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

Position Limits for Derivatives; Proposed Rule	)	17 CFR Parts 1, 150 and 151

Comments of the
United States Department of Transportation

Background

Last year the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed rules to restrict speculation in certain energy commodities, including petroleum derivatives. 75 Fed. Reg. 4144 (Jan. 26, 2010). The Commission noted that it was acting under the aegis of the Commodity Exchange Act of 1936, which gave it "authority to establish limits on positions to diminish, eliminate or prevent excessive speculation causing sudden or unreasonable fluctuations in the price of a commodity, or unwarranted changes in the price of a commodity." *Id.* The United States Department of Transportation ("DOT" or "Department") participated because, as we observed then, the missions of the two agencies coincided in that proceeding. DOT Comments filed April 26, 2010, at 2. [1]

Although without expertise in commodity futures trading and other matters within the CFTC's authority, DOT provided statistical data documenting the increase in fuel prices and price volatility in recent years after decades of relative stability. We also explained how the adverse effect of these activities was multiplied in the transportation sector, particularly for

[1] In sum, Congress has charged the CFTC with preventing extreme or abrupt price fluctuations due to unchecked speculative positions, and such pricing runs counter to DOT's responsibility for promoting safe and efficient transportation. *Id.*

common carriers. *Id.* at 1-2. The Department urged the Commission to identify the causes of such pricing patterns and to take effective actions against them.

The Current NPRM

Shortly after the comment period closed, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 became law. Pub.L. No. 111-203, 124 Stat. 1376 (2010) ("Dodd-Frank Act"). In pertinent part that statute expanded the financial instruments and transactions subject to the CFTC and directed the agency to act with respect to commodity futures, contracts, and swaps to counter adverse speculation and other market manipulations. *See* Dodd-Frank Act sec. 737, 124 Stat. 1723, *codified at* 7 U.S.C. § 6a(a)(3).

The Commission accordingly issued a new notice of proposed rulemaking to implement these provisions of the Dodd-Frank Act. 76 Fed. Reg. 4752 (Jan. 26, 2011) ("NPRM"). The Department submits these comments in support of the CFTC's efforts. Although DOT remains without expertise in the precise financial and legal questions at issue, we participate again to emphasize our concerns over the disproportionate impact on the transportation industry of volatile prices and inordinate price increases for petroleum-based fuels. As documented in the Department's prior filing, that industry does and will continue to consume far more of such fuels than all other sectors of the economy combined. That industry is and will continue to be dependent on such fuels for the foreseeable future. [2] And updated information confirms that that industry continues to face the same excessive fuel price volatility and price increases of recent years.

[2] Despite gains in fuel efficiency and the appearance of alternative fuel vehicles, it is unrealistic to expect these developments to enable large numbers of consumers, much less common carriers, to abandon petroleum-based fuels for many years.

The Department's comments last year traced fuel price trends from the early 1980s through 2008. Relative price stability consistently characterized this period until roughly 2003. From then through 2008, however, a pattern of atypical price volatility and increases emerged. DOT Comments at 3-4. Newly available data confirm the persistence of this phenomenon.

Fuel Price Volatility and Price Increases Continue Unabated

Table 1 below reflects the most recent information available -- through January of this year. It shows that, since 2002, not only have the average prices of petroleum products used in the transportation sector increased greatly, but that volatility (as measured by the percent standard deviation) has nearly doubled.

Table 1. Average Monthly Retail Sales Price and Standard Deviation of Price for Selected Petroleum Products Used in the Transportation Sector, 1982-2002 vs. 2003-2011 [3]

Period	Gasoline			Jet Fuel			#2 Diesel Fuel		
	Avg. Price ($/Gal)	Standard Deviation		Avg. Price ($/Gal)	Standard Deviation		Avg. Price ($/Gal)	Standard Deviation	
		$/Gal	Percent		$/Gal	Percent		$/Gal	Percent
1983-2002	$0.82	$0.14	17%	$0.65	$0.15	23%	$0.66	$0.15	22%
2003-2011	$2.03	$0.59	29%	$1.88	$0.70	37%	$1.70	$0.71	42%

[3] Note: "Retail Sales Price" is defined as monthly average price reported by refiners in sales to end users, from: USDOE/EIA, *Petroleum Marketing Monthly*. Current data from: http://www.eia.doe.gov/dnav/pet/pet_pri_refoth_dcu_nus_m.htm, downloaded March 17, 2011, covering January 1983 through January 2011.

Common carriers have historically tried to "hedge" against changes in the price of fuel. [4] Airlines in particular have done so because they are especially vulnerable, given that fuel comprises such a large portion of their operating costs. Indeed, DOT's Future of Aviation Advisory Committee, which recommended the Department's participation in this proceeding, reports that the portion of a passenger's ticket used to purchase fuel grew from 15% in 2002 to more than 40% in 2008. [5] But increasing volatility directly raises the cost of hedging by affecting the prices of petroleum futures and options.

Beyond greater volatility in general, DOT last year documented relatively spectacular month-to-month moves in petroleum prices from 2004 through 2008. DOT Comments at 3-4. More recent data through January of this year (in Figure 1 below) show that, after a recession-related drop-off, such moves continued.

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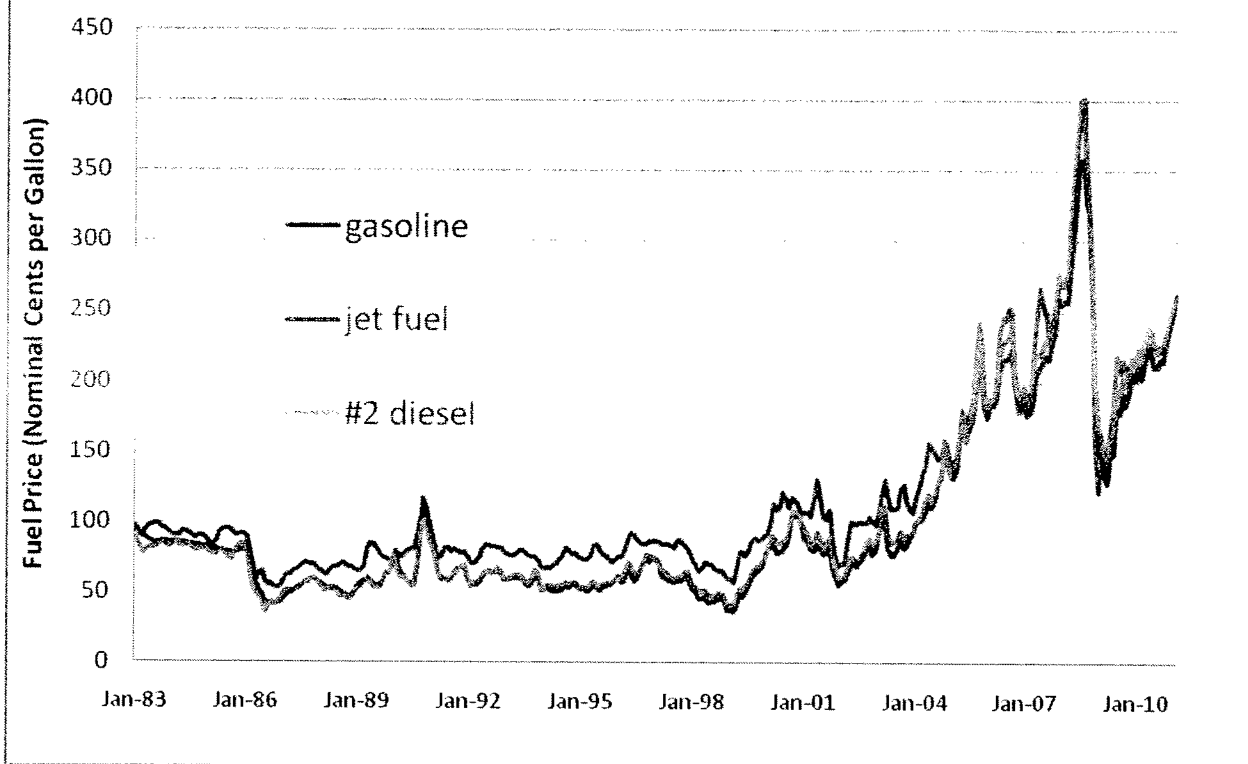
[4] DOT applauds the Commission's renewed proposal to exempt *bona fide* hedging. 76 Fed. Reg. at 4756.

[5] *See* Recommendation #14 at: http://www.dot.gov/faac/FAAC_Recommendations.pdf

Figure 1. Monthly Average Price of Transportation Fuels, 1983-2011



Source: U.S. Department of Energy, Energy Information Administration.

Conclusion

The Dodd-Frank Act requires the Commission to move forward against harmful price increases and price volatility in commodity futures markets. DOT can confirm that such adverse movements continue to beset petroleum-based fuels, and perforce the transportation industry. The Department therefore urges the CFTC to take appropriate remedial action against excessive movements in the price of petroleum-based fuels. While the Commission's rulemaking focuses on position limits consistent with the requirements of the Dodd-Frank Act, there may well be other factors that influence price volatility. In order that it may address other such possibilities, we urge the Commission to also pursue, together with its rulemaking, an active data collection and analytical effort to assess the impacts of position limits as well as other factors affecting price volatility, and whether there are other actions available to reduce volatility.

Respectfully submitted,

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March 28, 2011