

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.

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## 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

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## 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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