Illinois Petroleum Marketers Association
Illinois Association of Convenience Stores
WM. R. DEUTSCH BUILDING • 112 WEST COOK STREET
P.O. BOX 12020 • SPRINGFIELD, ILLINOIS 62791-2020
PHONE: 217/544-4609 • FAX: 217/789-0222

WILLIAM J. FLEISCHLI
EXECUTIVE VICE PRESIDENT

FEDERAL TRADE COMMISSION
RECEIVED DOCUMENTS
JUN 20 2008
PO82900

June 19, 2008

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

Re: Market Manipulation Rulemaking, PO82900

Dear Federal Trade Commission:

I am enclosing comments of the Illinois Petroleum Marketers Association on the Advance Notice of Proposed Rulemaking on the Prohibitions on Market Manipulation and False Information in Subtitle B of the Energy Independence and Security Act of 2007, promulgated in 16 CFR Part 317.

Thank you.

Sincerely yours,

William J. Fleischli
Executive Vice President

Illinois Petroleum Marketers Association
Illinois Association of Convenience Stores
WM. R. DEUTSCH BUILDING • 112 WEST COOK STREET
P.O. BOX 12020 • SPRINGFIELD, ILLINOIS 62791-2020
PHONE: 217/544-4609 • FAX: 217/789-0222

WILLIAM J. FLEISCHLI
EXECUTIVE VICE PRESIDENT

COMMENTS BY THE ILLINOIS PETROLEUM MARKETERS ASSOCIATION

June 19, 2008

Re: Market Manipulation Rulemaking, P082900

I am Executive Vice President of the Illinois Petroleum Marketers Association (IPMA), a trade association made up of 500 independent petroleum marketers and convenience store operators in Illinois. On behalf of my members, I provide the following comments on 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.

Overview. These comments are prompted by a situation which is occurring here in Illinois and in numerous States across the country. By way of background, the oil companies sell gasoline at truck rack terminals. The majority of gasoline is transported to these terminals by pipeline. Ethanol, a primary gasoline additive cannot be transported by pipeline. It must be delivered by truck or rail car from an ethanol plant or other terminal source. IPMA members operate independent gas stations and convenience stores in Illinois and buy their gasoline from numerous terminals at the best price on any given day. Historically, gasoline has been pure, unblended gasoline free of ethanol. If it is necessary or desirable to add ethanol or other oxygenate to the gasoline because of environmental rules or for added octane or other reasons, IPMA members have traditionally found ethanol at the best price from an independent ethanol producer. They would then inject the ethanol into the pure gasoline and sell it to a retailer or wholesaler for ultimate sale to the public. The percentage of ethanol added is typically 10% which is commonly known as E10.

Many major oil companies have recently announced that they would no longer sell pure, unblended gasoline at the terminal rack but would only sell pre-blended gasoline that already contains the ethanol. This removes independent marketers' ability to purchase gasoline and ethanol separately to produce their own gasoline/ethanol blends and take advantage of lower ethanol prices available on the open market. We believe that this results in the lowest blended gasoline price when sold to the consumer.

Effect on Marketplace. A number of consequences will flow from this limitation that will have an impact on the wholesale and retail price of gasoline. Independent ethanol producers and wholesalers around the country have been selling ethanol to both oil companies and independent marketers. Their customer base may be as large as 1000 customers per supplier. Should oil companies eliminate the availability of unblended gasoline, the ethanol suppliers' customer base will go from perhaps 1000 to less than 10. The smaller the customer base, the greater the likelihood that the purchaser will control the price through market dominance. If the oil companies eliminate the independent marketers' ability to do their own blending and control the market, they will control prices and distribution. Prior to this action by the oil companies, independent marketers could buy unblended gasoline from one source and ethanol from another source at the best price available and sell the blended fuel for the lowest possible value in the market. If unblended gasoline is unavailable, independent marketers will have no choice but to purchase blended gasoline at the terminal and no longer have the ability to blend gasoline and ethanol at the best price. As a result, it is our opinion that the consumer will suffer.

Comments on Advance Notice of Proposed Rulemaking. The Advance Notice of Proposed Rulemaking invites comment on the manner in which the Federal Trade Commission (FTC) should carry out its rulemaking responsibilities under Sections 811 of Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (EISA). The following comments are intended to illustrate those areas which we believe the FTC should take into consideration when it prepares and promulgates its forthcoming Notice of Proposed Rulemaking. The comments refer to specific sections of the ANPR.

III.A. The 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." We submit that the oil companies will employ such a manipulative device or contrivance when they limit, and therefore control, the market for unblended gasoline and ethanol. They will defraud consumers by "controlling and artificially affecting the price of [blended gasoline]. *Ernst & Ernst v. Hochfelder, 425 U.S. 185, 197 (1976).*

III.D. The Sherman Act, the Clayton Act, and the Federal Trade Commission Act. The *United States v. Saucony-Vacuum Oil Co., Inc.,* discussed in this section of the ANPR describes two buying programs. These buying programs "resulted in an increase of . . . market prices . . . and of retail prices." *Id. at 251.* It constituted a "form of manipulation." *Id. at 223.* Withholding supply of unblended gasoline should also be considered a manipulation of the market and prohibited.

IV. Particular Questions for Commenters. A. Defining Market Manipulation. The proposed definition defines market manipulation to "mean knowingly using or employing, directly or indirectly, a manipulative or deceptive 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." [emphasis added] If the oil companies 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. Such action should be regarded as a "market manipulation."

C. Effect on Market. We agree that the focus of the Section 811 rule should be on practices that intentionally, willfully, or recklessly cause distortions in the wholesale market such as artificially raising prices without regard to cost.

F. In the Public Interest or For the Protection of United States Citizens. The ANPR encourages commenters to discuss whether consumer protection principles should be incorporated into the Section 811 rule. We believe that they should. If the oil companies are able to sell only blended gasoline without regard to its cost, a number of consequences will follow. The price will be set without regard to market forces or cost, and independent marketers will no longer be able to find the lowest priced ethanol to be blended. As a consequence, as higher wholesale prices are passed down the line to consumers, they will be required to pay higher prices that are a result of the wholesale cost of blended gasoline being artificially set at the terminal without regard to the cost of its components.

I. Potential Practices. We request that our comments above be considered as comments on this Subsection of the ANPR.

Sincerely yours,

William J. Fleischli

Executive Vice President