

118TH CONGRESS
2D SESSION

S. 5063

To require the Administrator of the Small Business Administration to establish a program to allow small business concerns to purchase certain commodities futures, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 2024

Mrs. SHAHEEN (for herself and Mr. CASSIDY) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

To require the Administrator of the Small Business Administration to establish a program to allow small business concerns to purchase certain commodities futures, 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 “Helping Small Busi-
5 nesses To Hedge Risk and Insure against Volatile Ex-
6 penses Act” or the “Helping Small Businesses THRIVE
7 Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Small Busi-
5 ness Administration.

6 (2) COMMISSION; COMMODITY; COMMODITY
7 POOL; COMMODITY TRADING ADVISOR; FUTURE DE-
8 LIVERY; FUTURES COMMISSION MERCHANT.—The
9 terms “Commission”, “commodity”, “commodity
10 pool”, “commodity trading advisor”, “future deliv-
11 ery”, and “futures commission merchant” have the
12 meanings given those terms in section 1a of the
13 Commodity Exchange Act (7 U.S.C. 1a).

14 (3) COVERED COMMODITY.—The term “covered
15 commodity” means a commodity that the Adminis-
16 trator, under section 4(b), determines is eligible to
17 be the subject of an agreement entered into under
18 section 4(a).

19 (4) ELIGIBLE ENTITY.—The term “eligible enti-
20 ty”—

21 (A) means a small business concern; and

22 (B) does not include a small business con-
23 cern that—

24 (i) is, or is owned or controlled by an
25 entity that is, a financial institution (as de-

1 fined in section 509 of the Gramm-Leach-
2 Bliley Act (15 U.S.C. 6809));

3 (ii) is, or is owned or controlled by an
4 entity that is, with respect to any financial
5 activity, subject to the jurisdiction of the
6 Commission under the Commodity Ex-
7 change Act (7 U.S.C. 1 et seq.);

8 (iii) is, or is owned or controlled by,
9 an investment adviser (as defined in sec-
10 tion 202(a) of the Investment Advisers Act
11 of 1940 (15 U.S.C. 80b-2(a))) that is re-
12 quired to register with the Securities and
13 Exchange Commission under section 203
14 of that Act (15 U.S.C. 80b-3);

15 (iv) is, or is owned or controlled by, a
16 broker (as defined in section 3(a) of the
17 Securities Exchange Act of 1934 (15
18 U.S.C. 78e(a)));

19 (v) has been in operation for less than
20 1 year, as of the date on which the small
21 business concern submits an application
22 under section 3(b); or

23 (vi) the Administrator otherwise de-
24 termines should be excluded in order—

1 (I) to preserve the integrity of
2 the Program; and

3 (II) to ensure that the focus of
4 the Program remains on small busi-
5 ness concerns desiring to participate
6 in the Program to maximize stability
7 with respect to the direct operating
8 costs of those small business concerns.

9 (5) PROGRAM.—The term “Program” means
10 the Helping Small Businesses Thrive Program es-
11 tablished under section 3(a).

12 (6) RESOURCE PARTNERS.—The term “re-
13 source partners” means—

14 (A) small business development centers;

15 (B) women’s business centers described in
16 section 29 of the Small Business Act (15
17 U.S.C. 656);

18 (C) chapters of the Service Corps of Re-
19 tired Executives established under section
20 8(b)(1)(B) of the Small Business Act (15
21 U.S.C. 637(b)(1)(B)); and

22 (D) Veteran Business Outreach Centers
23 described in section 32 of the Small Business
24 Act (15 U.S.C. 657b).

1 (7) SMALL BUSINESS CONCERN; SMALL BUSI-
2 NESS DEVELOPMENT CENTER.—The terms “small
3 business concern” and “small business development
4 center” have the meanings given those terms in sec-
5 tion 3 of the Small Business Act (15 U.S.C. 632).

6 **SEC. 3. HELPING SMALL BUSINESSES THRIVE PROGRAM.**

7 (a) ESTABLISHMENT AND PURPOSE.—Not later than
8 1 year after the date of enactment of this Act, the Admin-
9 istrator shall, in consultation with the Commission, the
10 Secretary of the Treasury, and such other Federal officials
11 determined appropriate by the Administrator, establish
12 within the Small Business Administration a pilot pro-
13 gram—

14 (1) which shall be known as the “Helping Small
15 Businesses Thrive Program”; and

16 (2) the purpose of which shall be to assist eligi-
17 ble entities in limiting the risk faced by those eligible
18 entities with respect to rising input costs from com-
19 modities.

20 (b) APPLICATION.—

21 (1) IN GENERAL.—An eligible entity seeking to
22 participate in the Program shall submit an applica-
23 tion—

1 (A) at such time, in such manner, and con-
2 taining such information as the Administrator
3 determines to be necessary;

4 (B) that shall include information nec-
5 essary to establish that the entity submitting
6 the application is an eligible entity; and

7 (C) that may include additional informa-
8 tion to ensure that the Administrator, through
9 the Program, is able to properly assist the eligi-
10 ble entity in determining whether entering into
11 an agreement under section 4(a) would be bene-
12 ficial for the eligible entity, including a descrip-
13 tion of expenses incurred by the eligible entity
14 relating to commodities.

15 (2) GUIDANCE.—The Administrator shall de-
16 velop guidance, which shall be posted on a publicly
17 available website of the Small Business Administra-
18 tion, to assist an eligible entity in determining
19 whether the eligible entity should submit an applica-
20 tion to participate in the Program and whether en-
21 tering into an agreement under section 4(a) would
22 be beneficial for the eligible entity, including infor-
23 mation regarding—

24 (A) the purpose of the Program, the prod-
25 ucts the Program offers, and how those prod-

1 ucts can reduce exposure to price volatility for
2 eligible entities with respect to covered commod-
3 ities;

4 (B) determining the cost of covered com-
5 modities;

6 (C) the expenses of eligible entities relating
7 to each covered commodity, including when ex-
8 penses for covered commodities incurred by an
9 eligible entity reach a level such that it might
10 not be beneficial for the eligible entity to par-
11 ticipate in the Program;

12 (D) the percentages of commodity-related
13 expenses for the eligible entity that are most
14 likely beneficial to offset through participation
15 in the Program; and

16 (E) the impact of the type of revenue of an
17 eligible entity, such as a cost-plus or highly
18 variable pricing model for revenue or long-term
19 recurring revenue.

20 (c) OUTREACH AND CONSULTATION.—In carrying
21 out the Program, the Administrator shall conduct out-
22 reach to small business concerns, including small business
23 concerns that are not eligible entities by operation of sec-
24 tion 2(4)(B)(v), to share information regarding the Pro-
25 gram and the benefits of the Program, including by—

1 (1) providing informational materials to the
2 small business centers of the Small Business Admin-
3 istration, small business stakeholders and trade as-
4 sociations, and resource partners for distribution to
5 small business concerns;

6 (2) conducting webinars or in-person events
7 with small business concerns regarding the Program;
8 and

9 (3) operating a website and telephone line
10 that—

11 (A) offers additional information regarding
12 the Program; and

13 (B) allows a small business concern to ask
14 questions and obtain assistance in determining
15 whether the small business concern would ben-
16 efit from participating in the Program.

17 (d) ADMINISTRATION OF PROGRAM.—In carrying out
18 the Program, the following shall apply:

19 (1) The Administrator may—

20 (A) issue such rules as may be necessary;
21 and

22 (B) in consultation with the Commission,
23 form a commodity pool and apply for registra-
24 tion as a commodity pool operator under the
25 Commodity Exchange Act (7 U.S.C. 1 et seq.).

1 (2)(A) The Administrator may not take delivery
2 of any physical commodity except in extreme and ex-
3 igent circumstances.

4 (B) The Administrator shall conduct such pur-
5 chases and sales to close positions with respect to
6 covered commodities as are necessary to ensure that
7 the Administrator remains in compliance with the
8 prohibition under subparagraph (A).

9 (e) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to the Administrator
11 such sums as may be necessary to establish and operate
12 the Program, which shall remain available until expended.

13 **SEC. 4. ASSISTING SMALL BUSINESSES TRANSACTING IN**
14 **COMMODITY FUTURES MARKETS.**

15 (a) AGREEMENTS.—

16 (1) IN GENERAL.—The Administrator, in ac-
17 cordance with the other provisions of this subsection,
18 shall enter into agreements with eligible entities that
19 have been accepted for participation in the Program
20 for the purpose of assisting those eligible entities in
21 transacting in commodity futures markets with re-
22 spect to any commodity selected by the Adminis-
23 trator under subsection (b).

24 (2) REQUIREMENTS.—

1 (A) IN GENERAL.—Subject to subpara-
2 graphs (C) and (D), an eligible entity may
3 enter into 1 or more agreements under this
4 subsection under which the eligible entity
5 agrees to purchase a covered commodity (or a
6 derivative, the price of which is related to a cov-
7 ered commodity) at a price established by the
8 Administrator for the duration of the agree-
9 ment.

10 (B) AGREEMENTS OFFERED.—In deter-
11 mining which agreements to offer to an eligible
12 entity under this subsection, the Administrator
13 shall consider—

14 (i) how closely the agreement cor-
15 relates with the actual costs of the eligible
16 entity and whether an agreement already
17 offered under this subsection provides simi-
18 lar benefits;

19 (ii) how to minimize complexity for
20 the eligible entity;

21 (iii) how to reduce friction in trading
22 costs with respect to covered commodities;
23 and

24 (iv) how to minimize the number and
25 type of market positions of the Program in

1 order to reduce costs and the potential for
2 errors.

3 (C) OFFERED AT COST.—An agreement
4 under this subsection shall offer to the applica-
5 ble eligible entity the covered commodity (or de-
6 rivative, as applicable) that is the subject of the
7 agreement at cost, including any fees and com-
8 missions incurred by the Administrator in pro-
9 curing the covered commodity or derivative.

10 (D) TYPES OF AGREEMENTS.—

11 (i) IN GENERAL.—The Administrator,
12 through the Program, may offer to enter
13 into any of the following types of agree-
14 ments with an eligible entity:

15 (I) A futures purchase agreement
16 under which the direct cost of the ap-
17 plicable covered commodity is estab-
18 lished and maintained for the dura-
19 tion of the agreement.

20 (II) A call option purchase agree-
21 ment to protect the eligible entity in
22 any case in which the price of the ap-
23 plicable covered commodity increases
24 by more than 10 percent.

1 (ii) PAYMENT.—Each agreement
2 under this subsection shall clearly state
3 that—

4 (I) the applicable eligible entity
5 shall be responsible for all costs asso-
6 ciated with the agreement; and

7 (II) any initial costs shall be paid
8 at the time that the applicable eligible
9 entity enters into the agreement.

10 (E) DURATION.—

11 (i) IN GENERAL.—An agreement en-
12 tered into under this subsection shall be
13 for a duration of not less than 60 days and
14 not more than 3 years.

15 (ii) REQUIREMENT.—The Adminis-
16 trator shall ensure that the majority of
17 agreements entered into under this sub-
18 section shall be for a duration of not less
19 than 120 days.

20 (b) COVERED COMMODITIES.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 the Administrator shall determine which commod-
23 ities shall be eligible to be the subject of agreements
24 entered into under subsection (a).

1 (2) REQUIREMENTS.—In carrying out para-
2 graph (1), the Administrator—

3 (A) shall ensure that gasoline and diesel
4 gasoline are covered commodities;

5 (B) may offer agreements under subsection
6 (a) relating to not more than 3 covered com-
7 modities in addition to gasoline and diesel gaso-
8 line during the 1-year period beginning on the
9 date on which the Administrator establishes the
10 Program, of which only 1 covered commodity
11 may be intended for specific industry use;

12 (C) may remove a commodity from being
13 eligible to be the subject of an agreement en-
14 tered into subsection (a) only after providing
15 not less than 90 days notice to participants in
16 the Program; and

17 (D) shall use contracts available through
18 entities regulated by the Commission, such as
19 designated contract markets, to the maximum
20 extent practicable.

21 (3) FACTORS FOR CONSIDERATION.—In deter-
22 mining additional commodities that can be the sub-
23 ject of agreements entered into under subsection (a)
24 (beyond the commodities that are required to be in-
25 cluded for that purpose under paragraph (2) of this

1 subsection), or in removing a commodity that is eli-
2 gible to be the subject of an agreement entered into
3 under subsection (a), the Administrator, in consulta-
4 tion with the Commission, shall—

5 (A) take into consideration—

6 (i) feedback from eligible entities and
7 stakeholders, including survey data that
8 the Administrator may collect, relating to
9 demand from eligible entities for the Ad-
10 ministrator to add to the list of covered
11 commodities (beyond the commodities that
12 are required to be classified as covered
13 commodities under paragraph (2) of this
14 subsection), including whether certain com-
15 modities may see higher demand from eli-
16 gible entities in specific industries, even if
17 demand is not as widespread across all in-
18 dustries;

19 (ii) demand and transaction volume in
20 particular commodities;

21 (iii) available liquidity in new com-
22 modity markets; and

23 (iv) the capacity of the Program with
24 respect to funding and staff expertise re-
25 lating to commodities; and

1 (B) give particular consideration to
2 classifying standard utilities, such as electricity
3 and natural gas, as covered commodities.

4 (c) COMMODITY TRANSACTIONS BY ADMINIS-
5 TRATOR.—The Administrator—

6 (1) shall conduct or facilitate such transactions
7 in commodity derivatives markets as the Adminis-
8 trator determines to be necessary to fulfill the obli-
9 gations of the Program under agreements entered
10 into with eligible entities under subsection (a); and

11 (2) may enter into an agreement with a com-
12 modity trading advisor or futures commission mer-
13 chant to carry out paragraph (1).

14 (d) USE OF PROCEEDS.—The Administrator shall—

15 (1) use any proceeds earned by the Program in
16 a fiscal year to offset the operating costs of the Pro-
17 gram for that fiscal year; and

18 (2) return any proceeds beyond the proceeds re-
19 quired to carry out paragraph (1) to the general
20 fund of the Treasury.

21 **SEC. 5. REPORTS.**

22 (a) INITIAL REPORT.—Not later than 120 days after
23 the date of enactment of this Act, the Administrator shall
24 submit to the Committee on Small Business and Entrepre-
25 neurship of the Senate and the Committee on Small Busi-

1 ness of the House of Representatives a report, which shall
2 include—

3 (1) a description of the structure of, and proce-
4 dures for, the Program, including how covered com-
5 modities are selected;

6 (2) a plan for management of the Program; and

7 (3) a description of the merit-based review
8 process to be used in selecting eligible entities to
9 participate in the Program.

10 (b) ANNUAL REPORTS.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, and annually
13 thereafter, the Administrator shall submit to the
14 Committee on Small Business and Entrepreneurship
15 of the Senate and the Committee on Small Business
16 of the House of Representatives a report regarding
17 the Program, which shall include, for the period cov-
18 ered by the report—

19 (A) the number of applications submitted
20 by eligible entities for participation in the Pro-
21 gram;

22 (B) the number of agreements entered into
23 under section 4(a);

24 (C) the total notional value of the covered
25 commodities that were the subjects of the

1 agreements described in subparagraph (B),
2 which shall be disaggregated by covered com-
3 modity; and

4 (D) the effect of the Program on the eligi-
5 ble entities participating the Program, including
6 feedback from those eligible entities on any
7 costs and benefits of the Program with respect
8 to the business operations of those eligible enti-
9 ties, in particular with respect to expansion and
10 growth plans.

11 (2) LIMITATION.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (B), in collecting information
14 from eligible entities for the purpose of carrying
15 out paragraph (1)(D), the Administrator may
16 not require an eligible entity to report to the
17 Administrator more frequently than upon the
18 termination of an agreement under section 4(a)
19 to which the eligible entity is a party or annu-
20 ally, whichever is less frequent.

21 (B) EXCEPTION.—For the first 2 fiscal
22 years after the fiscal year in which an eligible
23 entity enters into an agreement under section
24 4(a), the Administrator, for the purpose of car-
25 rying out paragraph (1)(D), may not require an

1 eligible entity to report to the Administrator
2 more frequently than upon the termination of
3 an agreement under section 4(a) to which the
4 eligible entity is a party or annually, whichever
5 is more frequent.

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