

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

Clearinghouse Rule
No. 92-222

CERTIFICATION

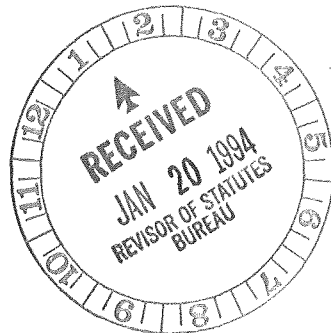
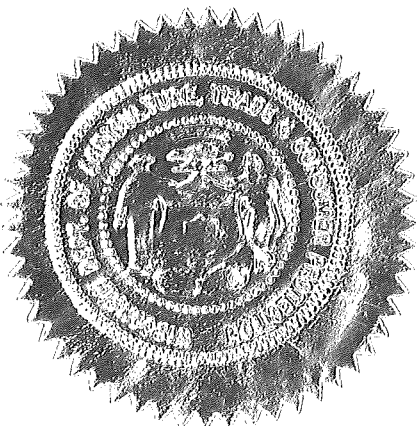
I, Alan T. Tracy, Secretary of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to Dairy Trade Practices was signed and adopted by the Department on January 12, 1994.

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.

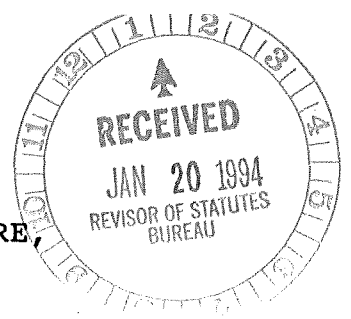
Signed and sealed this 12th day of January, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary



4-1-94



ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following order to repeal ATCP 103.01(9) and ch. ATCP 102; to amend chapter ATCP 103(title), ATCP 103.5, ATCP 103.10(8)(g), ATCP 103.11(3)(a), ATCP 103.14, ATCP 103.15(5)(d) and (h), ATCP 103.17 Table II (title); to renumber ATCP 103.01(1) to (8) and (10) to (14); to renumber and amend ATCP 103 Table I (title and table); to repeal and recreate ATCP 103.02; and to create chapter ATCP 103 note, ATCP 103.01 (intro.), (4), (5), (9), (10), (14), (15) and (20), and 103.17(title); relating to dairy industry trade practices.

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

Statutory Authority: ss. 93.07(1) and 100.201(1)(c), (2)(h)3 and (11), Stats.

Statutes Interpreted: s. 100.201, Stats.

Section 100.201, Stats., regulates trade practices in the sale of "selected dairy products" including fluid milk, fluid milk by-products and ice cream. The statute requires a wholesaler of selected dairy products to maintain a published price list for those products. Under the statute, a wholesaler may not deviate from its published price except to meet a documented competitor's price.

The statute prohibits wholesalers from discriminating between customers in price, services or promotional assistance, where the effect may be to injure competition or create a monopoly. It also prohibits wholesalers from selling selected dairy products below cost, furnishing equipment to retailers, or granting loans and other specified services to retailers. Retailers are prohibited from soliciting or accepting benefits which wholesalers are prohibited from giving.

This rule consolidates and amends current rules interpreting s. 100.201, Stats., including ch. ATCP 102, Wis. Adm. Code (Dairy Trade Practices), and ch. ATCP 103, Wis. Adm. Code (Uniform System of Accounting for Selected Dairy Products). Currently, ch. ATCP 102 specifies products covered by the law and establishes requirements for published price lists. Currently, ch. ATCP 103 establishes a uniform system of accounting for selected dairy products, which is used to determine whether wholesalers are selling those products below cost.

This rule consolidates chs. ATCP 102 and ATCP 103 into a single ch. ATCP 103, Wis. Adm. Code (Dairy Trade Practices). The rule makes a number of non-substantive drafting changes to the current rules. It also makes the following substantive changes:

- Section 100.201, Stats., currently prohibits wholesalers from furnishing equipment to retailers. This rule clarifies that the current statutory prohibition does not apply to "bossy carts" and other delivery cases in which dairy products are delivered to retailers, provided that those delivery cases remain the property of the wholesaler and are returned to the wholesaler at the time of the next wholesale delivery.
- Currently, under ch. ATCP 103, whenever a wholesaler reduces its price for a selected dairy product, the wholesaler must file a report with the department documenting its schedule of costs for that product. This rule repeals this current filing requirement.
- Currently, under s. 100.201, Stats., a wholesaler may not deviate from its published price list except to meet a competitor's price. The statute also requires the wholesaler to document the competitor's price, but does not specify how frequently the documentation must be updated. This rule requires the wholesaler to update the documentation at least every 180 days.

SECTION 1. Chapter ATCP 103(title) is amended to read:

Chapter ATCP 103(title) DAIRY TRADE PRACTICES

SECTION 2. Chapter ATCP 103 (note) is created to read:

NOTE: This chapter is adopted under authority of ss. 93.07(1) and 100.201, Stats., and is subject to penalties provided under s. 100.201(9), Stats. Sections ATCP 103.03 to 103.17 establish a uniform system of accounting, pursuant to s. 100.201(2)(h)(3), Stats., to be used in

determining whether selected dairy products are being sold below cost.

SECTION 3. ATCP 103.01 (intro.) is created to read:

ATCP 103.01(intro.) As used in this chapter:

SECTION 4. ATCP 103.01(1) to (8) are renumbered ATCP 103.01(2), (11), (13), (16), (17), (1), (3) and (6).

SECTION 5. ATCP 103.01(9) is repealed.

SECTION 6. ATCP 103.01(10) to (14) are renumbered ATCP 103.01(8), (12), (7), (19) and (18).

SECTION 7. ATCP 103.01(4), (5), (9), (10), (14), (15) and (20) are created to read:

ATCP 103.01(4) "Case" means a device, apparatus or secondary container used by a wholesaler to deliver containers of a selected dairy product to another wholesaler or to a retailer. "Case" includes a box, pallet, milk cart or crate, but does not include a vehicle, trailer or refrigeration unit.

(5) "Container" means the immediate package in which a selected dairy product is sold or offered for sale.

(9) "Full service delivery" means receiving an order for the delivery of a selected dairy product, putting up the order, delivering the product, stocking the display and storage coolers with the product, making out the invoice and delivery ticket for the product, removing outdated product, price marking the product and collecting payment for the product and delivery service.

(10) "Milk cart" means a wheeled apparatus, commonly known as a "bossy cart," that is owned by a wholesaler, used for the delivery of selected dairy products to a retailer, and returned

to the wholesaler when the wholesaler makes the next delivery of selected dairy products to the retailer. "Milk cart" does not include a cart equipped with a refrigeration unit.

(14) "Price" means the amount charged for the sale of a selected dairy product, including applicable surcharges and net of applicable discounts, rebates and allowances.

(15) "Selected dairy product" means any of the products specified in s. 100.201(1)(c), Stats., or any of the following products:

- (a) Low fat milk.
- (b) Yogurt or yoghurt.
- (c) Frozen yogurt.

(20) "Wholesaler" has the meaning given in s. 100.201(1)(f), Stats.

SECTION 8. ATCP 103.02 is repealed and created to read:

ATCP 103.02 GENERAL REQUIREMENTS. (1) WHOLESALER TO PUBLISH PRICE LIST FOR SELECTED DAIRY PRODUCTS. Every wholesaler of selected dairy products shall publish a price list for those products as required by s. 100.201(2)(a)1, Stats. The price list shall include all of the information required under s. 100.201(2)(a)1, Stats. Prices shall be specified for each standard category of delivery service identified under this chapter, including full service delivery, drop delivery, modified drop delivery, dock sale and warehouse delivery. Any deviations from these standard categories of delivery service shall be fully described in the price list.

(2) DEVIATION FROM PUBLISHED PRICE; MEETING COMPETITION; DOCUMENTATION REQUIRED. (a) Except as provided under par. (b), no wholesaler may sell a selected dairy product at a price which differs from the price stated in the wholesaler's published price list. A price differs from the wholesaler's published price if the wholesaler provides any discount or rebate, or any increase in delivery service, which is not published in connection with the wholesaler's published price.

(b) A wholesaler may sell a selected dairy product at a price which differs from the wholesaler's published price if all of the following apply:

1. The wholesaler offers the unpublished price to meet a competitor's bona fide price offer.

2. The wholesaler makes a written record, before selling at the unpublished price, of the competitive offer which the unpublished price is intended to meet. The record shall include the date of the competitive offer, the terms of the competitive offer, the actual or prospective purchaser to whom the competitive offer was made, and the name of the competitor who made the offer. A wholesaler's record of a competitive offer shall be made available to the department for inspection and copying upon request.

3. The wholesaler offers the unpublished price for not longer than 180 days after the last competitive offer documented by the wholesaler under subd. 2.

(3) WHOLESALER TO REPORT COSTS UPON REQUEST. In response

to a written request from the department, a wholesaler shall file with the department a schedule of the wholesaler's costs for selected dairy products. Costs shall be determined according to ss. ATCP 103.03 to 103.17. Cost information shall be filed in compliance with the department's instructions, on forms prescribed by the department, and within a reasonable time prescribed by the department.

(4) WHOLESALER PROHIBITED FROM FURNISHING EQUIPMENT TO RETAILER; EXEMPTIONS. No wholesaler may furnish equipment to a retailer in violation of s. 100.201(2)(e), Stats. Section 100.201(2)(e), Stats., does not prohibit a wholesaler from delivering selected dairy products to a retailer in cases or milk carts, nor does it prohibit a retailer from using those cases or milk carts for the temporary storage or display of the selected dairy products delivered in those cases or carts, provided that the cases and carts remain the property of the wholesaler and are returned to the wholesaler at the time of the next wholesale delivery.

SECTION 9. ATCP 103.05 is amended to read:

ATCP 103.05 MANAGEMENT PERSONNEL. The time of officers and management personnel ~~insofar as possible~~ shall be charged to the functions they perform. In the event officers or other personnel receive no salary or other remuneration, a value shall be placed on their services at a rate no lower than the average current labor rate paid in Wisconsin by in the dairy industry category of the "Food and Kindred Products Industry" as reported by the

Wisconsin industrial commission department of industry, labor and human relations in the periodical titled "Labor Force Trends Wisconsin Economic Indicators."

NOTE: Current labor rates reported in the above periodical may be obtained from the department or the department of industry, labor and human relations; jobs, employment and training services division; 201 east washington avenue, p.o. box 7944, Madison, Wisconsin, 53707-7944.

SECTION 10. ATCP 103.10(8)(g) is amended to read:

ATCP 103.10(8)(g) The cost accumulated in this category of raw material expenses shall be accumulated for all products processed, and converted by computation to unit costs in accordance with unit weights specified in s. ATCP 103.17, Table VI.

SECTION 11. ATCP 103.11(3)(a) is amended to read:

ATCP 103.11(3)(a) Milk products on the basis of points as shown in s. ATCP 103.17, Table I.

SECTION 12. ATCP 103.14 is amended to read:

ATCP 103.14 UNIT PLATFORM COST. The unit platform cost shall be determined for each product and package size. Platform cost includes all cost for material, labor and expense up to and including the loading of the product on the route truck and includes adjustments for sales returns. It includes all costs except local delivery cost. Selling, advertising and promotion costs and other general costs shall be determined ~~for the individual product and package size based upon a cost per unit point and the number of points assigned to the specific product~~

~~and package size~~ on a per unit basis based on the number of points assigned to individual products and packages under s. ATCP 103.17, Table I.

SECTION 13. ATCP 103.15(5)(d) is amended to read:

ATCP 103.15(5)(d) Multiply cost per minute by service time to get specific cost per delivery. ~~Service time~~ For purposes of this calculation, the wholesaler shall use appropriate wholesale delivery service times for full service delivery, modified drop delivery and drop delivery are as set forth in s. ATCP 103.17, Tables III, IV and V for wholesale milk deliveries, unless the wholesaler submits documentation proving that the wholesaler's actual delivery service times are different from those shown in the tables. Service time for warehouse delivery of milk products and wholesale ice cream deliveries shall be based on actual measurement.

SECTION 14. ATCP 103.15(5)(h) is amended to read:

ATCP 103.15(5)(h) Divide total cost per delivery by the number of ~~units~~ points delivered, as determined by s. ATCP 103.17, Table II, to get delivery cost per unit.

SECTION 15. ATCP 103.17(title) is created to read:

ATCP 103.17(title) TABLES.

SECTION 16. ATCP 103, Table I (title and table) is renumbered ATCP 103.17, Table I, and amended to read:

**TABLE I
PRODUCT POINT VALUES; MANUFACTURING**

General Point Values (Except as Provided for Specific Products Below)

1 Gal. Milk	4 Points
1/2 Gal.	2 Points
1 Quart	1 Point
1/3 Quart	1/3 Point
Pint	1/2 Point
1/2 Pint	1/4 Point

~~All products other than those listed below would be assigned the points above.~~

Cream

1 Gallon	16 Points
1 Quart	4 Points
1 Pint	2 Points
1/2 Pint	1 Point

1/2 & 1/2

1 Gallon	8 Points
1 Quart	2 Points
1 Pint	1 Point

Sour Cream

1 Gallon	16 Points
1 Quart	8 4 Points
1 Pint	2 Points
1/2 Pint	1 Point
Dip -- 8 oz.	1 Point
Cottage Cheese/lb.	3 Points

SECTION 17. ATCP 103.17, Table II (title) is amended to read:

ATCP 103.17, Table II (title) **PRODUCT POINT VALUES; DISTRIBUTION.**


SECTION 18. Chapter ATCP 102 is repealed.

SECTION 19. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following

publication in the Wisconsin administrative register, as provided
in s. 227.22(2)(intro.), Stats.

Dated this 12th day of January, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary

