

## Chapter ATCP 106

### PRICE GOUGING DURING AN EMERGENCY

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**ATCP 106.01 Definitions.** (1) “Abnormal economic disruption” means a disruption or threat of disruption to normal business transactions, due to an emergency.

(2) “Consumer good or service” means a good or service that is sold for use by consumers primarily for personal, family or household purposes, but does not include parts or raw materials sold or distributed for subsequent manufacture of a consumer good.

(3) “Cost” means the seller’s cost to obtain, replace or produce a consumer good or service and to provide that consumer good or service to the customer. Cost includes all of the following:

(a) Direct costs.

(b) Indirect costs that the seller reasonably allocates to that consumer good or service under the seller’s normal cost accounting system, in the seller’s ordinary course of business.

(4) “Department” means the Wisconsin department of agriculture, trade and consumer protection.

(5) “Emergency” means circumstances identified by the governor in an emergency declaration, including any of the following:

(a) A tornado, flood, fire, storm, or other destructive act of nature.

(b) A disruption of energy supplies that poses a serious risk to the economic well-being, health, or welfare of the public.

(c) Hostile action.

(d) A strike or civil disorder.

(6) “Emergency area” means this state or that part of this state identified, in an emergency declaration, as being affected by abnormal economic disruption.

(7) “Emergency declaration” means an executive order, issued by the governor, which declares that this state or a part of this state is affected by abnormal economic disruption due to an emergency.

(8) “Emergency period” means the time period during which an emergency declaration is in effect.

(9) “Hostile action” means an act of violence against a person or property in the United States by a foreign power or by a foreign or domestic terrorist.

(10) “Like consumer goods or services” means identical or essentially identical consumer goods or services.

(11) “Like customers” means customers whom the seller, in the ordinary course of business, normally treats as equivalent customers for pricing and sale purposes.

**Note:** For example, if a seller sells like consumer goods or services both at wholesale and at retail, and normally charges lower prices to wholesale customers than to retail customers, the wholesale customers are not considered “like customers” to the retail customers.

(12) “Normal markup” means a percentage markup, over the seller’s cost, that the seller has regularly used in the sale of like consumer goods or services to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration.

(13) “Relevant trade area” means the market area, including the relevant point of sale under s. ATCP 106.02 (1), in which the seller normally sells like consumer goods or services to like customers at like prices.

**Note:** The “relevant trade area” may be larger or smaller than the emergency area. The “relevant trade area” would not include areas where prevailing prices normally differ from those charged locally. For example, a multi-state or multi-national seller may not justify inflated local prices based on sales at distant locations where prices are normally higher. On the other hand, an emergency declaration could conceivably encompass 2 or more distinct trade areas in which prices for the same consumer good or service routinely differ.

(14) “Sale” means a contract to sell, an offer to sell, or an advertisement announcing a willingness to sell.

(15) “Sell” means to contract, advertise or offer for sale at wholesale or retail.

(16) “Sale at retail” means sale to consumers primarily for their consumption or use, and not for resale or for further distribution, manufacturing or processing.

(17) “Sale at wholesale” means sale other than sale at retail.

(18) “Seller” means a manufacturer, producer, supplier, wholesaler, distributor or retailer.

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**ATCP 106.02 Price gouging prohibited.** (1) PROHIBITION. Except as provided in sub. (2), no seller may sell a consumer good or service in an emergency area during an emergency period at a price that is more than 15% above the highest price at which the seller sold like consumer goods or services to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration.

(2) EXEMPTIONS. The prohibition in sub. (1) does not apply to a sale if, at the time of sale, the seller possesses and relies upon accurate information that demonstrates any of the following:

(a) The selling price does not exceed the seller’s cost plus normal markup.

(b) The selling price is required by law.

(c) The emergency declaration directly or impliedly exempted the sale from coverage under the emergency declaration.

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**ATCP 106.03 Price information.** (1) DEPARTMENT MAY REQUIRE SELLER TO PROVIDE INFORMATION. The department may by written notice require a seller to provide information under sub. (2) related to a price at which a seller has sold a consumer good or service in an emergency area during an emergency period. The notice shall identify the price, the sale location, the specific type of consumer good or service sold, and the information required under sub. (2). The seller shall provide the required information to the department in writing within 10 days after the department issues the notice to the seller, or by a later date specified in the notice.

**Note:** See ss. 93.15 and 93.16, Stats. The notice under sub. (1) is a demand for information, not a warning notice under s. 100.305 (4m) (a), Stats.

(2) INFORMATION REQUIRED. The department may require the seller to provide any of the following information in response to a notice under sub. (1):

(a) The highest price at which the seller sold like consumer goods or services to like customers in the relevant trade area during the 60-day period immediately preceding the emergency declaration.

(b) Any material differences between the like consumer goods or services under par. (a) and the consumer good or service identi-

fied in the department's notice under sub. (1), if the consumer goods or services are not identical.

(c) The scope of the relevant trade area claimed by the seller, and the rationale for that scope.

(d) Any exemptions that the seller claims under s. ATCP 106.02 (2).

(e) Documentation to support the seller's responses under pars. (a) to (d).

(f) Other relevant information required by the department.

**History:** CR 07-004; cr. Register December 2008 No. 636, eff. 1-1-09.