

110TH CONGRESS
1ST SESSION

S. 2423

To facilitate price transparency in markets for the sale of emission allowances,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2007

Mrs. FEINSTEIN introduced the following bill; which was read twice and
referred to the Committee on Environment and Public Works

A BILL

To facilitate price transparency in markets for the sale of
emission allowances, 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 “Emission Allowance
5 Market Transparency Act of 2007”.

6 **SEC. 2. EMISSION ALLOWANCE MARKET TRANSPARENCY.**

7 (a) PURPOSE.—The purpose of this section is to fa-
8 cilitate price transparency in markets for the sale of emis-
9 sion allowances (including markets for real-time, forward,

1 futures, and options) to the maximum extent practicable,
 2 taking into consideration—

- 3 (1) the public interest;
- 4 (2) the integrity of those markets;
- 5 (3) fair competition; and
- 6 (4) protection of consumers.

7 (b) DEFINITIONS.—In this section:

8 (1) ADMINISTRATOR.—The term “Adminis-
 9 trator” means the Administrator of the Environ-
 10 mental Protection Agency.

11 (2) EMISSION ALLOWANCE.—The term “emis-
 12 sion allowance” means any allowance, credit, or
 13 other permit issued pursuant to any Federal law (in-
 14 cluding regulations) to any individual or entity for
 15 use in offsetting the emissions of any pollutant (in-
 16 cluding any greenhouse gas) by the individual or en-
 17 tity.

18 (c) DUTIES OF ADMINISTRATOR.—

19 (1) REGULATIONS.—The Administrator shall
 20 promulgate such regulations as the Administrator
 21 determines to be necessary to achieve the purpose of
 22 this section, including regulations that provide for
 23 the dissemination, on a timely basis, of information
 24 regarding the availability and prices of emission al-
 25 lowances with respect to—

- 1 (A) the Administrator;
- 2 (B) State regulatory authorities;
- 3 (C) buyers and sellers of the emission al-
- 4 lowances; and
- 5 (D) the public.

6 (2) OBTAINING INFORMATION.—

7 (A) IN GENERAL.—Subject to subpara-

8 graph (B), the Administrator may—

9 (i) obtain the information described in

10 paragraph (1) directly from any emission

11 allowance market participant; or

12 (ii) enter into an agreement under

13 which another entity obtains and makes

14 public that information.

15 (B) LIMITATION.—Any activity carried out

16 by the Administrator or another entity to ob-

17 tain information pursuant to subparagraph (A)

18 shall be subject to applicable rules designed to

19 prevent the disclosure of information the disclo-

20 sure of which would be detrimental to the oper-

21 ation of an effective emission allowance market,

22 as determined by the Administrator.

23 (3) USE OF EXISTING PRICE PUBLISHERS AND

24 SERVICE PROVIDERS.—In carrying out this sub-

25 section, the Administrator shall—

1 (A) take into consideration the degree of
 2 relevant price transparency provided by price
 3 publishers and providers of trade processing
 4 services in operation on the date of enactment
 5 of this Act; and

6 (B) use information and services provided
 7 by those publishers and providers to the max-
 8 imum extent practicable.

9 (d) ACTIONS BY INDIVIDUALS AND ENTITIES.—

10 (1) PROHIBITIONS.—It shall be unlawful for
 11 any individual or entity—

12 (A) to knowingly provide to the Adminis-
 13 trator (or another entity acting pursuant to an
 14 agreement described in subsection (c)(2)(A)(ii))
 15 any false information relating to the price or
 16 quantity of emission allowances sold, purchased,
 17 transferred, banked, or borrowed by the indi-
 18 vidual or entity, with the intent to fraudulently
 19 affect the data being compiled by the Adminis-
 20 trator or other entity;

21 (B) directly or indirectly, to use in connec-
 22 tion with the purchase or sale of an emission al-
 23 lowance any manipulative or deceptive device or
 24 contrivance (within the meaning of section
 25 10(b) of the Securities Exchange Act of 1934

1 (15 U.S.C. 78j(b))), in contravention of such
 2 rules and regulations as the Administrator may
 3 prescribe to protect the public interest or con-
 4 sumers; or

5 (C) to cheat or defraud, or attempt to
 6 cheat or defraud, another market participant,
 7 client, or customer.

8 (2) MONITORING.—The Administrator shall
 9 monitor trading to prevent false reporting, manipu-
 10 lation, and fraud under this section.

11 (3) EFFECT OF SUBSECTION.—Nothing in this
 12 subsection creates any private right of action.

13 (e) EXCESSIVE SPECULATION.—

14 (1) FINDING.—Congress finds that excessive
 15 speculation relating to emission allowances—

16 (A) can cause sudden or unreasonable fluc-
 17 tuations or unwarranted changes in the price of
 18 emission allowances; and

19 (B) imposes an unnecessary burden on—

20 (i) the development of a well-func-
 21 tioning emission allowance market;

22 (ii) the planning decisions of busi-
 23 nesses and industry; and

24 (iii) consumers.

25 (2) PREVENTION OF BURDENS.—

1 (A) IN GENERAL.—To prevent, decrease,
2 or eliminate the burdens associated with exces-
3 sive speculation relating to emission allowances,
4 the Administrator, in accordance with subpara-
5 graph (B) and after providing notice and an op-
6 portunity for public comment, shall adopt posi-
7 tion limitations or position accountability for
8 speculators as the Administrator determines to
9 be necessary on—

10 (i) the quantity of trading trans-
11 actions allowed to be conducted, and the
12 positions eligible to be held, by any indi-
13 vidual or entity in any emission allowance
14 market; and

15 (ii) any emission allowance auction
16 conducted pursuant to Federal law (includ-
17 ing regulations).

18 (B) CONSULTATION.—In carrying out sub-
19 paragraph (A), the Administrator shall consult
20 with—

21 (i) the Commodity Futures Trading
22 Commission;

23 (ii) the Federal Trade Commission;
24 and

1 (iii) the Federal Energy Regulatory
2 Commission.

3 (C) NONAPPLICABILITY TO BONA FIDE
4 HEDGING TRANSACTIONS OR POSITIONS.—

5 (i) IN GENERAL.—No regulation pro-
6 mulgated pursuant to this paragraph shall
7 apply to a transaction or position described
8 in subparagraph (A)(i) that is a bona fide
9 hedging transaction or position, as deter-
10 mined by the Administrator.

11 (ii) REGULATIONS FOR DEFINI-
12 TIONS.—The Administrator shall promul-
13 gate such regulations as the Administrator
14 determines to be necessary to define the
15 term “bona fide hedging transaction or po-
16 sition” for purposes of clause (i), including
17 regulations that permit individuals or enti-
18 ties to hedge any legitimate anticipated
19 business need for any subsequent period
20 during which an appropriate futures con-
21 tract is open and available on an exchange
22 or other emission allowance market or auc-
23 tion.

24 (f) PENALTIES.—An individual or entity that, as de-
25 termined by the Administrator, violates an applicable pro-

1 vision of this section or a regulation promulgated pursuant
2 to this section shall be subject to a fine of \$1,000,000,
3 or imprisonment for not more than 10 years, or both, for
4 each violation.

5 (g) JURISDICTION OF COMMODITY FUTURES TRAD-
6 ING COMMISSION.—Nothing in this section abrogates the
7 jurisdiction of the Commodity Futures Trading Commis-
8 sion with respect to any contract, agreement, or trans-
9 action for future delivery of an emission allowance (includ-
10 ing a carbon dioxide credit).

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