

Chapter Ag 109

**FREEZER MEAT AND FOOD SERVICE PLAN
TRADE PRACTICES**

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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 subscribed by a buyer and includes promissory notes unless otherwise specified.

(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.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (2), Register, December, 1967, No. 144, eff. 1-1-68.

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, where, through no fault of the buyer, the food does not meet minimum standards of quality expected by the ordinary consumer. This does not apply to fresh foods, or promises to make exchanges or refunds regardless of the condition of the food.

(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 promissory note that the note may be transferred or assigned 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 cut and packaged meat delivered. 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.

(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. 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.

(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.

History: Cr. Register, September, 1967, No. 141, eff. 1-1-68; am. (4) (b) and (7) (g) and (1), Register, December, 1967, No. 144, eff. 1-1-68; am. (6) (b), Register, May, 1968, No. 149, eff. 6-1-68.

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, except promissory notes executed in conformity with another

contract document expressing all terms and conditions of sale. The seller shall give the buyer at the time of execution a true copy of every contract and promissory note and any other document incorporated or referred to therein. Contract requirements in subsections (7) through (12) do not apply to promissory notes executed in conformity with separate contract documents setting forth all terms and conditions of sale.

(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. Promissory notes executed concurrently with any other contract shall bear the same date as such other contract.

(4) CANCELLATION. (a) The buyer shall have the right to cancel an initial sales contract until midnight of the third day, excluding Sundays and legal holidays, after the day on which the contract was signed by the buyer. The buyer may cancel such contract during the 3-day period by delivering or mailing written notice thereof, signed by him, to the seller at the address set forth in the contract. If the statement required by paragraph (b) of this subsection or the seller's address is not shown in the contract, the time allowed for cancellation is extended until midnight of the third day after the day on which the seller furnishes the buyer with the required information. Notice of cancellation if given by mail, is given when it is deposited in a mail box properly addressed and postage prepaid. Notice of cancellation need not take any particular form and is sufficient if it indicates by any means a written expression of the intention of the buyer not to be bound by the sales contract.

(b) The following statement shall be printed clearly and conspicuously in contrasting type on contracts described in paragraph (a) of this subsection, other than promissory notes: "You may cancel this contract by delivering or mailing a signed written notice thereof to the seller at the address shown on this contract not later than midnight of the third day, excluding Sundays and legal holidays, after the day you signed this contract. This transaction is regulated by Wis. Adm. Code Chapter Ag 109 and the seller is liable to you for violations under section 100.20, Wis. Stats."

(c) Every promissory note executed in connection with an initial sales transaction shall bear on its face the following statement: "This note is subject to the terms of a separate sales contract and is governed by Wis. Adm. Code Chapter Ag 109."

(d) In the event of cancellation pursuant to paragraph (a) of this subsection, the seller within 10 days after such cancellation shall refund to the buyer all payments made by the buyer and return any note or other evidence of indebtedness. If the down payment includes goods traded in, the goods must be returned in substantially as good condition as when received.

(e) In the event that cancellation pursuant to paragraph (a) of this subsection occurs subsequent to the delivery of any goods by the seller, the seller is entitled to repossession of the goods in substantially as good condition as when delivered and he may retain as a cancellation fee 5% of the cash price not to exceed \$15, or the amount of the cash down payment, whichever is less. If the seller

fails to comply with any of the provisions of paragraph (d) of this subsection, he is not entitled to any of the rights or remedies set forth in this paragraph.

(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 nonfood 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 promissory note, the date and amount of the note and the terms of payment shall correspond exactly with those stated in any other related contract document.

(9) Contracts 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 nonfood 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% of the contract price or \$25, whichever is less.

(13) Contracts shall contain no provision whereby the buyer agrees to waive any rights or defenses he may have under this chapter.

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), (b), (c); cr. (4) (d) and (e); am. (8); cr. (13), Register, May, 1968, No. 149, eff. 6-1-68.

Register, May, 1968, No. 149