



October 17, 2008

Federal Trade Commission  
Office of the Secretary  
Room H-159 (Annex F)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Via: <http://secure.commentworks.com/ftc-marketmanipulationNPRM>

Re: Market Manipulation Rulemaking (P082900)

To Whom It May Concern:

The American Trucking Associations, Inc.<sup>1</sup> ("ATA") is writing to provide comments on the Federal Trade Commission's ("FTC") notice of proposed rulemaking concerning market manipulation (hereinafter the "Proposed Rule").<sup>2</sup> As the national representative of the trucking industry, ATA is interested in matters affecting the price and availability of fuel, one of our industry's most critical resources.

Diesel fuel is the lifeblood of the trucking industry. Last year, the trucking industry required over 39 billion gallons of diesel fuel to deliver the vast majority of the nation's consumer goods. As the largest consumer of diesel fuel, the trucking industry is impacted by the manipulation of markets affecting the price of fuel, such as wholesale petroleum markets. However, as energy concerns mount and alternative fuels are introduced and even mandated, petroleum markets are not the only markets that must be protected from manipulation. Indeed, new markets in cutting edge energy sources for vehicles, ranging from ethanol and biodiesel to coal-to-liquids and natural gas, must be protected from deceptive and manipulative practices.

We are pleased that the FTC has moved to implement the Market Manipulation Rulemaking and offer the following comments on the Proposed Rule. We specifically recommend the inclusion of renewable fuel markets in the Proposed Rule to protect consumers as the nation transitions to alternative fuels.

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<sup>1</sup> ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

<sup>2</sup> See Prohibitions On Market Manipulation and False Information, 73 *Federal Register* 48317 (August 19, 2008).

A. The Impact of Petroleum Market Manipulation on the Trucking Industry

In 2008, the trucking industry will spend nearly \$160 billion on diesel fuel. That is a 300% increase over what the industry spent on fuel in 2003 and nearly \$50 billion more than last year, despite consuming virtually the same amount of fuel. The impact of this astonishing cost increase is not limited to the trucking industry. Because nearly all consumer goods are transported by truck, the cost of these consumer goods increases as the trucking industry's costs increase.

Fuel is a commodity, and like most commodities in a competitive market, its cost is determined largely by supply and demand. When supply diminishes or demand increases, fuel prices climb. Supply and demand can be naturally influenced by factors such as production capacity or economic growth; however, supply and demand also can be influenced by deceptive or manipulative practices. Deceptive or manipulative practices can be used to disseminate false information or omit material information that causes market participants to perceive a change in the supply or demand, thus affecting the price. Other deceptive or manipulative practices may *actually* affect supply and demand such as improperly limiting production or attempts to corner the market to increase prices.<sup>3</sup> These practices can have a marked effect on the actual prices in the fuel markets and the FTC should have the discretion to regulate these practices where they rise to the level of market manipulation that impacts energy commodity prices.

The Proposed Rule adequately accounts for both types of manipulation mentioned above. Section 317.3(a) of the Rule makes it unlawful for any person to "Use or employ any device, scheme, or artifice to defraud."<sup>4</sup> Section 317.3(b) makes it unlawful for any person "to make any untrue statement of a material fact or to omit to state a material fact" that if omitted, can be misleading.<sup>5</sup> Finally, section 317.3(c) makes it unlawful for any person "to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person."<sup>6</sup> This Rule properly prohibits both the manipulation of the market participants' perception of supply and demand in the market and the improper manipulation of *actual* supply and demand.

ATA supports this Proposed Rule as an additional tool to help preserve the integrity of vital energy markets.

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<sup>3</sup> The items mentioned are merely examples. We support the FTC's attempt to preserve flexibility by issuing general conduct prohibitions so as to allow for adaptation to changing market conditions and to avoid a "'laundry list' of specifically proscribed conduct [that] could quickly become out of date." See 73 *Federal Register* at 48322/3; See Also 73 *Federal Register* at 48322 n.65.

<sup>4</sup> 16 CFR § 317.3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

B. Market Manipulation Protections Should Extend to Alternative Fuel Markets

Federal and state governments have mandated the use of alternative/renewable fuels in an attempt to reduce the country's reliance on foreign oil. As a result, consumers are being forced to use biodiesel and ethanol in large quantities and markets for these alternative fuels have quickly developed. While the FTC's proposed Market Manipulation Rulemaking goes a long way toward a goal of abolishing energy market manipulation, it is only a partial fix if it does not address all of the energy products that are potentially subject to manipulation. As dependence on alternative and renewable fuels increases, so too will the size of the markets facilitating the buying and selling of such sources. Due to their relatively small size, these markets will be even more vulnerable to market manipulation than the current gasoline and diesel markets. Including alternative and renewable fuel markets in the Market Manipulation Rulemaking will prevent deception and manipulation in those developing energy markets.

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For the reasons set forth above, we support FTC's initiative to promptly implement a rule that prohibits market manipulation. We believe that the FTC must also expand the scope of this rule to include alternative and renewable energy markets in order to create a permanent solution to energy market manipulation.

If you have questions concerning the trucking industry's recommendations for implementing biodiesel labeling requirements, please contact Rich Moskowitz at (703) 838-1910.

Respectfully submitted,

TJ England  
American Trucking Associations