

1:25 P.M.

Ag 109

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I, D. N. McDowell, Secretary of Agriculture, and custodian of the official records of the Department of Agriculture of the State of Wisconsin, do hereby certify that the annexed rules relating to freezer meat and food service plan trade practices, Wis. Adm. Code chapter Ag 109, were duly adopted by this department on August 4, 1967.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand at Madison, Wisconsin, this 4th day of August, 1967.

D. N. McDowell
Secretary of Agriculture

Docket No. 763.

ORDER OF THE DEPARTMENT OF AGRICULTURE
ADOPTING RULES

Pursuant to authority vested in the Department of Agriculture by section 100.20, Wis. Stats., the Department of Agriculture hereby adopts rules as follows:

Chapter Ag 109 of the Wisconsin administrative code is adopted to read:

Chapter Ag 109

FREEZER MEAT AND FOOD SERVICE PLAN TRADE PRACTICES

Ag 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, including promissory notes, subscribed by a buyer.

(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, 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, advertising, label, display, picture, illustration or sample.

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

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

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

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

(9) "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.

Ag 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 the following:

(1) Bait selling. (a) Disparage or degrade any product advertised or offered for sale by the seller 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 his purchase will entitle him to refer other buyers to the seller, for which he will be paid a commission, compensation or any other reward, or that he will get a special or reduced price on any purchases for making such referrals.

(b) Misrepresent to the buyer that he is being given an introductory, confidential, close-out, going out of business, factory, packer, special or wholesale price or discount, or any similar price concession.

(c) Represent 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, or fail to honor such offer.

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

(e) 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 a food service plan other than the seller's current prices to established customers, or fail to disclose fully and conspicuously thereon that the prices quoted are subject to change if such is the fact; or fail to furnish to the buyer prior to his signing of any contract a written copy of such current price list which shall contain an accurate description of the product 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.

(b) 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.

(c) 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 United States Government data on average food consumption and costs. A written itemization of all food to be sold, with the price and an accurate description 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.

(d) Misrepresent that the buyer can purchase all or most of his 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 he 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.

(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, his 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 the terms of any financing arrangement, interest, service charge, credit investigation fee, time-price differential or any other costs.

(b) Fail to advise the buyer before signing any negotiable note that the note may be transferred to a financial institution

or other third party and payment enforced by them. If any note is a cognovit note the seller shall advise the buyer that it authorizes a confession of judgment on the note if it is not paid when due, and that a court judgment may be entered against him without prior notice.

(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 any terms other than price per pound. Such price shall not be stated by dollar amount of an installment payment and number or period of such payments. Credit terms, if offered, shall be stated separately.

(7) Product representations. (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 fully and conspicuously the correct government grade for any food product if such product is represented as having been graded.

(e) 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.

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

(g) Fail to furnish the buyer with a written statement of total weight of meat delivered, with or without weight of the immediate wrappings. If said weight includes wrappings such fact shall be stated.

(h) 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.

(i) 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. The quarters shall be of the same grade or quality and the seller shall advise the buyer of the weight of each quarter prior to sale.

(j) Use the words "bundle", "sample order", 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.

(k) Advertise or offer free, bonus or extra food combined

with or conditioned on the purchase of any other product or service unless such additional food is accurately described including, whenever applicable, grade, net weight or measure, and brand or trade name.

(1) 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.

(m) 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.

Ag 109.03 Contract requirements. Any person who sells a food service plan shall comply with the following:

(1) All terms and conditions of sale shall be included in every contract. The seller shall give the buyer at the time of execution a true copy of such contract, any other documents referred to therein, and any promissory note, except as provided in subsections (7) and (9) herein.

(2) The name and mailing address of the seller shall be printed clearly and conspicuously on all contracts.

(3) Contracts shall bear the date of execution. Any accompanying promissory note shall bear the same date.

(4) (a) Contracts shall not become effective until three days, excluding Sundays and legal holidays, after date of execution. The seller shall not transfer any negotiable promissory note until expiration of the three-day period. The buyer may rescind all contracts during the three-day period by mailing notice thereof

signed by him to the seller at the address set forth in the contract. Mailing shall be by certified or registered mail. A sender's postmarked receipt is proof of mailing.

(b) The following statement shall be printed clearly and conspicuously on contracts other than negotiable promissory notes: "The buyer may cancel this contract by mailing a signed, written notice to the seller at the address shown on this contract not later than three days, excluding Sundays and legal holidays, after the date the buyer signs this contract. Notice shall be sent by certified or registered mail. A sender's postmarked receipt is proof of mailing. This transaction is regulated by Wis. Adm. Code chapter Ag 109 and the seller is liable to the buyer for violations under section 100.20, Wis. Stats."

(c) A negotiable promissory note shall bear on its face the following statement: "Not negotiable until the expiration of three days, excluding Sundays and legal holidays, from the date hereof."

(5) Contracts shall have all blank spaces filled in or a line drawn through them before they are signed by the buyer.

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

(7) 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 insuring agreement. The insuring agreement or a specimen copy thereof shall be

furnished to the buyer prior to execution of the contract. If a specimen copy is used the contract shall state when the insuring agreement will be furnished.

(8) Contracts 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; membership fees or similar charges; interest, carrying, time-price differential or similar charges; and the total price the buyer must pay. If the buyer is required to sign a negotiable promissory note, the date and amount of the note and the terms of payment shall correspond exactly with those stated in any other document.

(9) Contracts other than negotiable promissory notes shall describe separately all terms and conditions of any guarantee or warranty, including those relating to the time limit, any exclusions and limitations, cost of repairs and replacement parts, labor or service charges, and replacement of unsatisfactory or unused products. 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. A manufacturer's guarantee or warranty for a non-food product may be furnished to the buyer upon delivery of such product.

(10) Where a representation is made prior to the signing of a contract that the buyer shall be paid a fee, compensated, or in any way rewarded for referring prospective buyers to the seller, all the terms and conditions of such offers shall be set forth in the contract, including any limitations as to time, territory, or number of prospects that the seller will accept.

(11) Contracts involving a food freezer shall state specifically the brand or trade name, model number and year, and size or capacity of the freezer.

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

The rules contained herein shall take effect as provided in section 227.026, Wis. Stats.

Dated: August 4, 1967.

DEPARTMENT OF AGRICULTURE

/s/ D. N. McDowell

Secretary of Agriculture



WISCONSIN
STATE DEPARTMENT of AGRICULTURE

HILL FARMS STATE OFFICE BUILDING
MADISON, WISCONSIN 53702

September 7, 1967

To: REVISOR OF STATUTES
SECRETARY OF STATE

Re: Wis. Adm. Code ch. Ag 109

Dear Sirs:

The Department of Agriculture has filed in your offices certified copies of rules relating to freezer meat and food service plan trade practices, Wis. Adm. Code ch. Ag 109. Under the provisions of section 227.026 (1), Wis. Stats., a rule is effective on the first day of the month following its publication in the Wisconsin administrative register unless, among other exceptions, a later date is prescribed by the agency in a statement filed with the rule (par. (b)). Pursuant to this paragraph, the Department of Agriculture hereby prescribes January 1, 1968 as the effective date for Wis. Adm. Code ch. Ag 109, and requests that this statement be filed with the certified copy of said chapter on file in your office.

Sincerely yours,

A handwritten signature in cursive script, reading 'D. N. McDowell', is written over the typed name.

D. N. McDowell
Secretary of Agriculture