



Guide to Complying with Petroleum Market Manipulation Regulations

Federal Trade Commission

Guide to Complying with Petroleum Market Manipulation Regulations

The Federal Trade Commission (FTC) staff prepared this guide to help you comply with the anti-fraud provisions of the Energy Independence and Security Act of 2007 (EISA) and the FTC's Petroleum Market Manipulation Rule.

Section 811 of EISA authorized the FTC to issue regulations to prohibit manipulative or deceptive conduct in wholesale petroleum markets. The FTC's Petroleum Market Manipulation Rule prohibits you from engaging in fraudulent or deceptive conduct (including making false or misleading statements of material fact) in connection with wholesale purchases or sales of crude oil, gasoline, or petroleum distillates. The Rule separately bans your intentional failure to state a material fact when the omission (1) makes your statement misleading and (2) distorts or is likely to distort market conditions for any product covered by the Rule.

Section 812 of EISA makes it unlawful for you to report false or misleading information related to the wholesale price of crude oil, gasoline, or petroleum distillates to a federal department or agency if (1) you are legally required to report the information, (2) you knew, or reasonably should have known, that the information was false or misleading, and (3) you intended for the false or misleading information to affect the integrity of the data compiled by the department or agency for statistical or analytical purposes with respect to the market for crude oil, gasoline, or petroleum distillates.

Note on Section 5 of the FTC Act:

Nothing in connection with this Rule should be construed to alter standards associated with establishing that an act or practice is deceptive or unfair in violation of Section 5 of the FTC Act. EISA and this Rule are additional measures and apply to certain conduct within or in connection with wholesale petroleum markets.

EISA and the Petroleum Market Manipulation Rule do not apply to retail sales of gasoline, diesel, or fuel oil, nor do they set wholesale prices for the covered products.

This guide summarizes the Rule, answers commonly-asked questions, and contains a copy of the Rule and relevant portions of EISA to help your business comply.

Penalties for Violating the Petroleum Market Manipulation Regulations

The FTC can sue violators of EISA or the Rule in federal court. The court can impose civil penalties of up to \$1 million a day for each violation, in addition to other remedies available under the Federal Trade Commission Act, such as an order to stop the illegal conduct. In assessing any civil penalty, the court shall take into account factors such as the seriousness of the violation and the efforts of the violator to remedy any harm in a timely manner.

The Rule Prohibits Fraudulent or Deceptive Conduct

Section 317.3(a) of the Rule prohibits knowingly engaging in acts, practices, or courses of business – including making false or misleading statements of material fact – that defraud or deceive any person. Section 317.3(b) of the Rule prohibits intentionally omitting a material fact when the omission makes a statement misleading and distorts or is likely to distort market conditions for any covered product.

Under Section 317.3(a) of the Rule:

You may not knowingly engage in any act, practice, or course of business – including the making of any untrue statement of material fact – that operates or would operate as a fraud or deceit upon any person.

Under Section 317.3(b) of the Rule:

You may not intentionally fail to state a material fact that under the circumstances renders a statement you have made misleading, if the omission distorts or is likely to distort market conditions for any covered product.

Examples of Conduct Prohibited By the FTC's Rule:

- False or misleading public announcements of planned pricing or output decisions
- False or misleading statements to federal, state, or local governments about current inventory or refinery operating status
- False or misleading representations about the price or volumes of past transactions to a private price reporting service
- Fraudulent or deceptive transactions designed to disguise the actual liquidity or price of a particular asset or market for that asset
- Intentionally omitting material information from a report, such as the operational status of a refinery, terminal, or pipeline, that makes the report false or misleading
- Intentionally omitting material information about refinery production from statements to mislead others during an emergency

The two Rule sections set forth different standards for the intent you must have had when you acted. For violations of section 317.3(a), which covers overt fraud and deception such as outright lying, it is sufficient that you *knew* that your conduct was fraudulent or deceptive, or that you *must have known* that your conduct would create a serious risk of defrauding or deceiving another market participant. As a result, you will violate the Rule if you act with extreme recklessness and, in so doing, create a serious risk that your conduct would be fraudulent or deceptive. The Commission may rely on direct or circumstantial evidence to determine if you knew or must have known that your conduct created such a risk. By contrast, a violation of section 317.3(b) requires proof that you intended to defraud or deceive any person and that you intended to omit a material fact with the intent to make your statement misleading. Mistakenly transmitting false or misleading information to a price reporting service would not be sufficient to violate either section of the Rule.

In addition, violations of section 317.3(b) require proof that the misleading omission distorts or is likely to distort market conditions for a covered product. Therefore, this section prohibits only those misleading omissions of material information that are likely to make market information less reliable.

Section 317.3(b) of the Rule applies if you voluntarily provide information – or are compelled to provide information by statute, order, or regulation – but intentionally fail to disclose a material fact that makes the disclosed information misleading. The Rule does not relieve you of any other legal obligation to disclose information.

The Rule does not prohibit mistakes, unintended conduct, or legitimate conduct undertaken in the ordinary course of business. The Rule is not intended to disrupt the flow of truthful information or to discourage good faith estimates. Uncompleted acts also do not trigger the Rule. For example, preparing false or misleading data for a reporting service but not actually transmitting it does not violate the Rule.

The Commission does not intend to second-guess legitimate supply and operational decisions, nor does it intend to set output or prices for covered products. The Rule does, however, prohibit false or misleading statements about supply, operational actions, output, or prices for covered products.

Note on bilateral negotiations:

The Commission generally does not intend to reach negotiations between two parties when there is no broader dissemination of false or misleading information. Fraudulent or deceptive conduct in private contract disputes – such as claims that a contract was entered into under false pretenses or that a party had a pre-existing legal duty to provide information to a counterparty – is more appropriately treated under state law.

No New Conduct or Recordkeeping Requirements

The Rule does not require any new affirmative acts. Specifically, the Rule does not create a duty to supply product, to provide access to pipelines or terminals, or to update or correct information. The Rule also does not require you to disclose any price, volume, or other data to market participants, or to the market at large. In addition, the Rule does not require you to create, retain, or submit any information. As a result, the Rule does not impose any new recordkeeping requirements.

Who Must Comply

Any person – including, but not limited to, any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity – currently subject to the Federal Trade Commission Act must comply with the Rule.

Although the FTC Act applies broadly, it does not apply, or applies only in part, to certain entities. These include:

- Banks, federal savings and loans, and federal credit unions; and
- Common carriers – such as railroads and pipelines, long-distance telephone companies, and airlines – when they are engaging in common carrier activity.

Indirect Involvement in Fraud May Trigger the Rule

The Rule prohibits direct and indirect fraudulent or deceptive conduct. As a result, the Rule prevents you from engaging in fraudulent or deceptive conduct, whether alone or through others. For example, if you are trading in a covered product, you cannot avoid liability under the Rule for preparing a fraudulent or deceptive report by having someone else file it.

Questions & Answers

Q: I am required to submit reports to a government agency. What if I make a mistake in the information that I provide?

A: Neither the Rule nor Section 812 of EISA prohibits mistakes, and there is no liability under either the Rule or Section 812 for good faith estimates.

Q: I operate an oil pipeline company that is regulated by the Federal Energy Regulatory Commission as an interstate common carrier. Is my company's conduct covered by the Rule?

A: Possibly. Certain pipeline companies or their activities may fall outside the coverage of the FTC Act to the extent that they are acting as "common carriers." However, some pipeline companies and their owners or affiliates are involved in many aspects of the petroleum industry. If your company, or its owners or affiliates, engage in conduct in connection with the purchase or sale of covered products, you may be subject to the Rule.

Covered Petroleum Products

- Crude oil existing (1) in liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities, or (2) as shale oil or tar sands requiring further processing for sale as a refinery feedstock
- Finished gasoline (including conventional, reformulated, and oxygenated blends)
- Conventional and reformulated gasoline blendstock for oxygenate blending
- Jet fuels (including commercial and military specification jet fuels)
- Diesel fuels and fuel oils (including No. 1, No. 2, and No. 4)

Other products are covered by the Rule if there is a sufficient nexus between the fraudulent or deceptive conduct involving those products and a covered petroleum product. For instance, renewable fuels and blending components are integral to the overall supply of finished motor fuels. Thus, manipulating purchases or sales of these products can affect transactions for a covered product and may violate the Rule.

Products Not Covered

- Natural gas and other non-crude refinery feedstocks
- Heavy fuel oils
- Commodity inputs, such as corn and sugar, whose predominant use is in non-petroleum products

Questions & Answers

Q: An ethanol producer has a surplus of product. The producer falsely announces a shut-down of its plant to create a perception of a product shortage. Does this violate the Rule?

A: Possibly. The Rule prohibits fraudulent conduct if it has a sufficient nexus with a covered product. Ethanol is an important blending component for gasoline, and manipulation of ethanol prices may affect wholesale gasoline transactions.

Q: I own a gas station, and I pay a negotiated price based on the rack price for gasoline, which I then sell at my stations. How does the Rule apply to my business?

A: The Rule applies to rack sales, including negotiated purchases by wholesale customers like your company. The Rule does not apply to your retail gasoline sales at the pump.

Q: Our airline buys jet fuel from several different suppliers, and the fuel is delivered by the suppliers directly to our airplanes at the airport. Are these sales covered even though the jet fuel will not be resold?

A: Yes. Bulk purchases or sales of jet fuel are covered by the Rule, even if the fuel is not resold.

The Rule Applies to Wholesale Transactions

The Rule applies to fraudulent or deceptive conduct in connection with the purchase or sale of crude oil or jet fuel at any level of trade. The Rule also applies to the purchase or sale of gasoline or petroleum distillates (other than jet fuel) at the terminal rack level and upstream of the terminal rack level.

The Rule does not apply to retail sales of gasoline, diesel fuel, or fuel oil to consumers.

The Rule also Applies to Conduct “in connection with” Wholesale Transactions for Covered Products

The Rule applies to fraudulent or deceptive conduct “in connection with” wholesale transactions for covered products, including conduct that directly or indirectly affects a transaction for a covered product – that is, the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale. The Rule prohibits fraudulent or deceptive action whenever there is a sufficient nexus between the action and the purchase or sale of a covered product.

The Commission will interpret this phrase broadly to give full effect to the Rule.

Questions & Answers

Q: Our employees collect data on petroleum markets from public sources for internal forecasting and other reports. This information is valuable to our company, and we rely on it to make business decisions. Are we required to share this information with a counter-party in a bilateral negotiation if we believe it would change the counter-party’s business decisions?

A: No. Although such information may be material, the Rule does not require you to disclose such information – even if another company values that information or would have acted differently if it had such information.

Q: Does the Rule prohibit misleading omissions that are made in the context of negotiating with a counter-party over the terms of a spot transaction for gasoline?

A: Probably not. Misleading statements made during bilateral negotiations are unlikely to affect the integrity of the market because they are typically not widely disseminated. However, under some circumstances, such as in a thinly-traded market where a trade takes place and is reported, the reported market price more likely reflects that trade, so that the misleading information affects market prices. In such circumstances, making intentionally misleading statements (by omitting a material fact) violates section 317.3(b) of the Rule because such statements may distort, or be likely to distort, market conditions for a covered product.

A Material Fact Significantly Alters the Total Mix of Information Available to Market Participants

A fact is “material” if a reasonable market participant would consider the fact important in making a decision to buy or sell a covered product. It is not enough simply to show that a particular statement is false or incomplete if the misrepresented fact is otherwise insignificant in purchase and sale decisions for covered products.

Generally, establishing that any *particular person* would have found omitted information interesting – or would have made a different choice if additional information had been known – will not be sufficient to prove a Rule violation. A Rule violation requires that a *reasonable market participant* would find the

omitted information material and the omitted information is needed to make contemporaneous statements not misleading.

The Rule also does not entitle market participants to all information relating to a market transaction. A material omission is not misleading if a market participant could not reasonably expect to have the omitted information. For example, in bilateral negotiations, a reasonable market participant is not entitled to the market intelligence gathered by the other party in the negotiation.

Note on supply or inventory level information:

Market participants pay close attention to changes in supply or inventory. False or misleading announcements about supply or inventory by refiners are especially likely to affect transactions for covered products and are likely to be material.

Intentional Omissions of Material Facts To Make Statements Misleading Must Distort or Be Likely to Distort Market Conditions for Covered Products (the “Market Impact” Requirement of Section 317.3(b))

Section 317.3(b) of the Rule only prohibits intentional omissions of material fact from statements that distort or are likely to distort market conditions for covered products. Therefore, this section prohibits only those misleading omissions of material information that are likely to make market information less reliable. The Rule does not prohibit material omissions made during routine business activity unless the omission undermines the integrity of information disseminated into the broader marketplace for a covered product. Establishing a violation of section 317.3(b) does not require proof of a price or any other specific effect for any covered product.

Questions & Answers

Q: A refiner falsely announces that it is planning to shut down a refinery for maintenance to benefit from an increase in the near term futures contract price of gasoline. The refiner does not actually intend to take its refinery off-line for maintenance. Does such an action violate the Rule?

A: Yes. This action violates the Rule because the refiner has lied about shutting down its refinery for maintenance. Although the false announcement may directly affect futures markets prices, the false reporting would be considered “in connection with” transactions for a covered product because higher futures prices may induce firms to hold inventory rather than selling it.

Q: Is there a safe harbor that exempts futures markets activity from the Rule?

A: No. The jurisdiction of the FTC and the Commodity Futures Trading Commission (CFTC) may be overlapping or complementary for persons involved in the buying or selling of futures contracts that affect wholesale purchases or sales of covered products. When investigating fraudulent or deceptive conduct in petroleum futures markets, the FTC will work cooperatively with the CFTC to avoid duplicative or inconsistent enforcement.

Examples

Scenario 1

XYZ Price Service collects information on refined products transactions and uses that information to calculate and publish a market price. Traders regularly use the published price as the basis for trades of refined products. XYZ procedures, which are well known throughout the industry, require traders not to report transactions below a specified volume – or to identify transactions below the specified volume – to limit the impact of small volume transactions on the reported price.

(a) ABC engages in a trade that falls below XYZ's specified minimum volume. ABC reports the trade but inadvertently fails to identify it as below the specified minimum volume.

No violation. The Rule does not apply to inadvertent conduct or mere mistakes.

(b) ABC intentionally reports the below-minimum trade and does not disclose that it is below the specified minimum volume in order to influence the reported price.

This intentional report, although literally accurate as to price, is misleading because by submitting the report, ABC implied that the volume traded met XYZ's minimum reported trade. ABC's actions violate section 317.3(b) of the Rule if (1) the omitted information is material; (2) the omission was intended to make the report misleading; and (3) the misleading omission distorted or is likely to distort market conditions for a covered product.

Scenario 2

Refinery Co. anticipates a four-week turnaround for its refinery, and it makes spot purchases to build up its inventories in anticipation of the shutdown. Refinery Co. publicly announces that it anticipates an outage of four weeks, and that it will be able to continue to sell adequate supplies while performing the turnaround work. The turnaround lasts six weeks, and Refinery Co.'s output is reduced. Consequently, Refinery Co. needs to make additional market buys, which result in local price spikes.

If Refinery Co.'s announcement was based on a good faith estimate, the announcement would not violate the Rule. There is no liability if the good faith estimate later turns out to be incorrect.

What to do if you suspect Wholesale Petroleum Market Manipulation

Information about possible illegal activity helps law enforcement officials target would-be violators. If you have information regarding actions that may violate the Rule or Section 812 of EISA, send that information to mmr@ftc.gov. *Please note that email is not secure, so if you have confidential information, do not send it by email; instead, please mark it “Confidential,” and send it by regular mail to:*

Office of Policy and Coordination
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room 383
Washington, DC 20580

Other agencies also have authority to prohibit price or market manipulation, including the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, and the Securities and Exchange Commission. You may wish to contact those agencies for further information about their market manipulation authority.

Joint Conduct by Competitors that Affects Market Prices for Covered Products May Violate the Antitrust Laws

The antitrust laws generally prohibit agreements among competitors that raise, lower, or stabilize prices or other competitive terms of trade. When buyers make choices about what products to buy, they should expect that the prices for those products have been determined freely on the basis of supply and demand, rather than by an illegal agreement among competitors. The antitrust laws prohibit collective conduct such as price fixing, bid rigging, and market division or customer allocation.

If you have information regarding anticompetitive joint conduct by competitors that affects market prices or other terms of trade, please contact the FTC at antitrust@ftc.gov. *Please note that email is not secure, so if you have confidential information, do not send it by email; instead, please mark it “Confidential,” and send it by regular mail to the above address.*



ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

TITLE VIII IMPROVED MANAGEMENT OF ENERGY POLICY

Subtitle B – Prohibitions on Market Manipulation and False Information (42 U.S.C. 17301–17305)

Sec. 811. Prohibition on Market Manipulation.

It is unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Federal Trade Commission may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.

Sec. 812. Prohibition on False Information.

It is unlawful for any person to report information related to the wholesale price of crude oil gasoline or petroleum distillates to a Federal department or agency if–

- (1) the person knew, or reasonably should have known, the information to be false or misleading;
- (2) the information was required by law to be reported; and
- (3) the person intended the false or misleading data to affect data compiled by the department or agency for statistical or analytical purposes with respect to the market for crude oil, gasoline, or petroleum distillates.

Sec. 813. Enforcement by The Federal Trade Commission.

- (a) Enforcement. – This subtitle shall be enforced by the Federal Trade Commission in the same manner, by the same means, and with the same jurisdiction as though all applicable terms of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subtitle.

(b) Violation Is Treated as Unfair or Deceptive Act or Practice. – The violation of any provision of this subtitle shall be treated as an unfair or deceptive act or practice proscribed under a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

Sec. 814. Penalties.

- (a) Civil Penalty. – In addition to any penalty applicable under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), any supplier that violates section 811 or 812 shall be punishable by a civil penalty of not more than \$1,000,000.
- (b) Method. – The penalties provided by subsection (a) shall be obtained in the same manner as civil penalties imposed under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).
- (c) Multiple Offenses; Mitigating Factors. – In assessing the penalty provided by subsection (a) –
- (1) each day of a continuing violation shall be considered a separate violation; and
 - (2) the court shall take into consideration, among other factors –
 - (A) the seriousness of the violation; and
 - (B) the efforts of the person committing the violation to remedy the harm caused by the violation in a timely manner.

Sec. 815. Effect on Other Laws.

- (a) Other Authority of the Commission. – Nothing in this subtitle limits or affects the authority of the Federal Trade Commission to bring an enforcement action or take any other measure under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any other provision of law.
- (b) Antitrust Law. – Nothing in this subtitle shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of this subsection, the term “antitrust laws” shall have the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12), except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.
- (c) State Law. – Nothing in this subtitle preempts any State law.

16 CFR Part 317 – Prohibition of Energy Market Manipulation Rule

Sec.

- 317.1 Scope.
- 317.2 Definitions.
- 317.3 Prohibited practices.
- 317.4 Preemption.
- 317.5 Severability.

AUTHORITY: 42 U.S.C. 17301–17305; 15 U.S.C. 41–58.

§ 317.1 Scope.

This part implements Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (“EISA”), Pub. L. 110–140, 121 Stat. 1723 (December 19, 2007), *codified at* 42 U.S.C. 17301–17305. This rule applies to any person over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§ 317.2 Definitions.

The following definitions shall apply throughout this Rule:

- (a) **Crude oil** means any mixture of hydrocarbons that exists: (1) in liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities; or (2) as shale oil or tar sands requiring further processing for sale as a refinery feedstock.
- (b) **Gasoline** means: (1) finished gasoline, including, but not limited to, conventional, reformulated, and oxygenated blends; and (2) conventional and reformulated gasoline blendstock for oxygenate blending.
- (c) **Knowingly** means that the person knew or must have known that his or her conduct was fraudulent or deceptive.
- (d) **Person** means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- (e) **Petroleum distillates** means: (1) jet fuels, including, but not limited to, all commercial and military specification jet fuels; and (2) diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.

- (f) **Wholesale** means: (1) all purchases or sales of crude oil or jet fuel; and (2) all purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack or upstream of the terminal rack level.

§ 317.3 Prohibited practices.

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

- (a) Knowingly engage in any act, practice, or course of business – including the making of any untrue statement of material fact – that operates or would operate as a fraud or deceit upon any person; or
- (b) Intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or is likely to distort market conditions for any such product.

§ 317.4 Preemption.

The Federal Trade Commission does not intend, through the promulgation of this Rule, to preempt the laws of any state or local government, except to the extent that any such law conflicts with this Rule. A law is not in conflict with this Rule if it affords equal or greater protection from the prohibited practices set forth in § 317.3.

§ 317.5 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.



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