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**Sent:** Monday, April 26, 2010 5:01 PM  
**To:** secretary <secretary@CFTC.gov>  
**Cc:** Barnette, James <jbarnette@steptoe.com>  
**Subject:** CFTC Comments  
**Attach:** CFTC.DOC.pdf

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April 26, 2010

*VIA EMAIL TO SECRETARY@CFTC.GOV*

Mr. David Stawick  
Secretary  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

Re: Proposed Speculative Position Limits for  
Referenced Energy Contracts and Associated Regulations

Dear Mr. Stawick:

Please find below the comments of the National Association of Convenience Stores (“NACS”) and the Society of Independent Gasoline Marketers of America (“SIGMA”) regarding the Commodity Futures Trading Commission’s (“CFTC’s” of the “Commission’s”) proposed rulemaking entitled “Proposed Speculative Position Limits for Referenced Energy Contracts and Associated Regulations.” 75 Fed. Reg. 4,144 (Jan. 26, 2010) (the “Proposed Rule”).

NACS is an international trade association representing more than 2,200 retail and 1,800 supplier company members. NACS member companies do business in nearly 50 countries worldwide, with the majority of members based in the United States. The U.S. convenience store industry, with approximately 145,000 stores across the United States, accounts for over \$625 billion in total sales and roughly \$450 billion in motor fuels sales alone every year.

SIGMA represents approximately 270 independent chain retailers and marketers of motor fuel. SIGMA members represent significant diversity within the industry. While 92 percent are involved in gasoline retailing, 66 percent are involved in wholesaling, 36 percent transport product, 25 percent have bulk plant operations, and 15 percent operate terminals. Member retail outlets come in many forms including travel plazas, traditional “gas stations,” convenience stores with gas pumps, cardlocks, and unattended public fueling locations. Some members sell gasoline over the Internet, many are involved in fleet cards, and a few are leaders in the mobile refueling movement.

Together, NACS and SIGMA members account for approximately 80 percent of the country’s retail motor fuel sales. Any effort by the CFTC or other governmental entities to regulate the fuels marketplace, therefore, will obviously directly or indirectly affect fuel marketers and retailers.

#### NACS and SIGMA Comments

It is unlikely that NACS or SIGMA members will be directly regulated by the Proposed Rule. The indirect effects of any regulation of the marketplace in energy commodities, particularly crude oil and gasoline, are of enormous significance to us. In any regulation it puts forward, NACS and SIGMA urge that the Commission carefully consider three factors: competition/transparency, the marketplace, and supply.

Competition/Transparency. There is no more competitive, transparent market in the United States than in the retail sale of motor fuels. The prices that NACS and SIGMA members charge for their fuel products are available to every potential customer passing by their places of business, 24 hours a day, seven days a week. Studies have

shown that Americans will drive out of their way to save even a penny or two on a gallon of gasoline, keeping competition among retailers brisk not only on adjacent street corners, but in larger geographical areas as well.

Competition through transparency is clearly not in play when the markets see sudden, irrational, and inexplicable price spikes, as we have seen from time to time over the last decade. Crude oil prices at \$140/barrel do not make any sense with stable supplies and the absence of international threats to those supplies. But NACS and SIGMA members, and ultimately their customers, must continue to operate in that atmosphere.

NACS and SIGMA request that, in any final rule governing position limits or ancillary aspects of its work in this area, the Commission ensures that the markets in crude oil and gasoline remain as transparent as possible. In particular, we advocate that all speculative interests in the crude oil and gasoline markets be identified and made transparent. This transparency will allow market participants to gauge the forces driving the market while not impairing or unduly limiting the liquidity that must exist in the markets if they are to fulfill their historic role of permitting commercial entities to hedge the risk of holding, or not holding, physical inventory. A more transparent market will help such commercial entities make competitive decisions that, ultimately, will benefit the American public.

Motor Fuels Marketplace. Congress has fundamentally changed the motor fuels marketplace with the adoption of the so-called renewable fuels standards in 2005's Energy Policy Act and 2007's Energy Independence and Security Act. Although the

implementation of those standards is not the CFTC's responsibility, the Commission should ensure that its work in the energy markets – even just regulation of a limited number of companies on position limits – will have an effect on a marketplace that itself is undergoing tremendous change, as more and more gasoline is blended with so-called “renewable fuels” for public consumption. NACS and SIGMA therefore request that the Commission be mindful of the downstream marketplace in its decisionmaking. We would be happy to provide the Commission or its staff with more information in this important area.

Supply. The availability of an abundant supply of motor fuels is literally the lifeblood of our industry, and in many respects the American economy. In making its decisions concerning any appropriate level of regulation for the futures markets, the Commission needs to ensure that it does nothing to diminish the free flow of actual, physical products into the market. In other words, we advocate for a system free of manipulation and anti-competitive speculation, but only in a manner that does not choke off or eliminate the transactions necessary to provide us with product supply.

NACS and SIGMA appreciate the opportunity to provide the Commission with their views regarding the Proposed Rule. Please do not hesitate to contact me if we may be of any service to the Commission or its staff.

Sincerely,

A handwritten signature in cursive script, reading "James D. Barnette".

James D. Barnette