in which a person, upon a condition that he or she makes an investment, is granted a license to recruit, for profit, additional

investors who in turn further perpetuate the chain of investors.

Consumer Product Safety (ATCP 139). Establishes labeling requirements for hazardous substances and bans the use of extremely hazardous products, including unsafe toys and children's clothing.

Coupon Sales Promotions (ATCP 131). Prohibits misrepresentation in the sale of coupon books, requires written agreements between coupon book promoters and participating merchants and requires full disclosure of restrictions on coupon redemption.

Direct Marketing (Chapter ATCP 127). Establishes disclosure requirements, including the initial identification of the soliciting business firm and its products or services offered for sale. Prohibits unfair practices, such as false claims to be part of a survey or research project, false special offers or deceptive free gifts and unauthorized payments. Requires direct marketers to maintain sales records. Also, effective January 1, 2003, ATCP 127 establishes a program requiring most telephone solicitors to register and purchase a list of residential telephone customers that do not wish to be solicited by telephone. Residential customers may sign up for two years at no charge.

Environmental Labeling of Products (ATCP 137). Establishes standards for advertising and labeling that makes environmental claims for consumer products (for example, products that are advertised as recycled, recyclable or degradable). Further establishes labeling requirements for plastic containers and provides information to operators of materials recovery programs needed to facilitate recycling or reuse of the containers.

Fair Packaging and Labeling (ATCP 90). Regulates the packaging and labeling of products, including the accuracy and location of package or label descriptors that identify the product and list product origin, content, quantity and nutritional qualities.

Freezer Meat and Food Service Plans (ATCP 109). Prohibits misrepresentation in the advertising and sale of freezer meats and food service plans including bait-and-switch selling, false representations of savings from advertised food service plans and misrepresentation of special offers or price concessions, guarantees, identity of the seller, price or financing. Establishes contract requirements, and creates a three day right-to-cancel.

Gasoline Advertising (ATCP 113). Prohibits misrepresentation relating to octane rating or octane value of gasoline and prohibits misrepresenting gasoline as aviation fuel when the product is not suitable for aviation use.

Home Improvement Practices (ATCP 110). Prohibits deceptive practices, including model home misrepresentations, product misrepresentations bait and switch selling, deceptive gift offers, price and financing misrepresentation, and misleading guarantees. Establishes written guarantee and contract requirements and requires timely performance, except where delay is unavoidable and timely notice is given.

Mobile Air Conditioners; Reclaiming or Recycling Refrigerant (ATCP 136). Regulates motor vehicle repair shops that install or repair mobile air conditioners that contain ozone-depleting substances.

Mobile Home Parks (ATCP 125). Prohibits tie-in sales, which require the purchase of a mobile home or any other payment to qualify or receive preferential status for a mobile home park site. Establishes rental agreement and disclosure requirements, including utility charge limitations. Regulates termination of tenancy, mobile home resale practices, mobile home relocations and

changes in rental terms or park rules.

Motor Vehicle Repairs (ATCP 132). Establishes the regulation of motor vehicle repair transactions and practices for the repair of autos, motorcycles and small trucks. Prohibits unauthorized repairs, and generally requires shops to give customers a written repair order and written estimate of cost prior to commencing repairs and requires the return of used parts to customers upon request.

Price Comparison Advertising (ATCP 124). Prohibits misleading price comparisons and establishes standards for fair price comparisons, including standards establishing the seller's actual or offered price, the seller's future price for the product and the competitor's price.

Real Estate Advertising, Advance Fees (ATCP 114). Prohibits misrepresentation in the solicitation of real estate advance fees collected for listing or advertising the sale or lease of property, and requires that copies of all contracts be given to contracting property owners.

Referral Selling Plans (ATCP 121). Prohibits referral-selling plans, which induce a consumer sale based on an offer of compensation to a prospective buyer, unless the compensation is paid prior to the sale.

Residential Rental Practices (ATCP 134). Requires disclosure of known housing code violations and other conditions affecting habitability prior to rental. Establishes standards and procedures for the return of security deposits and earnest monies, and requires landlords to comply with repair promises. Prohibits certain unfair rental practices, including the advertising and rental of condemned premises, unauthorized entry during tenancy, confiscation of personal property and unfair retaliatory eviction. Prohibits certain practices from inclusion in rental agreements, such as eviction other than by judicial procedures, the acceleration of rent payments, the imposition of liabilities on tenants or the removal of landlord liabilities.

Telecommunications and Cable Television Services (ATCP 123). Regulates subscription and billing practices related to cable and telecommunication services provided to consumers primarily for personal, household or family use.

Work Recruitment Schemes (ATCP 116). Prohibits misrepresentations and other misleading practices by employment recruiters that require employment recruits to make an investment or purchase. Requires the disclosure of purchases or investments required to be made by potential recruits as a condition of employment and the basis, source and form of potential earnings to be made by such recruits.

Trade Practice Administrative Rules

Dairy Plant Payments to Milk Producers; Security (ATCP 100). Provides reasonable assurance that producers will be paid for their milk and prohibits price discrimination between individual producers.

Dairy Trade Practices (ATCP 103). Establishes a uniform system of accounting to determine whether selected dairy products are being sold below cost, which is prohibited.

Fruit and Vegetable Contractors; Security Requirements (ATCP 98). Regulates and licenses fruit and vegetable contractors and establishes guidelines for payment to producers.

Leaf Tobacco, Buying and Selling (ATCP 104). Prohibits a tobacco buyer or agent from engaging in any unfair trade practices in the business of buying leaf tobacco.

Price Discrimination and Related Practices (ATCP 102). Prohibits price discrimination by sellers of fermented malt beverages, soft drinks or motor fuels to prevent unfair trade practices.

Sales Below Cost (ATCP 105). Prohibits selling tobacco products, alcoholic beverages or motor vehicle fuel without required markups between wholesalers and retailers.

Vegetable Procurement Practices (ATCP 101). Regulates vegetable procurement contracts to ensure producers receive compensation for their labors.

Other Administrative Rules

Grain Warehouse Keepers and Grain Dealers (ATCP 99). Requires warehouse contents be insured and that grain inventories of sufficient quantity and quality be maintained to meet all outstanding obligations to grain depositors and to be returned to individual depositors on demand. Grain dealers are also required to truthfully measure type, weight, grade and quality of grain when determining purchase price.

Selling Commodities by Weight, Measure or Count (ATCP 91). Prescribes standards for measuring product volume (by weight, measure or count) to achieve greater uniformity in methods of sale used in the state, increase the accuracy of quantity information, prevent consumer deception and promote fair competition.

Public Warehouse Keepers (ATCP 97). Ensures public warehouse facilities are suited to reasonably protect the products in storage. Requires warehouse contents be insured and storage contents be disclosed by warehouse keepers.

Weighing and Measuring Devices (ATCP 92). Sets regulatory standards and permit requirements for commercial weighing and measuring devices including vehicle and livestock scales, gas pump volume/price indicators and liquefied petroleum gas specifications.