

# Calendar No. 882

110TH CONGRESS  
2D SESSION

# S. 3268

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy commodities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 15, 2008

Mr. REID (for himself, Mr. DURBIN, Mr. DORGAN, Mrs. MURRAY, Mr. SCHUMER, Mr. CASEY, Ms. MIKULSKI, Mr. CARPER, and Ms. KLOBUCHAR) introduced the following bill; which was ordered read the first time

JULY 16, 2008

Read the second time and placed on the Calendar

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## A BILL

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy commodities, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Stop Excessive Energy Speculation Act of 2008”.

- Sec. 2. Definition of energy commodity.
- Sec. 3. Speculative limits and transparency of off-shore trading.
- Sec. 4. Authority of Commodity Futures Trading Commission with respect to certain traders.
- Sec. 5. Working group of international regulators.
- Sec. 6. Elimination of manipulation and excessive speculation as cause of high oil, gas, and energy prices.
- Sec. 7. Large over-the-counter transactions.
- Sec. 8. Index traders and swap dealers.
- Sec. 9. Disaggregation of index funds and other data in energy markets.
- Sec. 10. Additional Commodity Futures Trading Commission employees for improved enforcement.
- Sec. 11. Working Group on Energy Markets.
- Sec. 12. Study of regulatory framework for energy markets.
- Sec. 13. Collection and analysis of information on energy commodities.
- Sec. 14. National natural gas market investigation.
- Sec. 15. Studies; reports.
- Sec. 16. Expedited procedures.

**1 SEC. 2. DEFINITION OF ENERGY COMMODITY.**

2 (a) DEFINITION OF ENERGY COMMODITY.—Section  
 3 1a of the Commodity Exchange Act (7 U.S.C. 1a) is  
 4 amended—

5 (1) by redesignating paragraphs (13) through  
 6 (34) as paragraphs (14) through (35), respectively;  
 7 and

8 (2) by inserting after paragraph (12) the fol-  
 9 lowing:

10 “(13) ENERGY COMMODITY.—The term ‘energy  
 11 commodity’ means—

12 “(A) a petroleum product; and

13 “(B) natural gas.”

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 2(c)(2)(B)(i)(II)(cc) of the Com-  
 16 modity Exchange Act (7 U.S.C.  
 17 2(c)(2)(B)(i)(II)(cc)) is amended—

1 (A) in subitem (AA), by striking “section  
2 1a(20)” and inserting “section 1a(21)”; and

3 (B) in subitem (BB), by striking “section  
4 1a(20)” and inserting “section 1a(21)”.

5 (2) Section 13106(b)(1) of the Food, Conserva-  
6 tion, and Energy Act of 2008 is amended by striking  
7 “section 1a(32)” and inserting “section 1a”.

8 (3) Section 402 of the Legal Certainty for  
9 Bank Products Act of 2000 (7 U.S.C. 27) is amend-  
10 ed—

11 (A) in subsection (a)(7), by striking “sec-  
12 tion 1a(20)” and inserting “section 1a”; and

13 (B) in subsection (d)—

14 (i) in paragraph (1)(B), by striking  
15 “section 1a(33)” and inserting “section  
16 1a”; and

17 (ii) in paragraph (2)(D), by striking  
18 “section 1a(13)” and inserting “section  
19 1a”.

20 **SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**  
21 **SHORE TRADING.**

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

24 “(e) FOREIGN BOARDS OF TRADE.—

1           “(1) IN GENERAL.—The Commission may not  
2 permit a foreign board of trade to provide to the  
3 members of the foreign board of trade or other par-  
4 ticipants located in the United States, or otherwise  
5 subject to the jurisdiction of the Commission, direct  
6 access to the electronic trading and order matching  
7 system of the foreign board of trade with respect to  
8 an agreement, contract, or transaction in an energy  
9 commodity that settles against any price (including  
10 the daily or final settlement price) of 1 or more con-  
11 tracts listed for trading on a registered entity, un-  
12 less—

13                   “(A) the foreign board of trade—

14                           “(i) makes public daily trading infor-  
15 mation regarding the agreement, contract,  
16 or transaction that is comparable to the  
17 daily trading information published by the  
18 registered entity for the 1 or more con-  
19 tracts against which the foreign board of  
20 trade settles; and

21                           “(ii) promptly notifies the Commission  
22 of any change regarding—

23                                   “(I) the information that the for-  
24 eign board of trade will make publicly  
25 available;

1 “(II) the position limits, specula-  
2 tion limits, and position accountability  
3 provisions that the foreign board of  
4 trade will adopt and enforce;

5 “(III) the position reductions re-  
6 quired to prevent manipulation; and

7 “(IV) any other area of interest  
8 expressed by the Commission to the  
9 foreign board of trade; and

10 “(B) the foreign board of trade (or the for-  
11 eign futures authority that oversees the foreign  
12 board of trade)—

13 “(i) adopts position limits (including  
14 related hedge exemption provisions), specu-  
15 lation limits, or position accountability pro-  
16 visions for speculators for the agreement,  
17 contract, or transaction that are com-  
18 parable to the position limits (including re-  
19 lated hedge exemption provisions), specula-  
20 tion limits, or position accountability provi-  
21 sions adopted by the registered entity for  
22 the 1 or more contracts against which the  
23 foreign board of trade settles;

24 “(ii) has the authority to require or  
25 direct market participants to limit, reduce,

1 or liquidate any position the foreign board  
2 of trade (or the foreign futures authority  
3 that oversees the foreign board of trade)  
4 determines to be necessary to prevent or  
5 reduce the threat of price manipulation,  
6 excessive speculation, price distortion, or  
7 disruption of delivery or the cash settle-  
8 ment process; and

9 “(iii) provides information to the  
10 Commission regarding the extent of legiti-  
11 mate and nonlegitimate hedge trading in  
12 the agreement, contract, or transaction  
13 that is comparable to the information that  
14 the Commission determines to be necessary  
15 to publish the commitments of traders re-  
16 port of the Commission for the 1 or more  
17 contracts against which the foreign board  
18 of trade settles.

19 “(2) EXISTING FOREIGN BOARDS OF TRADE.—

20 Paragraph (1) shall not be effective with respect to  
21 any agreement, contract, or transaction in an energy  
22 commodity executed on a foreign board of trade to  
23 which the Commission had granted direct access  
24 permission prior to the date of enactment of this

1 subsection until the date that is 180 days after the  
2 date of enactment of this subsection.”.

3 **SEC. 4. AUTHORITY OF COMMODITY FUTURES TRADING**  
4 **COMMISSION WITH RESPECT TO CERTAIN**  
5 **TRADERS.**

6 (a) IN GENERAL.—

7 (1) RESTRICTION OF FUTURES TRADING TO  
8 CONTRACT MARKETS OR DERIVATIVES TRANSACTION  
9 EXECUTION FACILITIES.—Section 4(b) of the Com-  
10 modity Exchange Act (7 U.S.C. 6(b)) is amended by  
11 inserting after the first sentence the following: “The  
12 Commission may adopt rules and regulations requir-  
13 ing the maintenance of books and records by any  
14 person that is located within the United States (in-  
15 cluding the territories and possessions of the United  
16 States) or that enters trades directly into the trade  
17 matching system of a foreign board of trade from  
18 the United States (including the territories and pos-  
19 sessions of the United States).”

20 (2) EXCESSIVE SPECULATION AS A BURDEN ON  
21 INTERSTATE COMMERCE.—Section 4a of the Com-  
22 modity Exchange Act (7 U.S.C. 6a) is amended—

23 (A) in subsection (e), in the second sen-  
24 tence—

1 (i) by striking “this Act for any per-  
2 son” and inserting “this Act for (1) any  
3 person”; and

4 (ii) by inserting after “to section  
5 5c(c)(1)” the following: “, and (2) any per-  
6 son that is located within the United  
7 States (including the territories and pos-  
8 sessions of the United States) or that en-  
9 ters trades directly into the trade matching  
10 system of a foreign board of trade from  
11 the United States (including the territories  
12 and possessions of the United States) to  
13 violate any bylaw, rule, regulation, or reso-  
14 lution of any foreign board of trade or for-  
15 eign futures authority fixing limits on the  
16 amount of trading that may be carried out  
17 or positions that may be held under any  
18 contract of sale of an energy commodity  
19 for future delivery or under any option on  
20 such contract or energy commodity, that  
21 settles against any price (including the  
22 daily or final settlement price) of 1 or  
23 more contracts listed for trading on a reg-  
24 istered entity”; and

25 (B) by adding at the end the following:

1 “(f) CONSULTATION.—Before taking any action  
2 under subsection (e), the Commission shall consult with  
3 the appropriate—

4 “(1) foreign board of trade; and

5 “(2) foreign futures authority.”.

6 (3) VIOLATIONS.—Section 9(a) of the Com-  
7 modity Exchange Act (7 U.S.C. 13(a)) is amended  
8 by inserting “(including any person trading on a for-  
9 eign board of trade)” after “Any person” each place  
10 it appears.

11 (4) EFFECT.—No amendment made by this  
12 subsection limits any of the otherwise applicable au-  
13 thorities of the Commodity Futures Trading Com-  
14 mission.

15 **SEC. 5. WORKING GROUP OF INTERNATIONAL REGU-**  
16 **LATORS.**

17 Section 4a of the Commodity Exchange Act (7 U.S.C.  
18 6a) (as amended by section 4(a)(2)(B)) is amended by  
19 adding at the end the following:

20 “(g) WORKING GROUP OF INTERNATIONAL REGU-  
21 LATORS.—Not later than 90 days after the date of enact-  
22 ment of this subsection, the Commission shall convene a  
23 working group of international regulators to develop uni-  
24 form international reporting and regulatory standards to  
25 ensure the protection of the energy futures markets from

1 nonlegitimate hedge trading, excessive speculation, manip-  
 2 ulation, location shopping, and lowest common dominator  
 3 regulation, each of which pose systemic risks to all energy  
 4 futures markets, countries, and consumers.”.

5 **SEC. 6. ELIMINATION OF MANIPULATION AND EXCESSIVE**  
 6 **SPECULATION AS CAUSE OF HIGH OIL, GAS,**  
 7 **AND ENERGY PRICES.**

8 Section 4a of the Commodity Exchange Act (7 U.S.C.  
 9 6a) (as amended by section 5) is amended by adding at  
 10 the end the following:

11 “(h) **ELIMINATION OF EXCESSIVE SPECULATION**  
 12 **AND NONLEGITIMATE HEDGE TRADING AS A CAUSE OF**  
 13 **HIGH OIL, GAS, AND ENERGY PRICES.—**

14 “(1) **DEFINITION OF LEGITIMATE HEDGE**  
 15 **TRADING.—**

16 “(A) **IN GENERAL.—**The term ‘legitimate  
 17 hedge trading’ means the conduct of trading  
 18 that involves transactions by commercial pro-  
 19 ducers and purchasers of actual physical petro-  
 20 leum and energy commodities for future deliv-  
 21 ery and the direct counterparties to such trades  
 22 (regardless of whether the counterparties are  
 23 commercial producers or purchasers).

24 “(B) **INCLUSION.—**To the extent a com-  
 25 mercial producer or purchaser of an actual

1 physical energy commodity for future delivery  
2 trades with an intermediary (referred to in this  
3 subparagraph as an ‘initial trade’), each subse-  
4 quent trade by the intermediary arising solely  
5 due to the initial trade and that directly results  
6 from such initial trade (referred to in this sub-  
7 paragraph as a ‘follow-on trade’) shall be con-  
8 sidered to be the conduct of ‘legitimate hedge  
9 trading’ if each follow-on trade executed by the  
10 intermediary is—

11 “(i) done proximate to the initial  
12 trade; and

13 “(ii) in the aggregate, economically  
14 the same in size and substance as the ini-  
15 tial trade.

16 “(2) IDENTIFICATION OF LEGITIMATE HEDGE  
17 TRADING.—In carrying out this Act, the Commission  
18 shall distinguish between—

19 “(A) legitimate hedge trading; and

20 “(B) all other trading in energy commod-  
21 ities.

22 “(3) TYPE OF TRADING.—Notwithstanding any  
23 other provision of this Act, the Commission shall  
24 modify (or delegate any appropriate entity to mod-  
25 ify) such definitions, classifications, and data collec-

1 tion under this Act as are necessary to ensure that  
2 all direct and indirect parties and counterparties to  
3 all trades in the energy commodities market are  
4 clearly identified for all purposes as engaging in—

5 “(A) legitimate hedge trading; or

6 “(B) any other type of trading.

7 “(4) ELIMINATION OF EXCESSIVE SPECULA-  
8 TION.—

9 “(A) IN GENERAL.—Notwithstanding any  
10 other provision of this Act, the Commission  
11 shall review all regulations, rules, exemptions,  
12 exclusions, guidance, no action letters, orders,  
13 and other actions taken by or on behalf of the  
14 Commission (including any action or inaction  
15 taken pursuant to delegated authority by an ex-  
16 change, self-regulatory organization, or any  
17 other entity) regarding all energy futures mar-  
18 ket participants or market activity (referred to  
19 in this subsection individually as a ‘prior ac-  
20 tion’) to ensure that—

21 “(i) legitimate hedge trading is pro-  
22 tected and promoted; and

23 “(ii) excessive speculation is elimi-  
24 nated.

25 “(B) PRIOR ACTION.—

1           “(i) IN GENERAL.—The Commission  
2           shall consider modifying or revoking the  
3           application after the date of enactment of  
4           this subsection of any prior action taken  
5           by the Commission (including any prior ac-  
6           tion taken pursuant to delegated authority  
7           by any other entity) with respect to any  
8           trade on any market, exchange, foreign  
9           board of trade, swap or swap transaction,  
10          index or index market participant or trade,  
11          hedge fund, pension fund, and any other  
12          transaction, trade, trader, or petroleum or  
13          energy futures market activity unless the  
14          Commission affirmatively determines that  
15          such prior action will protect and promote  
16          legitimate hedge trading and does not per-  
17          mit or encourage excessive speculation.

18          “(ii) REVOCATION.—In carrying out  
19          this subparagraph, the Commission shall  
20          consider modifying or revoking the results  
21          of each prior action that, in whole or in  
22          part, has the direct or indirect affect of  
23          limiting, reducing, or eliminating the filing  
24          of any report or data regarding any direct

1 or indirect trade or trader, including the  
2 filing of large trader reports.

3 “(C) SPECULATIVE POSITION LIMITS AP-  
4 PPLICABLE TO NONLEGITIMATE HEDGE TRADING  
5 IN ENERGY COMMODITIES AND DERIVATIVES.—

6 “(i) SPECULATIVE POSITION LIM-  
7 ITS.—

8 “(I) IN GENERAL.—Not later  
9 than 30 days after the date of enact-  
10 ment of this subsection, the Commis-  
11 sion shall impose, by rule, regulation,  
12 or order, speculative position limits on  
13 trading that is not legitimate hedge  
14 trading.

15 “(II) APPLICATION.—The Com-  
16 mission shall apply the limits imposed  
17 under subclause (I) to any person who  
18 executes accounts, agreements, or  
19 transactions involving an energy com-  
20 modity for the own account of the  
21 person and to any person for whom  
22 an agent in fact or substance executes  
23 accounts, agreements, or transactions  
24 involving an energy commodity, on a

1 registered entity or in covered over-  
2 the-counter trading.

3 “(ii) ADVISORY GROUP.—

4 “(I) IN GENERAL.—Not later  
5 than 30 days after the date of enact-  
6 ment of this subsection, the Commis-  
7 sion shall convene an advisory group  
8 primarily consisting of commercial  
9 producers and purchasers of actual  
10 physical energy commodities for fu-  
11 ture delivery.

12 “(II) RECOMMENDATIONS.—Not  
13 later than 60 days after the date on  
14 which the advisory group is convened  
15 under subclause (I), and annually  
16 thereafter, the advisory group shall  
17 submit to the Commission rec-  
18 ommendations regarding an appro-  
19 priate level for position limits—

20 “(aa) that are designed for  
21 traders or entities that are not  
22 legitimate hedge traders; and

23 “(bb) to replace the position  
24 limits imposed by the Commis-  
25 sion under clause (i)(I).

1                   “(III)     APPLICABILITY     OF  
2                   FACA.—The advisory group shall be  
3                   subject to the Federal Advisory Com-  
4                   mittee Act (5 U.S.C. App.).

5                   “(iii)    REVIEW    OF    RECOMMENDA-  
6                   TIONS.—Not later than 270 days after the  
7                   date of enactment of this subsection, the  
8                   Commission shall—

9                   “(I) analyze and review the rec-  
10                  ommendations submitted by the advi-  
11                  sory group under clause (ii)(II); and

12                  “(II) submit to the appropriate  
13                  committees of Congress a report de-  
14                  scribing each recommendation (includ-  
15                  ing each modification to the statutory  
16                  authority of the Commission that the  
17                  Commission determines to be nec-  
18                  essary to effectuate each recommenda-  
19                  tion).

20                  “(iv) RULEMAKING.—

21                  “(I) IN GENERAL.—Not later  
22                  than 18 months after the date of en-  
23                  actment of this subsection, the Com-  
24                  mission shall promulgate a final rule

1 that establishes speculative position  
2 limits—

3 “(aa) for any person en-  
4 gaged in nonlegitimate hedge  
5 trading of an energy commodity;  
6 and

7 “(bb) that are consistent  
8 with this Act.

9 “(II) EFFECTIVE DATE.—The  
10 final rule described in subclause (I)  
11 shall take effect on the date that is 30  
12 days after the date on which the Com-  
13 mission promulgates the final rule.

14 “(v) DEVELOPMENT OF METHOD-  
15 OLOGY.—

16 “(I) IN GENERAL.—Not later  
17 than 180 days after the date of enact-  
18 ment of this subsection, the Commis-  
19 sion shall propose a methodology to  
20 determine and set aggregate specula-  
21 tive position limits at the control enti-  
22 ty level for all nonlegitimate traders of  
23 energy commodities—

24 “(aa) on designated contract  
25 markets;

1           “(bb) on derivatives trans-  
2           action execution facilities; and

3           “(cc) in over-the-counter  
4           commodity derivatives.

5           “(II) REPORT.—Not later than  
6           180 days after the date of enactment  
7           of this subsection, the Commission  
8           shall submit to the appropriate com-  
9           mittees of Congress a report that con-  
10          tains—

11           “(aa) any recommendations  
12           regarding any additional statu-  
13           tory authority that the Commis-  
14           sion determines to be necessary  
15           for the imposition of the specula-  
16           tive position limits described in  
17           subclause (I); and

18           “(bb) a description of the  
19           resources that the Commission  
20           considers to be necessary to im-  
21           plement the speculative position  
22           limits.

23           “(D) MAXIMUM LEVEL OF SPECULATIVE  
24          POSITION LIMITS.—

1           “(i) IN GENERAL.—In establishing  
2 speculative position limits under this sec-  
3 tion (including subparagraph (C)(iv)), the  
4 Commission shall set the limits at the max-  
5 imum level practicable—

6                   “(I) to ensure sufficient market  
7 liquidity for the conduct of legitimate  
8 hedging activities;

9                   “(II) to ensure that price dis-  
10 covery is not disrupted;

11                   “(III) to protect and promote le-  
12 gitimate hedge trading;

13                   “(IV) to minimize nonlegitimate  
14 hedge trading; and

15                   “(V) to eliminate excess specula-  
16 tion.

17           “(ii) EFFECT.—

18                   “(I) IN GENERAL.—Nothing in  
19 this subparagraph modifies the spot  
20 month position limitation of 3,000  
21 contracts that is designed to prevent a  
22 corner or squeeze at the delivery date.

23                   “(II) COMMISSION ACTION.—If  
24 the Commission sets position limits  
25 under clause (i) that are different

1 from the spot month position limit de-  
 2 scribed in subclause (I), the Commis-  
 3 sion shall include in the report re-  
 4 quired under subparagraph (C)(v)(II)  
 5 an analysis describing the reasons for  
 6 the position limits.”.

7 **SEC. 7. LARGE OVER-THE-COUNTER TRANSACTIONS.**

8 Section 2 of the Commodity Exchange Act (7 U.S.C.  
 9 2) is amended by adding at the end the following:

10 “(j) OVER-THE-COUNTER TRANSACTIONS.—

11 “(1) DEFINITIONS.—In this subsection:

12 “(A) COVERED OVER-THE-COUNTER  
 13 TRANSACTION.—The term ‘covered over-the-  
 14 counter transaction’ means an over-the-counter  
 15 transaction the reporting of which is required  
 16 by the Commission as the result of a determina-  
 17 tion made under paragraph (3)(C).

18 “(B) COVERED PERSON.—The term ‘cov-  
 19 ered person’ means a person that enters into a  
 20 covered over-the-counter transaction.

21 “(C) MAJOR MARKET DISTURBANCE.—The  
 22 term ‘major market disturbance’ means any  
 23 disturbance in a commodity market that dis-  
 24 rupts the liquidity and price discovery function  
 25 of that market from accurately reflecting the

1 forces of supply and demand for a commodity,  
2 including—

3 “(i) a threatened or actual market  
4 manipulation or corner;

5 “(ii) excessive speculation;

6 “(iii) nonlegitimate hedge trading;

7 and

8 “(iv) any action of the United States  
9 or a foreign government that affects a  
10 commodity.

11 “(D) MARKET DISTURBANCE.—The term  
12 ‘market disturbance’ shall be interpreted in ac-  
13 cordance with section 8a(9)).

14 “(E) OVER-THE-COUNTER TRANS-  
15 ACTION.—The term ‘over-the-counter trans-  
16 action’ means a contract, agreement, or trans-  
17 action in a petroleum or energy commodity that  
18 is—

19 “(i) entered into only between persons  
20 that are eligible contract participants at  
21 the time the persons enter into the agree-  
22 ment, contract, or transaction;

23 “(ii) not entered into on a trading fa-  
24 cility; and

1                   “(iii) not a sale of any cash com-  
2                   modity for deferred shipment or delivery.

3                   “(2) COMMISSION OVERSIGHT AUTHORITY.—

4                   “(A) IN GENERAL.—In the case of a major  
5                   market disturbance, as determined by the Com-  
6                   mission, the Commission may require any trad-  
7                   er subject to the reporting requirements de-  
8                   scribed in paragraph (3) to take such action as  
9                   the Commission considers to be necessary to  
10                  maintain or restore orderly trading in any con-  
11                  tract listed for trading on a registered entity,  
12                  including—

13                  “(i) the liquidation of any over-the-  
14                  counter transaction; and

15                  “(ii) the fixing of any limit that may  
16                  apply to a market position involving any  
17                  over-the-counter transaction acquired in  
18                  good faith before the date of the deter-  
19                  mination of the Commission.

20                  “(B) JUDICIAL REVIEW.—Any action  
21                  taken by the Commission under subparagraph  
22                  (A) shall be subject to judicial review carried  
23                  out in accordance with section 8a(9).

24                  “(3) REPORTING; RECORDKEEPING.—

1           “(A) IN GENERAL.—The Commission shall  
2 require each covered person to submit to the  
3 Commission a report—

4           “(i) at such time and in such manner  
5 as the Commission determines to be appro-  
6 priate; and

7           “(ii) containing the information re-  
8 quired under subparagraph (B) to assist  
9 the Commission in detecting and pre-  
10 venting potential price manipulation of, or  
11 excessive speculation in, any contract listed  
12 for trading on a registered entity.

13           “(B) CONTENTS OF REPORT.—A report re-  
14 quired under subparagraph (A) shall contain—

15           “(i) information describing large trad-  
16 ing positions of the covered person ob-  
17 tained through 1 or more over-the-counter  
18 transactions that involve—

19           “(I) substantial quantities of a  
20 commodity in the cash market; or

21           “(II) substantial positions, in-  
22 vestments, or trades in agreements or  
23 contracts relating to the commodity;

24           “(ii) any other information relating to  
25 each covered over-the-counter transaction

1 carried out by the covered person that the  
2 Commission determines to be necessary to  
3 accomplish the purposes described in sub-  
4 paragraph (A); and

5 “(iii) information distinguishing legiti-  
6 mate hedge trading from nonlegitimate  
7 hedge trading.

8 “(C) DETERMINATION OF COVERED OVER-  
9 THE-COUNTER TRANSACTIONS.—

10 “(i) IN GENERAL.—The Commission  
11 shall identify each large over-the-counter  
12 transaction or class of large over-the-  
13 counter transactions the reporting of which  
14 the Commission determines to be appro-  
15 priate to assist the Commission in detect-  
16 ing and preventing potential price manipu-  
17 lation of, or excessive speculation in, any  
18 contract listed for trading on a registered  
19 entity.

20 “(ii) MANDATORY FACTORS FOR DE-  
21 TERMINATIONS.—

22 “(I) IN GENERAL.—In carrying  
23 out a determination under clause (i),  
24 the Commission shall consider the ex-

1                   tent to which each factor described in  
2                   subclause (II) applies.

3                   “(II) FACTORS.—The factors re-  
4                   quired for carrying out a determina-  
5                   tion under clause (i) include wheth-  
6                   er—

7                   “(aa) a standardized agree-  
8                   ment is used to execute the over-  
9                   the-counter transaction;

10                  “(bb) the over-the-counter  
11                  transaction settles against any  
12                  price (including the daily or final  
13                  settlement price) of 1 or more  
14                  contracts listed for trading on a  
15                  registered entity;

16                  “(cc) the price of the over-  
17                  the-counter transaction is re-  
18                  ported to a third party, pub-  
19                  lished, or otherwise disseminated;

20                  “(dd) the price of the over-  
21                  the-counter transaction is ref-  
22                  erenced in any other transaction;

23                  “(ee) there is a significant  
24                  volume of the over-the-counter

1 transaction or class of over-the-  
2 counter transactions; and

3 “(ff) there is any other fac-  
4 tor that the Commission deter-  
5 mines to be appropriate.

6 “(D) RECORDKEEPING.—The Commission,  
7 by rule, shall require each covered person—

8 “(i) in accordance with section 4i, to  
9 maintain such records as directed by the  
10 Commission for a period of 5 years, or  
11 longer, if directed by the Commission; and

12 “(ii) to provide such records upon re-  
13 quest to the Commission or the Depart-  
14 ment of Justice.

15 “(4) PROTECTION OF PROPRIETARY INFORMA-  
16 TION.—In carrying out this subsection, the Commis-  
17 sion may not—

18 “(A) require the real-time publication of  
19 any proprietary information;

20 “(B) prohibit the commercial sale or li-  
21 censing of any real-time proprietary informa-  
22 tion; and

23 “(C) except as provided in section 8, pub-  
24 licly disclose any information relating to any  
25 market position, business transaction, trade se-

1           cret, or name of any customer of a covered per-  
2           son.

3           “(5) APPLICABILITY.—Notwithstanding sub-  
4           sections (g) and (h), and any exemption issued by  
5           the Commission for any energy commodity, each  
6           over-the-counter transaction shall be subject to this  
7           subsection.

8           “(6) SAVINGS CLAUSE.—Nothing in this sub-  
9           section modifies or alters—

10                   “(A) the guidance of the Commission; or

11                   “(B) any applicable requirements with re-  
12           spect the disclosure of proprietary informa-  
13           tion.”.

14 **SEC. 8. INDEX TRADERS AND SWAP DEALERS.**

15           Section 4 of the Commodity Exchange Act (7 U.S.C.  
16 6) (as amended by section 3) is amended by adding at  
17 the end the following:

18           “(f) INDEX TRADERS AND SWAP DEALERS.—Not  
19 later than 60 days after the date of enactment of this sub-  
20 section, the Commission shall—

21                   “(1) routinely require detailed reporting from  
22           index traders and swap dealers in markets under the  
23           jurisdiction of the Commission;

1           “(2) reclassify the types of traders for regu-  
2           latory and reporting purposes to distinguish between  
3           index traders and swaps dealers;

4           “(3) review the trading practices for index trad-  
5           ers in markets under the jurisdiction of the Commis-  
6           sion—

7                   “(A) to ensure that index trading is not  
8                   adversely impacting the price discovery process;  
9                   and

10                   “(B) to determine whether different prac-  
11                   tices or regulations should be implemented; and

12           “(4) ensure, to the maximum extent prac-  
13           ticable, that the reports required under this sub-  
14           section distinguish between legitimate and nonlegiti-  
15           mate hedge trading.”.

16 **SEC. 9. DISAGGREGATION OF INDEX FUNDS AND OTHER**  
17 **DATA IN ENERGY MARKETS.**

18           Section 4 of the Commodity Exchange Act (7 U.S.C.  
19 6) (as amended by section 8) is amended by adding at  
20 the end the following:

21           “(g) **DISAGGREGATION OF INDEX FUNDS AND**  
22 **OTHER DATA IN ENERGY MARKETS.**—The Commission  
23 shall disaggregate and make public monthly—

1           “(1) the number of positions and total value of  
2 index funds and other passive, long-only positions in  
3 energy markets; and

4           “(2) data on speculative positions relative to  
5 bona fide physical hedgers in those markets.”.

6 **SEC. 10. ADDITIONAL COMMODITY FUTURES TRADING**  
7           **COMMISSION EMPLOYEES FOR IMPROVED**  
8           **ENFORCEMENT.**

9           Section 2(a)(7) of the Commodity Exchange Act (7  
10 U.S.C. 2(a)(7)) is amended by adding at the end the fol-  
11 lowing:

12                   “(D) **ADDITIONAL EMPLOYEES.**—As soon  
13 as practicable after the date of enactment of  
14 this subparagraph, the Commission shall ap-  
15 point at least 100 full-time employees (in addi-  
16 tion to the employees employed by the Commis-  
17 sion as of the date of enactment of this sub-  
18 paragraph)—

19                           “(i) to increase the public trans-  
20 parency of operations in energy futures  
21 markets;

22                           “(ii) to improve the enforcement of  
23 this Act in those markets; and

24                           “(iii) to carry out such other duties as  
25 are prescribed by the Commission.”.

1 **SEC. 11. WORKING GROUP ON ENERGY MARKETS.**

2 (a) ESTABLISHMENT.—There is established a Work-  
3 ing Group on Energy Markets.

4 (b) COMPOSITION.—The Working Group shall be  
5 composed of—

6 (1) the Secretary of Energy (referred to in this  
7 section as the “Secretary”);

8 (2) the Secretary of the Treasury;

9 (3) the Chairman of the Federal Energy Regu-  
10 latory Commission;

11 (4) the Chairman of Federal Trade Commis-  
12 sion;

13 (5) the Chairman of the Securities and Ex-  
14 change Commission;

15 (6) the Chairman of the Commodity Futures  
16 Trading Commission; and

17 (7) the Administrator of the Energy Informa-  
18 tion Administration.

19 (c) CHAIRPERSON.—

20 (1) INITIAL CHAIRPERSON.—The Secretary  
21 shall serve as the Chairperson of the Working Group  
22 for the 1-year period beginning on the date of enact-  
23 ment of this Act.

24 (2) ROTATION OF CHAIRPERSONS.—For each 1-  
25 year period following the period described in para-  
26 graph (1), each individual described in subsection

1 (b) shall serve as the Chairperson of the Working  
2 Group in the order corresponding to which the indi-  
3 vidual is described in that subsection.

4 (d) PURPOSE AND FUNCTION.—The Working Group  
5 shall—

6 (1) investigate the effect of speculation in en-  
7 ergy commodities on energy prices and the energy  
8 security of the United States;

9 (2) recommend to the President and Congress  
10 laws (including regulations) that may be needed to  
11 prevent excessive speculation in energy commodities  
12 to prevent or minimize the adverse impact of high  
13 energy prices on consumers and the economy of the  
14 United States; and

15 (3) review energy security considerations posed  
16 by developments in international energy markets.

17 (e) ADMINISTRATION.—The Secretary shall provide  
18 the Working Group with such administrative and support  
19 services as may be necessary for the performance of the  
20 functions of the Working Group.

21 (f) COOPERATION OF OTHER AGENCIES.—The heads  
22 of Executive departments, agencies, and independent in-  
23 strumentalities shall, to the extent permitted by law, pro-  
24 vide the Working Group with such information as the  
25 Working Group requires to carry out this section.

1 (g) CONSULTATION.—The Working Group shall con-  
2 sult, as appropriate, with representatives of the various  
3 exchanges, clearinghouses, self-regulatory bodies, other  
4 major market participants, consumers, and the general  
5 public.

6 **SEC. 12. STUDY OF REGULATORY FRAMEWORK FOR EN-**  
7 **ERGY MARKETS.**

8 (a) STUDY.—The Working Group established under  
9 section 11(a) shall conduct a study to—

10 (1) identify the factors that affect the pricing of  
11 crude oil and refined petroleum products, including  
12 an examination of the effects of market speculation  
13 on prices; and

14 (2) review and assess the roles, missions, and  
15 structures of relevant Federal agencies, examine  
16 interagency coordination, and identify and assess the  
17 gaps that need to be filled for the Federal Govern-  
18 ment to effectively oversee and regulate markets  
19 critical to the energy security of the United States.

20 (b) ELEMENTS OF STUDY.—The study shall in-  
21 clude—

22 (1) an examination of price formation with re-  
23 spect to crude oil and refined petroleum products;

24 (2) an examination of relevant international  
25 regulatory regimes; and



1 7135(h)(1)) is amended by adding at the end the fol-  
2 lowing:

3           “(C) INFORMATION ON ENERGY-PRO-  
4           DUCING COMPANIES.—Notwithstanding any  
5           other provision of law, the head of each Federal  
6           department or agency shall provide to the Ad-  
7           ministrator, on the request of the Adminis-  
8           trator, such information as the Administrator  
9           may require to identify each energy-producing  
10          company.”.

11          (b) ENHANCED DATA ON OWNERSHIP OF CRITICAL  
12          ENERGY COMMODITIES.—Section 205 of the Department  
13          of Energy Organization Act (42 U.S.C. 7135) is amended  
14          by adding at the end the following:

15          “(n) COLLECTION OF INFORMATION ON OWNERSHIP  
16          OF ENERGY COMMODITIES.—

17                 “(1) IN GENERAL.—To ensure transparency of  
18                 information with respect to critical energy infra-  
19                 structure and product ownership in the United  
20                 States, the Administrator shall collect on a weekly  
21                 basis information identifying the ownership of all  
22                 commercially held oil and natural gas inventories in  
23                 the United States.

24                 “(2) COMPANY-SPECIFIC DATA.—The informa-  
25                 tion shall include company-specific data, including—

1           “(A) volumes of product under ownership;  
2           and

3           “(B) storage and transportation capacity  
4           (including owned and leased capacity).

5           “(3) PROTECTION OF PROPRIETARY INFORMA-  
6           TION.—Section 11(d) of the Energy Supply and En-  
7           vironmental Coordination Act of 1974 (15 U.S.C.  
8           796(d)) shall apply to information collected under  
9           this section.

10          “(o) MONTHLY REPORTING ON ENERGY COMMODITY  
11          TRANSACTIONS.—

12           “(1) IN GENERAL.—In accordance with para-  
13           graph (2), to improve the ability to evaluate the en-  
14           ergy security of the United States, any person hold-  
15           ing or controlling energy futures contracts or energy  
16           commodity swaps (as defined in section 202 of the  
17           Energy Policy and Conservation Act) at a level to be  
18           determined by the Secretary for which the under-  
19           lying energy commodity is physically delivered within  
20           the United States shall report on a monthly basis,  
21           with respect to the energy commodities and the by-  
22           products of the energy commodities—

23           “(A) the quantity of physical stocks owned;

24           “(B) the quantity of fixed price purchase  
25           commitments open;

1           “(C) the quantity of fixed price sales com-  
2           mitments open;

3           “(D) the physical storage capacity owned  
4           or leased; and

5           “(E) such other information as the Sec-  
6           retary determines is necessary to provide ade-  
7           quate transparency with respect to entities that  
8           control critical energy assets in the United  
9           States.

10          “(2) USE OF DATA.—Any data collected under  
11          paragraph (1) shall not be made public in a manner  
12          that is inconsistent with this Act.

13          “(p) FINANCIAL MARKET ANALYSIS OFFICE.—

14                 “(1) ESTABLISHMENT.—There shall be within  
15          the Energy Information Administration a Financial  
16          Market Analysis Office, headed by a director, who  
17          shall report directly to the Administrator of the En-  
18          ergy Information Administration.

19                 “(2) DUTIES.—The Office shall be responsible  
20          for analysis of the financial aspects of energy mar-  
21          kets.

22                 “(3) ANALYSES.—The Administrator of the En-  
23          ergy Information Administration shall take analyses  
24          by the Office into account in conducting analyses  
25          and forecasting of energy prices.”.



1           (b) ASSESSMENT.—The Commission may include in  
2 the investigation an assessment of real-time market dy-  
3 namics during the 2008 winter heating season.

4           (c) REQUIRED DATA.—Each Federal department and  
5 agency shall comply with any request from the Commis-  
6 sion for records, papers, and information in the possession  
7 of the department or agency relating to any agreement,  
8 contract, or transaction for the sale of an energy com-  
9 modity for future delivery in interstate or foreign com-  
10 merce, or any energy commodity swap.

11          (d) REPORTS.—Not later than 270 days after the  
12 date of enactment of this Act, the Commission shall sub-  
13 mit to the Committee on Energy and Natural Resources  
14 of the Senate and the Committee on Energy and Com-  
15 merce of the House of Representatives a report on the  
16 findings, conclusions, and recommendations of the inves-  
17 tigation conducted under this section.

18          (e) ADDITIONAL INVESTIGATIONS.—On an annual  
19 basis and during any other period the Commission deter-  
20 mines necessary, the Commission shall—

21               (1) conduct an investigation that is similar to  
22 the investigation required under subsections (a)  
23 through (c); and

24               (2) submit to the Committee on Energy and  
25 Natural Resources of the Senate and the Committee

1 on Energy and Commerce of the House of Rep-  
2 resentatives a report on the findings, conclusions,  
3 and recommendations of the investigation.

4 (f) AUTHORIZATION OF APPROPRIATIONS.—There  
5 are authorized to be appropriated such sums as are nec-  
6 essary to carry out this section.

7 **SEC. 15. STUDIES; REPORTS.**

8 (a) STUDY RELATING TO INTERNATIONAL REGULA-  
9 TION OF ENERGY COMMODITY MARKETS.—

10 (1) IN GENERAL.—The Comptroller General of  
11 the United States shall conduct a study of the inter-  
12 national regime for regulating the trading of energy  
13 commodity futures and derivatives.

14 (2) ANALYSIS.—The study shall include an  
15 analysis of, at a minimum—

16 (A) key common features and differences  
17 among countries in the regulation of energy  
18 commodity trading, including with respect to  
19 market oversight and enforcement standards  
20 and activities;

21 (B) variations among countries with re-  
22 spect to the use of position limits, account-  
23 ability limits, or other thresholds to detect and  
24 prevent price manipulation, excessive specula-  
25 tion, or other unfair trading practices;

1 (C) variations in practices regarding the  
2 differentiation of commercial and noncommer-  
3 cial trading;

4 (D) agreements and practices for sharing  
5 market and trading data among regulatory bod-  
6 ies and among individual regulators and the en-  
7 tities that the bodies and regulators oversee;  
8 and

9 (E) agreements and practices for facili-  
10 tating international cooperation on market over-  
11 sight, compliance, and enforcement.

12 (3) REPORT.—Not later than 1 year after the  
13 date of enactment of this Act, the Comptroller Gen-  
14 eral shall submit to the appropriate committees of  
15 Congress a report that—

16 (A) describes the results of the study;

17 (B) addresses the effects of excessive spec-  
18 ulation and energy price volatility on energy fu-  
19 tures; and

20 (C) provides recommendations to improve  
21 openness, transparency, and other necessary  
22 elements of a properly functioning market in a  
23 manner that protects consumers in the United  
24 States.

1 (b) STUDY RELATING TO EFFECTS OF NONCOMMER-  
2 CIAL SPECULATORS ON ENERGY FUTURES MARKETS AND  
3 ENERGY PRICES.—

4 (1) STUDY.—The Comptroller General of the  
5 United States shall conduct a study of the effects of  
6 noncommercial speculators on energy futures mar-  
7 kets and energy prices.

8 (2) ANALYSIS.—The study shall include an  
9 analysis of, at a minimum—

10 (A) the effect of increased amounts of cap-  
11 ital in energy futures markets;

12 (B) the impact of the roll-over of positions  
13 by index fund traders and swap dealers on en-  
14 ergy futures markets and energy prices; and

15 (C) the extent to which each factor de-  
16 scribed in subparagraphs (A) and (B) and non-  
17 commercial speculators—

18 (i) affect—

19 (I) the pricing of energy com-  
20 modities; and

21 (II) risk management functions;

22 and

23 (ii) contribute to economically efficient  
24 price discovery.

1           (3) REPORT.—Not later than 2 years after the  
2           date of enactment of this Act, the Comptroller Gen-  
3           eral shall submit to the appropriate committees of  
4           Congress a report that describes the results of the  
5           study.

6           (c) REPORTS OF COMMODITY FUTURES TRADING  
7           COMMISSION.—

8           (1) IN GENERAL.—The Commission shall sub-  
9           mit to Congress—

10                   (A) not later than 60 days after the date  
11                   of enactment of this Act, a report that describes  
12                   in detail the actions the Commission has taken,  
13                   is taking, and intends to take to carry out this  
14                   subsection (including any recommended legisla-  
15                   tive changes that are necessary to carry out this  
16                   subsection); and

17                   (B) not later than 45 days after the date  
18                   described in subparagraph (A) and every 45  
19                   days thereafter until the date of implementation  
20                   of this subsection, an update on the report re-  
21                   quired under subparagraph (A).

22           (2) ADDITIONAL EMPLOYEES OR RESOURCES.—  
23           Not later than 60 days after the date of enactment  
24           of this Act, the Commission shall submit to Con-  
25           gress a report that describes the number of addi-

1 tional positions and resources that the Commission  
2 determines to be necessary to carry out this sub-  
3 section (including the specific duty of each addi-  
4 tional employee).

5 **SEC. 16. EXPEDITED PROCEDURES.**

6 (a) IN GENERAL.—Subject to subsection (b), the  
7 Commodity Futures Trading Commission (referred to in  
8 this section as the “Commission”) shall use emergency  
9 and expedited procedures (including any administrative or  
10 other procedure as appropriate) to carry out this Act (in-  
11 cluding the amendments made by this Act).

12 (b) REPORT.—If the Commission decides not to use  
13 the procedures described in subsection (a) in a specific in-  
14 stance, not later than 30 days after the date of the deci-  
15 sion, the Commission shall submit to Congress a detailed  
16 report that describes in each instance the reasons for not  
17 using the procedures.

Calendar No. 882

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3268**

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**A BILL**

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy commodities, and for other purposes.

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JULY 16, 2008

Read the second time and placed on the Calendar