

Clearinghouse Rule 99-133

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

Docket No. 99-R-2
99-133

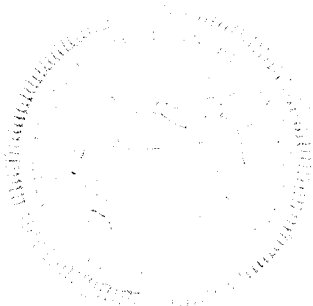
CERTIFICATION:

I, Ben Brancel, Secretary, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order amending chapter ATCP 105, Wisconsin Administrative Code, relating to selling motor vehicle fuel below cost was duly approved and adopted by the Department on February 25, 2000.

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

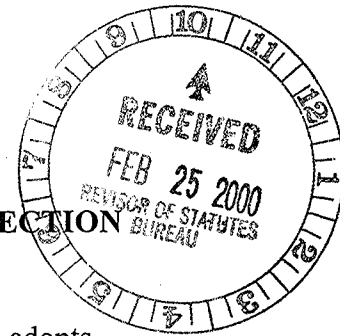
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 25th day of February, 2000.

Ben Brancel
Ben Brancel
Secretary



4-1-00

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



The state of Wisconsin department of agriculture, trade and consumer protection adopts the following order to amend ATCP 105.23(intro.), and to create ATCP 105.009(5) relating to selling motor vehicle fuel below cost.

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

Statutory Authority: s. 93.07(1), Stats.
Statute Interpreted: s. 100.30, Stats.

The department of agriculture, trade and consumer protection (DATCP) administers Wisconsin's "unfair sales act," s. 100.30, Stats. The unfair sales act prohibits sales of motor fuel and other merchandise below "cost" as defined in the act. DATCP has adopted rules under ch. ATCP 105, Wis. Adm. Code, to interpret the unfair sales act. This rule modifies current rules related to retail sales of motor fuel.

Background

Under s. 100.30(6)(a)7. of the unfair sales act, a person may sell below "cost" if the person is meeting the documented sale price of a competitor. Motor fuel retailers often use this exception to meet competitors' prices. A motor fuel retailer who sells below "cost" to meet competition must comply with the notification requirements under s. 100.30(7), Stats.

Competition in the retail motor fuel industry is also affected by credit card promotions offered by third parties. A credit card company (such as a financial institution or major oil company affiliate) may offer credit card discounts to consumers who buy a particular brand of motor fuel, even though the credit card company is not the retail seller from whom the consumers buy the motor fuel. For example, a credit card company may advertise: "Use your ABC Oil Company credit card, and receive a discount of 3 cents per gallon."

The credit card company, rather than the motor fuel retailer, offers the promotional discount. Although the motor fuel retailer charges and receives the normal pump price, the credit card user receives an effective discount of 3 cents per gallon.

Because the credit card company is not the motor fuel retailer, the credit card promotion may escape coverage under the unfair sales act. Since the motor fuel retailer charges and receives the full pump price, the retailer may be in compliance with the act (assuming that the pump price complies). The credit card company, which offers the promotion, may escape coverage because it is not engaged in the retail sale of motor fuel.

This type of credit card promotion may have a serious impact on competing retailers of motor fuel. Yet a retailer who sells below cost to match the credit card promotion may risk an unfair sales act violation. This rule clarifies that, under certain conditions, a motor fuel retailer may meet a competing credit card promotion without violating the unfair sales act, even though the competing promotion is offered by a credit card company rather than a competing motor fuel retailer.

Rule Contents

Under this rule, a motor fuel retailer's credit card promotion does not violate the unfair sales act, even though the promotion results in an effective sale price that is below the retailer's "cost," if all the following apply:

- The retailer offers the promotion in good faith, pursuant to s. 100.30(6)(a)7., Stats., to "meet but not beat" a credit card promotion that any person offers on credit card purchases of motor fuel from a competing retailer. A retailer may not claim to be meeting competition if the retailer offers the credit card promotion for more than 180 days after the competing credit card promotion is discontinued.
- The retailer gives the department written notice of the promotion. The notice must include all the following:
 - * The retailer's name, and any trade name under which the retailer offers the credit card promotion.
 - * The general terms, conditions and geographic scope of the credit card promotion.
 - * A description of the credit card promotion that the retailer is purporting to meet, including the person offering the promotion, the general terms of the promotion, and the identity and geographic distribution of competing motor fuel retailers who are benefiting from the promotion.

If a motor fuel retailer competes on a statewide or regional basis with retailers who benefit from a statewide or regional credit card promotion, the retailer may offer a credit card promotion under this rule at all of its retail locations in that statewide or regional market, regardless of whether the competition occurs at every one of its retail locations in that market.

1 **SECTION 1.** ATCP 105.009(5) is created to read:

2 (5) CREDIT CARD PROMOTIONS; MEETING COMPETITION. (a) Pursuant to s.
3 100.30(6)(a)7., Stats., a motor fuel retailer may in good faith offer a credit card
4 promotion to meet, but not beat, a credit card promotion that any person offers on credit
5 card purchases of motor fuel from a competing retailer. A retailer may not claim to be
6 meeting competition if the retailer offers the credit card promotion for more than 180
7 days after the competing credit card promotion is discontinued.

8 (b) If a motor fuel retailer competes in this state with retailers who benefit from a
9 statewide or regional credit card promotion, the retailer may offer a credit card promotion
10 under par. (a) at any or all of its retail locations in that statewide or regional market,
11 regardless of whether the competition occurs at every one of its retail locations in that
12 market.

13 (c) A retailer offering a credit card promotion under par. (a) shall give the
14 department written notice of that promotion, and of any material change in the general
15 terms of that promotion. The retailer notice shall include all the following:

16 1. The retailer's name, and any trade name under which the retailer offers the
17 credit card promotion.

1 2. The general terms, conditions and geographic scope of the credit card
2 promotion.

3 3. A description of the credit card promotion that the retailer is purporting to
4 meet, including the person offering the promotion, the general terms of the promotion,
5 and the identity and geographic distribution of competing motor fuel retailers who are
6 benefiting from the promotion.

7 **SECTION 2.** ATCP 105.23(intro.) is created to read:

8
9 ATCP 105.23(intro.) **Notice of price offered to meet competition.** Except as
10 provided in s. ATCP 105.009(5)(c):

11 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the
12 first day of the month following publication in the Wisconsin administrative register, as
13 provided under s. 227.22(2), Stats.

Dated this 25th day of Feb, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary