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112TH CONGRESS
1ST SESSION

H. R. 2328

To require the Chairman of the Commodity Futures Trading Commission to impose unilaterally position limits and margin requirements to eliminate excessive oil speculation, and to take other actions to ensure that the price of crude oil, gasoline, diesel fuel, jet fuel, and heating oil accurately reflects the fundamentals of supply and demand, to remain in effect until the date on which the Commission establishes position limits to diminish, eliminate, or prevent excessive speculation as required by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2011

Mr. HINCHEY (for himself, Mr. WELCH, Mr. DEFAZIO, Mr. GRIJALVA, Mr. OLVER, and Mr. STARK) introduced the following bill; which was referred to the Committee on Agriculture

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A BILL

To require the Chairman of the Commodity Futures Trading Commission to impose unilaterally position limits and margin requirements to eliminate excessive oil speculation, and to take other actions to ensure that the price of crude oil, gasoline, diesel fuel, jet fuel, and heating oil accurately reflects the fundamentals of supply and demand, to remain in effect until the date on which the Commission establishes position limits to diminish, eliminate, or prevent excessive speculation as required by title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''End Excessive Oil Speculation Now Act of 2011''.

SEC. 2. ELIMINATION OF EXCESSIVE OIL SPECULATION.

(a) FINDINGS.—Congress finds that—

(1) the national average retail price for a gallon of gasoline was $3.75 on June 8, 2011;

(2) increased gasoline prices are causing severe economic pain to the American people;

(3) Congress has a responsibility—

(A) to ensure that gasoline prices at the pump reflect the fundamentals of supply and demand; and

(B) to bring needed relief to consumers and businesses of the United States at the gas pump;

(4) there is mounting evidence that the spike in gasoline prices has—

(A) little to do with the fundamentals of supply and demand; and

(B) more to do with Wall Street speculators increasing oil and gas prices in the energy futures and swaps markets;

(5) as of May 27, 2011—

(A) the supply of gasoline in the United States was higher than it was 2 years ago; and

(B) the demand for gasoline was lower than it was 2 years ago when the national average for a gallon of regular unleaded gasoline was $2.44 a gallon;

(6) on May 12, 2011, Exxon Mobil Chairman and Chief Executive Officer, Rex Tillerson, told the Committee on Finance of the Senate that oil should cost between $60 and $70 per barrel, if the price of oil was based on supply and demand fundamentals;

(7) on March 21, 2011, Goldman Sachs warned clients that speculators were boosting crude oil prices by as much as $27 a barrel;

(8) on March 25, 2011, Delta Airlines General Counsel, Ben Hirst, said that the marginal cost of oil production is between $60 to $70 a barrel;

(9) in the summer of 2008, when gas prices rose to over $4 a gallon, Saudi Arabian government officials told the Federal Government that speculators were responsible for increasing oil prices by about $40 a barrel;

(10) the Commodity Futures Trading Commission has the authority to ensure that the price dis-

covery for oil and gasoline is based on the fundamentals of supply and demand, rather than excessive speculation;

(11) title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8301 et seq.) (and amendments made by that Act) requires the Commission to establish position limits ‘‘to diminish, eliminate, or prevent excessive speculation’’ for trading in crude oil, gasoline, heating oil and other physical commodity derivatives;

(12) as of the date of introduction of this Act, the Commission has failed to impose position limits to diminish, eliminate, or prevent excessive oil and gasoline speculation as required by law; and

(13) the proposed position limits for derivatives that the Commission included in the notice of proposed rulemaking entitled ‘‘Position Limits for Derivatives’’ (76 Fed. Reg. 4752 (January 26, 2011)) are not scheduled to go into effect until the first quarter of 2012, which would—

(A) occur on a date that is later than the statutory deadline for the regulations; and

(B) fail to diminish, eliminate, or prevent excessive speculation as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376).

(b) ELIMINATION OF EXCESSIVE OIL SPECULATION.—

(1) DEFINITIONS.—In this Act:

(A) BONA-FIDE HEDGE TRADING; BONA-FIDE HEDGE TRANSACTION.—The terms ‘‘bona-fide hedge trading’’ and ‘‘bona-fide hedge transaction’’ means a transaction or position that—

(i)(I) represents a substitute for a transaction made or to be made, or a position taken or to be taken, at a later time in a physical marketing channel;

(II) is economically appropriate for the reduction of risks in the conduct and management of a commercial enterprise; and

(III) arises from the potential change in the value of—

(aa) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

(bb) liabilities that a person has incurred or anticipates incurring; or

(cc) services that a person provides, purchases, or anticipates providing or purchasing; or

(ii) reduces risks attendant to a position resulting from a swap that—

(I) was executed opposite a counterparty for which the transaction would qualify as a bona-fide hedging transaction; or

(II) meets the requirements of clause (i).

(B) COMMISSION.—The term ''Commission'' means the Commodity Futures Trading Commission.

(2) DUTY OF CHAIRMAN OF THE COMMISSION.—Notwithstanding section 2 of the Commodity Exchange Act (7 U.S.C. 2) or any other provision of law (including regulations), not later than 14 days after the date of enactment of this Act, the Chairman of the Commission shall unilaterally—

(A) establish 1 or more speculative position limits in any registered entity on or through which crude oil, gasoline, diesel fuel, jet fuel, or heating oil futures or swaps are traded that are equal to the position accountability levels or position limits, as appropriate, established by the New York Mercantile Exchange;

(B) establish 1 or more speculative position limits that are equal to the position accountability levels or position limits, as appropriate, established by the New York Mercantile Exchange on the aggregate number or amount of positions in contracts based upon the same underlying commodity that may be held by any person, including any group or class of traders, for each month across—

(i) contracts listed by designated contract markets;

(ii) with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade; and

(iii) swap contracts that perform or affect a significant price discovery function with respect to regulated entities;

(C) establish margin requirements of 12 percent for speculative swaps and futures trading in crude oil, gasoline, diesel fuel, jet fuel, and heating oil;

(D) require that each bank holding company, investment bank, hedge fund, or swaps dealer engaged in the trading of energy futures or swaps for the benefit of the bank holding company, investment bank, hedge fund, or swaps dealer or on the behalf of, or as counterparty to, an index fund, exchange traded fund, or other noncommercial participant—

(i) register with the Commission as a noncommercial participant; and

(ii) be subject to each position limit and margin requirement under this subsection for each position in a manner by which the position is considered to be a speculative, proprietary position of the bank holding company, investment bank, hedge fund, or swaps dealer;

(E) take any other action that the Chairman of the Commission determines to be necessary to eliminate excessive speculation in the aggregate to ensure that the price of crude oil, gasoline, diesel fuel, jet fuel, and heating oil accurately reflects the fundamentals of supply and demand; and

(F) ensure that each bank holding company, hedge fund, investment bank, and swaps dealer that is engaged in the trading of energy futures or swaps for the benefit of the bank holding company, hedge fund, investment bank, and swaps dealer, or on the behalf of, or as counterparty to, 1 or more noncommercial participants, abides by each position limit and margin requirement under this subsection.

(3) APPLICABILITY.—Each position limit and margin requirement under this subsection shall not apply to bona-fide hedge trading.

(4) ADJUSTMENTS.—Notwithstanding section 2 of the Commodity Exchange Act (7 U.S.C. 2) or any other provision of law (including regulations), the Chairman of the Commission may adjust any posi-

tion limit under this subsection to the extent that the position of all noncommercial participants or speculators (in the aggregate and measured on an annual basis) shall not equal an amount greater than 35 percent of the annual, aggregate position of all traders in such futures and swaps market or markets for crude oil, gasoline, diesel fuel, jet fuel, and heating oil trading.

(5) SUNSET.—

(A) IN GENERAL.—This Act, and the authority provided under this Act, shall terminate on the date on which the Commission imposes position limits to diminish, eliminate, or prevent excessive speculation as required by, and increased margin requirements as authorized in, title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8301 et seq.) (and amendments made by that Act).

(B) SENSE OF CONGRESS.—It is the sense of Congress that, if finalized, the proposed position limits for derivatives that the Commission included in the notice of proposed rulemaking entitled ''Position Limits for Derivatives'' (76 Fed. Reg. 4752 (January 26, 2011)) are not sufficient to fulfill the statutory requirements of title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8301 et seq.) (and amendments made by that Act) to diminish, eliminate, or prevent excessive speculation.

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