

110TH CONGRESS  
1ST SESSION

# H. R. 594

To regulate over-the-counter trading of energy derivatives.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2007

Mr. STUPAK (for himself, Mr. DINGELL, Mr. LARSON of Connecticut, Mr. HINCHEY, Mr. ALLEN, Mrs. CAPPS, Mr. DEFazio, Ms. SCHAKOWSKY, Mr. CONYERS, Mr. PASCARELL, Mr. GRIJALVA, Ms. JACKSON-LEE of Texas, Mr. TIERNEY, Mr. KILDEE, Ms. SCHWARTZ, Mr. CHANDLER, Mr. MICHAUD, Mrs. DAVIS of California, and Mr. BAIRD) introduced the following bill; which was referred to the Committee on Agriculture

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## A BILL

To regulate over-the-counter trading of energy derivatives.

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 “Prevent Unfair Manip-  
5 ulation of Prices Act of 2007”.

6 **SEC. 2. OVER-THE-COUNTER TRANSACTIONS IN ENERGY**  
7 **COMMODITIES.**

8 (a) DEFINITIONS.—Section 1a of the Commodity Ex-  
9 change Act (7 U.S.C. 1a) is amended by adding at the  
10 end the following:

1           “(34) INCLUDED ENERGY TRANSACTION.—The  
2 term ‘included energy transaction’ means a contract,  
3 agreement, or transaction in an energy commodity  
4 that is—

5           “(A)(i) executed or traded on an electronic  
6 trading facility; and

7           “(ii) entered into on a principal-to-prin-  
8 cipal basis solely between persons that are eligi-  
9 ble commercial entities at the time the persons  
10 enter into the agreement, contract, or trans-  
11 action; or

12           “(B)(i) executed or traded not on or  
13 through a trading facility; and

14           “(ii) entered into solely between persons  
15 that are eligible contract participants at the  
16 time the persons enter into the agreement, con-  
17 tract, or transaction, regardless of the means of  
18 execution of the agreement, contract, or trans-  
19 action.

20           “(35) ENERGY COMMODITY.—

21           “(A) IN GENERAL.—The term ‘energy  
22 commodity’ means a commodity (other than an  
23 excluded commodity, a metal, or an agricultural  
24 commodity) that is used as a source of energy.

1                   “(B) INCLUSIONS.—The term ‘energy com-  
2                   modity’ includes—

3                   “(i) coal;

4                   “(ii) crude oil, gasoline, diesel fuel,  
5                   heating oil, and propane;

6                   “(iii) electricity; and

7                   “(iv) natural gas.

8                   “(36) ELECTRONIC ENERGY TRADING FACIL-  
9                   ITY.—The term ‘electronic energy trading facility’  
10                  means an electronic trading facility on or through  
11                  which included energy transactions are traded or ex-  
12                  ecuted.”.

13                  (b) OFF-EXCHANGE TRANSACTIONS IN ENERGY  
14                  COMMODITIES.—Section 2(g) of the Commodity Exchange  
15                  Act (7 U.S.C. 2(g)) is amended—

16                   (1) by inserting “or an energy commodity”  
17                   after “agricultural commodity”;

18                   (2) by redesignating paragraphs (1) through  
19                   (3) as subparagraphs (A) through (C), respectively;

20                   (3) by striking “No provision” and inserting  
21                   the following:

22                   “(1) IN GENERAL.—No provision”; and

23                   (4) by adding at the end the following:

24                   “(2) TRANSACTIONS IN ENERGY COMMOD-  
25                   ITIES.—

1           “(A) IN GENERAL.—Except as provided in  
2 subparagraphs (B) and (C) and subsection  
3 (h)(7), nothing in this Act applies to an in-  
4 cluded energy transaction.

5           “(B) PROHIBITED CONDUCT.—

6           “(i) IN GENERAL.—An included en-  
7 ergy transaction shall be subject to—

8                   “(I) sections 5b, 12(e)(2)(B),  
9 and 22(a)(4); and

10                   “(II) the prohibitions in sections  
11 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6e, 6d,  
12 8a, and 9(a)(2).

13           “(ii) TRANSACTIONS EXEMPTED BY  
14 COMMISSION ACTION.—Notwithstanding  
15 any exemption by the Commission under  
16 section 4(e), an included energy trans-  
17 action shall be subject to the sections spec-  
18 ified in clause (i) of this subparagraph,  
19 subparagraph (C), and subsection (h)(7).

20           “(C) REPORTING AND RECORDKEEPING  
21 REQUIREMENTS.—

22           “(i) IN GENERAL.—An eligible con-  
23 tract participant that enters into or exe-  
24 cutes an included energy transaction that  
25 performs, or together with other such

1 transactions performs, a significant price  
2 discovery function in the cash market for  
3 an energy commodity or in any other mar-  
4 ket for agreements, contracts, or trans-  
5 actions relating to an energy commodity,  
6 and an eligible commercial entity that en-  
7 ters into or executes an included energy  
8 transaction described in section 1a(34)(A)  
9 shall—

10 “(I) provide to the Commission  
11 on a timely basis the information re-  
12 quired under clause (ii); and

13 “(II)(aa) consistent with section  
14 4i, maintain books and records relat-  
15 ing to each included energy trans-  
16 action, for a period of at least 5 years  
17 after the date of the transaction, in  
18 such form as the Commission shall re-  
19 quire; and

20 “(bb) keep the books and records  
21 open to inspection by any representa-  
22 tive of the Commission or the Attor-  
23 ney General.

24 “(ii) REQUIRED INFORMATION.—

1           “(I) IN GENERAL.—The Commis-  
2           sion shall require that such informa-  
3           tion regarding included energy trans-  
4           actions be provided to the Commission  
5           as the Commission considers nec-  
6           essary to assist in detecting and pre-  
7           venting price manipulation.

8           “(II) INFORMATION TO BE IN-  
9           CLUDED.—Such information shall in-  
10          clude information regarding large  
11          trading positions obtained through 1  
12          or more included energy transactions  
13          that involve—

14               “(aa) substantial quantities  
15               of the commodity in the cash  
16               market; or

17               “(bb) substantial positions,  
18               investments, or trades in agree-  
19               ments or contracts related to en-  
20               ergy commodities.

21          “(III) MANNER OF COMPLI-  
22          ANCE.—The Commission shall specify  
23          when and how such information shall  
24          be provided and maintained by eligible

1 contract participants and eligible com-  
2 mercial entities.

3 “(IV) PRICE DISCOVERY TRANS-  
4 ACTIONS.—

5 “(aa) IN GENERAL.—In  
6 specifying the information to be  
7 provided under this paragraph,  
8 the Commission shall identify the  
9 transactions or class of trans-  
10 actions that the Commission con-  
11 siders to perform a significant  
12 price discovery function.

13 “(bb) CONSIDERATIONS.—In  
14 determining which included en-  
15 ergy transactions perform a sig-  
16 nificant price discovery function,  
17 the Commission shall consider  
18 the extent to which—

19 “(AA) standardized  
20 agreements are used to exe-  
21 cute the transactions;

22 “(BB) the transactions  
23 involve standardized types or  
24 measures of a commodity;

1                   “(CC) the prices of the  
2                   transactions are reported to  
3                   third parties, published, or  
4                   disseminated;

5                   “(DD) the prices of the  
6                   transactions are referenced  
7                   in other transactions; and

8                   “(EE) other factors  
9                   considered appropriate by  
10                  the Commission.

11                  “(V) PERSONS FILING.—

12                  “(aa) IN GENERAL.—The  
13                  Commission, in its discretion,  
14                  may allow large trader position  
15                  reports required to be provided  
16                  by an eligible commercial entity  
17                  to be provided by an electronic  
18                  energy trading facility if the eli-  
19                  gible commercial entity author-  
20                  izes the facility to provide such  
21                  information on its behalf.

22                  “(bb) INFORMATION AND  
23                  ENFORCEMENT.—Nothing in an  
24                  authorization under item (aa)  
25                  shall impair the ability of the

1 Commission to obtain informa-  
2 tion from an eligible commercial  
3 entity or otherwise enforce this  
4 Act.

5 “(VI) REGULATIONS.—Not later  
6 than 180 days after the date of enact-  
7 ment of this paragraph, the Commis-  
8 sion shall issue a notice of proposed  
9 rulemaking, and not later than 1 year  
10 after the date of enactment of this  
11 paragraph, the Commission shall pro-  
12 mulgate final regulations, specifying  
13 the information to be provided and  
14 maintained under this subpara-  
15 graph.”.

16 **SEC. 3. ELECTRONIC TRADING FACILITIES FOR ENERGY**  
17 **COMMODITIES.**

18 Section 2(h) of the Commodity Exchange Act (7  
19 U.S.C. 2(h)) is amended—

20 (1) in paragraph (1), by inserting after “an ex-  
21 empt commodity” the following: “, other than an en-  
22 ergy commodity,”;

23 (2) in paragraph (3), by inserting after “an ex-  
24 empt commodity” the following: “, other than an en-  
25 ergy commodity,”; and

1 (3) by adding at the end the following:

2 “(7) ENERGY TRANSACTIONS.—

3 “(A) IN GENERAL.—To the extent that the  
4 Commission determines to be appropriate under  
5 subparagraph (C), an electronic energy trading  
6 facility shall—

7 “(i) be subject to the requirements of  
8 section 5a, to the extent provided in sec-  
9 tions 5a(g) and 5d;

10 “(ii)(I) consistent with section 4i,  
11 maintain books and records relating to the  
12 business of the electronic energy trading  
13 facility, including books and records relat-  
14 ing to each transaction in such form as the  
15 Commission may require; and

16 “(II) make the books and records re-  
17 quired under this section available to rep-  
18 resentatives of the Commission and the At-  
19 torney General for inspection for a period  
20 of at least 5 years after the date of each  
21 included energy transaction;

22 “(iii) make available to the public in-  
23 formation on trading volumes, settlement  
24 prices, open interest (where applicable),  
25 and opening and closing ranges (or daily

1           highs and lows, as appropriate) for in-  
2           cluded energy transactions; and

3           “(iv) provide the information to the  
4           Commission in such form and at such  
5           times as the Commission may require.

6           “(B) APPLICABILITY OF OTHER PROVI-  
7           SIONS.—

8           “(i) PARAGRAPH (5).—An electronic  
9           energy trading facility shall comply with  
10          paragraph (5).

11          “(ii) PARAGRAPH (6).—Paragraph (6)  
12          shall apply with respect to a subpoena  
13          issued to any foreign person that the Com-  
14          mission believes is conducting or has con-  
15          ducted transactions on or through an elec-  
16          tronic energy trading facility.

17          “(C) REGULATIONS.—Not later than 180  
18          days after the date of enactment of this para-  
19          graph, the Commission shall issue a notice of  
20          proposed rulemaking, and not later than 1 year  
21          after the date of enactment of this paragraph,  
22          the Commission shall promulgate final regula-  
23          tions, specifying the information to be provided,  
24          maintained, or made available to the public  
25          under subparagraphs (A) and (B).

1           “(8) NONDISCLOSURE OF PROPRIETARY INFOR-  
2           MATION.—In carrying out paragraph (7) and sub-  
3           section (g)(2), the Commission shall not—

4                   “(A) require the real-time publication of  
5                   proprietary information;

6                   “(B) prohibit the commercial sale or li-  
7                   censing of real-time proprietary information; or

8                   “(C) publicly disclose information regard-  
9                   ing market positions, business transactions,  
10                  trade secrets, or names of customers, except as  
11                  provided in section 8.”.

12 **SEC. 4. NO EFFECT ON OTHER AUTHORITY.**

13           (a) NO EFFECT ON FERC AUTHORITY.—Nothing  
14           contained in this title shall affect the jurisdiction of the  
15           Federal Energy Regulatory Commission with respect to  
16           the authority of the Federal Energy Regulatory Commis-  
17           sion under the Federal Power Act (16 U.S.C. 791a et  
18           seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or  
19           other law to obtain information or otherwise carry out the  
20           responsibilities of the Federal Energy Regulatory Commis-  
21           sion.

22           (b) NO EFFECT ON EXCLUDED COMMODITIES.—The  
23           amendments made by this title have no effect on the regu-  
24           lation of excluded commodities under the Commodity Ex-  
25           change Act (7 U.S.C. 1a et seq.).

1 (c) NO EFFECT ON METALS.—The amendments  
2 made by this title have no effect on the regulation of met-  
3 als under the Commodity Exchange Act (7 U.S.C. 1a et  
4 seq.).

5 **SEC. 5. PROHIBITION OF FRAUDULENT TRANSACTIONS.**

6 Section 4b of the Commodity Exchange Act (7 U.S.C.  
7 6b) is amended by striking subsection (a) and inserting  
8 the following:

9 “(a) PROHIBITIONS.—

10 “(1) IN GENERAL.—It shall be unlawful (A) for  
11 any person, in or in connection with any order to  
12 make, or the making of, any contract of sale of any  
13 commodity for future delivery or in interstate com-  
14 merce, that is made, or to be made, on or subject  
15 to the rules of a designated contract market, for or  
16 on behalf of any other person, or (B) for any person,  
17 in or in connection with any order to make, or the  
18 making of, any contract of sale of any commodity  
19 for future delivery or other agreement, contract or  
20 transaction subject to paragraphs (1) and (2) of sec-  
21 tion 5a(g), that is made, or to be made, for or on  
22 behalf of or with, any other person, other than on  
23 or subject to the rules of a designated contract mar-  
24 ket—

1           “(i) to cheat or defraud or attempt to  
2 cheat or defraud the other person;

3           “(ii) willfully to make or cause to be made  
4 to such other person any false report or state-  
5 ment or willfully to enter or cause to be entered  
6 for the other person any false record;

7           “(iii) willfully to deceive or attempt to de-  
8 ceive the other person by any means whatsoever  
9 in regard to any order or contract or the dis-  
10 position or execution of any order or contract,  
11 or in regard to any act of agency performed,  
12 with respect to any order or contract for (or, in  
13 the case of a contract described in subpara-  
14 graph (B), with the other person) such person;  
15 or

16           “(iv)(I) to bucket an order represented by  
17 the person as an order to be executed, for or on  
18 behalf of the other person, on an organized ex-  
19 change; or

20           “(II) to—

21           “(aa) fill an order by offset against  
22 the order or orders of the other person; or

23           “(bb) willfully and knowingly and  
24 without the prior consent of the other per-  
25 son, to—

1                   “(AA) become the buyer in re-  
2                   spect to any selling order of the other  
3                   person; or

4                   “(BB) become the seller in re-  
5                   spect to any buying order of the other  
6                   person,

7                   if the order is to be executed on or subject to  
8                   the rules of a designated contract market.

9                   “(2) LIMITATION.—This subsection does not  
10                  obligate any person, in connection with a transaction  
11                  in a contract of sale of a commodity for future deliv-  
12                  ery with another person, to disclose to any other  
13                  person nonpublic information that may be material  
14                  to the market price of the commodity or transaction,  
15                  except as necessary to make any statement made to  
16                  the other person in connection with the transaction  
17                  not misleading in any material respect.”.

18 **SEC. 6. CRIMINAL AND CIVIL PENALTIES.**

19                  (a) ENFORCEMENT POWERS OF COMMISSION.—Sec-  
20                  tion 6(c) of the Commodity Exchange Act (7 U.S.C. 9,  
21                  15) is amended in clause (3) of the tenth sentence—

22                         (1) by inserting “(A)” after “assess such per-  
23                         son”; and

24                         (2) by inserting after “each such violation” the  
25                         following: “, or (B) in any case of manipulation of,

1 or attempt to manipulate, the price of any com-  
2 modity, a civil penalty of not more than the greater  
3 of \$1,000,000 or triple the monetary gain to such  
4 person for each such violation.”.

5 (b) MANIPULATIONS AND OTHER VIOLATIONS.—Sec-  
6 tion 6(d) of the Commodity Exchange Act (7 U.S.C. 13b)  
7 is amended in the first sentence—

8 (1) by striking “paragraph (a) or (b) of section  
9 9 of this Act” and inserting “subsection (a), (b), or  
10 (f) of section 9”; and

11 (2) by striking “said paragraph 9(a) or 9(b)”  
12 and inserting “subsection (a), (b), or (f) of section  
13 9”.

14 (c) NONENFORCEMENT OF RULES OF GOVERNMENT  
15 OR OTHER VIOLATIONS.—Section 6b of the Commodity  
16 Exchange Act (7 U.S.C. 13a) is amended—

17 (1) in the first sentence, by inserting before the  
18 period at the end the following: “, or, in any case  
19 of manipulation of, or an attempt to manipulate, the  
20 price of any commodity, a civil penalty of not more  
21 than \$1,000,000 for each such violation”; and

22 (2) in the second sentence, by inserting before  
23 the period at the end the following: “, except that  
24 if the failure or refusal to obey or comply with the  
25 order involved any offense under section 9(f), the

1 registered entity, director, officer, agent, or employee  
2 shall be guilty of a felony and, on conviction, shall  
3 be subject to penalties under section 9(f)”.

4 (d) ACTION TO ENJOIN OR RESTRAIN VIOLATIONS.—  
5 Section 6c(d) of the Commodity Exchange Act (7 U.S.C.  
6 13a–1(d)) is amended by striking “(d)” and all that fol-  
7 lows through the end of paragraph (1) and inserting the  
8 following:

9 “(d) CIVIL PENALTIES.—(1) In any action brought  
10 under this section, the Commission may seek and the  
11 court shall have jurisdiction to impose, on a proper show-  
12 ing, on any person found in the action to have committed  
13 any violation—

14 “(A) a civil penalty in the amount of not more  
15 than the greater of \$100,000 or triple the monetary  
16 gain to the person for each violation; or

17 “(B) in any case of manipulation of, or an at-  
18 tempt to manipulate, the price of any commodity, a  
19 civil penalty in the amount of not more than the  
20 greater of \$1,000,000 or triple the monetary gain to  
21 the person for each violation.”.

22 (e) VIOLATIONS GENERALLY.—Section 9(a) of the  
23 Commodity Exchange Act (7 U.S.C. 13) is amended—

24 (1) by striking “(or \$500,000 in the case of a  
25 person who is an individual)”;

1           (2) by striking “five years” and inserting “10  
2           years”; and

3           (3) in paragraph (2), by striking “false or mis-  
4           leading or knowingly inaccurate reports” and insert-  
5           ing “knowingly false, misleading, or inaccurate re-  
6           ports”.

7 **SEC. 7. CONFORMING AMENDMENTS.**

8           (a) Section 2 of the Commodity Exchange Act (7  
9 U.S.C. 2) is amended—

10           (1) in subsection (d)(1), by striking “section  
11           5b” and inserting “section 5a(g), 5b,”;

12           (2) in subsection (e)(1), by inserting “(1)” after  
13           “(g)”; and

14           (3) in subsection (i)—

15           (A) in paragraph (1)—

16           (i) by striking “No provision” and in-  
17           serting “IN GENERAL.—Subject to sub-  
18           sections (g)(2) and (h)(7), no provision”;  
19           and

20           (ii) in subparagraph (A), by inserting  
21           “(1)” after “2(g)”; and

22           (B) in paragraph (2), by striking “No pro-  
23           vision” and inserting “IN GENERAL.—Subject  
24           to subsections (g)(2) and (h)(7), no provision”.

1           (b) Section 4i of the Commodity Exchange Act (7  
2 U.S.C. 6i) is amended in the first sentence by inserting  
3 “, or pursuant to an exemption under section 4(c)” after  
4 “transaction execution facility”.

5           (c) Section 8a(9) of the Commodity Exchange Act (7  
6 U.S.C. 12a(9)) is amended—

7           (1) by inserting “or an electronic energy trad-  
8           ing facility” after “direct the contract market”;

9           (2) by inserting after “liquidation of any fu-  
10          tures contract” the following: “or included energy  
11          transaction”; and

12          (3) by inserting “or an electronic energy trad-  
13          ing facility” after “given by a contract market”.

○