

109TH CONGRESS  
2D SESSION

# H. R. 5248

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2006

Mr. STUPAK (for himself, Mr. DINGELL, Mr. LARSON of Connecticut, Mr. NADLER, Mrs. MCCARTHY, Mr. HINCHEY, Mr. BAIRD, Mrs. NAPOLITANO, Mr. CHANDLER, Ms. SCHWARTZ of Pennsylvania, Mr. TIERNEY, Mr. INSLEE, Ms. MCKINNEY, Mr. ALLEN, Mr. AL GREEN of Texas, Mr. DEFazio, Mrs. CAPPS, Mr. PASCRELL, Mr. DOGGETT, Mr. RUPPERSBERGER, and Mr. BISHOP of New York) 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 2006”.

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

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

6 “(34) INCLUDED ENERGY TRANSACTION.—The  
7 term ‘included energy transaction’ means a contract,  
8 agreement, or transaction in an energy commodity  
9 that is—

10 “(A)(i) executed or traded on an electronic  
11 trading facility; and

12 “(ii) entered into on a principal-to-prin-  
13 cipal basis solely between persons that are eligi-  
14 ble commercial entities at the time the persons  
15 enter into the agreement, contract, or trans-  
16 action; or

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

19 “(ii) entered into solely between persons  
20 that are eligible contract participants at the  
21 time the persons enter into the agreement, con-  
22 tract, or transaction, regardless of the means of  
23 execution of the agreement, contract, or trans-  
24 action.

25 “(35) ENERGY COMMODITY.—

1           “(A) IN GENERAL.—The term ‘energy  
2           commodity’ means a commodity (other than an  
3           excluded commodity, a metal, or an agricultural  
4           commodity) that is used as a source of energy.

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

7                   “(i) coal;

8                   “(ii) crude oil, gasoline, diesel fuel,  
9                   heating oil, and propane;

10                  “(iii) electricity; and

11                  “(iv) natural gas.

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

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

20                   (1) by inserting “or an energy commodity”  
21                   after “agricultural commodity”;

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

24                   (3) by striking “No provision” and inserting  
25                   the following:

1 “(1) IN GENERAL.—No provision”; and

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

3 “(2) TRANSACTIONS IN ENERGY COMMOD-

4 ITIES.—

5 “(A) IN GENERAL.—Except as provided in

6 subparagraphs (B) and (C) and subsection

7 (h)(7), nothing in this Act applies to an in-

8 cluded energy transaction.

9 “(B) PROHIBITED CONDUCT.—

10 “(i) IN GENERAL.—An included en-

11 ergy transaction shall be subject to—

12 “(I) sections 5b, 12(e)(2)(B),

13 and 22(a)(4); and

14 “(II) the prohibitions in sections

15 4b, 4c(a), 4c(b), 4o, 6(c), 6(d), 6e, 6d,

16 8a, and 9(a)(2).

17 “(ii) TRANSACTIONS EXEMPTED BY

18 COMMISSION ACTION.—Notwithstanding

19 any exemption by the Commission under

20 section 4(e), an included energy trans-

21 action shall be subject to the sections spec-

22 ified in clause (i) of this subparagraph,

23 subparagraph (C), and subsection (h)(7).

24 “(C) REPORTING AND RECORDKEEPING

25 REQUIREMENTS.—

1           “(i) IN GENERAL.—An eligible con-  
2           tract participant that enters into or exe-  
3           cutes an included energy transaction that  
4           performs, or together with other such  
5           transactions performs, a significant price  
6           discovery function in the cash market for  
7           an energy commodity or in any other mar-  
8           ket for agreements, contracts, or trans-  
9           actions relating to an energy commodity,  
10          and an eligible commercial entity that en-  
11          ters into or executes an included energy  
12          transaction described in section 1a(34)(A)  
13          shall—

14                 “(I) provide to the Commission  
15                 on a timely basis the information re-  
16                 quired under clause (ii); and

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

24                 “(bb) keep the books and records  
25                 open to inspection by any representa-

1           tive of the Commission or the Attor-  
2           ney General.

3           “(ii) REQUIRED INFORMATION.—

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

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

17                   “(aa) substantial quantities  
18                  of the commodity in the cash  
19                  market; or

20                   “(bb) substantial positions,  
21                  investments, or trades in agree-  
22                  ments or contracts related to en-  
23                  ergy commodities.

24                   “(III) MANNER OF COMPLI-  
25          ANCE.—The Commission shall specify

1 when and how such information shall  
2 be provided and maintained by eligible  
3 contract participants and eligible com-  
4 mercial entities.

5 “(IV) PRICE DISCOVERY TRANS-  
6 ACTIONS.—

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

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

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

1 “(BB) the transactions  
2 involve standardized types or  
3 measures of a commodity;

4 “(CC) the prices of the  
5 transactions are reported to  
6 third parties, published, or  
7 disseminated;

8 “(DD) the prices of the  
9 transactions are referenced  
10 in other transactions; and

11 “(EE) other factors  
12 considered appropriate by  
13 the Commission.

14 “(V) PERSONS FILING.—

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



1 “(bb) INFORMATION AND  
 2 ENFORCEMENT.—Nothing in an  
 3 authorization under item (aa)  
 4 shall impair the ability of the  
 5 Commission to obtain informa-  
 6 tion from an eligible commercial  
 7 entity or otherwise enforce this  
 8 Act.

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

20 **SEC. 3. ELECTRONIC TRADING FACILITIES FOR ENERGY**  
 21 **COMMODITIES.**

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

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

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

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

8       “(7) ENERGY TRANSACTIONS.—

9           “(A) IN GENERAL.—To the extent that the  
10       Commission determines to be appropriate under  
11       subparagraph (C), an electronic energy trading  
12       facility shall—

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

16           “(ii)(I) consistent with section 4i,  
17       maintain books and records relating to the  
18       business of the electronic energy trading  
19       facility, including books and records relat-  
20       ing to each transaction in such form as the  
21       Commission may require; and

22           “(II) make the books and records re-  
23       quired under this section available to rep-  
24       resentatives of the Commission and the At-  
25       torney General for inspection for a period

1 of at least 5 years after the date of each  
2 included energy transaction;

3 “(iii) make available to the public in-  
4 formation on trading volumes, settlement  
5 prices, open interest (where applicable),  
6 and opening and closing ranges (or daily  
7 highs and lows, as appropriate) for in-  
8 cluded energy transactions; and

9 “(iv) provide the information to the  
10 Commission in such form and at such  
11 times as the Commission may require.

12 “(B) APPLICABILITY OF OTHER PROVI-  
13 SIONS.—

14 “(i) PARAGRAPH (5).—An electronic  
15 energy trading facility shall comply with  
16 paragraph (5).

17 “(ii) PARAGRAPH (6).—Paragraph (6)  
18 shall apply with respect to a subpoena  
19 issued to any foreign person that the Com-  
20 mission believes is conducting or has con-  
21 ducted transactions on or through an elec-  
22 tronic energy trading facility.

23 “(C) REGULATIONS.—Not later than 180  
24 days after the date of enactment of this para-  
25 graph, the Commission shall issue a notice of

1           proposed rulemaking, and not later than 1 year  
 2           after the date of enactment of this paragraph,  
 3           the Commission shall promulgate final regula-  
 4           tions, specifying the information to be provided,  
 5           maintained, or made available to the public  
 6           under subparagraphs (A) and (B).

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

10                 “(A) require the real-time publication of  
 11                 proprietary information;

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

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

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

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

1 responsibilities of the Federal Energy Regulatory Commis-  
2 sion.

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

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

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

12 Section 4b of the Commodity Exchange Act (7 U.S.C.  
13 6b) is amended by striking subsection (a) and inserting  
14 the following:

15 “(a) PROHIBITIONS.—

16 “(1) IN GENERAL.—It shall be unlawful(A) for  
17 any person, in or in connection with any order to  
18 make, or the making of, any contract of sale of any  
19 commodity for future delivery or in interstate com-  
20 merce, that is made, or to be made, on or subject  
21 to the rules of a designated contract market, for or  
22 on behalf of any other person, or(B) for any person,  
23 in or in connection with any order to make, or the  
24 making of, any contract of sale of any commodity  
25 for future delivery or other agreement, contract or

1 transaction subject to paragraphs (1) and (2) of sec-  
2 tion 5a(g), that is made, or to be made, for or on  
3 behalf of or with, any other person, other than on  
4 or subject to the rules of a designated contract mar-  
5 ket—

6 “(i) to cheat or defraud or attempt to  
7 cheat or defraud the other person;

8 “(ii) willfully to make or cause to be made  
9 to such other person any false report or state-  
10 ment or willfully to enter or cause to be entered  
11 for the other person any false record;

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

21 “(iv)(I) to bucket an order represented by  
22 the person as an order to be executed, for or on  
23 behalf of the other person, on an organized ex-  
24 change; or

25 “(II) to—

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

3                   “(bb) willfully and knowingly and  
4                   without the prior consent of the other per-  
5                   son, to—

6                   “(AA) become the buyer in re-  
7                   spect to any selling order of the other  
8                   person; or

9                   “(BB) become the seller in re-  
10                  spect to any buying order of the other  
11                  person,

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

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

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

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

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

7 (2) by inserting after “each such violation” the  
8 following: “, or (B) in any case of manipulation of,  
9 or attempt to manipulate, the price of any com-  
10 modity, a civil penalty of not more than the greater  
11 of \$1,000,000 or triple the monetary gain to such  
12 person for each such violation,”.

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

16 (1) by striking “paragraph (a) or (b) of section  
17 9 of this Act” and inserting “subsection (a), (b), or  
18 (f) of section 9”; and

19 (2) by striking “said paragraph 9(a) or 9(b)”  
20 and inserting “subsection (a), (b), or (f) of section  
21 9”.

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

25 (1) in the first sentence, by inserting before the  
26 period at the end the following: “, or, in any case



1 of manipulation of, or an attempt to manipulate, the  
2 price of any commodity, a civil penalty of not more  
3 than \$1,000,000 for each such violation”; and

4 (2) in the second sentence, by inserting before  
5 the period at the end the following: “, except that  
6 if the failure or refusal to obey or comply with the  
7 order involved any offense under section 9(f), the  
8 registered entity, director, officer, agent, or employee  
9 shall be guilty of a felony and, on conviction, shall  
10 be subject to penalties under section 9(f)”.

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

16 “(d) CIVIL PENALTIES.—(1) In any action brought  
17 under this section, the Commission may seek and the  
18 court shall have jurisdiction to impose, on a proper show-  
19 ing, on any person found in the action to have committed  
20 any violation—

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

24 “(B) in any case of manipulation of, or an at-  
25 tempt to manipulate, the price of any commodity, a

1 civil penalty in the amount of not more than the  
 2 greater of \$1,000,000 or triple the monetary gain to  
 3 the person for each violation.”.

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

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

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

10 (3) in paragraph (2), by striking “false or mis-  
 11 leading or knowingly inaccurate reports” and insert-  
 12 ing “knowingly false, misleading, or inaccurate re-  
 13 ports”.

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

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

17 (1) in subsection (d)(1), by striking “section  
 18 5b” and inserting “section 5a(g), 5b,”;

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

21 (3) in subsection (i)—

22 (A) in paragraph (1)—

23 (i) by striking “No provision” and in-  
 24 serting “IN GENERAL.—Subject to sub-

1 sections (g)(2) and (h)(7), no provision”;

2 and

3 (ii) in subparagraph (A), by inserting

4 “(1)” after “2(g)”; and

5 (B) in paragraph (2), by striking “No pro-

6 vision” and inserting “IN GENERAL.—Subject

7 to subsections (g)(2) and (h)(7), no provision”.

8 (b) Section 4i of the Commodity Exchange Act (7

9 U.S.C. 6i) is amended in the first sentence by inserting

10 “, or pursuant to an exemption under section 4(c)” after

11 “transaction execution facility”.

12 (c) Section 8a(9) of the Commodity Exchange Act (7

13 U.S.C. 12a(9)) is amended—

14 (1) by inserting “or an electronic energy trad-

15 ing facility” after “direct the contract market”;

16 (2) by inserting after “liquidation of any fu-

17 tures contract” the following: “or included energy

18 transaction”; and

19 (3) by inserting “or an electronic energy trad-

20 ing facility” after “given by a contract market”.

○