

Compliance with M.G.L. c. 30A – Emergency Adoption

Recently, infections caused by a new coronavirus—Coronavirus Disease 2019 (COVID-19)—have been detected in the Commonwealth, as well as in every other state in the U.S. The respiratory infection caused by COVID-19 is highly contagious and not fully responsive to existing vaccines and medications. As a result, a critical strain has been placed on hospitals and other medical facilities, as well as the individual residents of the Commonwealth who are at risk of infection.

Because the COVID-19 epidemic continues to escalate at an alarming rate, all possible measures to ensure the availability of necessary goods and services—including, but not limited to, personal protective equipment for medical professionals—must be taken immediately. Pursuant to her authority to issue regulations interpreting c. 93A, the Attorney General has previously issued a regulation, 940 CMR 3:18, related to price gouging. However, this regulation in its present form addresses only the sale of gasoline and other petroleum products. Accordingly, the Attorney General now amends 940 CMR 3:18 to add two additional paragraphs that prohibit price gouging with regard to goods or services necessary for the health, safety or welfare of the public during a declared statewide or national emergency.

The AGO adopts and issues these amendments to 940 CMR 3:18 on an emergency basis. For the reasons described above, the AGO finds that the immediate amendment of 940 CMR 3:18 is necessary for the preservation of the public health, safety and general welfare, and that observance of the requirements of notice and a public hearing set forth in M.G.L. c. 30A, sec. 2, would be contrary to the public interest.

940 CMR 3:18: Price Gouging

3.18: Price Gouging

(1) It shall be an unfair or deceptive act or practice, during any market emergency, for any petroleum-related business to sell or offer to sell any petroleum product for an amount that represents an unconscionably high price.

(2) A price is unconscionably high if:

(a) the amount charged represents a gross disparity between the price of the petroleum product and

1. the price at which the same product was sold or offered for sale by the petroleum-related business in the usual course of business immediately prior to the onset of the market emergency, or

2. the price at which the same or similar petroleum product is readily obtainable by other buyers in the trade area; and

(b) the disparity is not substantially attributable to increased prices charged by the petroleum-related business suppliers or increased costs due to an abnormal market disruption.

(3) It shall be an unfair or deceptive act or practice, during any declared statewide or national emergency, for any business at any point in the chain of distribution or manufacture to sell or offer to sell to any consumer or to any other business any goods or services necessary for the health, safety or welfare of the public for an amount that represents an unconscionably high price.

(4) A price is unconscionably high for the purposes of Paragraph 3 of this Section if:

(a) there is gross disparity between the price charged or offered and

1. the price at which the same good or service was sold or offered for sale by the business in the usual course of business immediately prior to the onset of the declared statewide or national emergency, or

2. the price at which the same or similar product is readily obtainable from other businesses; and

(b) the disparity is not substantially attributable to increased prices charged by the business's suppliers or increased costs due to an abnormal market disruption.