



June 20, 2008

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex G)  
600 Pennsylvania Avenue, N.W.  
Washington, D. C. 20580

RE: Market Manipulation Rulemaking PO82900

Dear Sirs:

Enclosed are comments from the Tennessee Oil Marketers Association in regard to the Advance Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation and False Information in Subtitle B of the 2007 Energy Independence and Security Act, promulgated in 16 CFR Part 317.

We request that these comments be considered and placed in the record in regard to this rulemaking.

Sincerely,

Marylee A. Booth  
Executive Director

Enclosure

## COMMENTS FROM THE TENNESSEE OIL MARKETERS ASSOCIATION

### MARKET MANIPULATION RULEMAKING, PO82900

I am writing on behalf of the members of the Tennessee Oil Marketers Association (TOMA), where I serve as Executive Director. TOMA is a trade association representing 115 independent petroleum marketer companies and the 3,000+ convenience stores and retail outlets they either own and operate or supply. These comments are provided for the Advance Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation and False Information in Subtitle B of Title VIII of the Energy Independence and Security Act of 2007, promulgated at 16 CFR Part 317.

The major oil companies sell gasoline from terminals to which gasoline is usually delivered via pipeline. Our members pick up the gasoline from the truck rack at these terminals. Ethanol cannot be delivered through a pipeline and must be delivered by truck or rail from an ethanol plant or other terminal source. Our members buy their gasoline from numerous terminals at the best price on any given day. Then, they buy ethanol at the best price they can find from an independent ethanol producer, splash blend the ethanol with the pure gasoline, then sell it to a retailer or wholesaler for sale to the public. The percentage of ethanol added to the pure gasoline is usually ten percent which is known as E-10. Both our marketer members and independent ethanol producers have invested thousands of dollars into producing, delivering, and supplying E-10 based on legislative requirements to sell alternative fuels.

The major oil companies have traditionally supplied pure unblended gasoline in various grades. They have been slow to offer alternative fuels such as E-10, boasting at their stations "No Ethanol." However, many of these companies are now announcing that they will only sell pre-blended gasoline that already contains ethanol. Our members and other wholesalers and retailers will no longer have the ability to shop around for gasoline and ethanol separately in order to take advantage of lower ethanol prices on the open market, which we believe results in the lowest blended gasoline price for consumers.

The consequences of the major oil companies' actions will impact wholesalers and retailers, independent ethanol producers, and ultimately, consumers. If unblended gasoline is not available, independent marketers will have no choice but to buy blended product at the terminal, and will not have the ability to blend gasoline and ethanol at the best price to offer to their customers. Again, marketers, retailers and ethanol producers have invested a lot of money to offer E-10 at competitive prices to benefit consumers.

The Advance Notice of Proposed Rulemaking asks for comments in regard to the way in which the Federal Trade Commission should carry out its rulemaking responsibilities under Sections 811 of Subtitle B of Title VIII of the 2007 Energy Independence and Security Act. The following comments are meant to illustrate those areas which we believe the FTC should take into consideration. These comments refer to specific sections.

III.A. *Securities Laws.* The Securities Exchange Act of 1934 and SEC Rule 10b-5 define "manipulative device or contrivance" as "employ(ing) any device, scheme, or artifice to defraud." In our opinion, the major oil companies employ such a device when they limit, and therefore, control, the market for unblended gasoline and ethanol. They defraud consumers by controlling and artificially affecting the price of blended gasoline.

III.D. *Sherman Act, Clayton Act, and the FTC Act.* Withholding supply of unblended gasoline should be considered a manipulation of the market, and therefore, prohibited. In the *United States v. Saucony-Vacuum Oil Co., Inc.* describes two buying programs. These buying programs “resulted in an increase of....market prices....and of retail prices.” We submit that the major oil companies actions to stop supplying pure unblended gasoline and to supply only blended product will have the same result.

IV. *Defining Market Manipulation.* The proposed definition defines market manipulation to mean “knowingly using or employing, directly or indirectly, a manipulative or deception device or contrivance in connection with the purchase or sale of crude oil, gasoline or petroleum distillates at wholesale for the purpose or with the effect of increasing the market price thereof relative to costs.” If the major oil companies will no longer sell unblended gasoline and do not post the cost of the components of blended gasoline, they will be able to increase the market price of gasoline without regard to the cost. This can certainly be construed as “market manipulation” in our view.

F. *In the Public Interest.* The Advance Notice of Proposed Rulemaking asks commenters to discuss whether consumer protection principles should be added in the Section 811 rule. We believe they should. If major oil companies are able to sell only blended gasoline without regard to its cost, the price will be set without regard to market forces or costs, and independent marketers will not be able to negotiate for the lowest price ethanol for blending. As higher wholesale prices are passed down the line to consumers, consumers will have to pay higher prices that result of the wholesale cost of blended gasoline being artificially set at the terminal without regard to the cost of its components.

Sincerely,

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Marylee A. Booth, Executive Director  
Tennessee Oil Marketers Association