

110TH CONGRESS  
2D SESSION

# S. 3183

To amend the Commodity Exchange Act to provide oil and gas price relief by requiring the Commodity Futures Trading Commission to take action to end excessive speculation, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 2008

Mr. DORGAN (for himself, Mr. NELSON of Florida, and Mr. CARPER) 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 provide oil and gas price relief by requiring the Commodity Futures Trading Commission to take action to end excessive speculation, 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 “End Oil Speculation  
5 Act of 2008”.

6 **SEC. 2. FINDINGS.**

7       Congress finds that—

1                             (1) skyrocketing energy prices in oil and gas  
2                             are damaging families of the United States, as well  
3                             as the economy, foreign policy, and national security  
4                             of the United States;

5                             (2) while there are a number of reasons for in-  
6                             creasing energy costs, a large part of the problem  
7                             appears to be from excessive speculation in petro-  
8                             leum in the futures markets;

9                             (3) oil and gas prices result from the prices es-  
10                             tablished in the petroleum futures markets;

11                             (4) in the early 20th century, speculators were  
12                             trading commodities to make money at the expense  
13                             of farmers and families of the United States;

14                             (5) Congress stopped that action by enacting  
15                             the Commodities Exchange Act (7 U.S.C. 1 et seq.),  
16                             which was reinforced later when Congress estab-  
17                             lished the Commodity Futures Trading Commission  
18                             (referred to in this section as the “Commission”),  
19                             both of which were designed to ensure that the fu-  
20                             tures markets worked free of fraud, manipulation,  
21                             and excessive speculation;

22                             (6) the Commission accomplished this (directly  
23                             or through delegated authority) primarily by promul-  
24                             gating rules and regulations that required the disclo-

1       sure of trading information and that limited speculative  
2       trading;

3                 (7) Congress made it clear in the Commodities  
4       Exchange Act and in the establishment of the Com-  
5       mission that the petroleum futures markets exist for  
6       legitimate hedging of actual, physical commercial  
7       products that are bought and sold today, but are to  
8       be delivered in the future;

9                 (8) for a long time after enactment and en-  
10     forcement of that Act (including rules and regula-  
11      tions), the prices generated in the petroleum futures  
12      markets were based largely on fundamental factors  
13      relating to supply and demand for oil and gas in the  
14      United States and world markets;

15                 (9) those prices no longer appear to be based  
16      on those factors, as excessive speculation appears to  
17      have, once again, hijacked the petroleum futures  
18      markets and sent oil and gas prices soaring;

19                 (10) some experts have concluded that as much  
20      as 30 to 50 percent of the recent increase in the  
21      price of oil may be due to manipulation or excessive  
22      speculation in the petroleum futures markets;

23                 (11) some experts have estimated that as much  
24      as 70 percent of the trading in the petroleum fu-  
25      tures markets is by speculators rather than commer-

1       cial parties seeking to hedge the risk of the future  
2       delivery of an actual physical product and their  
3       counterparties;

4                 (12) the excessive speculation appears to have  
5       resulted, in part, from a variety of actions by the  
6       Commission (including the issuance of exemptions,  
7       exclusions, and no action letters), technology  
8       changes, and threats by market participants to take  
9       their business outside the regulated United States  
10      markets to overseas unregulated markets in which  
11      the participants may not have to disclose their trad-  
12      ing activities and will be subject to less regulation  
13      designed to protect markets and consumers;

14                 (13) the petroleum futures markets must be re-  
15      stored to their original intent and purpose, which is  
16      legitimate hedge trading directly involving commer-  
17      cial parties and in which manipulation and excessive  
18      speculation are eliminated;

19                 (14) the Commission is the primary regulator  
20      of the petroleum futures markets and has ample ex-  
21      isting investigative and regulatory authority to end  
22      manipulation and excessive speculation and to do so  
23      quickly;

24                 (15) Congress acknowledges that the Commis-  
25      sion announced on May 29, 2008, that the Commis-

1 sion was conducting a broad and far-reaching invest-  
2 igation into the national and international crude  
3 markets (including into oil trading on regulated and  
4 unregulated exchanges, over the counter trading,  
5 cash trades, and storage, pipeline operations, ship-  
6 ping, and transportation generally) to determine if  
7 there was or is any improper manipulation or exces-  
8 sive speculation; and

9 (16) the announced investigation by the Com-  
10 mission is a good start, but it is only a start and  
11 much more needs to be done quickly.

12 **SEC. 3. ELIMINATION OF MANIPULATION AND EXCESSIVE**  
13 **SPECULATION AS CAUSE OF HIGH OIL AND**  
14 **GAS PRICES.**

15 Section 4a of the Commodity Exchange Act (7 U.S.C.  
16 6a) is amended by adding at the end the following:

17 “(f) ELIMINATION OF MANIPULATION AND EXCES-  
18 SIVE SPECULATION AS CAUSE OF HIGH OIL AND GAS  
19 PRICES.—

20 “(1) DUTY OF COMMISSION.—

21 “(A) IN GENERAL.—In accordance with  
22 subparagraph (B), the Commission shall use  
23 the authority provided under this Act to restore  
24 the petroleum futures markets to the original  
25 purpose and intent of the markets by elimi-

1 nating manipulation and excessive speculation  
2 by investigation, regulation, and rulemaking.

3 “(B) CONSIDERATION OF FINDINGS.—In  
4 carrying out subparagraph (A), the Commission  
5 shall take into account each finding described  
6 in section 2 of the End Oil Speculation Act of  
7 2008 (including paragraphs 2, 4 through 7, and  
8 10 through 14 of section 2 of that Act).

9 “(2) LEGITIMATE HEDGE TRADING.—

10 “(A) IN GENERAL.—In carrying out this  
11 Act, the Commission shall distinguish be-  
12 tween—

13 “(i) trading involving transactions by  
14 commercial producers and purchasers in-  
15 volving actual physical petroleum products  
16 for future delivery (referred to in this sub-  
17 section as ‘legitimate hedge trading’); and  
18 “(ii) all other trading;

19 “(B) INCLUSION.—For purposes of this  
20 subsection, legitimate hedge trading shall in-  
21 clude counterparties to a transaction by com-  
22 mercial producers and purchasers involving ac-  
23 tual physical petroleum products for future de-  
24 livery regardless of whether the counterparties

1           are commercial producers or purchasers of the  
2           physical products.

3           “(3) TYPE OF TRADING.—Notwithstanding any  
4           other provision of this Act, the Commission shall  
5           modify (or delegate any appropriate entity to mod-  
6           ify) such definitions, classifications, and data collec-  
7           tion under this Act as is necessary to ensure that all  
8           direct and indirect parties and counterparties to all  
9           trades in the petroleum futures market are dis-  
10          tinctly, clearly, and correctly identified for all pur-  
11          poses as engaging in—

12           “(A) legitimate hedge trading; or  
13           “(B) any other type of trading.

14           “(4) ELIMINATION OF EXCESSIVE SPECULA-  
15          TION.—

16           “(A) IN GENERAL.—Notwithstanding any  
17           other provision of this Act, the Commission  
18           shall review all regulations, rules, exemptions,  
19           exclusions, guidance, no action letters, orders,  
20           and other actions taken by or on behalf of the  
21           Commission (including any action or inaction  
22           taken pursuant to delegated authority by an ex-  
23           change, self-regulatory organization, or any  
24           other entity) regarding all petroleum futures  
25           market participants or market activity (referred

1 to in this subsection individually as a ‘prior ac-  
2 tion’) to ensure that only legitimate hedge trad-  
3 ing occurs and that excessive speculation is  
4 eliminated.

5 “(B) PRIOR ACTION.—

6 “(i) IN GENERAL.—The Commission  
7 shall revoke or modify the application after  
8 the date of enactment of this subsection of  
9 any prior action taken by the Commission  
10 (including any prior action taken pursuant  
11 to delegated authority by any other entity)  
12 with respect to any trade on any market,  
13 exchange, foreign board of trade, swap or  
14 swap transaction, index or index market  
15 participant or trade, hedge fund, pension  
16 fund, and any other transaction, trade,  
17 trader, or petroleum futures market activ-  
18 ity that is not a legitimate hedge trade.

19 “(ii) REVOCATION.—In carrying out  
20 this subparagraph, the Commission shall  
21 consider revoking the results of each prior  
22 action that, in whole or in part, has the di-  
23 rect or indirect affect of limiting, reducing,  
24 or eliminating—

1                         “(I) the full applicability of posi-  
2                         tion limits on any trading that is not  
3                         legitimate hedge trading; or

4                         “(II) the filing of any report or  
5                         data regarding any direct or indirect  
6                         trade or trader, including the filing of  
7                         large trader reports.

8                         “(C) DIFFERENT RULES OR REGULA-  
9                         TIONS.—

10                         “(i) IN GENERAL.—The Commission  
11                         shall apply different rules and regulations  
12                         to legitimate hedge trading and any other  
13                         transactions, trades, traders, or petroleum  
14                         futures market activity in a manner that  
15                         accomplishes the purposes of this sub-  
16                         section.

17                         “(ii) MARGIN REQUIREMENTS.—In  
18                         carrying out this subparagraph, the Com-  
19                         mission shall modify the purpose of margin  
20                         requirements from credit protection only to  
21                         include discouraging excessive speculation  
22                         by setting margin requirements of at least  
23                         25 percent for any trading that is not le-  
24                         gitimate hedge trading.

1                 “(5) REGULATION.—Notwithstanding any other  
2 provision of law (including regulations), the Commis-  
3 sion shall subject, to the maximum extent prac-  
4 ticable, any person engaging, directly or indirectly,  
5 in a petroleum futures market trade, transaction, or  
6 other petroleum futures market activity in any loca-  
7 tion to regulation by the Commission unless and  
8 until the trade or transaction occurs in a market or  
9 exchange that has regulations that are substantially  
10 identical to the regulations of the Commission and  
11 that are fully and effectively enforced in each such  
12 market or on each such exchange.

13                 “(6) DISCLOSURE TO COMMISSION.—Notwith-  
14 standing any other provision of law (including regu-  
15 lations), the Commission shall ensure, to the max-  
16 imum extent practicable, that the activity of each  
17 participant in the petroleum futures markets, and all  
18 trades, trading, traders, and direct and indirect par-  
19 ties to the trades, trading, and traders, are fully,  
20 clearly, and accurately disclosed to the Commission  
21 so that the Commission and Congress can effectively  
22 regulate and monitor all such activity.

23                 “(7) WORKING GROUP OF INTERNATIONAL REG-  
24 ULATORS.—The Commission shall convene a work-  
25 ing group of international regulators to develop uni-

1 form international reporting and regulatory stand-  
2 ards to ensure the protection of the petroleum fu-  
3 tures markets from excessive speculation, manipula-  
4 tion, location shopping, and lowest common denomina-  
5 tor regulation, which pose systemic risks to all pe-  
6 troleum futures markets, countries, and consumers.

7       “(8) REPORTS.—

8           “(A) IN GENERAL.—The Commission shall  
9 submit to Congress—

10              “(i) not later than 60 days after the  
11 date of enactment of this subsection, a re-  
12 port that describes in detail the actions the  
13 Commission has taken, is taking, and in-  
14 tends to take to carry out this subsection,  
15 including any recommended legislative  
16 changes that are necessary to carry out  
17 this subsection; and

18              “(ii) every 45 days thereafter, an up-  
19 date of the report required under clause  
20 (i).

21           “(B) ADDITIONAL EMPLOYEES OR RE-  
22 SOURCES.—Not later than 60 days after the  
23 date of enactment of this subsection, the Com-  
24 mission shall submit to Congress a report that  
25 describes the number of additional employees

1           and resources that the Commission determines  
2           are necessary to carry out this subsection (in-  
3           cluding the specific duty of each additional em-  
4           ployee).

5           **“(9) EXPEDITED PROCEDURES.—**

6           “(A) IN GENERAL.—Subject to subparagraph  
7           (B), the Commission shall use emergency  
8           and expedited procedures to carry out this sub-  
9           section.

10          “(B) REPORT.—If the Commission decides  
11         not to use the procedures described in subparagraph  
12         (A) in a specific instance, not later than  
13         30 days after the date of the decision, the Com-  
14         mission shall submit to Congress a detailed re-  
15         port that describes in each instance the reasons  
16         for not using the procedures.”.

17 **SEC. 4. EFFECTIVE DATE.**

18          (a) IN GENERAL.—This Act and the amendments  
19         made by this Act take effect on June 24, 2008.

20          (b) APPLICATION.—Section 4a(f) of the Commodity  
21         Exchange Act (7 U.S.C. 6a(f)) (as amended by section  
22         3) applies to any action taken by the Commodity Futures  
23         Trading Commission or any person or entity on or after  
24         June 24, 2008.

1           (c) IMPLEMENTATION.—The Commodity Futures  
2 Trading Commission shall implement section 4a(f) of the  
3 Commodity Exchange Act (7 U.S.C. 6a(f)) (as amended  
4 by section 3) not later than December 31, 2008.

