

Calendar No. 12

118TH CONGRESS
1ST SESSION

S. 259

To ensure transparent and competitive transportation fuel markets in order to protect consumers from unwarranted price increases.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2023

Ms. CANTWELL (for herself, Ms. CORTEZ MASTO, and Mr. WYDEN) introduced the following bill; which was read the first time

FEBRUARY 7, 2023

Read the second time and placed on the calendar

A BILL

To ensure transparent and competitive transportation fuel markets in order to protect consumers from unwarranted price increases.

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 “Transportation Fuel
5 Market Transparency Act”.

1 **SEC. 2. AMENDMENTS TO THE PROHIBITIONS ON MARKET**
2 **MANIPULATION AND FALSE INFORMATION**
3 **PROVISIONS OF THE ENERGY INDEPEND-**
4 **ENCE AND SECURITY ACT OF 2007.**

5 (a) APPLICATION TO TRANSPORTATION FUEL.—Sub-
6 title B of title VIII of the Energy Independence and Secu-
7 rity Act of 2007 (42 U.S.C. 17301 et seq.) is amended—

8 (1) in section 811, by striking “gasoline or pe-
9 troleum distillates” and inserting “or transportation
10 fuel”;

11 (2) in section 812—

12 (A) in the matter preceding paragraph (1),
13 by striking “gasoline or petroleum distillates”
14 and inserting “or transportation fuel”; and

15 (B) in paragraph (3), by striking “, gaso-
16 line, or petroleum distillates” and inserting “or
17 transportation fuel”; and

18 (3) by adding at the end the following new sec-
19 tion:

20 **“SEC. 816. DEFINITION OF TRANSPORTATION FUEL.**

21 “In this subtitle, the term ‘transportation fuel’ in-
22 cludes gasoline, distillate fuels (including heating oil), jet
23 fuel, aviation gasoline, and biofuel (including ethanol, bio-
24 mass-based diesel and distillates, and renewable blending
25 components).”.

1 (b) PROHIBITION ON FALSE INFORMATION.—Section
2 812 of the Energy Independence and Security Act of 2007
3 (42 U.S.C. 17302) is amended—

4 (1) in the matter preceding paragraph (1)—

5 (A) by striking “wholesale” and inserting
6 “supply of, operational actions related to, out-
7 put related to, or wholesale”; and

8 (B) by striking “to a Federal department
9 or agency”;

10 (2) in paragraph (1), by adding “and” at the
11 end;

12 (3) by striking paragraph (2) and redesignating
13 paragraph (3), as amended by subsection (a), as
14 paragraph (2); and

15 (4) in paragraph (2), as so redesignated, by
16 striking “the person intended the false or misleading
17 data to affect data compiled by the department or
18 agency” and inserting “the person intended the false
19 or misleading information reported by the person to
20 affect the analyses”.

21 (c) ENFORCEMENT.—Section 813(a) of the Energy
22 Independence and Security Act of 2007 (42 U.S.C.
23 17303(a)) is amended by striking “This subtitle” and in-
24 serting “Except as otherwise provided in section 814, this
25 subtitle”.

1 (d) PENALTIES.—Section 814(b) of the Energy Inde-
 2 pendence and Security Act of 2007 (42 U.S.C. 17304(b))
 3 is amended by striking “section 5 of the Federal Trade
 4 Commission Act (15 U.S.C. 45)” and inserting “section
 5 5(m)(1)(A) of the Federal Trade Commission Act (15
 6 U.S.C. 45(m)(1)(A))”.

7 **SEC. 3. TRANSPORTATION FUEL MONITORING AND EN-**
 8 **FORCEMENT WITHIN THE FEDERAL TRADE**
 9 **COMMISSION.**

10 (a) ESTABLISHMENT OF THE TRANSPORTATION
 11 FUEL MONITORING AND ENFORCEMENT UNIT.—

12 (1) IN GENERAL.—The Commission shall estab-
 13 lish within the Commission the Transportation Fuel
 14 Monitoring and Enforcement Unit (in this section
 15 referred to as the “Unit”).

16 (2) DUTIES OF THE UNIT.—

17 (A) PRIMARY RESPONSIBILITY.—The pri-
 18 mary responsibility of the Unit shall be to assist
 19 the Commission in protecting the public interest
 20 by continuously and comprehensively collecting,
 21 monitoring, and analyzing crude oil and trans-
 22 portation fuel market data in order to—

23 (i) support transparent and competi-
 24 tive market practices;

1 (ii) identify any market manipulation,
2 reporting of false information, use of mar-
3 ket power to disadvantage consumers, or
4 other unfair method of competition; and

5 (iii) facilitate enforcement of penalties
6 against persons in violation of relevant
7 statutory prohibitions.

8 (B) SPECIFIC DUTIES.—In order to carry
9 out the responsibility under subparagraph (A),
10 the Unit shall assist the Commission in car-
11 rying out the following duties:

12 (i) Receiving, compiling, and ana-
13 lyzing relevant buying and selling activity
14 in order to identify and investigate anoma-
15 lous market trends and potential market
16 manipulation.

17 (ii) Gathering evidence of wrongdoing
18 against any person in violation of the stat-
19 utory prohibitions on market manipulation
20 and false information established in, and
21 consistent with, subtitle B of title VIII of
22 the Energy Independence and Security Act
23 of 2007, as amended by section 2, or any
24 other applicable provisions of the Federal

1 Trade Commission Act (15 U.S.C. 45 et
2 seq.).

3 (iii) Obtaining a data-sharing agree-
4 ment with the Energy Information Admin-
5 istration that includes the data collected in
6 accordance with section 205(n) of the De-
7 partment of Energy Organization Act (42
8 U.S.C. 7135), as amended by section 4.

9 (iv) Obtaining data-sharing agree-
10 ments with the Commodities Futures
11 Trading Commission, the Federal Energy
12 Regulatory Commission, and as necessary
13 and practicable, State energy offices or
14 commissions, and relevant public and pri-
15 vate data sources that will allow the Com-
16 mission to receive and archive information
17 on—

18 (I) crude oil and transportation
19 fuel buying and selling activity;

20 (II) individual physical and fi-
21 nancial market positions of market
22 participants regarding crude oil and
23 transportation fuel;

1 (III) refinery output, capacity,
2 and inventory levels of crude oil and
3 transportation fuel;

4 (IV) imports and exports of
5 crude oil and transportation fuel with-
6 in regions and at levels that could im-
7 pact prices faced by consumers;

8 (V) public announcements by en-
9 ergy companies of planned pricing or
10 output decisions regarding crude oil
11 and transportation fuel; and

12 (VI) other relevant market infor-
13 mation that will facilitate the gath-
14 ering of evidence described in clause
15 (ii), including sufficient market infor-
16 mation necessary to monitor for cross-
17 market manipulations that may in-
18 clude multiple financial and physical
19 market positions.

20 (v) Any other information determined
21 appropriate by the Commission to carry
22 out the responsibility under subparagraph
23 (A).

24 (b) DEFINITIONS.—In this section:

1 (1) COMMISSION.—Other than in subsection
2 (a)(2)(B)(iv), the term “Commission” means the
3 Federal Trade Commission.

4 (2) TRANSPORTATION FUEL.—The term “trans-
5 portation fuel” includes gasoline, distillate fuels (in-
6 cluding heating oil), jet fuel, aviation gasoline, and
7 biofuel (including ethanol, biomass-based diesel and
8 distillates, and renewable blending components).

9 (c) REGULATIONS.—Not later than 90 days after the
10 date of enactment of this Act, the Commission shall pro-
11 mulgate regulations to carry out this section.

12 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated to the Commission such
14 sums as may be necessary for each of fiscal years 2023
15 through 2028 to carry out this section.

16 **SEC. 4. TRANSPORTATION FUEL MARKET TRANSPARENCY.**

17 Section 205 of the Department of Energy Organiza-
18 tion Act (42 U.S.C. 7135) is amended by adding at the
19 end the following:

20 “(n) TRANSPORTATION FUEL MARKET TRANS-
21 PARENCY.—

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

23 “(A) ENERGY COMPANY.—The term ‘en-
24 ergy company’ means a person (as defined in
25 section 11(e) of the Energy Supply and Envi-

1 ronmental Coordination Act of 1974 (15 U.S.C.
2 796(e)) that—

3 “(i) owns or controls commercial
4 amounts of crude oil or transportation
5 fuel; or

6 “(ii) is engaged in—

7 “(I) exploration for, or develop-
8 ment of, crude oil;

9 “(II) extraction of crude oil;

10 “(III) refining or otherwise proc-
11 essing crude oil or transportation fuel;

12 “(IV) commercial storage of
13 crude oil or transportation fuel;

14 “(V) transportation by any
15 means of commercial amounts of
16 crude oil or transportation fuel; or

17 “(VI) wholesale or retail distribu-
18 tion of crude oil or transportation
19 fuel.

20 “(B) TRANSPORTATION FUEL.—The term
21 ‘transportation fuel’ means—

22 “(i) gasoline;

23 “(ii) distillate fuels, including heating
24 oil;

25 “(iii) jet fuel;

1 “(iv) aviation gasoline; and

2 “(v) biofuel, including ethanol, bio-
3 mass-based diesel and distillates, and re-
4 newable blending components.

5 “(2) PURPOSE.—The purpose of this subsection
6 is to collect data necessary to facilitate transparent
7 and competitive transportation fuel markets, deter-
8 mine adherence to relevant international sanctions,
9 and protect consumers.

10 “(3) SURVEYS.—

11 “(A) IN GENERAL.—The Administrator
12 shall conduct surveys of energy companies to
13 collect detailed and timely information on
14 United States crude oil and transportation fuel
15 markets.

16 “(B) EXEMPTION.—The Administrator
17 shall exempt an energy company from partici-
18 pating in the surveys conducted under subpara-
19 graph (A) if the energy company has a de mini-
20 mis market presence or impact, as determined
21 by the Administrator.

22 “(4) DATA COLLECTED.—

23 “(A) IN GENERAL.—The surveys con-
24 ducted under paragraph (3) shall collect infor-

1 mation on a national, regional, State, and en-
2 ergy company basis.

3 “(B) INFORMATION.—The surveys con-
4 ducted under paragraph (3) shall collect the fol-
5 lowing information with respect to crude oil and
6 transportation fuel, as applicable:

7 “(i) The quantity of crude oil and
8 transportation fuel imported and exported.

9 “(ii) The quantity of crude oil and
10 transportation fuel refined, stored, and
11 transported.

12 “(iii) The quantity of crude oil and
13 transportation fuel entering final retail and
14 commercial commerce.

15 “(iv) The quantity of crude oil and
16 transportation fuel purchased and sold at
17 any upstream point between energy compa-
18 nies, including off-exchange bilateral sales
19 and sales between subsidiaries of the same
20 energy company.

21 “(v) Market price data for the trans-
22 actions described in clauses (i) through
23 (iv).

24 “(vi) Submissions to relevant price re-
25 porting entities.

1 “(vii) Any other such data, analyses,
2 or evaluations that the Administrator de-
3 termines is necessary to achieve the pur-
4 pose described in paragraph (2).

5 “(C) ORIGIN OF FUEL.—In obtaining the
6 information described in subparagraph (B), the
7 Administrator shall, to the maximum extent
8 practicable, track and publish the country of
9 original production of crude oil and transpor-
10 tation fuel that may have been resold, refined,
11 blended, stored, or otherwise been exchanged or
12 sold before being imported or exported into the
13 United States.

14 “(D) OTHER SOURCES.—The Adminis-
15 trator may, when practicable and determined
16 reliable by the Administrator, obtain informa-
17 tion described in subparagraph (B) from pri-
18 vate price publishers and providers of trade
19 processing services.

20 “(5) MINIMIZING REPORTING BURDENS.—The
21 Administrator shall seek to minimize any burdens on
22 energy companies in reporting information to the
23 Administrator, including by automating data sub-
24 mission practices for data collected under the sur-
25 veys conducted under paragraph (3).

1 “(6) PUBLIC DISTRIBUTION.—

2 “(A) IN GENERAL.—To the maximum ex-
3 tent practicable, subject to this paragraph, the
4 Administrator shall consistently and promptly
5 make publicly available analyses of the results
6 of the data collected pursuant to this subsection
7 in a form and manner easily adaptable for pub-
8 lic use and machine analysis.

9 “(B) GEOGRAPHICAL SPECIFICITY.—Anal-
10 yses published under subparagraph (A)—

11 “(i) shall be geographically specific
12 enough to provide meaningful differentia-
13 tion between fuel markets; and

14 “(ii) shall not organize geographical
15 data in the form of Petroleum Administra-
16 tion for Defense Districts or other geo-
17 graphic aggregations lacking sufficient res-
18 olution to ascertain regionally specific mar-
19 ket trends or disparities.

20 “(C) NONDISCLOSURE.—Any analysis pub-
21 lished under subparagraph (A) shall not dis-
22 close matters exempted from mandatory disclo-
23 sure under section 552(b) of title 5, United
24 States Code.

25 “(7) DATA-SHARING AGREEMENTS.—

1 “(A) FEDERAL TRADE COMMISSION.—Not-
2 withstanding subchapter III of chapter 35 of
3 title 44, United States Code (commonly known
4 as the ‘Confidential Information Protection and
5 Statistical Efficiency Act of 2018’), not later
6 than 1 year after the date of enactment of this
7 subsection, the Administrator shall enter into a
8 data-sharing agreement with the Federal Trade
9 Commission that shall allow any information
10 collected pursuant to this subsection to be re-
11 quested by and transferred to the Federal
12 Trade Commission without limitation or delay.

13 “(B) OTHER FEDERAL AGENCIES.—The
14 Administrator may enter into data-sharing
15 agreements with other Federal agencies that
16 have energy-related policy decision-making re-
17 sponsibilities, including the Commodity Futures
18 Trading Commission, the Federal Energy Regu-
19 latory Commission, and the Securities and Ex-
20 change Commission.”.

21 “(9) AUTHORIZATION OF APPROPRIATIONS.—
22 There is authorized to be appropriated to the Ad-
23 ministrator to carry out this section such sums as
24 are necessary for each of fiscal years 2023 through
25 2028.”.

1 **SEC. 5. REPORT ON FTC ENFORCEMENT ACTIONS BASED**
2 **ON THE MARKET MANIPULATION AND FALSE**
3 **INFORMATION PROVISIONS OF THE ENERGY**
4 **INDEPENDENCE AND SECURITY ACT OF 2007.**

5 (a) REPORT.—Not later than 90 days after the date
6 of enactment of this Act, the Federal Trade Commission
7 (in this section referred to as the “Commission”) shall
8 submit to the Committee on Commerce, Science, and
9 Transportation of the Senate and the Committee on En-
10 ergy and Commerce of the House of Representatives a re-
11 port regarding the enforcement actions of the Commission
12 against prohibited market manipulation or false informa-
13 tion under section 813 of the Energy Independence and
14 Security Act of 2007 (42 U.S.C. 17303) during the cal-
15 endar year commencing on January 1, 2022, and the pre-
16 ceding 5 calendar years.

17 (b) REPORT CONTENTS.—The report required under
18 subsection (a) shall include, for each calendar year—

19 (1) the number of enforcement actions initiated;
20 and

21 (2) the number of enforcement actions com-
22 pleted, including—

23 (A) the number of such actions that re-
24 sulted in a violation of section 811 or 812 of
25 the Energy Independence and Security Act of
26 2007 (42 U.S.C. 17301, 17302), including—

1 (i) the average number of violations
2 per enforcement action;

3 (ii) the average civil penalty assessed
4 in each enforcement action; and

5 (iii) the aggregate civil penalties col-
6 lected by the Commission during the cal-
7 endar year; and

8 (B) the number of such actions that re-
9 sulted in a finding of no violation of such sec-
10 tion 811 or 812.

11 **SEC. 6. SAVINGS CLAUSE.**

12 Nothing in this Act shall be construed to alter or ex-
13 pand the authority of the Federal Trade Commission.

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A BILL

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