FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

THE CHAIRMAN

May 2, 2008

The Honorable Patrick Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for the letter of April 30, 2008, from you, Senator Sanders, and Representative Welch about the Federal Trade Commission's new authority, under Section 811 of the Energy Independence and Security Act of 2007, regarding manipulation in wholesale crude oil, gasoline, or petroleum distillate markets. Today, the Commission will make public an Advance Notice of Proposed Rulemaking (ANPR), and our goal is to complete the Rulemaking process this year.

Our staff has worked hard to move as speedily as possible. To date, an FTC task force has examined the development and use of anti-manipulation authority by other federal agencies, as well as by the states; met with other government officials (including the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, and the Securities and Exchange Commission); and undertaken other tasks, both substantive and administrative, in connection with this legislation. The ANPR announces a comment period of 30 days, following which the agency expects expeditiously to analyze the comments received, draft a proposed rule, and issue a Notice of Proposed Rulemaking (NPR), with a 30-day comment period. We appreciate your efforts to combat high and volatile gasoline prices, and we will keep you apprised of significant developments throughout the Rulemaking process.

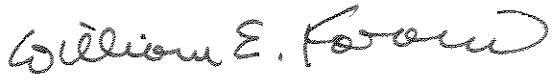
The learning that will accompany the ANPR/NPR process is crucial. The Commission has not previously sought to develop a legal definition of the term "manipulation" or prosecuted a case alleging manipulation. Moreover, there are challenges involved in appropriately applying this broad concept to markets that, unlike electricity or natural gas, are not subject to comprehensive regulatory, disclosure, or reporting regimes. The pursuit of a case alleging manipulation in wholesale markets for crude oil, gasoline, or distillates may encounter other complexities arising from the differences between such products and the other markets in which manipulation cases have been brought, but we hope to overcome those challenges as we avail ourselves of the methods and opportunities contemplated by the ANPR/NPR procedures. Specifically, we believe that there is no better way to generate meaningful comments that will assist in our development of a workable rule for the benefit of the American public.

You also inquired about the sufficiency of the FTC's newly granted authority to challenge manipulation in wholesale crude oil, gasoline, or petroleum distillate markets, and

about referrals of possible criminal conduct to the Department of Justice. If the Commission determines at any point during the rulemaking process that expanded authority is desirable, we will promptly notify the appropriate Committees of Congress and will work with those bodies to secure it. Once the FTC promulgates a rule, any subsequent referrals to the Department of Justice for possible criminal action would be non-public information. Any previous referrals to the Department of Justice are similarly confidential.

Enclosed please find a copy of the ANPR which we expect to be published in the Federal Register on Monday, May 5, 2008. The Commission greatly appreciates your interest in this topic. Please feel free to contact me at any time with any additional questions or comments, or have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195.

Sincerely,



William E. Kovacic
Chairman

Enclosure