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BEFORE THE FEDERAL TRADE COMMISSION OF THE UNITED STATES

In The Matter Of:)	
)	
Prohibitions On Market Manipulation And)	
False Information In Subtitle B Of The Title VII)	RIN 3084 AB12
Of Energy Independence And Security Act of 2007)	
)	
)	

COMMENTS OF THE PETROLEUM MARKETERS ASSOCIATION OF AMERICA

These comments are being submitted pursuant to a request for comments published, 73 F.R. 161 at 48317. They are being submitted on behalf of the Petroleum Marketers Association of America (PMAA). The PMAA is a federation of 46 state and regional trade associations representing over 8,000 independent petroleum marketing companies distributing and retailing 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 Proposal Rulemaking (“ANPR”) filed last May, 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 the ANPR. 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 and/or heating oil 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 proposal that the rule cover deceptive and fraudulent practices from the refinery gate to the terminal rack, as well as the Commission's

assertion that the rule could indeed cover petroleum related activities of banks and not-for-profit organizations.

Section 317.2 – Definitions

The definitions of “crude oil”, “gasoline”, “person” and “petroleum distillates” all seem appropriate. In particular, PMAA agrees with the Commission’s statement that “manipulation of ethanol may be covered under the proposed Rule, where changes in ethanol prices directly or indirectly affect wholesale gasoline prices.” Similarly, PMAA is in agreement with the Commission’s definition of “wholesale”: “purchases or sales at the terminal rack level or upstream of the terminal rack level.” No one is more directly affected by manipulation or at the level of fraud than the thousands of PMAA members whose trucks load at these terminal racks tens of thousand times each day.

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

This definition, when combined with the discussion of the “necessary elements” (see below) is appropriate. Particularly important is the scienter requirement.

Section 317.3(b) – False material facts and omissions of material fact

Hereto, care has been taken in borrowing relevant established precedent. Particularly important is the discussion of reporting false or misleading information to government agencies or third-party reporting services and to the public, through corporate announcements.

Elements of Proof Under the Rule

The proposed rule allows regulated entities to understand both its intent and how it will be applied, by the clear elucidation of the elements of proof.

“The Commission has determined that it would not likely act except in cases where an entity: (1) uses a fraudulent device, scheme or artifice, or make a

material misrepresentation or a material omission, or engages in any act, practice, or course of business that operate or would operate as a fraud or deceit upon any entity; (2) with scienter; and (3) in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale.”

These elements and the more in-depth discussion of them (73 F.R. 161 at 48328-48330) provide the needed clarity.

Conclusion

In sum, PMAA agrees with the proposal and compliments the Commission on its comprehensive and careful craftsmanship.

Respectfully submitted,

Petroleum Marketers Association of America