

111th Congress  
1st Session

# H. R. 2448

**Official Title:**

To provide for regulation of futures transactions involving energy commodities, to regulate credit default swaps, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act, Natural Gas Policy Act of 1978, and the Federal Power Act, and for other purposes.

**Stage:**

Introduced in House

**Short Title:**

[Prevent Unfair Manipulation of Prices Act of 2009](#)

## IN THE HOUSE OF REPRESENTATIVES

**May 14, 2009**

Mr. Stupak (for himself, Mr. Doyle, Mr. Inslee, Mr. Van Hollen, Mr. Bishop of New York, Mr. Carney, Mr. Larson of Connecticut, Mr. Wilson of Ohio, Ms. Slaughter, Mr. Gene Green of Texas, Ms. Kilpatrick of Michigan, and Mr. McHugh) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committees on Energy and Commerce and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the " Prevent Unfair Manipulation of Prices Act of 2009 " .

**SEC. 2. TABLE OF CONTENTS.**

The table of contents of this Act is as follows:

[Sec. 1. Short title.](#)

[Sec. 2. Table of contents.](#)

[Sec. 3. Regulation of certain transactions in derivatives involving energy commodities.](#)

[Sec. 4. No effect on authority of the Federal Energy Regulatory Commission.](#)

[Sec. 5. Inspector general of the Commodity Futures Trading Commission.](#)

[Sec. 6. Settlement and clearing through registered derivatives clearing organizations.](#)

[Sec. 7. Limitation on eligibility to purchase a credit default swap.](#)

[Sec. 8. Transaction fees.](#)

[Sec. 9. No effect on authority of the Federal Trade Commission.](#)

[Sec. 10. Cease-and-desist authority.](#)

[Sec. 11. Natural Gas Act refunds.](#)

[Sec. 12. Regulation of carbon derivatives markets.](#)

### **SEC. 3. REGULATION OF CERTAIN TRANSACTIONS IN DERIVATIVES INVOLVING ENERGY COMMODITIES.**

(a) **ENERGY COMMODITY DEFINED** .— Section 1a of the [Commodity Exchange Act \(7 U.S.C. 1a\)](#) is amended—

(1) in paragraph (14), by inserting “, an energy commodity,” after “excluded commodity”;

(2) by redesignating paragraphs (13) through (21) and paragraphs (22) through (34) as paragraphs (14) through (22) and paragraphs (24) through (36), respectively;

(3) by inserting after paragraph (12) the following:

“(13) **ENERGY COMMODITY** .— The term ‘energy commodity’ means—

“(A) coal;

“(B) crude oil, gasoline, diesel fuel, jet fuel, heating oil, and propane;

“(C) electricity (excluding financial transmission rights which are subject to regulation and oversight by the Federal Energy Regulatory Commission);

“(D) natural gas; and

“(E) any other substance (other than an excluded commodity, a metal, or an agricultural commodity) that is used as a source of energy, as the Commission, in its discretion, deems appropriate. ”; and

(4) by inserting after paragraph (22) (as so redesignated by paragraph (2) of this subsection) the following:

“(23) **INCLUDED ENERGY TRANSACTION** .— The term ‘included energy transaction’ means a contract, agreement, or transaction in an energy commodity for future delivery that provides for a delivery point of the energy commodity in the United States or a territory or possession of the United States, or that is offered or transacted on or through a computer terminal located in the United States. ”.

(b) **EXTENSION OF REGULATORY AUTHORITY TO SWAPS INVOLVING ENERGY TRANSACTIONS** .— Section 2(g) of such Act ([7 U.S.C. 2\(g\)](#)) is amended by inserting “or an energy commodity” after “agricultural commodity”.

(c) **ELIMINATION OF EXEMPTION FOR OVER-THE-COUNTER SWAPS INVOLVING ENERGY COMMODITIES** .— Section 2(h)(1) of such Act ([7 U.S.C. 2\(h\)\(1\)](#)) is amended by inserting “(other than an energy commodity)” after “exempt commodity”.

**(d) EXTENSION OF REGULATORY AUTHORITY TO INCLUDED ENERGY TRANSACTIONS ON FOREIGN BOARDS OF TRADE .—** Section 4 of such Act ([7 U.S.C. 6](#)) is amended—

(1) in subsection (a), by inserting “, and which is not an included energy transaction” after “territories or possessions” the 2nd place it appears; and

(2) in subsection (b), by adding at the end the following: “The preceding sentence shall not apply with respect to included energy transactions.”.

**(e) LIMITATION OF GENERAL EXEMPTIVE AUTHORITY OF THE CFTC WITH RESPECT TO INCLUDED ENERGY TRANSACTIONS .—**

(1) **IN GENERAL .—** Section 4(c) of such Act ([7 U.S.C. 6\(c\)](#)) is amended by adding at the end the following:

“(6) The Commission may not exempt any included energy transaction from the requirements of subsection (a), unless the Commission provides 60 days advance notice to the Congress and the Position Limit Energy Advisory Group and solicits public comment about the exemption request and any proposed Commission action. ”.

(2) **NULLIFICATION OF NO-ACTION LETTER EXEMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE TO INCLUDED ENERGY TRANSACTIONS .—** Beginning 180 days after the date of the enactment of this Act, any exemption provided by the Commodity Futures Trading Commission that has allowed included energy transactions (as defined in section 1a(13) of the [Commodity Exchange Act](#)) to be conducted without regard to the requirements of section 4(a) of such Act shall be null and void.

**(f) REQUIREMENT TO ESTABLISH UNIFORM SPECULATIVE POSITION LIMITS FOR ENERGY TRANSACTIONS .—**

(1) **IN GENERAL .—** Section 4a(a) of such Act ([7 U.S.C. 6a\(a\)](#)) is amended—

(A) by inserting “(1)” after “(a)”;

(B) by inserting after the 2nd sentence the following: “With respect to energy transactions, the Commission shall fix limits on the aggregate number of positions which may be held by any person for each month across all markets subject to the jurisdiction of the Commission.”;

(C) in the 4th sentence by inserting “, consistent with the 3rd sentence,” after “Commission”; and

(D) by adding after and below the end the following:

“(2) (A) Not later than 60 days after the date of the enactment of this paragraph, the Commission shall convene a Position Limit Energy Advisory Group consisting of representatives from—

“(i) 7 predominantly commercial short hedgers of the actual energy commodity for future delivery;

“(ii) 7 predominantly commercial long hedgers of the actual energy commodity for future delivery;

“(iii) 4 non-commercial participants in markets for energy commodities for future delivery; and

“(iv) each designated contract market or derivatives transaction execution facility upon which a contract in the energy commodity for future delivery is traded, and each electronic trading facility that has a significant price discovery contract in the energy commodity.

“(B) Not later than 60 days after the date on which the advisory group is convened under subparagraph (A), and annually thereafter, the advisory group shall submit to the Commission advisory recommendations regarding the position limits to be established in paragraph (1).

“(C) The Commission shall have exclusive authority to grant exemptions for bona fide hedging transactions and positions from position limits imposed under this Act on energy transactions. ”.

**(2) CONFORMING AMENDMENTS .—**

**(A) SIGNIFICANT PRICE DISCOVERY CONTRACTS .—** Section 2(h)(7) of such Act ([7 U.S.C. 2\(h\)\(7\)](#)) is amended—

(i) in subparagraph (A)—

(I) by inserting “of this paragraph and section 4a(a)” after “(B) through (D)”;

(II) by inserting “of this paragraph” before the period; and

(ii) in subparagraph (C)(ii)(IV)—

(I) in the heading, by striking “ limitations or ”;

(II) by striking “position limitations or”.

**(B) CONTRACTS TRADED ON OR THROUGH DESIGNATED CONTRACT MARKETS .—** Section 5(d)(5) of such Act ([7 U.S.C. 7\(d\)\(5\)](#)) is amended—

(i) in the heading by striking “ limitations or ”;

(ii) by striking “position limitations or”.

**(C) CONTRACTS TRADED ON OR THROUGH DERIVATIVES**

**TRANSACTION EXECUTION FACILITIES .—** Section 5a(d)(4) of such Act ([7 U.S.C. 7a\(d\)\(4\)](#)) is amended—

- (i) in the heading by striking " limitations or "; and
- (ii) by striking "position limits or".

(g) **ELIMINATION OF THE SWAPS LOOPHOLE .—** Section 4a(c) of such Act ([7 U.S.C. 6a\(c\)](#)) is amended—

- (1) by inserting "(1)" after "(c)"; and
- (2) by adding after and below the end the following:

"(2) For the purposes of contracts of sale for future delivery and options on such contracts or commodities, the Commission shall define what constitutes a bona fide hedging transaction or position as a transaction or position that—

"(A) (i) represents a substitute for transactions made or to be made or positions taken or to be taken at a later time in a physical marketing channel;

"(ii) is economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise; and

"(iii) arises from the potential change in the value of—

"(I) assets that a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

"(II) liabilities that a person owns or anticipates incurring; or

"(III) services that a person provides, purchases, or anticipates providing or purchasing; or

"(B) reduces risks attendant to a position resulting from a transaction that—

"(i) was executed pursuant to subsection (d), (g), (h)(1), or (h)(2) of section 2, or an exemption issued by the Commission by rule, regulation or order; and

"(ii) was executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction pursuant to paragraph (2)(A) of this subsection. "

(h) **DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA .—** Section 4 of such Act ([7 U.S.C. 6](#)) is amended by adding at the end the following:

" (e) **DETAILED REPORTING AND DISAGGREGATION OF MARKET DATA .—**

"(1) **INDEX TRADERS AND SWAP DEALERS REPORTING** .— The Commission shall issue a proposed rule defining and classifying index traders and swap dealers (as those terms are defined by the Commission) for purposes of data reporting requirements and setting routine detailed reporting requirements for any positions of such entities in contracts traded on designated contract markets, over-the-counter markets, derivatives transaction execution facilities, foreign boards of trade subject to section 4 (f), and electronic trading facilities with respect to significant price discovery contracts not later than 120 days after the date of the enactment of this subsection, and issue a final rule within 180 days after such date of enactment.

"(2) **DISAGGREGATION OF INDEX FUNDS AND OTHER DATA IN MARKETS** .— Subject to section 8 and beginning within 60 days of the issuance of the final rule required by paragraph (1), the Commission shall disaggregate and make public weekly—

"(A) the number of positions and total notional value of index funds and other passive, long-only and short-only positions (as defined by the Commission) in all markets to the extent such information is available; and

"(B) data on speculative positions relative to bona fide physical hedgers in those markets to the extent such information is available.

"(3) **DISCLOSURE OF IDENTITY OF HOLDERS OF POSITIONS IN INDEXES IN EXCESS OF POSITION LIMITS** .— The Commission shall include in its weekly Commitment of Trader reports the identity of each person who holds a position in an index in excess of a limit imposed under section 4i. "

**(i) AUTHORITY TO SET LIMITS TO PREVENT EXCESSIVE SPECULATION IN INDEXES** .—

(1) **IN GENERAL** .— Section 4a of such Act ([7 U.S.C. 6a](#)) is amended by adding at the end the following:

" (f) The provisions of this section shall apply to the amounts of trading which may be done or positions which may be held by any person under contracts of sale of an index for future delivery on or subject to the rules of any contract market, derivatives transaction execution facility, or over-the-counter market, or on an electronic trading facility with respect to a significant price discovery contract, in the same manner in which this section applies to contracts of sale of a commodity for future delivery. "

(2) **REGULATIONS** .— The Commodity Futures Trading Commission shall issue regulations under section 4a(f) of the [Commodity Exchange Act](#) within 180 days after the date of the enactment of this Act.

 **SEC. 4. NO EFFECT ON AUTHORITY OF THE FEDERAL ENERGY REGULATORY COMMISSION.**

Section 2 of the [Commodity Exchange Act](#) ([7 U.S.C. 2](#)) is amended by

adding at the end the following: .

" (j) **NO EFFECT ON FERC AUTHORITY** .— This Act shall not be interpreted to affect the jurisdiction of the Federal Energy Regulatory Commission with respect to the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or other law to obtain information, carry out enforcement actions, or otherwise carry out the responsibilities of the Federal Energy Regulatory Commission. "

## **SEC. 5. INSPECTOR GENERAL OF THE COMMODITY FUTURES TRADING COMMISSION.**

### (a) **ELEVATION OF OFFICE** .—

#### (1) **INCLUSION OF CFTC IN DEFINITION OF ESTABLISHMENT** .—

(A) Section 11(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "or the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code;" and inserting "the Federal Cochairpersons of the Commissions established under section 15301 of title 40, United States Code; or the Chairman of the Commodity Futures Trading Commission;" .

(B) Section 11(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "or the Commissions established under section 15301 of title 40, United States Code," and inserting "the Commissions established under section 15301 of title 40, United States Code, or the Commodity Futures Trading Commission," .

(2) **EXCLUSION OF CFTC FROM DEFINITION OF DESIGNATED FEDERAL ENTITY** .— Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking "the Commodity Futures Trading Commission," .

### (b) **EFFECTIVE DATE; TRANSITION RULE** .—

(1) **EFFECTIVE DATE** .— The amendments made by this section shall take effect 30 days after the date of the enactment of this Act.

(2) **TRANSITION RULE** .— An individual serving as Inspector General of the Commodity Futures Trading Commission on the effective date of this section pursuant to an appointment made under section 8G of the Inspector General Act of 1978 (5 U.S.C. App.)—

(A) may continue so serving until the President makes an appointment under section 3(a) of such Act consistent with the amendments made by this section; and

(B) shall, while serving under subparagraph (A), remain subject to the provisions of section 8G of such Act which apply with respect to the Commodity Futures Trading Commission.

## **SEC. 6. SETTLEMENT AND CLEARING THROUGH REGISTERED**

**DERIVATIVES CLEARING ORGANIZATIONS.****(a) IN GENERAL .—****(1) APPLICATION TO EXCLUDED DERIVATIVE TRANSACTIONS .—**

(A) Section 2(d)(1) of the [Commodity Exchange Act \(7 U.S.C. 2\(d\)\(1\)\)](#) is amended—

(i) by striking “and” at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting “and”; and

(iii) by adding at the end the following:

“(C) except as provided in section 4(f), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission. ”.

(B) Section 2(d)(2) of such Act ([7 U.S.C. 2\(d\)\(2\)](#)) is amended—

(i) by striking “and” at the end of subparagraph (B);

(ii) by striking the period at the end of subparagraph (C) and inserting “; and”; and

(iii) by adding at the end the following:

“(D) except as provided in section 4(f), the agreement, contract, or transaction is settled and cleared through a derivatives clearing organization registered with the Commission. ”.

**(2) APPLICATION TO CERTAIN SWAP TRANSACTIONS .—** Section 2(g) of such Act ([7 U.S.C. 2\(g\)](#)) is amended—

(A) by striking “and” at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting “; and”; and

(C) by adding at the end the following:

“(4) except as provided in section 4(f), settled and cleared through a derivatives clearing organization registered with the Commission. ”.

**(3) APPLICATION TO CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES .—**

(A) Section 2(h)(1) of such Act ([7 U.S.C. 2\(h\)\(1\)](#)) is amended—

(i) by striking “and” at the end of subparagraph (A);



(ii) by striking the period at the end of subparagraph (B) and inserting “; and”; and

(iii) by adding at the end the following:

“(C) except as provided in section 4(f), is settled and cleared through a derivatives clearing organization registered with the Commission. ”.

(B) Section 2(h)(3) of such Act ([7 U.S.C. 2\(h\)\(3\)](#)) is amended—

(i) by striking “and” at the end of subparagraph (A);

(ii) by striking the period at the end of subparagraph (B) and inserting “; and”; and

(iii) by adding at the end the following:

“(C) except as provided in section 4(f), settled and cleared through a derivatives clearing organization registered with the Commission. ”.

(4) **GENERAL EXEMPTIVE AUTHORITY .—** Section 4(c)(1) of such Act ([7 U.S.C. 6\(c\)\(1\)](#)) is amended by inserting “the agreement, contract, or transaction, except as provided in section 4(h), will be settled and cleared through a derivatives clearing organization registered with the Commission and” before “the Commission determines”.

(5) **CONFORMING AMENDMENT RELATING TO SIGNIFICANT PRICE DISCOVERY CONTRACTS .—** Section 2(h)(7)(D) of such Act ([7 U.S.C. 2\(h\)\(7\)\(D\)](#)) is amended by striking the heading for the subparagraph and all that follows through “As part of” and inserting the following:

“(D) **REVIEW OF IMPLEMENTATION .—** As part of ”.

(b) **ALTERNATIVES TO CLEARING THROUGH DESIGNATED CLEARING ORGANIZATIONS .—** Section 4 of such Act ([7 U.S.C. 6](#)), as amended by section 3 (h) of this Act, is amended by adding at the end the following:

“(f) **ALTERNATIVES TO CLEARING THROUGH DESIGNATED CLEARING ORGANIZATIONS .—**

“(1) **SETTLEMENT AND CLEARING THROUGH CERTAIN OTHER REGULATED ENTITIES .—** An agreement, contract, or transaction, or class thereof, relating to an excluded commodity, that would otherwise be required to be settled and cleared by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section may be settled and cleared through an entity listed in subsections (a) or (b) of section 409 of the [Federal Deposit Insurance Corporation Improvement Act of 1991](#).

“(2) **WAIVER OF CLEARING REQUIREMENT .—**

“(A) The Commission, in its discretion, may exempt an agreement,

contract, or transaction, or class thereof, that would otherwise be required by section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), or 2(h)(3)(C) of this Act, or subsection (c)(1) of this section to be settled and cleared through a derivatives clearing organization registered with the Commission from such requirement.

"(B) In granting exemptions pursuant to subparagraph (A), the Commission shall consult with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System regarding exemptions that relate to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator.

"(C) Before granting an exemption pursuant to subparagraph (A), the Commission shall find that the agreement, contract, or transaction, or class thereof—

"(i) is highly customized as to its material terms and conditions;

"(ii) is transacted infrequently;

"(iii) does not serve a significant price-discovery function in the marketplace; and

"(iv) is being entered into by parties who can demonstrate the financial integrity of the agreement, contract, or transaction and their own financial integrity, as such terms and standards are determined by the Commission. The standards may include, with respect to any federally regulated financial entity for which net capital requirements are imposed, a net capital requirement associated with any agreement, contract, or transaction subject to an exemption from the clearing requirement that is higher than the net capital requirement that would be associated with such a transaction were it cleared.

"(D) Any agreement, contract, or transaction, or class thereof, which is exempted pursuant to subparagraph (A) shall be reported to the Commission in a manner designated by the Commission, or to such other entity the Commission deems appropriate.

"(E) The Commission, the Securities and Exchange Commission, and the Board of Governors of the Federal Reserve System shall enter into a memorandum of understanding by which the information reported to the Commission pursuant to subparagraph (D) with regard to excluded commodities or entities for which the Securities Exchange Commission or the Board of Governors of the Federal Reserve System serve as the primary regulator may be provided to the other agencies.

"(g) **SPOT AND FORWARD EXCLUSION** .— The settlement and clearing requirements of section 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), or 4(c)(1) shall not apply to an agreement, contract, or transaction of any cash commodity for immediate or deferred shipment or delivery, as defined by the Commission. "

(c) **ADDITIONAL REQUIREMENTS APPLICABLE TO APPLICANTS FOR REGISTRATION AS A DERIVATIVE CLEARING ORGANIZATION** .— Section 5b(c)(2) of such Act ([7 U.S.C. 7a-1\(c\)\(2\)](#)) is amended by adding at the end the following:

“(O) **DISCLOSURE OF GENERAL INFORMATION** .— The applicant shall disclose publicly and to the Commission information concerning—

“(i) the terms and conditions of contracts, agreements, and transactions cleared and settled by the applicant;

“(ii) the conventions, mechanisms, and practices applicable to the contracts, agreements, and transactions;

“(iii) the margin-setting methodology and the size and composition of the financial resource package of the applicant; and

“(iv) other information relevant to participation in the settlement and clearing activities of the applicant.

“(P) **DAILY PUBLICATION OF TRADING INFORMATION** .— The applicant shall make public daily information on settlement prices, volume, and open interest for contracts settled or cleared pursuant to the requirements of 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C) or 4(c)(1) of this Act by the applicant if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

“(Q) **FITNESS STANDARDS** .— The applicant shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, and members of the applicant, and any other persons with direct access to the settlement or clearing activities of the applicant, including any parties affiliated with any of the persons described in this subparagraph. ”.

(d) **AMENDMENTS** .—

(1) Section 409 of the [Federal Deposit Insurance Corporation Improvement Act of 1991](#) ([12 U.S.C. 4422](#)) is amended by adding at the end the following:

“(c) **CLEARING REQUIREMENT** .— A multilateral clearing organization described in subsections (a) or (b) of this section shall comply with requirements similar to the requirements of sections 5b and 5c or the [Commodity Exchange Act](#). ”.

(2) Section 407 of the [Legal Certainty for Bank Products Act of 2000](#) ([7 U.S.C. 27e](#)) is amended by inserting “and the settlement and clearing requirements of sections 2(d)(1)(C), 2(d)(2)(D), 2(g)(4), 2(h)(1)(C), 2(h)(3)(C), and 4(c)(1) of such Act” after “the clearing of covered swap agreements”.

(e) **EFFECTIVE DATE** .— The amendments made by this section shall take effect 150 days after the date of the enactment of this Act.

(f) **TRANSITION RULE** .— Any agreement, contract, or transaction entered into before the date of the enactment of this Act or within 150 days after such date of enactment, in reliance on subsection (d), (g), (h)(1), or (h)(3) of section 2 of the [Commodity Exchange Act](#) or any other exemption issued by the Commission Futures Trading Commission by rule, regulation, or order shall, within 90 days after such date of enactment, unless settled and cleared through an entity registered with the Commission as a derivatives clearing organization or another clearing entity pursuant to section 4(f) of such Act, be reported to the Commission in a manner designated by the Commission, or to such other entity as the Commission deems appropriate.

## **SEC. 7. LIMITATION ON ELIGIBILITY TO PURCHASE A CREDIT DEFAULT SWAP.**

(a) **IN GENERAL** .— Section 4c of the [Commodity Exchange Act \(7 U.S.C. 6c\)](#) is amended by adding at the end the following:

“ (h) **LIMITATION ON ELIGIBILITY TO PURCHASE A CREDIT DEFAULT SWAP** .— It shall be unlawful for any person to enter into a credit default swap unless the person—

“ (1) owns a credit instrument which is insured by the credit default swap;

“ (2) would experience financial loss if an event that is the subject of the credit default swap occurs with respect to the credit instrument; and

“ (3) meets such minimum capital adequacy standards as may be established by the Commission, in consultation with the Board of Governors of the Federal Reserve System, or such more stringent minimum capital adequacy standards as may be established by or under the law of any State in which the swap is originated or entered into, or in which possession of the contract involved takes place. ”.

(b) **ELIMINATION OF PREEMPTION OF STATE BUCKETING LAWS REGARDING NAKED CREDIT DEFAULT SWAPS** .— Section 12(e)(2)(B) of such Act ([7 U.S.C. 16\(e\)\(2\)\(B\)](#)) is amended by inserting “(other than a credit default swap in which the purchaser of the swap would not experience financial loss if an event that is the subject of the swap occurred)” before “that is excluded”.

(c) **DEFINITION OF CREDIT DEFAULT SWAP** .— Section 1a of such Act ([7 U.S.C. 1a](#)), as amended by section 3(a) of this Act, is amended by adding at the end the following:

“ (37) **CREDIT DEFAULT SWAP** .— the term ‘credit default swap’ means a contract which insures a party to the contract against the risk that an entity may experience a loss of value as a result of an event specified in the contract, such as a default or credit downgrade. A credit default swap that is traded on or cleared by a registered entity shall be excluded from the definition of a security as defined in this Act and in section 2(a)(1) of the [Securities Act of 1933](#) or section 3(a)(10) of the [Securities Exchange Act of 1934](#), except it shall be deemed a security solely for purpose of enforcing

prohibitions against insider trading in sections 10 and 16 of the Securities Exchange Act of 1934. ”.

(d) **EFFECTIVE DATE** .— The amendments made by this section shall be effective for credit default swaps (as defined in section 1a(37) of the Commodity Exchange Act) entered into after 60 days after the date of the enactment of this section.

## **SEC. 8. TRANSACTION FEES.**

(a) **IN GENERAL** .— Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively, and inserting after subsection (d) the following:

“ (e) **CLEARING FEES** .—

“ (1) **IN GENERAL** .— The Commission shall, in accordance with this subsection, charge and collect from each registered clearing organization, and each such organization shall pay to the Commission, transaction fees at a rate calculated to recover the costs to the Federal Government of the supervision and regulation of futures markets, except those directly related to enforcement.

“ (2) **FEES ASSESSED PER SIDE OF CLEARED CONTRACTS** .—

“ (A) **IN GENERAL** .— The Commission shall determine the fee rate referred to in paragraph (1), and shall apply the fee rate per side of any transaction cleared.

“ (B) **AUTHORITY TO DELEGATE** .— The Commission may determine the procedures by which the fee rate is to be applied on the transactions subject to the fee, or delegate the authority to make the determination to any appropriate derivatives clearing organization.

“ (3) **EXEMPTIONS** .— The Commission may not impose a fee under paragraph (1) on—

“ (A) a class of contracts or transactions if the Commission finds that it is in the public interest to exempt the class from the fee; or

“ (B) a contract or transaction cleared by a registered derivatives clearing organization that is—

“ (i) subject to fees under section 31 of the Securities Exchange Act of 1934; or

“ (ii) a security as defined in the Securities Act of 1933 or the Securities Exchange Act of 1934.

“ (4) **DATES FOR PAYMENT OF FEES** .— The fees imposed under paragraph (1) shall be paid on or before—

“ (A) March 15 of each year, with respect to transactions occurring

on or after the preceding September 1 and on or before the preceding December 31; and

“(B) September 15 of each year, with respect to transactions occurring on or after the preceding January 1 and on or before the preceding August 31.

“(5) **ANNUAL ADJUSTMENT OF FEE RATES .—**

“(A) **IN GENERAL .—** Not later than April 30 of each fiscal year, the Commission shall, by order, adjust each fee rate determined under paragraph (2) for the fiscal year to a uniform adjusted rate that, when applied to the estimated aggregate number of cleared sides of transactions for the fiscal year, is reasonably likely to produce aggregate fee receipts under this subsection for the fiscal year equal to the target offsetting receipt amount for the fiscal year.

“(B) **DEFINITIONS .—** In subparagraph (A):

“(i) **ESTIMATED AGGREGATE NUMBER OF CLEARED SIDES OF TRANSACTIONS .—** The term ‘estimated aggregate number of cleared sides of transactions’ means, with respect to a fiscal year, the aggregate number of cleared sides of transactions to be cleared by registered derivatives clearing organizations during the fiscal year, as estimated by the Commission, after consultation with the Office of Management and Budget, using the methodology required for making projections pursuant to section 257 of the [Balanced Budget and Emergency Deficit Control Act of 1985](#).

“(ii) **TARGET OFFSETTING RECEIPT AMOUNT .—** The term ‘target offsetting receipt amount’ means, with respect to a fiscal year, the total level of Commission budget authority for all non-enforcement activities of the Commission, as contained in the regular appropriations Acts for the fiscal year.

“(C) **NO JUDICIAL REVIEW .—** An adjusted fee rate prescribed under subparagraph (A) shall not be subject to judicial review.

“(6) **PUBLICATION .—** Not later than April 30 of each fiscal year, the Commission shall cause to be published in the Federal Register notices of the fee rates applicable under this subsection for the succeeding fiscal year, and any estimate or projection on which the fee rates are based.

“(7) **INAPPLICABILITY OF CERTAIN PROCEDURAL RULES .—** Section [553](#) of title 5, United States Code, shall not apply with respect to any exercise of authority under this subsection.

“(8) **ESTABLISHMENT OF FUTURES AND OPTIONS TRANSACTION FEE ACCOUNT; DEPOSIT OF FEES .—** There is established in the Treasury of the United States an account which shall be known as the ‘Futures and Options Transaction Fee Account’. All fees collected under this subsection for a fiscal year shall be deposited in the account. Amounts in the account are authorized to be appropriated to fund the expenditures of the Commission.

”

(b) **EFFECTIVE DATE** .— The amendments made by subsection (a) shall apply to fiscal years beginning 30 or more days after the date of the enactment of this Act.

(c) **TRANSITION RULE** .— If this section becomes law after March 31 and before September 1 of a fiscal year, then paragraphs (5)(A) and (6) of section 12(e) of the [Commodity Exchange Act](#) shall be applied, in the case of the 1st fiscal year beginning after the date of the enactment of this Act, by substituting “August 31” for “April 30”.

## **SEC. 9. NO EFFECT ON AUTHORITY OF THE FEDERAL TRADE COMMISSION.**

Nothing in this Act shall be interpreted to affect or diminish the jurisdiction or authority of the Federal Trade Commission with respect to its authorities under the [Federal Trade Commission Act](#) ([15 U.S.C. 41](#) et seq.) or the [Energy Independence and Security Act of 2007](#) ([Public Law 110-140](#)) to obtain information, to carry out enforcement activities or otherwise carry out the responsibilities of the Federal Trade Commission.

## **SEC. 10. CEASE-AND-DESIST AUTHORITY.**

(a) **NATURAL GAS ACT** .— Section 20 of the [Natural Gas Act](#) ([15 U.S.C. 717s](#)) is amended by adding the following at the end:

“ (e) **CEASE-AND-DESIST PROCEEDINGS; TEMPORARY ORDERS; AUTHORITY OF THE COMMISSION** .—

“ (1) **IN GENERAL** .— If the Commission finds, after notice and opportunity for hearing, that any entity may be violating, may have violated, or may be about to violate any provision of this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under the authority of this Act, the Commission may publish its findings and issue an order requiring such entity, and any other entity that is, was, or would be a cause of the violation, due to an act or omission the entity knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring an entity to cease and desist from committing or causing a violation, require such entity to comply, to provide an accounting and disgorgement, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify.

“ (2) **TIMING OF ENTRY** .— An order issued under this subsection shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.



" (f) **HEARING** .— The notice instituting proceedings pursuant to subsection (e) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

" (g) **TEMPORARY ORDER** .— Whenever the Commission determines that—

" (1) a respondent may take actions to dissipate or convert assets prior to the completion of the proceedings referred to in subsection (e), and such assets would be necessary to comply with or otherwise satisfy a final enforcement order of the Commission pursuant to alleged violations or threatened violations specified in the notice instituting proceedings, or

" (2) a respondent is engaged in actual or threatened violations of this Act or a Commission rule, regulation, restriction or order referred to in subsection (e),

the Commission may issue a temporary order requiring the respondent to take such action to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission's ability to conduct the proceedings, or frustration of the Commission's ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings.

" (h) **REVIEW OF TEMPORARY ORDERS** .—

" (1) **COMMISSION REVIEW** .— At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (g), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

" (2) **JUDICIAL REVIEW** .— Within—

" (A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing; or

" (B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except



after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

"(3) **NO AUTOMATIC STAY OF TEMPORARY ORDER .—** The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"(4) **EXCLUSIVE REVIEW .—** Sections 19(d) and 24 shall not apply to a temporary order entered pursuant to this section.

"(i) **IMPLEMENTATION .—** The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this section. "

(b) **FEDERAL POWER ACT .—** Section 314 of the Federal Power Act (16 U.S.C. 825m) is amended by adding the following at the end:

"(e) **CEASE-AND-DESIST PROCEEDINGS; TEMPORARY ORDERS; AUTHORITY OF THE COMMISSION .—**

"(1) **IN GENERAL .—** If the Commission finds, after notice and opportunity for hearing, that any entity may be violating, may have violated, or may be about to violate any provision of this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under the authority of this Act, the Commission may publish its findings and issue an order requiring such entity, and any other entity that is, was, or would be a cause of the violation, due to an act or omission the entity knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring an entity to cease and desist from committing or causing a violation, require such entity to comply, to provide an accounting and disgorgement, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify.

"(2) **TIMING OF ENTRY .—** An order issued under this subsection shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

"(3) **HEARING .—** The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

"(4) **TEMPORARY ORDER .—** Whenever the Commission determines that—

"(A) a respondent may take actions to dissipate or convert assets prior to the completion of the proceedings referred to in paragraph (1),

and such assets would be necessary to comply with or otherwise satisfy a final enforcement order of the Commission pursuant to alleged violations or threatened violations specified in the notice instituting proceedings, or

“(B) a respondent is engaged in actual or threatened violations of this Act or a Commission rule, regulation, restriction or order referred to in paragraph (1),

the Commission may issue a temporary order requiring the respondent to take such action to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission’s ability to conduct the proceedings, or frustration of the Commission’s ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings.

“(5) **REVIEW OF TEMPORARY ORDERS .—**

“(A) **COMMISSION REVIEW .—** At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (4), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

“(B) **JUDICIAL REVIEW .—** Within—

“(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing; or

“(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent’s application under subparagraph (A) of this paragraph.

“(C) **NO AUTOMATIC STAY OF TEMPORARY ORDER .—** The commencement of proceedings under subparagraph (B) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission’s order.

"(D) **EXCLUSIVE REVIEW** .— Section 317 shall not apply to a temporary order entered pursuant to this section.

"(6) **IMPLEMENTATION** .— The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this subsection. "

(c) **NATURAL GAS POLICY ACT OF 1978** .— Section 504 of the [Natural Gas Policy Act of 1978 \(15 U.S.C. 3414\)](#) is amended by adding the following at the end:

" (c) **CEASE-AND-DESIST PROCEEDINGS; TEMPORARY ORDERS; AUTHORITY OF THE COMMISSION** .—

"(1) **IN GENERAL** .— If the Commission finds, after notice and opportunity for hearing, that any entity may be violating, may have violated, or may be about to violate any provision of this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under the authority of this Act, the Commission may publish its findings and issue an order requiring such entity, and any other entity that is, was, or would be a cause of the violation, due to an act or omission the entity knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring an entity to cease and desist from committing or causing a violation, require such entity to comply, to provide an accounting and disgorgement, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify.

"(2) **TIMING OF ENTRY** .— An order issued under this subsection shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest.

"(3) **HEARING** .— The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

"(4) **TEMPORARY ORDER** .— Whenever the Commission determines that—

"(A) a respondent may take actions to dissipate or convert assets prior to the completion of the proceedings referred to in paragraph (1) and such assets would be necessary to comply with or otherwise satisfy a final enforcement order of the Commission pursuant to alleged violations or threatened violations specified in the notice instituting proceedings, or

“(B) a respondent is engaged in actual or threatened violations of this Act or a Commission rule, regulation, restriction or order referred to in paragraph (1),

the Commission may issue a temporary order requiring the respondent to take such action to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission’s ability to conduct the proceedings, or frustration of the Commission’s ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings.

“(5) **REVIEW OF TEMPORARY ORDERS .—**

“(A) **COMMISSION REVIEW .—** At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (4), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

“(B) **JUDICIAL REVIEW .—** Within—

“(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing; or

“(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent’s application under paragraph (1) of this subsection.

“(C) **NO AUTOMATIC STAY OF TEMPORARY ORDER .—** The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission’s order.

“(6) **IMPLEMENTATION .—** The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this subsection. ”.

 **SEC. 11. NATURAL GAS ACT REFUNDS.**

Section 5(a) of the Natural Gas Act (15 U.S.C. 717d(a)) is amended by adding the following new paragraphs at the end thereof:

**“(3) REFUND EFFECTIVE DATE .—**

**“(A) IN GENERAL .—** In accordance with subparagraphs (B) and (C), the Commission shall establish a refund effective date for any proceeding initiated under this subsection.

**“(B) COMPLAINTS .—** In the case of a proceeding initiated by a complaint, the refund effective date shall be—

**“(i) not earlier than the date on which the complaint is submitted to the Commission; and**

**“(ii) not later than 150 days after the date on which the complaint was submitted to the Commission.**

**“(C) COMMISSION MOTION .—** In the case of a proceeding initiated on motion of the Commission, the refund effective date shall be—

**“(i) not earlier than the date on which the Commission publishes notice of the intention of the Commission to initiate the proceeding; and**

**“(ii) not later than 150 days after the date on which the notice under clause (i) is published.**

**“(4) ISSUANCE OF REFUNDS .—**

**“(A) IN GENERAL .—** At the conclusion of any hearing under this section, the Commission may order, for the period beginning on the refund effective date and ending on a date 15 months after the refund effective date, refunds of any amounts paid in excess of the amounts that would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract that the Commission orders that would be in effect after the hearing.

**“(B) EXCEPTION .—** Notwithstanding subparagraph (A), the Commission may order refunds of any or all amounts paid for the period beginning on the refund effective date and ending on the date on which the hearing concludes—

**“(i) if the proceeding is not concluded by the date that is 15 months after the refund effective date; and**

**“(ii) if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the 15-month period primarily because of dilatory behavior by the natural gas company.**

“(C) **INTEREST** .— Refunds under this subsection shall be issued in an amount determined by the proceeding, plus interest, to the persons that paid the rates or charges. ”.

## **SEC. 12. REGULATION OF CARBON DERIVATIVES MARKETS.**

(a) **IN GENERAL** .— Section 2 of the [Commodity Exchange Act \(7 U.S.C. 2\)](#), as amended by section 4 of this Act, is amended by adding at the end the following:

“(k) The Commission shall have jurisdiction over the establishment, operation, and oversight of markets for regulated allowance derivatives, and shall provide for the establishment, operation, and oversight of the markets in accordance with the same regulations that apply under this Act to included energy transactions. ”.

(b) **DEFINITIONS** .— Section 1a of such Act ([7 U.S.C. 1a](#)), as amended by section 3(a) of this Act, is amended by redesignating paragraphs (32) through (36) as paragraphs (34) through (38), respectively, and by inserting after paragraph (31) the following:

“(32) **REGULATED ALLOWANCE** .— The term ‘regulated allowance’ means any allowance authorized under law to emit a greenhouse gas, and any credit authorized under law based on a reduction in greenhouse gas emissions, the production of renewable energy, a carbon emission offset, or an increase in carbon sequestration.

“(33) **REGULATED ALLOWANCE DERIVATIVE** .— The term ‘regulated allowance derivative’ means an instrument that is, or includes, an instrument—

“(A) which—

“(i) is of the character of, or is commonly known to the trade as, a ‘put option’, ‘call option’, ‘privilege’, ‘indemnity’, ‘advance guaranty’, ‘decline guaranty’, or ‘swap agreement’; or

“(ii) is a contract of sale for future delivery, other than a written agreement for the origination and development of an offset project, and the related issuance of offset credits, pursuant to title VII of the [Clean Air Act](#); and

“(B) the value of which, in whole or in part, is expressly linked to the price of a regulated allowance or another regulated allowance derivative. ”.