

# THE ESSENTIALS OF THE PETROLEUM MARKETING PRACTICES ACT AND HOW TO DEAL WITH IT

2007 Pacific Oil Conference

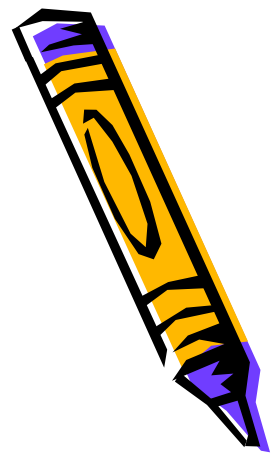
Reno Hilton

Reno, Nevada



Robert S. Bassman, Esquire  
Bassman, Mitchell & Alfano, Chtd.  
September 18, 2007

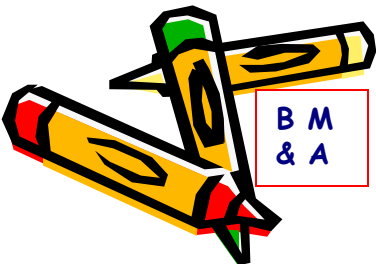
# Petroleum Marketing Practices Act



## ➤ A Little History

## ➤ Enacted in 1978

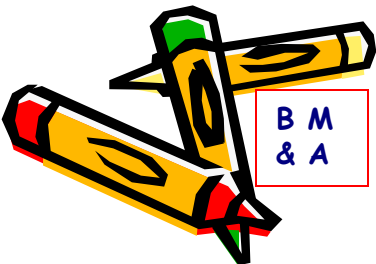
- ◉ After 6 year push by retail dealer association (National Congress of Petroleum Retailers)



# Petroleum Marketing Practices Act



- **Majors and Jobbers Role**
- **Over 25 Years of PMPA Litigation**

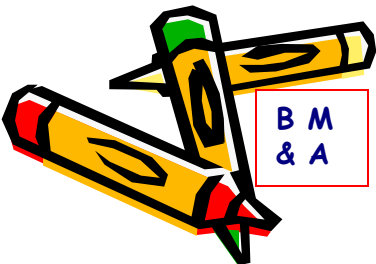


# Petroleum Marketing Practices Act



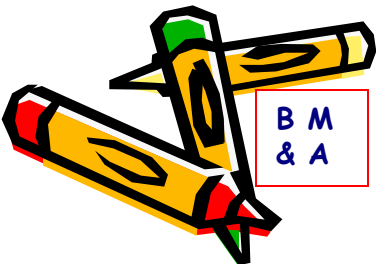
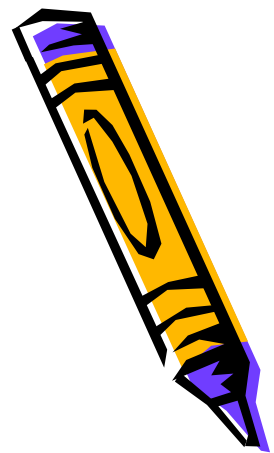
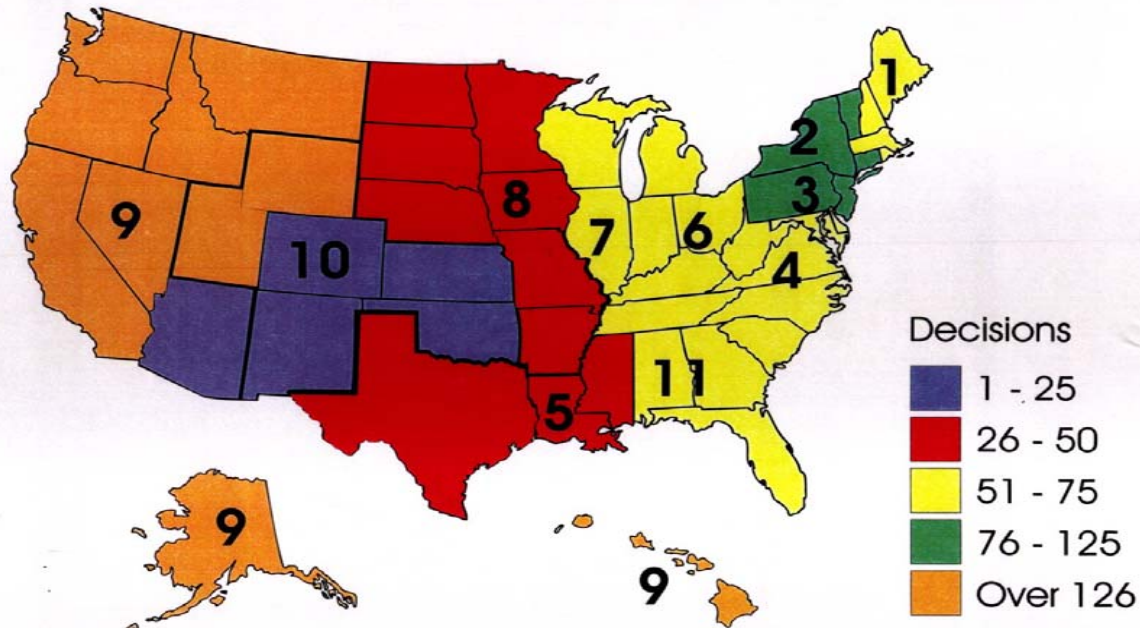
STATISTICAL BREAKDOWN OF PMPA DECISIONS BY YEAR

Year	Decisions	Won by Franchisor	Won by Franchisee	Other
1978	2	2	0	0
1979	17	12	3	2
1980	30	19	7	4
1981	44	22	16	0
1982	26	19	5	2
1983	39	26	8	5
1984	31	21	7	3
1985	32	21	5	6
1986	23	19	3	1
1987	35	27	6	2
1988	33	22	1	10
1989	25	17	2	6
1990	31	18	3	10
1991	20	15	3	2
1992	23	16	0	7
1993	25	13	4	8
1994	30	23	1	6
1995	11	7	2	2
1996	14	11	0	3
1997	15	11	2	2
1998	11	7	3	1
1999	22	15	7	0
2000	17	13	2	2
2001	15	8	4	3
2002	21	13	6	2
2003	20	10	2	8
2004	2	2	0	0
<b>TOTALS</b>	<b>614</b>	<b>409</b>	<b>102</b>	<b>103</b>



# Petroleum Marketing Practices Act

Geographical Distribution of PMPA Decisions  
June 1978 - Present

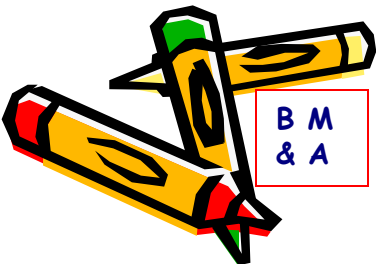


# Petroleum Marketing Practices Act



## What the PMPA Does

Sets procedural and substantive ground rules for terminating a “franchise relationship”.

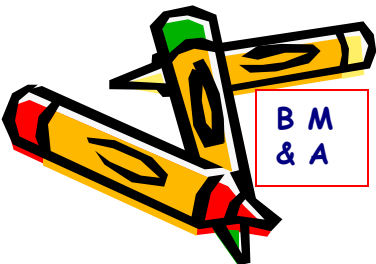


# Petroleum Marketing Practices Act



## What the PMPA Does

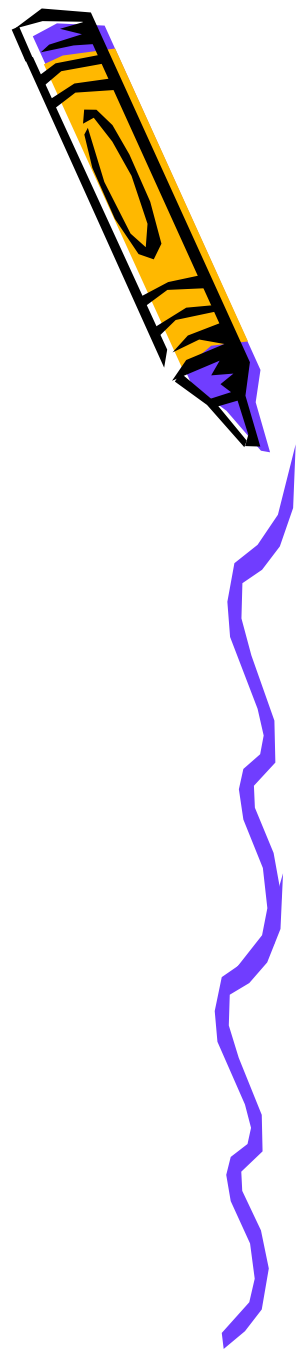
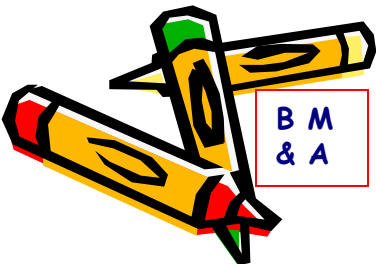
- Preempts of state laws on termination or nonrenewal
- Grants attorneys fees to franchisee who substantially prevails



# Petroleum Marketing Practices Act

## What the PMPA Does

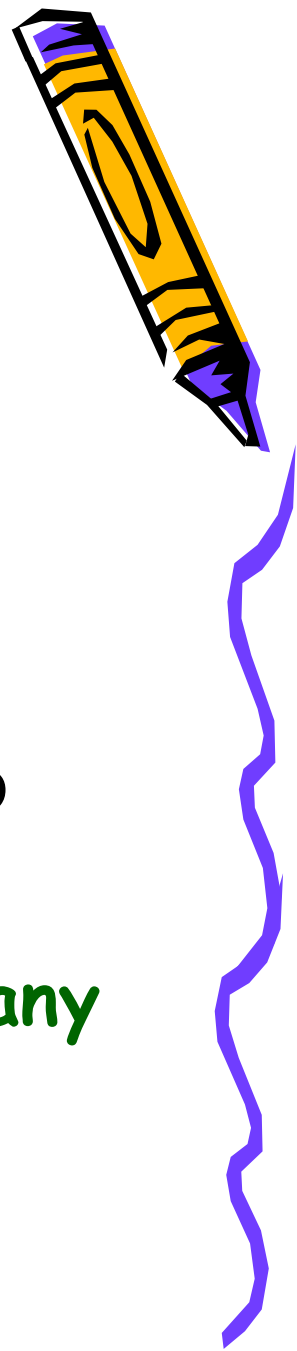
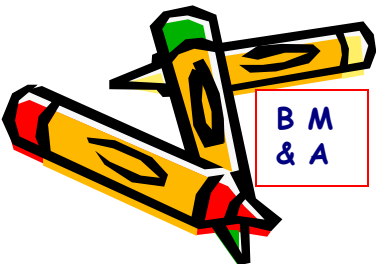
- Easy availability of preliminary injunction for franchisee

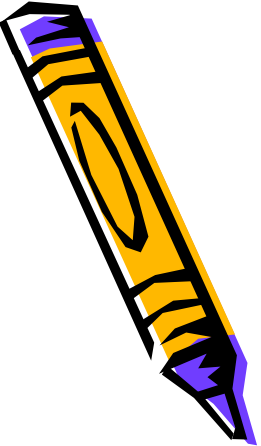


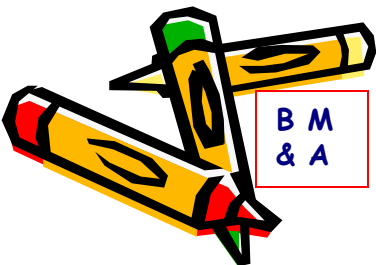
# Petroleum Marketing Practices Act

## Misconceptions on the Scope of the PMPA

1. It does not make any reference to pricing
2. It does not require franchises of any particular duration



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3. It does not require that a franchisee be offered the right to purchase his station if the franchisor is selling it, unless the franchisee will be nonrenewed based on that sale

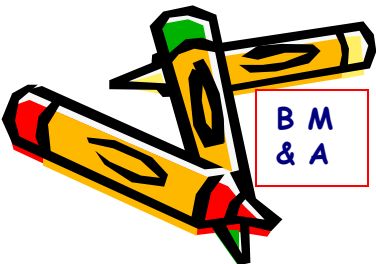


# Petroleum Marketing Practices Act



## Franchisee Rights on Termination Or Nonrenewal of Franchise

- 90 days written notice (less when reasonable) of termination or nonrenewal

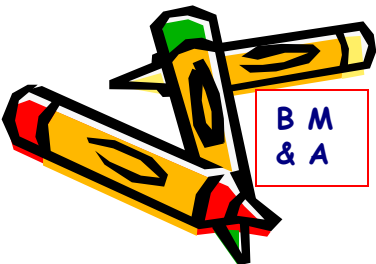


# Petroleum Marketing Practices Act



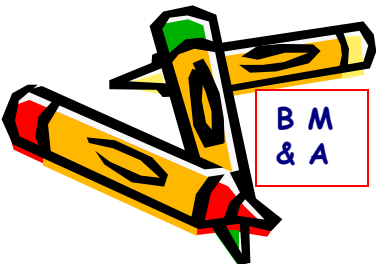
## Franchisee Rights on Termination Or Nonrenewal of Franchise

- ◆ Either hand delivered to franchisee or sent via certified mail



# The Importance of Contracts

- ❖ Memorialize Mutual Understandings
- ❖ Secure Relied Upon Terms Including Pricing and Duration
- ❖ Environmental Responsibility Allocation

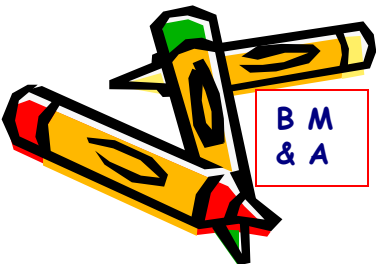




❖ Security

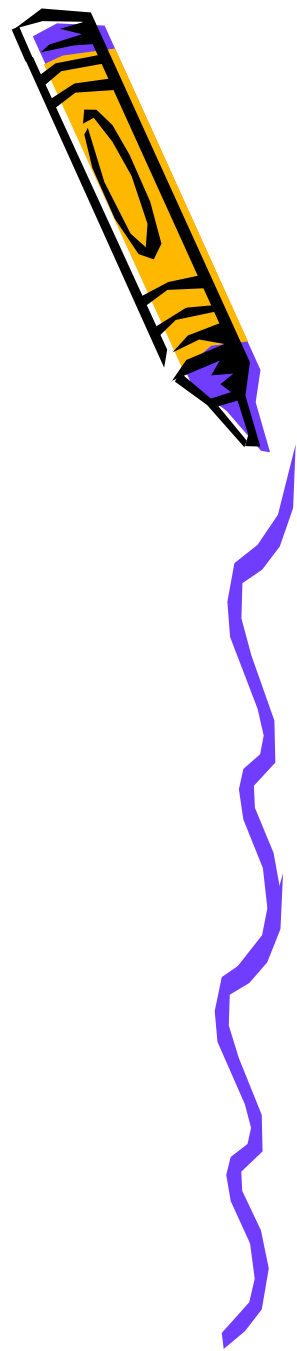
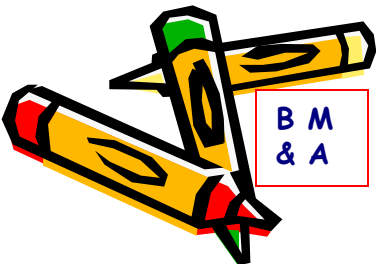
❖ Fulfill Major Oil Company Requirements on Dealer Responsibilities

❖ Fulfill the Petroleum Marketing Practices Act Requirement for Good Faith (nondiscriminatory) Franchises



# MOST FREQUENTLY REQUIRED AGREEMENTS

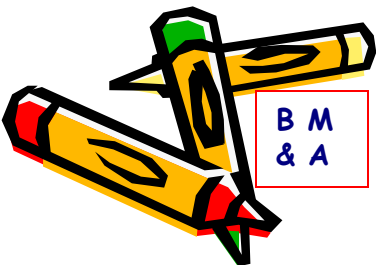
1. Contract of Sale - Branded or Unbranded Fuel Supply Agreement
2. Station Leases
3. Consignment Agreements



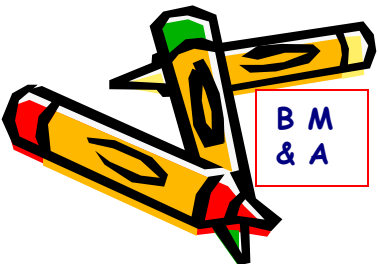
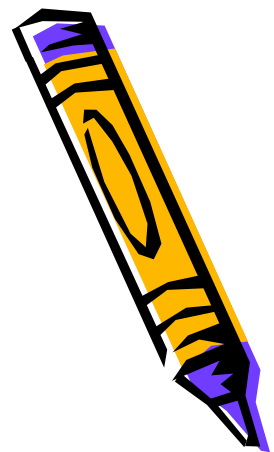


4. Security and Amortization Agreements

5. Subjobber Agreements

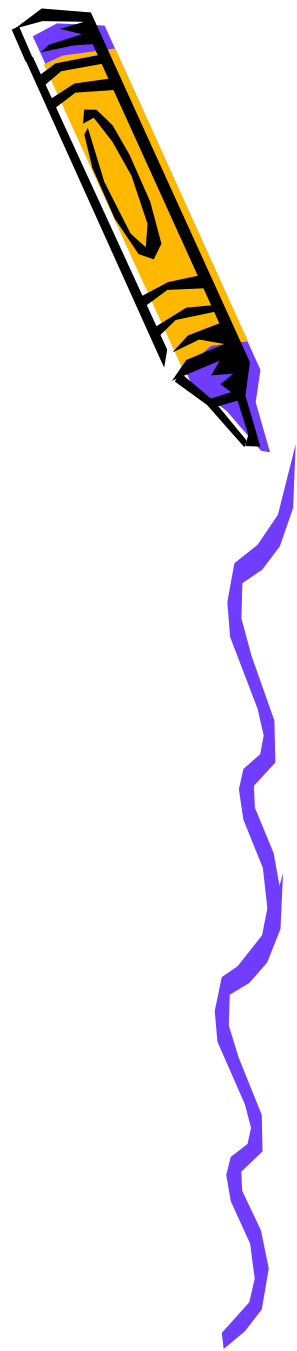
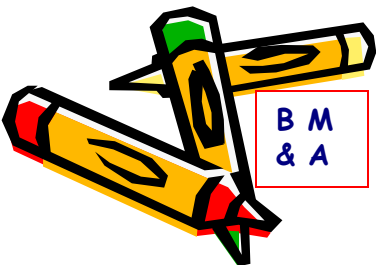


# Major Oil Company Requirements For Jobber-Dealers



# Dealer and Subjobber Agreements

- Most Important Terms
- Complying With the PMPA



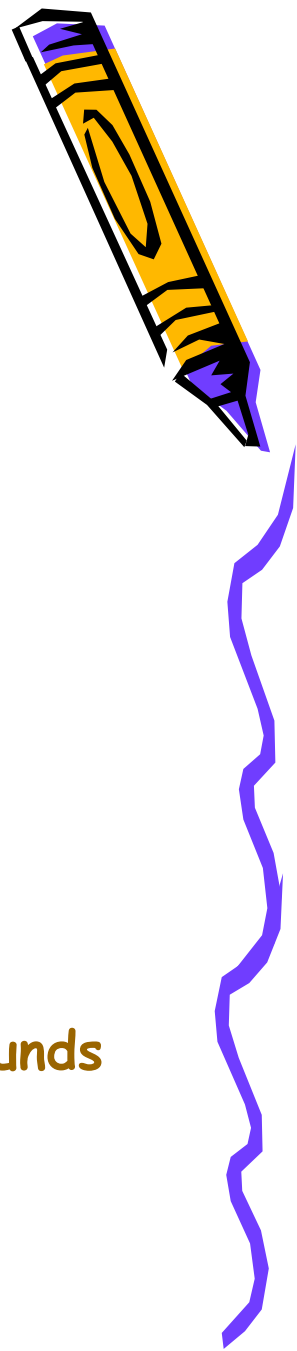
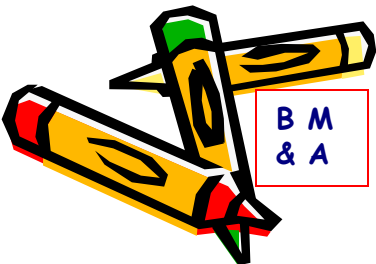
# Petroleum Marketing Practices Act

## The Ten Steps

To Terminate or Nonrenew a Franchise

### BEFORE YOU DECIDE TO TAKE ACTION:

1. Determine Whether Or Not Dealer Is A PMPA Franchisee
2. Decide On Reason(s) Ground(s) For Termination Or Nonrenewal. Check The PMPA And Your Contract
3. Make Sure You Have Records Of Existence Of Grounds



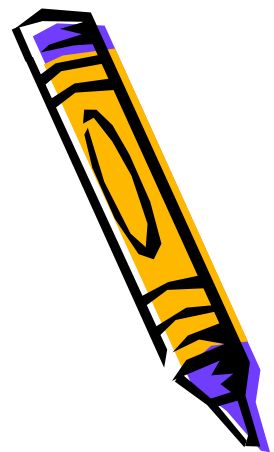
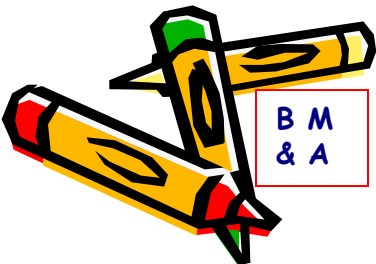
# Petroleum Marketing Practices Act

## The Ten Steps

4. Make Sure You Have Records To Show Communication Of Grounds To The Dealer In Question

### AFTER YOU DECIDE TO TERMINATE OR NOT RENEW:

5. Make Sure (In Most Cases) That You Gave Franchisee An Opportunity To Correct The Act(s) Which Will Be Your Ground(s) And Have A Record Of That Communication



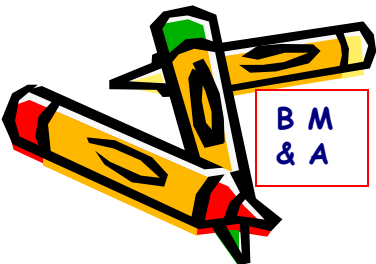
# Petroleum Marketing Practices Act

## The Ten Steps

### THE TERMINATION PROCESS

(TO BE INITIATED GENERALLY NO LESS THAN 90 DAYS PRIOR TO  
THE DATE ON WHICH YOU EXPECT THE DEALER TO BE OUT.)

6. Note The Required Dates For Both The  
Grounds And The Notice
7. Call Your Attorney



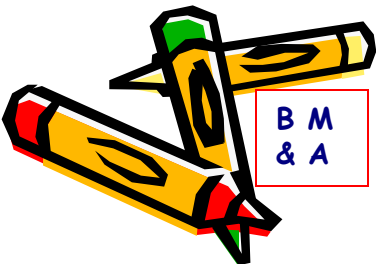
# Petroleum Marketing Practices Act

## The Ten Steps



8. Attempt To Enter Into A Mutual Termination Agreement With The Dealer

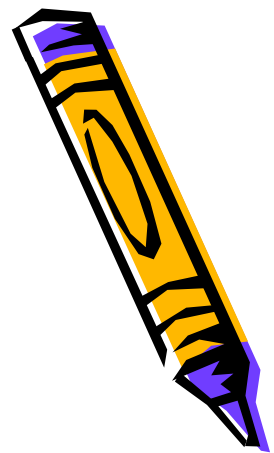
9. If Successful, Wait The Required Seven (7) Days Until Mutual Termination Becomes Final



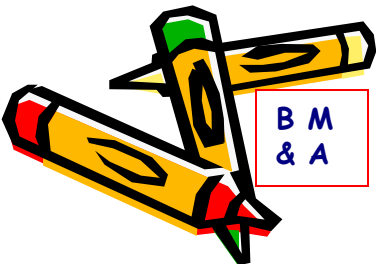
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# Petroleum Marketing Practices Act

## The Ten Steps



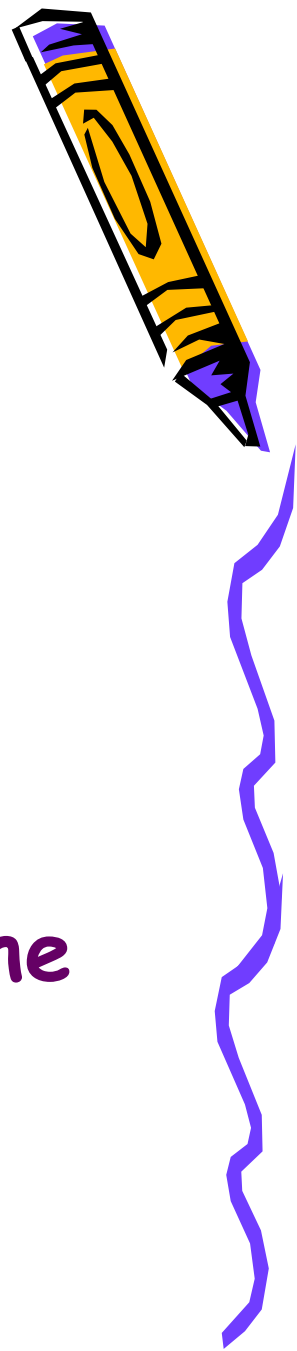
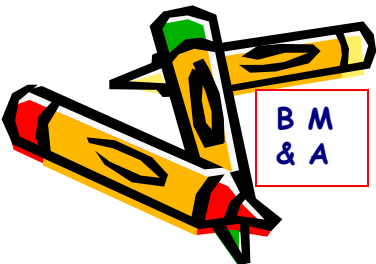
10. If Unsuccessful, Hand Deliver (With A Witness) Or Mail To The Notice Address Stated In Your Contract (Certified Mail - Return Receipt Requested) A Properly Filled Out Termination Or Nonrenewal Notice And Make Sure You Have Enclosed The Summary Statement Of Rights Along With Your Termination Or Nonrenewal Notice



# Petroleum Marketing Practices Act

## How Can Franchisors Protect Themselves From PMPA Suits

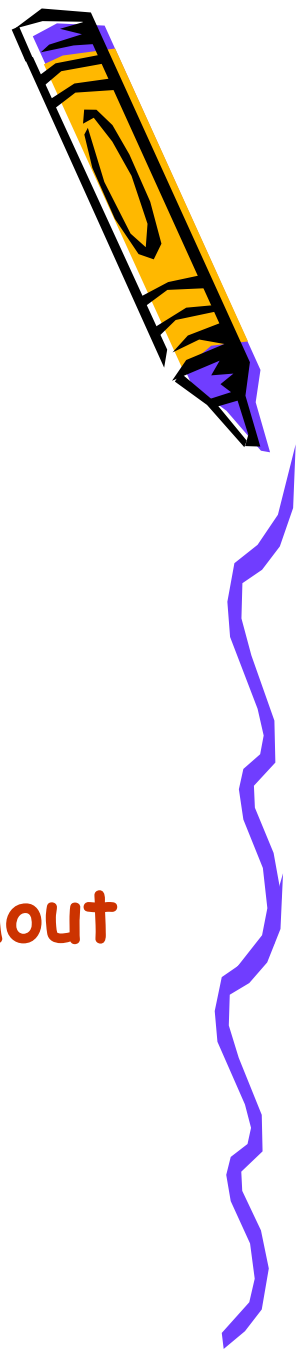
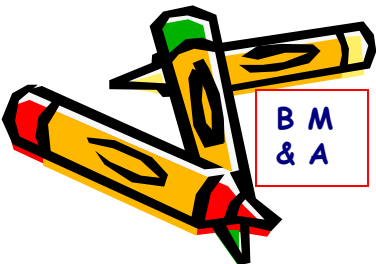
- ✓ Have good written contracts.
- ✓ Have a basic understanding of the law.



# Petroleum Marketing Practices Act

## How Can Franchisors Protect Themselves From PMPA Suits

- ✓ Do not terminate or nonrenew a franchisee (dealer or subjobber) without consulting a knowledgeable attorney.





*Thanks for  
coming in*

**HURRY  
BACK!**

