

BEFORE THE FEDERAL TRADE COMMISSION OF THE UNITED STATES

In The Matter Of:)
)
Prohibitions On Market Manipulation And) **[Project No. P082900]**
False Information In Subtitle B Of The Title VII) **(RIN 3084-AB12)**
Of Energy Independence And Security Act of 2007)
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_____)

COMMENTS OF THE PETROLEUM MARKETERS ASSOCIATION OF AMERICA
ON THE REVISED NOTICE OF PROPOSED REULEMAKING

These comments are being submitted pursuant to a request for comments published, 74 F.R. 76 at 18304, *et seq.* They are being submitted on behalf of the Petroleum Marketers Association of America (PMAA). The PMAA is a federation of 47 state and regional trade associations representing over 7,000 independent marketers of petroleum products in all 50 states. These marketers distribute approximately 60% of the gasoline and diesel fuel and 95% of the home heating oil consumed in the U.S.

As said in its comments on the Advance Notice of Proposed Rulemaking (“ANPR”) and Notice of Proposed Rulemaking (“NPRM”) filed in 2008, PMAA, its federated associations and their individual marketer members are most concerned that the implementation of the, prohibitions on market manipulation and false information, mandated to the FTC by the Energy Independence and Security Act of 2007, not be carried out in such a manner as to disrupt the efficient distribution of vital petroleum products, particularly in times of market upheavals.

The Review Process

PMAA is most pleased that the proposed Rule evidences the Commission’s careful review of the comments it received on both the ANPR and the NPRM. This care is evidenced by both the manner in which the Commission decided that its proposed rule would be appropriate

and in the public interest, and the Commission’s self-described and clearly evidenced effort to “narrowly tailor” it.

Likewise, the Commission’s stated view that the “EISA targets manipulative and deceptive conduct . . . which serves *no legitimate purpose* and may in fact harm the market . . .” clearly informed many elements in the proposed rule.

PMAA members, virtually all of whom purchase motor fuels at terminal racks, appreciate the Commission’s attention to the inherently difficult logistics in the petroleum marketplace and the necessity to prevent fraudulent manipulation of it, while not interfering with the efficient flow of these most vital of commodities.

PMAA is particularly pleased that the proposed rule evidences agreement with its suggestion, in its comments on the ANPR, that the SEC and FERC models not be slavishly followed. This is clearly evidenced by the statement that, while the 10b-5 rules will serve as a model, the proposed rule, “does not regulate supply decisions”.

In sum, PMAA believes that the proposed rule fulfills the Commission’s intention to, “prohibit manipulative and deceptive conduct without discouraging pro-competitive or otherwise desirable market practices.”

Specific Comments on the Proposed Rule

Section 317.1 – Scope

PMAA agrees with the Commission’s positions concerning the scope of the rule. In particular, the Commission’s position on pipelines, the futures market, and rack sales seem appropriate and in line with PMAA’s prior comments.

Section 317.3(a) – Device, scheme, or artifice to defend

The revisions to Section 317.3 are also appropriate. The clarification of the fraud requirements and the explicit scienter standard improve upon what was already a well-crafted rule. The combinations of the former 317.3(c), with the prohibition on false statements from previous Section 317.3(b), gives additional clarity to the prohibitions on fraudulent or deceptive comments, and are an improvement of the wording in the NPRM. The proposed rule is made more effective due to the scienter standard being made more explicit.

Conclusion

In sum, PMAA once again supports the Commission's efforts in this matter.

Respectfully submitted,

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