

GENERAL INSTRUCTIONS FOR FILING A NEW YORK STATE MOTOR FUEL MARKETING PRACTICES ACT (NYMFMPA) COMPLAINT

The NYMFMPA identifies five general categories of unlawful activity: (1) sales of motor fuel at a retail price less than 95% of cost (predatory practices); (2) sales of motor fuel by refiners at a price less than 95% of the price charged to other wholesalers or dealers in the same market (discriminatory practices); (3) limitations or allocations of the quantity of motor fuel by a supplier to a reseller in certain conditions (discriminatory allocations); (4) unfair practices such as fixing or maintaining the retail price of motor fuel by a refiner or making significant modifications to a contract between a supplier and the dealer during the terms of the contract (unfair practices); and (5) rebates, subsidies or concessions associated with the sale of motor fuel for resale, when the seller does not provide the same general terms to all persons in that geographic market (unlawful rebates).

1. Predatory pricing violations are covered under New York State General Business Law Section 370-c. Predatory practices unlawful; exceptions, which states:
 - (a)(1) It is unlawful for any refiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet at a price which is less than ninety-five (95) percent of the refiner cost where the effect is to injure competition.
 - (2) It is unlawful for any nonrefiner engaged in commerce in this state to sell any grade or quality of motor fuel at a retail outlet at a price which is less than ninety-five (95) percent of the nonrefiner cost where the effect is to injure competition.
 - (b) It is unlawful for any refiner, including any affiliate or agent thereof, to sell any grade or quality of motor fuel at a retail outlet at a price that is less than ninety-five (95) percent of the price charged by that refiner to any wholesaler or dealer under written contract for the like grade and quality of motor fuel, to the extent that the wholesaler or dealer resells in the relevant geographic market where the refiner's retail price is in effect.
 - (c)(1) A isolated, inadvertent incident involving activity prohibited pursuant to subdivision (a) or (b) of this section shall not be a violation of this article.
 - (2) A refiner's sale at a price which is less than ninety-five (95) percent of the refiner cost or a nonrefiner's sale at a price which is less than ninety-five (95) percent of the nonrefiner cost made in good faith to meet an equally low retail price of a competitor selling motor fuel of like grade or quality in the same relevant geographic market which

can be used in the same motor vehicle, or of the same or similar items in combination with motor fuel of like grade or quality which can be used in the same motor vehicle, is not a violation of this article.

2. Discriminatory practices violations are covered under General Business Law Section 370-d. Discriminatory practices unlawful; exceptions, which states:

- (a) It is unlawful for any person engaged in commerce in this state:
 - (1) To sell for resale any grade or quality of motor fuel at a price which is less than ninety-five (95) percent of the price at which the seller contemporaneously sells motor fuel of like grade or quality to another person on the same level of distribution, in the same class of trade, and within the same relevant geographic market as the purchaser where the effect is to injure competition.
 - (2) To knowingly receive for resale any grade or quality of motor fuel at a price which is less than ninety-five (95) percent of the price at which the seller from which the motor fuel is purchased or received contemporaneously sells motor fuel of like grade or quality to any person on the same level of distribution, in the same class of trade, and within the same relevant geographic market as the purchaser where the effect is to injure competition.
- (b) A sale of motor fuel of like grade and quality at different prices to persons at the same level of distribution is not a violation of this section if the difference in price is due to a difference in the cost of sale or delivery resulting from differing methods or quantities at which the grade of motor fuel is sold or delivered.
- (c) Subject to the limitations of subdivision (b) of section three hundred seventy-c of this article, a sale made in good faith to meet an equally low price of a competitor selling motor fuel of like grade and quality which can be used in the same motor vehicle is not a violation of this section.
- (d) it is unlawful for a refiner to sell any grade or quality of motor fuel to a wholesaler under written contract at a price, after adding federal, state, and local taxes and fees, which is higher than the net price, after deducting all allowances, rebates, and discounts, at which the refiner contemporaneously sells motor fuel of like grade and quality to a dealer in competition with any retail outlet supplied by such wholesaler, where the effect is to injure competition, except to the extent that the difference in price is attributable to a rebate, rent subsidy, or other concession which is offered to the wholesaler on proportionately equal or comparable terms.

- (e) An isolated, inadvertent incident involving the activity prohibited pursuant to subdivision (a) or (d) of this section shall not be a violation of this article.
3. Discriminatory allocations violations are covered by General Business Law Section 370-e. Discriminatory practices unlawful, which states:
- (a) It is unlawful for any person supplying motor fuel in this state to limit or allocate the quantity of motor fuel available to a reseller purchasing under contract from such supplier because such reseller was prevented by such supplier from purchasing the minimum quantities such reseller was obligated to purchase from such supplier in the immediately preceding year, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.
 - (b) It is unlawful for a supplier to limit or allocate for more than five consecutive days the quantity of motor fuel available to a reseller purchasing under contract from such supplier, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner among all resellers supplied by such supplier under contract in a general trade area and the supplier's own retail outlets.
4. Unfair practices violations are covered under General Business Law Section 370-f. Unfair practices unlawful, which states:
- (a) It shall be unlawful for a refiner or other supplier to fix or maintain the retail price of motor fuel at a retail outlet supplied by that refiner or supplier. Nothing in this section shall be construed to prevent a refiner or supplier from counseling concerning retail prices, provided no threat or coercion is used in the counseling. This subdivision shall not apply to retail outlets operated by the refiner or supplier.
 - (b) It is unlawful for any person who supplies motor fuel to a dealer for resale and who leases a retail outlet to the dealer to impose any material modification in the contractual arrangements during the term of the contract, including a material modification of the leased retail outlet, unless such modification is made in good faith and based upon reasonable business practices.

5. Rebates violations are covered under General Business Law Section 370-g. Certain rebates unlawful, which states:

It is unlawful for any person selling motor fuel to offer or give a rebate, rent subsidy, or concession of any kind in connection, either directly or indirectly, with the sale of motor fuel to a person for resale when the seller does not provide, on proportionately equal terms, the same rebate, rent subsidy, or concession, or the equivalent of the rebate, rent subsidy, or cession, to all persons purchasing for resale in the relevant geographic market, where the effect is to injure competition. If a wholesaler receives a rebate, rent subsidy, or concession, the wholesaler must offer on proportionately equal terms, the rebate, rent subsidy, or concession, or the equivalent of the rebate, rent subsidy, or concession, to any retail outlet supplied by such wholesaler to the extent the wholesaler passes through such rebate, rent subsidy or concession. however, a rebate, rent subsidy, or concession made in good faith to meet the same or a comparable rebate, rent subsidy, or concession of a competitor shall not be a violation of this article, provided that any person who sells motor fuel to any wholesaler or dealer under written contract for resale in the relevant geographic market shall offer the rebate, rent subsidy, or concession, or the equivalent of such rebate, rent subsidy, or concession, to all other similarly situated wholesalers and dealers on proportionately equal terms.

BEFORE FILING A COMPLAINT FOR ANY NYMFMPA VIOLATIONS PLEASE:

1. Read the law as applicable to each type of complaint as set out in these instructions and on the complaint form;
2. Review the exceptions to the law to determine whether or not the business against which you wish to file a complaint is covered by an exception to the law; and remember
3. An isolated, inadvertent incident involving activity prohibited by the NYMFMPA is not a violation.

After you determine the type of complaint you intend to file, have read the law applicable to that type of complaint, and conclude that the business against which you wish to file a complaint is not covered by an exception, you may proceed with submitting a complaint. Please fill out each section of the complaint form as completely as possible so that we may process your complaint in a timely fashion. Additionally, please provide copies of any and all documentation that supports your complaint.

If you are a member of an association, you may wish to seek assistance from your association with any questions that you may have about filing a NYMFMPA complaint.

You may fax the complaint form and any necessary attachments to the Consumer Protection Board at (518) 408-1172 or mail the original complaint form and attachments to:

New York State Consumer Protection Board
Post Office Box 2078
Albany, New York 12223

Should you need to contact the Consumer Protection Board by telephone, you may do so by calling (518) 473-0058.