



[Billing Code: 6750-01P]

FEDERAL TRADE COMMISSION

16 CFR Part 317

Prohibition of Energy Market Manipulation Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) seeks public comment on the overall costs, benefits, and regulatory and economic impact of its rule prohibiting fraud or deceit in wholesale petroleum markets, and omissions of material information that are likely to distort petroleum markets, as part of the Commission’s systematic review of all current FTC rules and guides.

DATES: Comments must be received on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section. Write “Energy Market Manipulation Rule, 16 CFR part 317, Project No. P082900” on your comment, and file your comment online through

<https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following

address: Federal Trade Commission, Office of the Secretary, Constitution Center,
400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Peter Richman (202-326-2563),
Assistant Director, Mergers III, Bureau of Competition, Federal Trade Commission,
600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Prohibition of Energy Market Manipulation Rule (“Energy Market Manipulation Rule” or “Rule”), authorized by the Energy Independence and Security Act of 2007 (“EISA”) (42 U.S.C. 17301-17305), prohibits market manipulation in connection with the purchase or sale of crude oil or petroleum products. The Rule, initially promulgated by the Commission on November 4, 2009, prohibits 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 the intentional failure to state a material fact when the omission (1) makes the statement misleading and (2) distorts or is likely to distort market conditions for any product covered by the Rule. The Commission formally adopted the Rule on November 4, 2009.

II. Regulatory Review Program

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews

assist the Commission in identifying rules and guides that warrant modification or rescission.

With this document, the Commission initiates its review of the Energy Market Manipulation Rule. The Commission solicits comments on, among other things, the economic impact of, and the continuing need for, the Rule, the Rule's benefits to consumers, and the burdens it places on industry members subject to the Rule's requirements, including small businesses.

III. Issues for Comments

To aid commenters in submitting information, the Commission has prepared the following specific questions related to the Energy Market Manipulation Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. In their replies, commenters should provide any available evidence and data that supports their positions, such as empirical data, consumer perception studies, and consumer complaints.

(1) *Need*: Is there a continuing need for the Rule? Why or why not?

(2) *Benefits and Costs to Consumers*: What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumers?

(3) *Benefits and Costs to Industry Members*: What benefits, if any, has the Rule provided to businesses, and does the Rule impose any significant costs, including costs of compliance, on businesses, including small businesses?

(4) *Changes*:

- a. What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?
- b. Is there evidence of acts or practices in connection with the purchase or sale of wholesale petroleum that violate the antitrust or consumer protection laws and that fall within the statutory prohibition of “any manipulative or deceptive device or contrivance,” but which § 317.3 does not reach?
- c. The Rule defines “knowingly” to mean “that the person knew or must have known that his or her conduct was fraudulent or deceptive.” 16 CFR § 317.2(c).
 - i. Has this definition prevented the Commission’s Rule from addressing behavior that is within the meaning of 42 U.S.C. 17301?
 - ii. Specifically, would changing the definition of knowingly to capture acts, practices, or courses of business that a person “knew or *should* have known” was fraudulent or deceptive, or changing the definition in some other manner that tracks the statutory language, enhance the Commission’s ability to address behavior in wholesale petroleum markets that is within the meaning of 42

U.S.C. 17301? Commenters should address any costs and benefits to wholesale petroleum markets and industry participants from modifying the definition.

(5) *Impact on Information*: What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(6) *Compliance*: Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(7) *Unnecessary Provisions*: Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

(8) *Technological or Economic Changes*: What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(9) *Conflicts with Other Requirements*: Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

IX. Comment Submissions

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 90 DAYS AFTER DATE OF

PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Energy Market Manipulation Rule, 16 CFR part 317, Project No. P082900)” on your comment. Because of the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay.

We strongly encourage you to submit your comment online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form provided by [regulations.gov](https://www.regulations.gov). Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

If you file your comment on paper, write “Energy Market Manipulation Rule, 16 CFR part 317, Project No. P082900” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at www.regulations.gov, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification

number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at <https://www.regulations.gov> – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the

collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020-10988 Filed: 6/4/2020 8:45 am; Publication Date: 6/5/2020]