



Highlights of [GAO-08-25](#), a report to congressional addressees

Why GAO Did This Study

Prices for four energy commodities—crude oil, heating oil, unleaded gasoline, and natural gas—have risen substantially since 2002. Some observers believe that higher energy prices are the result of changes in supply and demand. Others believe that increased futures trading activity has also contributed to higher prices. This report, conducted under the Comptroller General of the United States' authority, examines (1) trends and patterns in the physical and energy derivatives markets, (2) the scope of the Commodity Futures Trading Commission's (CFTC) regulatory authority over these markets, and (3) the effectiveness of CFTC's monitoring and detection of market abuses and enforcement. For this work, GAO analyzed futures and large trader data and interviewed market participants, experts, and officials at six federal agencies.

What GAO Recommends

As part of CFTC's reauthorization process, Congress should consider further exploring the scope of the agency's authority over energy derivatives trading, in particular for trading in exempt commercial markets. In addition, GAO recommends that CFTC improve the usefulness of the information provided to the public, better document its monitoring activities, and develop more outcome-oriented performance measures for its enforcement program. In written comments, CFTC generally agreed with GAO's recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-25](#). For more information, contact Orice Williams at (202) 512-8678 or williamso@gao.gov.

COMMODITY FUTURES TRADING COMMISSION

Trends in Energy Derivatives Markets Raise Questions about CFTC's Oversight

What GAO Found

Rising energy prices have been attributed to a variety of factors, among them recent trends (2002-2006) in the physical and futures markets. These trends include (1) factors in the physical markets, such as tight supply, rising demand, and a lack of spare production capacity; (2) higher than average, but declining, volatility (a measure of the degree to which prices fluctuate over time) in energy futures prices for crude oil, heating oil, and unleaded gasoline; and (3) growth in several key areas, including the number of noncommercial participants in the futures markets (including hedge funds), the volume of energy futures contracts traded, and the volume of energy derivatives traded outside of traditional futures exchanges. Because these changes took place concurrently, the effect of any individual trend or factor is unclear.

On the basis of its authority under the Commodity Exchange Act (CEA), CFTC focuses its oversight primarily on the operations of traditional futures exchanges, such as the New York Mercantile Exchange, Inc. (NYMEX), where energy futures are traded. Energy derivatives are also traded on other markets, namely, exempt commercial and over-the-counter (OTC) markets, that are exempt from CFTC oversight. Both types of markets have seen their volumes climb in recent years. Exempt commercial markets are electronic trading facilities where certain commodities, such as energy, are traded between large, sophisticated participants. OTC markets allow eligible parties to enter into contracts directly, without using an exchange. While the exempt commercial and OTC markets are subject to the CEA's antimanipulation and antifraud provisions and CFTC enforcement of those provisions, some market observers question whether CFTC needs broader authority to oversee these markets. CFTC is currently examining the effects of trading in the regulated and exempt energy markets on price discovery and the scope of its authority over these markets—an issue that will warrant further examination as part of the CFTC reauthorization process. Moreover, because of changes and innovations in the market, the methods used to categorize these data can distort the information reported to the public, which may not be completely accurate or relevant.

CFTC conducts daily surveillance of trading on NYMEX that is designed to detect and deter fraudulent or abusive trading practices involving energy futures contracts. To detect abusive practices, such as potential manipulation, CFTC uses various information sources and relies heavily on trading activity data for large market participants. Using this information, CFTC staff may pursue alleged abuse or manipulation. However, because the agency does not maintain complete records of all such allegations, this lack of information makes it difficult to determine the usefulness and extent of these activities. In addition, CFTC's performance measures for enforcement do not fully reflect the program's goals and purposes, which could be addressed by developing additional outcome-based performance measures that more fully reflect progress in meeting the program's overall goals.