

**The New York State
Motor Fuel Marketing
Practices Act**

The New York Motor Fuel Marketing Practices Act (MFMPA) is intended to help preserve, promote, and encourage competition in the motor fuel marketing industry in New York State. The New York State Consumer Protection Board (CPB) is charged with investigating complaints regarding violations of this law. This information is provided to assist all market participants in complying with the MFMPA and to instruct them how they may file complaints concerning potential violations of the law.

Objectives of the Law

The MFMPA identifies and defines certain illegal marketing practices that impair fair and healthy competition and harm consumers. Persons who knowingly violate the law would be subject to a civil penalty of up to \$10,000 per violation. Each day that a violation occurs would be considered a separate violation, but no civil penalty could exceed \$250,000.

Unlawful Conduct

More specifically the MFMPA makes the following conduct **unlawful**:

- Sales of motor fuel at a retail price which is less than 95% of the seller's cost, where the effect is to injure competition. Seller's cost includes the cost of the motor fuel commodity; federal, state and local taxes and fees applicable to motor fuels; transportation costs; direct labor costs; and the reasonable rental value of the retail outlet applicable to motor fuels.
- Sales of motor fuel by refiners and their agents at a price that is less than 95% of the price they charge any wholesaler or dealer under written contract in the same geographic market, where the effect is to injure competition.
- Sales or receipt of fuel at a price which is less than 95% of the price at which the seller contemporaneously sells fuel of like grade to another person on the same level of distribution and within the same geographic market, where the effect is to injure competition.
- Sales of motor fuel by a refiner to a wholesaler under written contract at a price which is higher than the net price at which the refiner contemporaneously sells motor fuel to a dealer in competition with any retail outlet supplied by the wholesaler, where the effect is to injure competition.

- Limitations or allocations of the quantity of motor fuel by a supplier to a reseller purchasing under contract from the supplier because the reseller was prevented from purchasing minimum quantities from the supplier in the previous year, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner.
- Limitations or allocations of the quantity of motor fuel for more than five consecutive days by a supplier to a reseller purchasing under contract from the supplier, unless the limitations or allocations are applied in a reasonable and nondiscriminatory manner.
- Fixing or maintaining the retail price of motor fuel by a refiner or other supplier, at a retail outlet supplied by that refiner or supplier. This provision does not apply to retail outlets operated by the refiner or supplier.
- Material modifications in contractual arrangements between a supplier of motor fuel for resale, who leases a retail outlet to a dealer, and the dealer, during the term of a contract. This includes a material modification of the leased retail outlet, unless the modification is made in good faith and based on reasonable business practices.
- Rebates, rent subsidies or concessions of any kind, by any person selling motor fuel, in connection with the sale of motor fuel for resale, when the seller does not provide on proportionately equal terms, the same rebate, rent subsidy or concession to all persons purchasing for resale in that geographic market, where the effect is to injure competition. Wholesalers who receive such rebates, rent subsidies or concessions must offer them, on proportionately equal terms, to any retail outlet supplied by the wholesaler to the extent the wholesaler passes on the rebate, rent subsidy or concession.

Exempt Sales

The law provides for certain exemptions. An isolated or inadvertent incident involving prohibited activity is not considered a violation of the law. In addition, retail sales made in good faith to meet an equally low retail price of a competitor in the same geographic market are not violations.

Further, certain retail sales by a refiner are exempt, including clearance sales for the purpose of discontinuing trade; final business liquidation sales; sales made by a fiduciary under the order or direction of a court; and sales made during a grand opening to introduce a new or remodeled business not to exceed three days, if held within sixty days from the date the new or remodeled business begins operations.

Filing Complaints

Complaints alleging violations of the law are to be filed with the CPB. Complaint forms are available at <http://www.nymfmpa.gov> or by contacting your industry trade association. Completed complaints should be sent to:

New York State Consumer Protection Board
PO Box 2078
Albany, New York 12223
Fax: (518) 408-1172
e-mail: nymfmpa@consumer.state.ny.us

CPB Investigations

Upon receipt of a complaint, the CPB may conduct an investigation to determine whether a violation of the MFMPA has occurred. CPB investigations will be based on the technical definitions and legal standards contained in the law. As part of any investigation, the CPB may request that industry participants, including the alleged violator and the complainant, produce documents and records. The CPB may issue and serve subpoenas to obtain the information required for the investigation. Trade secret and proprietary business information contained in this documentation will be treated as confidential by the CPB.

After completing the investigation, the CPB may:

- › dismiss the complaint following a determination that no violation occurred;
- › dismiss the complaint following a determination that there has been a minimal injury to competition; or

- › determine that a violation has likely occurred, and if so, attempt to resolve the matter by settlement.

If no settlement is achieved, the CPB will refer the matter to the Attorney General for further proceedings, including, if necessary, legal action.

Further Information

Additional information regarding the MFMPA and industry obligations is available at:

<http://www.nymfmpa.gov>
or
from your trade association

**New York State
Consumer Protection Board**

www.nysconsumer.gov

1-800-NYS-1220