

119TH CONGRESS
1ST SESSION

S. _____

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

Mrs. SHAHEEN introduced the following bill; which was read twice and referred to the Committee on _____

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; and

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-
3igent circumstances.

4 (B) The Administrator shall conduct such pur-
5chases and sales to close positions with respect to
6covered commodities as are necessary to ensure that
7the Administrator remains in compliance with the
8prohibition 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 the date
13 that is 5 years after the date of enactment of this Act.

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

16 (a) AGREEMENTS.—

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

25 (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 a call option purchase agreement with
14 an eligible entity to protect the eligible en-
15 tity in any case in which the price of the
16 applicable covered commodity increases by
17 more than 5 percent.

18 (ii) PAYMENT.—Each agreement
19 under this subsection shall clearly state
20 that—

21 (I) the applicable eligible entity
22 shall be responsible for all costs asso-
23 ciated with the agreement; and

1 (II) any initial costs shall be paid
2 at the time that the applicable eligible
3 entity enters into the agreement.

4 (E) DURATION.—

5 (i) IN GENERAL.—An agreement en-
6 tered into under this subsection shall be
7 for a duration of not less than 60 days and
8 not more than 3 years.

9 (ii) REQUIREMENT.—The Adminis-
10 trator shall ensure that the majority of
11 agreements entered into under this sub-
12 section shall be for a duration of not less
13 than 120 days.

14 (b) COVERED COMMODITIES.—

15 (1) IN GENERAL.—Subject to paragraph (2),
16 the Administrator shall determine which commod-
17 ities shall be eligible to be the subject of agreements
18 entered into under subsection (a).

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

21 (A) shall ensure that gasoline and diesel
22 gasoline are covered commodities;

23 (B) may offer agreements under subsection
24 (a) relating to not more than 3 covered com-
25 modities in addition to gasoline and diesel gaso-

1 line during the 1-year period beginning on the
2 date on which the Administrator establishes the
3 Program, of which only 1 covered commodity
4 may be intended for specific industry use;

5 (C) may remove a commodity from being
6 eligible to be the subject of an agreement en-
7 tered into subsection (a) only after providing
8 not less than 90 days notice to participants in
9 the Program; and

10 (D) shall use contracts available through
11 entities regulated by the Commission, such as
12 designated contract markets, to the maximum
13 extent practicable.

14 (3) FACTORS FOR CONSIDERATION.—In deter-
15 mining additional commodities that can be the sub-
16 ject of agreements entered into under subsection (a)
17 (beyond the commodities that are required to be in-
18 cluded for that purpose under paragraph (2) of this
19 subsection), or in removing a commodity that is eli-
20 gible to be the subject of an agreement entered into
21 under subsection (a), the Administrator, in consulta-
22 tion with the Commission, shall—

23 (A) take into consideration—

24 (i) feedback from eligible entities and
25 stakeholders, including survey data that

1 the Administrator may collect, relating to
2 demand from eligible entities for the Ad-
3 ministrator to add to the list of covered
4 commodities (beyond the commodities that
5 are required to be classified as covered
6 commodities under paragraph (2) of this
7 subsection), including whether certain com-
8 modities may see higher demand from eli-
9 gible entities in specific industries, even if
10 demand is not as widespread across all in-
11 dustries;

12 (ii) demand and transaction volume in
13 particular commodities;

14 (iii) available liquidity in new com-
15 modity markets; and

16 (iv) the capacity of the Program with
17 respect to funding and staff expertise re-
18 lating to commodities; and

19 (B) give particular consideration to
20 classifying standard utilities, such as electricity
21 and natural gas, as covered commodities.

22 (c) COMMODITY TRANSACTIONS BY ADMINIS-
23 TRATOR.—The Administrator—

24 (1) shall conduct or facilitate such transactions
25 in commodity derivatives markets as the Adminis-

1 trator determines to be necessary to fulfill the obli-
2 gations of the Program under agreements entered
3 into with eligible entities under subsection (a); and

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

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

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

11 (2) return any proceeds beyond the proceeds re-
12 quired to carry out paragraph (1) to the general
13 fund of the Treasury.

14 **SEC. 5. REPORTS.**

15 (a) INITIAL REPORT.—Not later than 120 days after
16 the date of enactment of this Act, the Administrator shall
17 submit to the Committee on Small Business and Entrepre-
18 neurship of the Senate and the Committee on Small Busi-
19 ness of the House of Representatives a report, which shall
20 include—

21 (1) a description of the structure of, and proce-
22 dures for, the Program, including how covered com-
23 modities are selected;

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

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

4 (b) ANNUAL REPORTS.—

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

13 (A) the number of applications submitted
14 by eligible entities for participation in the Pro-
15 gram;

16 (B) the number of agreements entered into
17 under section 4(a);

18 (C) the total notional value of the covered
19 commodities that were the subjects of the
20 agreements described in subparagraph (B),
21 which shall be disaggregated by covered com-
22 modity; and

23 (D) the effect of the Program on the eligi-
24 ble entities participating the Program, including
25 feedback from those eligible entities on any

1 costs and benefits of the Program with respect
2 to the business operations of those eligible enti-
3 ties, in particular with respect to expansion and
4 growth plans.

5 (2) LIMITATION.—

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

15 (B) EXCEPTION.—For the first 2 fiscal
16 years after the fiscal year in which an eligible
17 entity enters into an agreement under section
18 4(a), the Administrator, for the purpose of car-
19 rying out paragraph (1)(D), may not require an
20 eligible entity to report to the Administrator
21 more frequently than upon the termination of
22 an agreement under section 4(a) to which the
23 eligible entity is a party or annually, whichever
24 is more frequent.