

2008 PUMP Act Section by Section Congressman Bart Stupak

Section 1

Short Title: “Prevent Unfair Manipulation of Prices Act of 2008”

Section 2

Energy Commodities No Longer Exempt from CFTC Oversight

- Eliminates the current exemption from CFTC regulation for over-the-counter energy commodities by amending the definition of an exempt commodity to no longer include energy
- Defines an “Energy Commodity” to include: coal, crude oil, gasoline, diesel fuel, jet fuel, heating oil, propane, electricity, and natural gas.
- Stipulates that if an energy transaction provides for a delivery point in the United States or is traded on a computer terminal located in the United States, it is subject to the rules that regulated markets (NYMEX) are already subject to, including large trader reporting, recordkeeping, and prohibitions against fraud and market manipulation.
- This applies to: designated contract markets, energy trading facilities here in the U.S., bilateral trades, and trades transacted on a foreign board of trade.

Extension of Regulatory Authority to Swaps Involving Energy Transactions; Section 2(g) of the Commodities Exchange Act (CEA):

- Closes the swaps loophole, no longer allowing energy transactions to be excluded from the requirements of the Commodity Exchange Act. This would require the CFTC to provide greater oversight over these swap transactions.

Extension of Regulatory Authority to Energy Transactions on Foreign Boards of Trade; Section 4 of CEA:

- Requires that traders of energy commodities on a foreign board of trade be subject to the rules that regulated markets are already subject to if they are using computer terminals in the United States or they are trading energy commodities that provide for a delivery point in the United States.
- Requires the CFTC to notify Congress and allow public comment on any energy transaction that it intends to exempt from regulation in the future.
- Nullifies all previously issued “No Action” letters for foreign boards of trade for energy transactions and provides 180 days for exchanges to comply.

Requirement to Establish Uniform Position Limits on Energy Commodities; Section 4a(a):

- Requires the CFTC to set aggregate position limits on energy contracts for a trader over all markets. Especially with the growing number of markets, speculators can currently comply with exchange specific position limits on several exchanges while still holding an excessive number of total contracts in the aggregate. By setting aggregate position limits over all markets, CFTC would be better able to make sure traders aren’t amassing huge positions in a commodity in an attempt to play one exchange off of another.

Swaps No Longer Eligible for Exemption as Bona Fide Hedging for Energy Transactions; Section 4a(c) of CEA:

- Closes the bona fide hedging exemption for energy swaps not backed by a physical commodity. A growing number of speculators have taken advantage of the bona fide hedging exemption to avoid position limits and other CFTC action to limit excessive speculation. While 4a(c) provides an exemption from position limits for bona fide hedging to allow businesses “to hedge their legitimate anticipated business needs”, speculators have exploited this provision, even though their trading is speculative and, not for the legitimate business needs of a user or producer.

Special Rules Applicable to Bilateral Included Energy Transactions; Section 4(a) of the CEA:

- Requires reporting and recordkeeping by bilateral traders. This will allow CFTC to monitor for fraud and manipulation.

Public Disclosure of Index Funds; Section 8 of the CEA:

- Requires CFTC to make public information on the size of positions invested in commodity index replication strategies and disclose the total value of energy contracts traded by commodity index speculators.

No Effect on FERC Authority; Section 2 of CEA:

- Protects the Federal Energy Regulatory Commission’s (FERC) authority provided in the 2005 Energy Policy Act to prosecute market manipulation in natural gas and electricity markets.

Section 3

FERC Cease and Desist Authority; Section 20 of the Natural Gas Act, Section 314 of the Federal Power Act:

- Provides FERC with Cease-and Desist Authority to freeze the assets of companies prosecuted under the anti-manipulation authority given to FERC in the 2005 Energy Policy Act. FERC is currently unable to freeze the assets of violators. As a result, by the time FERC is ready to assess penalties, the company could have liquidated and distributed their assets, allowing them to avoid any monetary penalties. This legislation will allow FERC to freeze these assets to ensure that once a company is found guilty of manipulating natural gas or electricity markets, the agency can secure a full recovery on behalf of consumers and taxpayers.