Before the
Commodity Futures Trading Commission
Washington, D.C.

Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations; Proposed Rule	)	17 CFR Parts 1, 20 and 151

Comments of the
United States Department of Transportation

Introduction

In this proceeding the Commodity Futures Trading Commission ("CFTC" or "Commission") has proposed to impose speculative position limits on futures and options contracts in certain energy commodities, while continuing to allow *bona fide* hedging transactions. 75 Fed.Reg. 4144 (January 26, 2010).

Transportation consumes over 25 percent of the energy used in this country, almost all of it in the form of petroleum products. Fuel is one of the largest costs, and sometimes the largest cost, of common carriers by air, rail, and motor vehicle. Thus, price volatility and higher costs are a matter of serious concern to the transportation industry. To the extent the causes of such activity are unrelated to supply and demand, as has been alleged in this proceeding, they distort the marketplace and impede the efficient provision of transportation services, and the United States Department of Transportation ("DOT" or "Department") urges the Commission to identify and take effective action against these causes.

Discussion

The Commission notes that Congress has found extreme or abrupt price fluctuations due to unchecked speculative positions to be harmful, and has accordingly charged the agency with

responsibility for limiting these positions. 75 Fed.Reg. at 4148. Similarly, Congress has directed the Department to develop policies and programs "that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost" consistent with national objectives, including "the efficient use and conservation" of the country's resources. 49 U.S.C. §101(a). The missions of both agencies thus intersect in this proceeding.

The Department has no exposure to commodity futures, markets, or other matters within the jurisdiction of the Commission. Consequently, DOT expresses no view on the merits of the legal issues arising in this proceeding or on the relative value or efficacy of the details of the regulatory options under consideration. But we are very familiar with the transportation sector and its use of petroleum-based fuels; moreover, we have information about the price of these fuels over time that is germane to this proceeding. DOT offers its perspective and these data in order to inform the record and to aid in the CFTC's decisionmaking.

As noted, transportation for decades has consumed more than 25 percent of all the energy used in the United States, and almost all of that has been in the form of petroleum products. [1] Consumption of petroleum-based fuels by the transportation industry dwarfs that of all other sectors of the economy combined -- 13 to 14 million barrels per day versus five to six million barrels per day. [2] Hence, petroleum prices and price volatility affect transportation, and particularly transportation common carriers, disproportionately. The fact that carriers cannot as a

---

[1]/ DOT's Bureau of Transportation Statistics ("BTS") collects, analyzes, and reports data relevant to transportation, including National Transportation Statistics ("NTS"). The publication is available at: http://www.bts.gov/publications/national_transportation_statistics/. *See* NTS,Table 4-2, addressing energy and petroleum consumption. The Department of Energy's Energy Information Administration produces an Annual Energy Review ("AER") of, among other things, energy consumption. *See also* 2008 AER, Tables 2.1a and 2.1e.

[2]/ *See* the 2008 AER Tables 5.13a through 5.13d and Figures 5.13a, 5.13b. These data are available on the EIA website at http://www.eia.doe.gov/emeu/aer/petro.html.

practical matter turn to substitute fuels only magnifies the impact. The Department can confirm the dramatically greater price volatility and higher prices for petroleum products faced by the transportation industry in recent years.

The pattern is the same regardless of the specific type of product in question. For the jet fuel used by air carriers, the diesel used by rail and motor carriers, and the gasoline used by motor vehicles, prices were comparatively stable from the early1980s until the 2003 – 2004 time frame. [3] More specifically, in the 22 years between 1981 through 2002, there were only six instances of price increases or decreases of more than 10 percent from the prior year for gasoline. *Id.* During much the same period for jet fuel and diesel (which closely track each other) there were six instances of price increases or decreases of more than 20 percent over the prior year. [4] By contrast, in five of the six years between 2003 through 2008 there were price increases (and no decreases) of more than 10 percent over the previous year for gasoline, and four instances of price increases (and no decreases) of more than 20 percent for diesel and jet fuel. *Id.*

These fluctuations have not only become more frequent, but often more pronounced as well. For gasoline, between 1981 and 2002 the largest upward price swings within a 12 month period were 39 percent (November 1990 over December 1989) and 52 percent (March 2000 over March 1999) and the largest downward movements were 31 percent (November 1986 over December 1985) and 34 percent (May 2001 over December 2001). Since 2003 major price upswings have become more common: increases of 59 percent (September 2005 over January

[3]/ AER, Tables 5.23 and 5.24; NTS, Table 3-8; also BTS' Key Transportation Indicators, February 2010 for prices of domestic airline jet fuel, railroad fuel, and retail diesel and gasoline (available at: http://www.bts.gov/publications/key_transportation_indicators/february_2010/index.html).

[4]/ Price variations for diesel tend to be greater than for gasoline because the price of diesel has historically been lower.

2005), 46 percent (July 2008 over September 2007), and 56 percent (October 2009 over December 2008). The magnitude of price decreases has not been as great other than the collapse of prices in 2008: 25 percent (December 2005 over September 2005), 25 percent (November 2006 over July 2006), and 58 percent (December 2008 over July 2008). *Id.* For diesel and jet fuel between 1981 and 2002 the largest upward price swings were 87 percent (October 1990 over June 1990) and 117 percent (February 2000 over February 1999); between 2003 and 2008 they were 79 percent (February 2003 over February 2002), 75 percent (October 2005 over December 2004), and 80 percent (June 2008 over June 2007). *Id.* The largest within year price decreases between 1981 and 2002 were 57 percent (July 1986 over December 1985) and 43 percent (June 1991 over October 1990), while since 2003 they have been 24 percent (January 2007 over August 2006) and 67 percent (March 2009 over July 2008). *Id.*

Although the Department does not have the expertise to identify the cause(s) of this recent activity, information submitted to the CFTC on which this proceeding is based suggests that "excessive speculation" in energy and oil futures may be responsible in part. 75 Fed.Reg. at 4148 and note 46. DOT anticipates that additional evidence will be forthcoming. If the Commission determines that increased speculative investing has indeed produced higher and more volatile prices for petroleum-based fuels, the Department would support position limits or other remedial measures to prevent this activity. We would not expect *bona fide* hedging to induce fluctuations of this magnitude.

Conclusion

The transportation industry has suffered disproportionately from recent high prices and high price volatility in petroleum-based fuels. Transportation efficiency and resource conservation both militate in favor of identifying and eliminating the cause(s) of this harm.

Respectfully submitted,

ROBERT S. RIVKIN
General Counsel

April 26, 2010