

112TH CONGRESS
1ST SESSION

S. 1598

To amend the Commodity Exchange Act to prevent excessive speculation in commodity markets and excessive speculative position limits on energy contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2011

Mr. NELSON of Florida (for himself, Mr. SANDERS, Mr. BLUMENTHAL, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to prevent excessive speculation in commodity markets and excessive speculative position limits on energy contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Excessive Specu-
5 lation Act of 2011”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) as scores of recent academic and govern-
2 mental studies, reports, and analyses have shown,
3 unlimited and excessive speculation in commodity
4 markets causes harm to consumers and commodity-
5 dependent businesses of the United States by con-
6 tributing to unnecessary volatility and unwarranted
7 increases in food and energy prices;

8 (2) for the purpose of diminishing, eliminating,
9 or preventing the burdens imposed on interstate
10 commerce by excessive speculation in commodities,
11 section 4a(a)(1) of the Commodity Exchange Act (7
12 U.S.C. 6a(a)(1)) directs the Commodity Futures
13 Trading Commission to proclaim and fix speculative
14 position limits, as necessary, on the amount of com-
15 modity trading by any person, including any group
16 or class of traders other than bona fide hedgers;

17 (3) pursuant to the standards set forth in sec-
18 tion 4a(a)(1) of the Commodity Exchange Act (7
19 U.S.C. 6a(a)(1)), section 4a(a)(2) of that Act directs
20 the Commodity Futures Trading Commission to es-
21 tablish limits on the positions that may be held by
22 commodity traders, other than bona fide hedge posi-
23 tions, and establishes a specific timetable for imple-
24 mentation of those limits;

1 (4) the rulemaking authority of section 4a of
2 the Commodity Exchange Act (7 U.S.C. 6a) pro-
3 vides the Commodity Futures Trading Commission
4 with ample authority to impose meaningful specula-
5 tive position limits on commodity trading by indi-
6 vidual speculators, as well as position limits on the
7 overall level of speculative trading in the market-
8 place;

9 (5) in recent years, the interpretation of the
10 Commodity Futures Trading Commission of the
11 term “excessive speculation” has focused on the
12 threat that singular, concentrated positions pose to
13 the liquidity and efficient management of commodity
14 trading;

15 (6) the historically narrow emphasis of the
16 Commodity Futures Trading Commission on the
17 burden created by concentrated speculative positions
18 has deterred the Commission from adopting addi-
19 tional measures to ensure that the aggregate level of
20 speculation in the market does not contribute to un-
21 warranted increases in commodity price levels;

22 (7) this Act clarifies that—

23 (A) one of the fundamental objectives of
24 the Commodity Exchange Act (7 U.S.C. 1 et
25 seq.) is to ensure that the commodity markets

1 accurately reflect the fundamental supply and
2 demand for commodities; and

3 (B) the deterrence and prevention of exces-
4 sive speculation is an express purpose of that
5 Act;

6 (8) in order to end decades of legal uncertainty
7 and regulatory ambiguity that has undermined en-
8 forcement efforts, this Act defines the term “exces-
9 sive speculation” and creates legal presumptions
10 that give rise to a determination that excessive spec-
11 ulation is present in a commodity market; and

12 (9) the individual and aggregate position limits
13 set forth in this Act and applicable to energy con-
14 tracts seek to strengthen, and not replace, any limits
15 established by the Commodity Futures Trading
16 Commission under the rulemaking processes of the
17 Commission.

18 **SEC. 3. FINDINGS AND PURPOSE.**

19 Section 3 of the Commodity Exchange Act (7 U.S.C.
20 5) is amended—

21 (1) in subsection (a), by striking “, or” and in-
22 sserting “that accurately reflect the fundamental sup-
23 ply and demand for commodities, and”;

1 (2) in subsection (b), in the second sentence, by
2 inserting “and excessive speculation” after “prevent
3 price manipulation”.

4 **SEC. 4. FOREIGN BOARDS OF TRADE.**

5 Section 4(b)(1)(A)(i) of the Commodity Exchange
6 Act (7 U.S.C. 6(b)(1)(A)(i)) is amended by striking “sub-
7 ject to comparable, comprehensive” and inserting the fol-
8 lowing: “subject to—

9 “(I) rules and restrictions prohib-
10 iting excessive speculation by govern-
11 mental authorities that are com-
12 parable to the law, regulations, and
13 orders applicable to boards of trade in
14 the United States; and

15 “(II) comparable, comprehen-
16 sive”.

17 **SEC. 5. EXCESSIVE SPECULATION.**

18 Section 4a of the Commodity Exchange Act (7 U.S.C.
19 6a) is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (1)—

22 (i) in the first sentence, by striking
23 “Excessive speculation” and inserting the
24 following:

25 “(A) EXCESSIVE SPECULATION.—

1 “(i) IN GENERAL.—Excessive specula-
2 tion”;

3 (ii) by inserting after the first sen-
4 tence the following:

5 “(ii) FACTORS.—Excessive speculation
6 in a commodity market exists if speculative
7 traders have a substantial impact on price
8 discovery.

9 “(iii) PRESUMPTION OF EXCESSIVE
10 SPECULATION.—For purposes of this Act,
11 speculative traders shall be presumed to
12 have a substantial impact on price dis-
13 covery if the Commission determines
14 that—

15 “(I) gross positions, long or
16 short, attributable to speculative trad-
17 ing in a contract for future delivery,
18 an option on such a contract, a swaps
19 contract listed for trading on a des-
20 ignated contract market, or a swaps
21 contract listed for trading on a swaps
22 execution facility exceed the gross po-
23 sitions, long or short, attributable to
24 bona fide hedging transactions traded
25 in such a contract or option; or

1 “(II) the average percentage of
2 open interest, long or short, held by
3 persons primarily engaged in specula-
4 tive trading during the most recent
5 12-month period for which data are
6 available exceeds by more than 10
7 percent the average annual percentage
8 of open interest, long or short, held by
9 persons primarily engaged in specula-
10 tive trading during—

11 “(aa) the preceding 25-year
12 period; or

13 “(bb) if the interest is held
14 by the persons for less than the
15 25-year period, the period during
16 which the contract has been trad-
17 ed on a designated contract mar-
18 ket.”;

19 (iii) in the second sentence, by strik-
20 ing “For the purpose of diminishing, elimi-
21 nating, or preventing such burden” and in-
22 serting the following:

23 “(B) POSITION LIMITS.—

24 “(i) IN GENERAL.—For the purpose
25 of diminishing, eliminating, or preventing

1 the burden on interstate commerce de-
 2 scribed in subparagraph (A)(i)”; and

3 (iv) by designating the third, fourth,
 4 fifth, and sixth sentences (as those sen-
 5 tences existed before the amendments
 6 made by clauses (i) through (iii)) as
 7 clauses (ii), (iii), (iv), and (v), respectively,
 8 of subparagraph (B) (as added by clause
 9 (iii));

10 (B) by redesignating paragraph (7) as
 11 paragraph (8);

12 (C) by inserting after paragraph (6) the
 13 following:

14 “(7) SPECULATIVE POSITION LIMITS ON EN-
 15 ERGY CONTRACTS.—

16 “(A) DEFINITIONS.—In this paragraph:

17 “(i) ENERGY CONTRACT.—The term
 18 ‘energy contract’ means—

19 “(I) a contract referencing the
 20 price of crude oil, gasoline, diesel fuel,
 21 jet fuel, heating oil, or natural gas
 22 and traded on a registered entity;

23 “(II) with respect to an agree-
 24 ment, contract, or transaction that
 25 settles against any price (including

1 the daily or final settlement price) of
2 one or more contracts referencing the
3 price of crude oil, gasoline, diesel fuel,
4 jet fuel, heating oil, or natural gas
5 and listed for trading on a registered
6 entity, a contract traded on a foreign
7 board of trade that provides members
8 or other participants located in the
9 United States with direct access to
10 the electronic trading and order
11 matching system of the foreign board
12 of trade; and

13 “(III) swap contracts referencing
14 the price of crude oil, gasoline, diesel
15 fuel, jet fuel, heating oil, or natural
16 gas that perform or affect a signifi-
17 cant price discovery function with re-
18 spect to regulated entities.

19 “(ii) EXCESSIVE SPECULATIVE POSI-
20 TION.—The term ‘excessive speculative po-
21 sition’ means a position that affects—

22 “(I) in the spot month, more
23 than 5 percent of the estimated deliv-
24 erable supply of the same commodity;
25 and

1 “(II) in a single month or all
2 months combined, more than 5 per-
3 cent of the open interest in a contract.

4 “(B) INDIVIDUAL POSITION LIMITS ON EN-
5 ERGY CONTRACTS.—No person may hold or
6 control an excessive speculative position, long or
7 short, in an energy contract in any single mar-
8 ket described in subclause (I), (II), or (III) of
9 subparagraph (A)(i) and aggregated across all
10 markets described in those subclauses in the
11 spot month, a single month, or all months com-
12 bined.

13 “(C) AGGREGATE SPECULATIVE POSITION
14 LIMITS ON ENERGY CONTRACTS.—

15 “(i) IN GENERAL.—Not later than 45
16 days after the date of enactment of the
17 Anti-Excessive Speculation Act of 2011,
18 the Commission shall issue an order that
19 establishes aggregate speculative position
20 limits for long energy contracts held by
21 speculators as a class of traders in any sin-
22 gle market described in subclause (I), (II),
23 or (III) of subparagraph (A)(i) and in all
24 markets described in those subclauses.

1 “(ii) REQUIREMENTS.—The aggregate
2 speculative position limits shall be estab-
3 lished at levels that are not greater than
4 the average annual percentage of long open
5 interest held by speculators in any single
6 market described in subclause (I), (II), or
7 (III) of subparagraph (A)(i) and in all
8 markets described in those subclauses dur-
9 ing—

10 “(I) the preceding 25-year pe-
11 riod; or

12 “(II) if the interest is held by
13 speculators for less than the 25-year
14 period, the period during which the
15 contract has been traded.

16 “(iii) PROCEDURES.—To the extent
17 necessary, the order shall include transi-
18 tion rules to ensure an orderly and gradual
19 reduction in aggregate speculative posi-
20 tions in a manner that does not mandate
21 or require the unwinding of contracts and
22 agreements existing on the date of enact-
23 ment of the Anti-Excessive Speculation Act
24 of 2011.

1 “(D) EXEMPTION FOR BONA FIDE ENERGY
2 HEDGING TRANSACTIONS.—

3 “(i) DEFINITION OF BONA FIDE EN-
4 ERGY HEDGING.—

5 “(I) IN GENERAL.—In this sub-
6 paragraph, the term ‘bona fide energy
7 hedging’ means a transaction or posi-
8 tion that is proportionate and eco-
9 nomically appropriate for the reduc-
10 tion of risks in the conduct and man-
11 agement of a trade or business that
12 produces, processes, merchandises,
13 manufactures, or consumes an energy
14 commodity.

15 “(II) EXCLUSION.—For purposes
16 of this paragraph, the management of
17 financial risk associated with swaps or
18 other similar contracts, by itself, shall
19 not constitute bona fide energy hedg-
20 ing.

21 “(ii) EXCLUSION.—For purposes of
22 this paragraph, bona fide energy hedging
23 shall be excluded when computing the posi-
24 tions held or controlled by a person.

1 “(E) ANTI-ABUSE REGULATORY AUTHOR-
2 ITY.—The Commission shall issue such rules,
3 regulations, or orders as are necessary—

4 “(i) to prevent persons from circum-
5 venting or evading the speculative position
6 limits established under this paragraph; or

7 “(ii) to carry out the purpose of lim-
8 iting excessive speculation in energy mar-
9 kets.”; and

10 (D) in paragraph (8) (as redesignated by
11 subparagraph (B)), by striking “The Commis-
12 sion” and inserting “Except as provided in
13 paragraph (7), the Commission”.

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