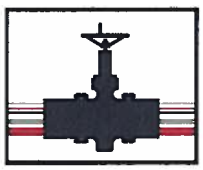

PLAINS
ALL AMERICAN
PIPELINE, L.P.

October 17, 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, P082900

Dear Sir or Madam:

This letter is submitted on behalf of Plains All American Pipeline, L.P. ("Plains") in response to the Notice of Proposed Rulemaking (the "NOPR") issued by the Federal Trade Commission ("Commission") regarding Prohibitions on Market Manipulation and False Information in Subtitle B of the Title VIII of the Energy Independence and Security Act of 2007 ("EISA"), 73 Fed. Reg. 48,317 (August 19, 2008). Plains is a publicly traded master limited partnership engaged in the transportation, storage, terminalling and marketing of crude oil, refined products and liquefied petroleum gas and other natural gas related petroleum products through its primary operating subsidiaries, Plains Marketing, L.P. and Plains Pipeline, L.P. Plains Marketing, L.P. is a non-regulated storage and terminalling company, primarily engaged in the storage of crude oil and certain refined products. Plains Pipeline, L.P., is a regulated pipeline entity, primarily engaged in the transport of crude oil and refined products on lines regulated by the Federal Energy Regulatory Commission ("FERC").

Plains previously submitted a comment letter in response to the Commission's Advance Notice of Proposed Rulemaking, dated June 23, 2008. In that letter, a copy of which is attached, Plains stated that a number of the proposals included in the Advance Notice, particularly those that would have imposed specific affirmative obligations and prohibitions on market participants under the proposed anti-manipulation rule, were inadvisable and would not accomplish the Commission's objectives. We are pleased to note that the Commission has not proposed the adoption of these provisions in the NOPR. However, Plains continues to believe that a number of the proposals reflected in the NOPR should be modified or deleted.

In this regard, Plains has participated in the preparation of, and fully supports, the comments on the NOPR submitted by the American Petroleum Institute ("API"). In particular, we agree with the statement by the API that Congress did not intend to create a private right of action under the EISA. We urge the Commission to make it clear that its proposed rule does not create any private right of action and that the rule may be enforced only by the Commission itself.

We also agree with the contention of the API that the proposed rule does not adequately reflect the significant differences between the securities markets and the markets for crude oil and products, or the distinctions between the regulatory schemes that are appropriate for those markets. As the API notes, the securities laws (and in particular Rule 10b-5, promulgated under the Securities Exchange Act of 1934, as amended) were designed to protect relatively unsophisticated investors in dealing with relatively sophisticated counterparties that typically have fiduciary duties to such investors, and to protect against the misuse of information that is specific to issuers of securities (that is, information that specifically impacts only the security being traded). In contrast, the participants in the crude oil and products markets are generally sophisticated commercial parties dealing with each other at arm's length on the basis of information regarding market-wide production, supply and demand characteristics. The types of protective rules and doctrines that may be appropriate for the securities markets, therefore, cannot simply be applied without modification to the petroleum markets.

Clearly, the large body of law that has developed around Rule 10b-5 cannot be expected to neatly fit into every aspect of a regulation of a market for which Rule 10b-5 was never designed. The mismatch is highlighted in the NOPR's approach to the concept of "scienter". The NOPR states that, while scienter will be a necessary element of a violation of the proposed rule, "recklessness" will satisfy the scienter requirement. The NOPR further states that "recklessness" will be defined for this purpose to have the meaning given to the term under decisions of two Circuit Courts of Appeal construing the scienter requirement under Rule 10b-5. One of those decisions defined "recklessness" to mean "an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." Sundstrand Corp. v. Sun Chemical Corp., 553 F. 2d 1033, 1045 (7th Cir. 1977). The other case defined "recklessness" as conduct "from which it can be reasonably inferred that the violator both acted with an extreme departure from standards of ordinary care and either knew or must have known that its conduct created a danger of misleading buyers or sellers." NOPR, at 48,329, citing, SEC v. Steadman, 967 F. 2d 636 (D.C. Cir. 1992).

In our view, these standards cannot be applied to the markets for crude oil and products which are fundamentally distinct from the securities markets in the nature of the market participants, the relative fungibility of commodities being traded, the types of information on which trading decisions are made and the relationships among participants. SEC Rule 10b-5 is premised, in pertinent part, on the fact that market participants may have material non-public information regarding issuers of securities that is not available to other participants, and that parties trading while in possession of such information may breach duties to their counterparties or third parties. In contrast, the crude oil and related markets operate on the basis of information regarding such factors as supply, demand, production and geopolitical considerations that are either publicly available or specific to the participants themselves. There is no analogue to the securities market concept of information about an unaffiliated issuer that is both non-public and material. Of course, one market participant might obtain information about a third party's facilities or production capabilities that could conceivably have an effect on the market. However, unlike the circumstances in the securities markets, market participants are not trading

in instruments that relate solely and specifically to that third party, but rather in the same crude oil and products that are traded by a vast global market. Any such information, therefore, is much less likely to be material.

Moreover, typical crude oil market participants, both buyers and sellers, are overwhelmingly commercial and institutional entities with substantial sophistication, experience and expertise in the markets, and with access to the same available information. Under such circumstances, there is no presumption that one market participant owes any duties to its counterparties that would require disclosure of any information, unless such duties arise out of specific circumstances. For these reasons, the standards established in the Circuit Court cases cited in the NOPR have no applicability to the crude oil markets. The "standards of ordinary care" that exist between a securities broker and its customer, or between other buyers and sellers of securities, have no meaning in, and cannot be made applicable to, the very different context and relationships that pertain in the crude oil markets. Of course, deliberately misleading conduct or breach of a duty that is created by course of conduct or contract will and should be actionable under the proposed rule. However, given the distinctions between the securities markets and the crude oil markets, a recklessness standard is inapplicable, will be ineffective in preventing or prosecuting actual fraud and will lead only to uncertainty and confusion as to the type of conduct that is prohibited.

Further, we recommend that the Commission make it clear that conduct will be actionable under the proposed rule only if it has a manipulative effect on the relevant market. As currently drafted, the NOPR states that a violation of the proposed rule may be found even if there is no effect on the market, resulting in potential liability for conduct that causes no harm. Given the general nature of the proposed rule and the uncertainties that will exist with respect to its scope and applicability, the imposition of liability without any finding of an effect on the market or third parties will restrict legitimate market activity and will be inappropriate and counterproductive. Moreover, when coupled with a "recklessness" standard, such a rule could render unlawful an unintentional act with no consequences. Clearly, this goes far beyond Congressional intent as reflected in EISA. We therefore urge the Commission to revise the NOPR in this respect.

In sum, while we support many of the changes to the Advance Notice of Proposed Rulemaking that are now reflected in the NOPR , we believe that additional modifications are necessary in order to make the proposed rule workable and consistent with the operations of the markets for crude oil and products. Plains appreciates the opportunity to comment on the NOPR. We would of course be pleased to provide any additional assistance in this process that the Commission might request.

Sincerely,

Plains All American Pipeline, L.P.

By PAA GP LLC, its General Partner

By: _____

Tim Moore
Vice President