

Chapter ATCP 109

FREEZER MEAT AND FOOD SERVICE PLAN TRADE PRACTICES

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Note: Chapter Ag 109 was renumbered chapter ATCP 109 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

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

ATCP 109.01 Definitions. (1) "Buyer" means both actual and prospective purchasers but does not include persons purchasing for resale.

(2) "Contract" means all written agreements subscribed by a buyer and includes promissory notes and sales agreements.

(3) "Food service plan" means any contract under which the seller agrees to furnish the buyer with any food, or food and any other product or service, whether or not a membership fee or similar charge is involved. It includes a contract to furnish a wholesale cut.

(4) "Misrepresent" means the use of any untrue, deceptive or misleading oral or written statement, advertisement, label, display, picture, illustration or sample.

(5) "Person" means individuals, corporations, partnerships and any other form of business organization, and all officers, directors, agents, employes and representatives thereof.

(6) "Custom cutter" means one who breaks down carcass meat into retail cuts.

(7) "Product" means food and non-food consumer goods unless otherwise indicated.

(8) "Represent" means the use of any form of oral or written statement, advertising, label, display, picture, illustration or sample.

(9) "Seller" means any person soliciting or making a sale, whether or not a contract is involved, and includes a principal or any other person for whom the sale is procured.

(10) "Wholesale cut" means a whole carcass of beef, swine or sheep or any part thereof customarily classified as being of commercial size and usually requiring further cutting into cuts of retail size for use by consumers.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (2), Register, December, 1967, No. 144, eff. 1-1-68; am. (2), (3) and (4), renum. (6) to (9) to be (7) to (10) and cr. (6), Register, June, 1975, No. 234, eff. 7-1-75; correction in (9) made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448.

ATCP 109.02 Prohibited trade practices. No person advertising, offering for sale or selling any wholesale cut or food service plan shall engage in any unfair methods of competition or unfair trade practices, and particularly including, but not limited to the following:

(1) **BAIT SELLING.** (a) Disparage or degrade any product advertised or offered for sale by the seller, or display any product or depiction thereof to any buyer in such a manner as would be likely to discourage the sale of the advertised or offered product, in order to induce the purchase of another product, or represent that a product is for sale when such representation is used primarily to sell another product.

(b) Substitute any product for that ordered by the buyer without the buyer's consent.

(c) Fail to have available a sufficient quantity of any product represented as being for sale to meet reasonably anticipated demands, unless the available amount is disclosed fully and conspicuously.

(2) **PRICE CONCESSIONS AND SPECIAL OFFERS.** (a) Misrepresent to the buyer that the buyer is being given an introductory, confidential, close-out, going out of business, factory, packer, special or wholesale price or discount, grand opening or any similar price concession. Grand opening sales shall not extend more than 21 days after the first announcement of the promotion.

(b) Offer any gift or prize, without fully and conspicuously disclosing all terms of the offer, including all rules, conditions and the expiration date of the offer. Any gift or prize offered shall be given at the time any potential recipient qualifies for the gift or prize as set forth in the offer.

(c) Misrepresent that insurance or some other form of protection is available to the buyer, or misrepresent the terms, conditions or limitations thereof.

(d) Misrepresent that the buyer will receive certain benefits or privileges from payment of a membership fee or similar charge, or fail to furnish to the buyer prior to the signing of any contract a written statement of all such benefits and privileges.

(3) **SAVINGS REPRESENTATIONS.** (a) Use any price list related to the seller's food service plan which contains prices other than the seller's current billing prices.

(b) Fail to furnish to, and leave with the buyer prior to the signing of any contract or the placing of any order pursuant to the contract, a written copy of a current price list which shall contain an accurate description and the billing price of each product on the list including, whenever applicable, for food products: grade, net weight or measure, brand or trade name; and for non-food products: brand or trade name, model number and year, size or capacity. All price lists shall conspicuously specify an expiration date. Orders placed with the seller prior to the expiration date shall be billed at the prices set forth in such current price list.

(c) Misrepresent the amount of money that the buyer will save on purchases of any product or compare the seller's prices either with prices of other sellers not selling in the same trade area or with prices of products which are not of the same grade or quality.

(d) Represent to the buyer that a specified amount of food products or the cost thereof is sufficient to meet the requirements of the buyer. Any computation as to amount of food required shall be determined solely by the buyer, except that the seller may furnish current official government data on average food consumption and costs. A written itemization of all food to be sold, with the price and accurate description of each item including, whenever applicable, grade, net weight or measure, and brand or trade name shall be furnished to the buyer prior to the signing of any contract.

(e) Misrepresent that the buyer can purchase all or most of the buyer's food requirements, or any non-food product in connection with a food service plan.

(4) **GUARANTEES.** (a) Represent that the same products and services offered for sale by the seller of a food service plan will be available to the buyer from sellers in other areas without payment of another membership fee or similar charge by the buyer unless the seller agrees to refund such membership fee or similar

charge in full if the seller cannot arrange for the buyer to receive such products and services elsewhere.

(b) Make any promise, either to exchange unsatisfactory food products or to give a refund therefor, which expires in less than 60 days from the date of delivery of such products, or fail to honor such promise, where through no fault of the buyer, said food does not meet minimum standards of quality expected by the ordinary consumer.

(c) Give any guarantee or warranty which is not clear and specific or with which the seller is unable to comply; or misrepresent that someone else is the guarantor or warrantor of any product or service, or fail to furnish the buyer with a copy of such guarantee or warranty.

(d) Misrepresent the date of performance of any contract.

(5) IDENTITY OF SELLER. (a) Represent that a person is, or that the seller will provide the service of, a nutritionist or home economist, unless such person has completed specialized training in such fields or is otherwise technically qualified.

(b) Misrepresent that the seller, products or service have been approved by any better business bureau, chamber of commerce, service club, financial institution, government agency or any other commercial or civic organization, or any official or employee thereof, or that the seller is a member of such organization.

(6) PRICE AND FINANCING. (a) Misrepresent or fail to disclose fully and conspicuously at the time of the sale, the name of the financing institution or contract assignee, if any.

(b) Fail to advise the buyer before signing any contract that the contract may be transferred or assigned to a financial institution or other third party and payment enforced by them.

(c) Misrepresent the total amount that the buyer will be obligated to pay.

(d) Misrepresent that the offer or sale or any part thereof is made on a trial basis, or fail to disclose fully and conspicuously that the buyer must pay a membership fee or similar charge in full if such payment is required.

(e) Misrepresent that the seller will pay or reimburse the buyer for the expenses of delivering or moving a freezer or any other product for the buyer.

(f) Fail to disclose fully and conspicuously any extra charges for cutting, wrapping, freezing, delivery or other services.

(g) Represent the price of a wholesale cut in terms other than price per single pound.

(h) In all wholesale cut advertising which in any manner represents the availability of credit terms or payment plans, the seller shall fully disclose if the purchaser must obligate himself or herself to a party other than the seller if the total of the purchaser's obligation is not fully paid at the time of delivery.

(7) PRODUCT REPRESENTATION. (a) Misrepresent the cut, grade, brand or trade name, or weight or measure of any food product.

(b) Use the abbreviation "U.S." in describing a food product not graded by the United States department of agriculture, except that foods may be described as "U.S. Inspected" when true.

(c) Misrepresent a food product through the use of any term similar to a government grade.

(d) Fail to disclose, when a yield grade is advertised, a definition of the yield grade in the following terms:

"Yield Grade 1—Extra Lean"

"Yield Grade 2—Lean"

"Yield Grade 3—Average Waste"

"Yield Grade 4—Wasty"

"Yield Grade 5—Exceptionally Wasty"

(e) Advertise or offer for sale in combinations wholesale cuts with one unit price.

(f) Fail to disclose fully and conspicuously the correct government grade for any food product if such product is represented as having been graded.

(g) Fail to disclose fully and conspicuously that the yield of consumable meat from any wholesale cut will be less than the weight of the wholesale cut. The seller shall, for each wholesale cut advertised, use separately and distinctly in at least 10 point type the following disclosure: "Sold hanging weight subject to cutting loss."

(h) Misrepresent the amount or proportion of retail cuts that a wholesale cut of meat will yield.

(i) Fail to furnish the buyer with a complete and accurate signed statement, at the time of delivery, showing the net weight of meat delivered to the buyer. If weighed with immediate wrappings, such fact shall be stated. Both the actual net weight of the wholesale cut, prior to cutting and trimming, and the delivered weight shall be disclosed to the buyer in writing at time of delivery. This section shall apply separately to each wholesale cut sold on any individual order.

(j) Fail to disclose fully and conspicuously whether a quarter of a carcass is the front or hind quarter, or represent any meat as a quarter if it has been cut from a quarter prior to sale.

(k) Represent any wholesale cut as a "half" or "side" unless it consists of a front and hind quarter. Both quarters shall be from the same side of the same animal unless the seller discloses fully and conspicuously that they are from different sides or different animals as the case may be. Each quarter shall be of the same grade or quality as the other quarters comprising the half or side and the seller shall advise the buyer of the weight of each quarter prior to sale. In selling quarters individually or as part of a half or side, if actual weights are not known or cannot be determined prior to sale, approximate weights may be used, provided: The buyer is informed that the weights are approximate, the weights are so identified on any purchase order or contract, and the seller agrees with the buyer, in writing, to make a cash refund or grant a credit on delivery for the difference between actual weight and the approximate weight on which the sale was made.

(L) Use the words "bundle", "sample order", "split side", or words of similar import to describe a quantity of meat or poultry unless the seller itemizes each cut and the weight thereof which the buyer will receive.

(m) Advertise or offer free, bonus or extra product or service combined with or conditioned on the purchase of any other product or service unless such additional product or service is accurately described including, whenever applicable, grade, net weight or measure, type, and brand or trade name. The words "free," "bonus," or other words of similar import, shall not be used in any advertisement unless the advertisement clearly and conspicuously sets forth the total price or amount which must be paid to entitle the buyer to the additional product or service.

(n) Misrepresent the breed, origin or diet of slaughtered animals or parts thereof offered for sale. Sellers making such claims shall have written records available to substantiate such fact.

(o) Represent the price of any food freezer without fully and conspicuously disclosing its brand or trade name, model number and year, and size or capacity.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (4) (b) and (7) (g) and (i), Register, December, 1967, No. 144, eff. 1-1-68; am. (6) (b), Register, May, 1968, No. 149, eff. 6-1-68; am. (1) (intro. par.), (1) (a), (3) (a), (4) (b), (6) (a), (6) (b), and (6) (g), r. (2) (a), renum. (2) (b) and (c) to be (2) (a) and (b) and am., renum. (2) (d) and (e) to be (2) (c) and (d), renum. (3) (b) to (d) to be (3) (c) to (e), am. (3) (d), cr. (3) (b), cr. (6) (h), renum. (7) (d) to (m) to be (7) (f) to (o), am. (7) (g), (i), (l) and (m) and cr. (7) (d) and (e), Register, June, 1975, No. 234, eff. 7-1-75; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448.

ATCP 109.03 Contract requirements. (1) SERVICE PLAN. Any seller of a food service plan which does not involve an extension of credit shall comply with the following:

(a) Give the buyer at the time of execution a true copy of the contract, which shall include its date of execution and all terms and conditions of the sale and a copy of any price list, guarantee, service agreement or other document incorporated or referred to in the contract.

(b) Print clearly and conspicuously on the contract the name and mailing address of the seller.

(c) All blank spaces shall be filled in or a line drawn through them before the contract is signed by the buyer.

(d) When a representation is made that insurance will be provided, the terms, conditions and limitations thereof, as well as the name and address of the insurer if different from the seller shall be set forth in the contract or in a separate insurance policy. The individual policy, group certificate or notice of proposed insurance shall be furnished to the buyer prior to execution of the contract. If the individual policy is not furnished at the time the contract is executed, the contract shall state when the individual policy will be furnished to the buyer.

(2) CANCELLATION. (a) In all transactions which are not consumer approval transactions, the buyer shall have the right to cancel the contract until midnight of the third business day (as defined in s. 421.301 (6), Stats.) after the seller has given the notice to the buyer in accordance with this chapter. Notice of cancellation may be given by delivering or mailing written notice thereof, signed by the buyer, to the seller at the address set forth in the contract. Notice of cancellation given by mail shall be considered given at the time mailed. Notice of cancellation need not take any particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the contract.

(b) The seller shall give 2 copies of a typed or printed notice to the buyer. The notice must:

1. Be printed in capital and lowercase letters of not less than 12-point boldface type;

2. Appear under the conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL";

3. Read as follows: "You must cancel this agreement by mailing a written notice to (insert name and mailing address of seller) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing "I hereby cancel" and adding your name and address. A duplicate of this page is provided by the seller for your records."

4. Compliance with requirements of federal statutes, rules or regulations governing form of notice of right of cancellation shall be deemed to satisfy the notice requirements of this chapter, provided such compliance does not deprive the customer of any rights or benefits the customer would otherwise enjoy under Wisconsin law.

(c) Within 10 days after the contract has been cancelled, the seller shall cause any money paid by the buyer, including a downpayment, to be returned to the buyer and shall take any appropriate action to reflect the termination of the transaction including any security interest created as a result.

(d) In the event that cancellation pursuant to par. (a) occurs subsequent to the delivery of any goods by the seller, the buyer has the duty to take reasonable care of the goods in the buyer's possession before cancellation and for a reasonable time after tender, not to exceed 20 days. If the seller fails to comply with any of the provisions of par. (c), the seller is not entitled to any of the right or remedies set forth in this paragraph.

(3) If any part of a contract is to be performed by a person other than the seller, the contract and all advertisements shall fully and conspicuously disclose the name and address of the person responsible for performance.

(4) Every contract executed in connection with an initial sales transaction shall bear separately on its face the following statement:

"This contract is governed by ch. ATCP 109, Wis. Adm. Code, administered by the Wis. Dept. of Agriculture, Trade and Consumer Protection. Every holder takes subject to claims and defenses of the maker or obligor."

(5) Every contract shall state clearly and separately the total net price of food products sold; total net price of non-food products sold; service or delivery charges; and membership fees or similar charges.

(6) Every contract shall describe separately all terms and conditions of any guarantee or warranty, including exclusions and time limitations, cost of repairs and replacement parts, labor or service charges, and replacement of unsatisfactory or unused product. If any part of the guarantee or warranty is given or is to be performed by any person other than the seller, that fact and the name and address of such person shall be stated in the contract. Any manufacturer's guarantee or warranty for a non-food product shall be furnished to the buyer upon delivery of such product.

(7) Every contract which includes a food freezer shall state specifically the brand or trade name, model number and year, and size or capacity of the freezer.

(8) Contract provisions for liquidated damages for breach by the buyer shall be reasonable and in no event shall exceed 10% of the contract price or \$25, whichever is less.

(9) Contracts shall not contain any provision whereby the buyer agrees to waive any rights or defenses the buyer may have under this chapter.

(10) No provision of this chapter shall be deemed to relieve the seller of any obligation the seller might otherwise have under the Wisconsin Consumer Act.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (1), (3), (4), (8) and (9), Register, December, 1967, No. 144, eff. 1-1-68; am. (4) (a) to (c), cr. (4) (d) and (e), am. (8) and cr. (13), Register, May, 1968, No. 149, eff. 6-1-68; r. and recr. Register, June, 1975, No. 234, eff. 7-1-75; corrections made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448; am. (4), Register, June, 1999, No. 522, eff. 7-1-99.

ATCP 109.04 Custom cutters. Each custom cutter shall, for each wholesale cut, furnish to the customer a signed, written statement of the actual net weight of each wholesale cut prior to cutting and trimming, and the delivered weight after cutting and trimming.

History: Cr. Register, June, 1975, No. 234, eff. 7-1-75.