

109TH CONGRESS
1ST SESSION

H. R. 3936

To protect consumers from price-gouging of gasoline and other fuels during energy emergencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2005

Mr. STUPAK (for himself, Ms. HERSETH, Mr. ETHERIDGE, Ms. PELOSI, Mr. DEFazio, Mr. OBERSTAR, Ms. SCHAKOWSKY, Mr. HOLDEN, Mr. KILDEE, Mr. RAHALL, Mr. MICHAUD, Ms. BORDALLO, Mrs. CAPPS, Ms. SCHWARTZ of Pennsylvania, Mr. FILNER, Mr. PASCRELL, Mr. BISHOP of New York, Mr. McNULTY, Mr. COSTELLO, Mr. SANDERS, Mr. CONYERS, Mr. LIPINSKI, Mr. BOUCHER, Ms. ESHOO, Ms. HARMAN, Mr. EVANS, Mr. PALLONE, Ms. MCCOLLUM of Minnesota, Mr. ENGEL, Mr. MARKEY, Mrs. MCCARTHY, Mr. HINCHEY, Ms. SOLIS, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, 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

A BILL

To protect consumers from price-gouging of gasoline and other fuels during energy emergencies, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Response to
3 Energy Emergencies Act of 2005”.

4 **SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE, OIL,
5 NATURAL GAS, AND PETROLEUM DIS-
6 TILLATES DURING EMERGENCIES.**

7 (a) UNCONSCIONABLE PRICING.—

8 (1) IN GENERAL.—During any energy emer-
9 gency declared by the President under section 3, it
10 is unlawful for any person to sell crude oil, gasoline,
11 natural gas, or petroleum distillates in, or for use in,
12 the area to which that declaration applies at a price
13 that—

14 (A) is unconscionably excessive; or

15 (B) indicates the seller is taking unfair ad-
16 vantage of the circumstances to increase prices
17 unreasonably.

18 (2) FACTORS CONSIDERED.—In determining
19 whether a violation of paragraph (1) has occurred,
20 there shall be taken into account, among other fac-
21 tors, whether—

22 (A) the amount charged represents a gross
23 disparity between the price of the crude oil, gas-
24 oline, natural gas, or petroleum distillate sold
25 and the price at which it was offered for sale

1 in the usual course of the seller's business im-
2 mediately prior to the energy emergency; or

3 (B) the amount charged grossly exceeds
4 the price at which the same or similar crude oil,
5 gasoline, natural gas, or petroleum distillate
6 was readily obtainable by other purchasers in
7 the area to which the declaration applies.

8 (3) MITIGATING FACTORS.—In determining
9 whether a violation of paragraph (1) has occurred,
10 there also shall be taken into account, among other
11 factors, whether the price at which the crude oil,
12 gasoline, natural gas, or petroleum distillate was
13 sold reasonably reflects additional costs, not within
14 the control of the seller, that were paid or incurred
15 by the seller.

16 (b) FALSE PRICING INFORMATION.—It is unlawful
17 for any person to report information related to the whole-
18 sale price of crude oil, gasoline, natural gas, or petroleum
19 distillates to the Federal Trade Commission if—

20 (1) that person knew, or reasonably should have
21 known, the information to be false or misleading;

22 (2) the information was required by law to be
23 reported; and

24 (3) the person intended the false or misleading
25 data to affect data compiled by that department or

1 agency for statistical or analytical purposes with re-
2 spect to the market for crude oil, gasoline, natural
3 gas, or petroleum distillates.

4 (c) MARKET MANIPULATION.—It is unlawful for any
5 person, directly or indirectly, to use or employ, in connec-
6 tion with the purchase or sale of crude oil, gasoline, nat-
7 ural gas, or petroleum distillates at wholesale, any ma-
8 nipulative or deceptive device or contrivance, in contraven-
9 tion of such rules and regulations as the Federal Trade
10 Commission may prescribe as necessary or appropriate in
11 the public interest or for the protection of United States
12 citizens.

13 (d) RULEMAKING.—Not later than 180 days after the
14 date of the enactment of this Act, the Federal Trade Com-
15 mission shall promulgate rules necessary and appropriate
16 to enforce this section.

17 **SEC. 3. DECLARATION OF ENERGY EMERGENCY.**

18 (a) IN GENERAL.—If the President finds that the
19 health, safety, welfare, or economic well-being of the citi-
20 zens of the United States is at risk because of a shortage
21 or imminent shortage of adequate supplies of crude oil,
22 gasoline, natural gas, or petroleum distillates due to a dis-
23 ruption of the national distribution system for crude oil,
24 gasoline, natural gas, or petroleum distillates (including
25 such a shortage related to a major disaster (as defined

1 in section 102(2) of the Robert T. Stafford Disaster Relief
2 and Emergency Assistance Act (42 U.S.C. 5122))), or sig-
3 nificant pricing anomalies in national or regional energy
4 markets for crude oil, gasoline, natural gas, or petroleum
5 distillates of a more than transient nature, the President
6 may declare that a Federal energy emergency exists.

7 (b) SCOPE AND DURATION.—The declaration shall
8 apply to the Nation, a geographical region, or 1 or more
9 States, as determined by the President, but may not be
10 in effect for a period of more than 45 days.

11 (c) EXTENSIONS.—The President may—

12 (1) extend a declaration under subsection (a)
13 for a period of not more than 45 days; and

14 (2) extend such a declaration more than once.

15 **SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
16 **SION.**

17 (a) ENFORCEMENT BY FTC.—A violation of section
18 2 shall be treated as a violation of a rule defining an un-
19 fair or deceptive act or practice prescribed under section
20 18(a)(1)(B) of the Federal Trade Commission Act (15
21 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
22 shall enforce this Act in the same manner, by the same
23 means, and with the same jurisdiction as though all appli-
24 cable terms and provisions of the Federal Trade Commis-
25 sion Act were incorporated into and made a part of this

1 Act. In enforcing section 2(a) of this Act, the Commission
2 shall give priority to enforcement actions concerning com-
3 panies with total United States wholesale or retail sales
4 of crude oil, gasoline, and petroleum distillates in excess
5 of \$500,000,000 per year.

6 (b) CIVIL PENALTIES.—

7 (1) IN GENERAL.—Notwithstanding the pen-
8 alties set forth under the Federal Trade Commission
9 Act, any person who violates this Act shall be sub-
10 ject to the following penalties:

11 (A) PRICE GOUGING; UNJUST PROFITS.—

12 Any person who violates section 2(a) of this Act
13 shall be subject to—

14 (i) a fine of not more than 3 times the
15 amount of profits gained by such person
16 through such violation; or

17 (ii) a fine of not more than
18 \$3,000,000.

19 (B) FALSE INFORMATION; MARKET MANIP-
20 ULATION.—Any person who violates section
21 2(b) or 2(c) of this Act shall be subject to a
22 civil penalty of not more than \$1,000,000.

23 (2) METHOD OF ASSESSMENT.—The penalties
24 provided by paragraph (1) shall be assessed in the
25 same manner as civil penalties imposed under sec-

1 tion 5 of the Federal Trade Commission Act (15
2 U.S.C. 45).

3 (3) MULTIPLE OFFENSES; MITIGATING FAC-
4 TORS.—In assessing the penalty provided by sub-
5 section (a)—

6 (A) each day of a continuing violation shall
7 be considered a separate violation; and

8 (B) the Federal Trade Commission shall
9 take into consideration the seriousness of the
10 violation and the efforts of the person commit-
11 ting the violation to remedy the harm caused by
12 the violation in a timely manner.

13 **SEC. 5. CRIMINAL PENALTIES.**

14 Any person who violates section 2 or any rule or order
15 issued thereunder shall be fined under title 18, United
16 States Code—

17 (1) if a corporation, not to exceed
18 \$100,000,000; or

19 (2) if any other person, not to exceed
20 \$1,000,000, or imprisoned for not more than 10
21 years, or both.

22 **SEC. 6. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTOR-**
23 **NEYS GENERAL.**

24 (a) IN GENERAL.—A State, as *parens patriae*, may
25 bring a civil action on behalf of its residents in an appro-

1 p r i a t e d i s t r i c t c o u r t o f t h e U n i t e d S t a t e s t o e n f o r c e t h e
2 p r o v i s i o n s o f s e c t i o n 2(a) o f t h i s A c t, o r t o i m p o s e t h e
3 c i v i l p e n a l t i e s a u t h o r i z e d b y s e c t i o n 4(b)(1)(B), w h e n e v e r
4 t h e a t t o r n e y g e n e r a l o f t h e S t a t e h a s r e a s o n t o b e l i e v e t h a t
5 t h e i n t e r e s t s o f t h e r e s i d e n t s o f t h e S t a t e h a v e b e e n o r
6 a r e b e i n g t h r e a t e n e d o r a d v e r s e l y a f f e c t e d b y a v i o l a t i o n
7 o f t h i s A c t o r a r e g u l a t i o n u n d e r t h i s A c t.

8 (b) NOTICE.—The State shall serve written notice to
9 t h e F e d e r a l T r a d e C o m m i s s i o n o f a n y c i v i l a c t i o n u n d e r
10 s u b s e c t i o n (a) p r i o r t o i n i t i a t i n g s u c h c i v i l a c t i o n. T h e n o -
11 t i c e s h a l l i n c l u d e a c o p y o f t h e c o m p l a i n t t o b e f i l e d t o
12 i n i t i a t e s u c h c i v i l a c t i o n, e x c e p t t h a t i f i t i s n o t f e a s i b l e
13 f o r t h e S t a t e t o p r o v i d e s u c h p r i o r n o t i c e, t h e S t a t e s h a l l
14 p r o v i d e s u c h n o t i c e i m m e d i a t e l y u p o n i n s t i t u t i n g s u c h c i v i l
15 a c t i o n.

16 (c) AUTHORITY TO INTERVENE.—Upon receiving the
17 n o t i c e r e q u i r e d b y s u b s e c t i o n (b), t h e F e d e r a l T r a d e C o m -
18 m i s s i o n m a y i n t e r v e n e i n s u c h c i v i l a c t i o n a n d u p o n i n t e r -
19 v e n i n g—

20 (1) b e h e a r d o n a l l m a t t e r s a r i s i n g i n s u c h c i v i l
21 a c t i o n; a n d

22 (2) f i l e p e t i t i o n s f o r a p p e a l o f a d e c i s i o n i n s u c h
23 c i v i l a c t i o n.

24 (d) CONSTRUCTION.—For purposes of bringing any
25 c i v i l a c t i o n u n d e r s u b s e c t i o n (a), n o t h i n g i n t h i s s e c t i o n

1 shall prevent the attorney general of a State from exer-
2 cising the powers conferred on the attorney general by the
3 laws of such State to conduct investigations or to admin-
4 ister oaths or affirmations or to compel the attendance
5 of witnesses or the production of documentary and other
6 evidence.

7 (e) VENUE; SERVICE OF PROCESS.—In a civil action
8 brought under subsection (a)—

9 (1) the venue shall be a judicial district in
10 which—

11 (A) the defendant operates;

12 (B) the defendant was authorized to do
13 business; or

14 (C) where the defendant in the civil action
15 is found;

16 (2) process may be served without regard to the
17 territorial limits of the district or of the State in
18 which the civil action is instituted; and

19 (3) a person who participated with the defend-
20 ant in an alleged violation that is being litigated in
21 the civil action may be joined in the civil action with-
22 out regard to the residence of the person.

23 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
24 ACTION IS PENDING.—If the Federal Trade Commission
25 has instituted a civil action or an administrative action

1 for violation of this Act, no State attorney general, or offi-
2 cial or agency of a State, may bring an action under this
3 subsection during the pendency of that action against any
4 defendant named in the complaint of the Federal Trade
5 Commission or the other agency for any violation of this
6 Act alleged in the complaint.

7 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
8 tained in this section shall prohibit an authorized State
9 official from proceeding in State court to enforce a civil
10 or criminal statute of such State.

11 **SEC. 7. LOW INCOME ENERGY ASSISTANCE.**

12 Amounts collected in fines and penalties under sec-
13 tions 4 or 5 of this Act shall be deposited in a separate
14 fund in the treasury to be known as the Consumer Relief
15 Trust Fund. To the extent provided for in advance in ap-
16 propriations Acts fund shall be used to provide assistance
17 under the Low Income Home Energy Assistance Program
18 administered by the Secretary of Health and Human Serv-
19 ices.

20 **SEC. 8. EFFECT ON OTHER LAWS.**

21 (a) OTHER AUTHORITY OF FEDERAL TRADE COM-
22 MISSION.—Nothing in this Act shall be construed to limit
23 or affect in any way the Federal Trade Commission’s au-
24 thority to bring enforcement actions or take any other

1 measure under the Federal Trade Commission Act (15
2 U.S.C. 41 et seq.) or any other provision of law.

3 (b) STATE LAW.—Nothing in this Act preempts any
4 State law.

5 **SEC. 9. MARKET TRANSPARENCY FOR CRUDE OIL, GASO-**
6 **LINE, AND PETROLEUM DISTILLATES.**

7 (a) IN GENERAL.—The Federal Trade Commission
8 shall facilitate price transparency in markets for the sale
9 of crude oil and essential petroleum products at wholesale,
10 having due regard for the public interest, the integrity of
11 those markets, fair competition, and the protection of con-
12 sumers.

13 (b) MARKETPLACE TRANSPARENCY.—

14 (1) DISSEMINATION OF INFORMATION.—In car-
15 rying out this section the Federal Trade Commission
16 shall provide by rule for the dissemination, on a
17 timely basis, of information about the availability
18 and prices of wholesale crude oil, gasoline, and pe-
19 troleum distillates to the Federal Trade Commission,
20 States, wholesale buyers and sellers, and the public.

21 (2) PROTECTION OF PUBLIC FROM ANTI-
22 COMPETITIVE ACTIVITY.—In determining the infor-
23 mation to be made available under this section and
24 time to make the information available, the Federal
25 Trade Commission shall seek to ensure that con-

1 consumers and competitive markets are protected from
2 the adverse effects of potential collusion or other
3 anticompetitive behaviors that can be facilitated by
4 untimely public disclosure of transaction-specific in-
5 formation.

6 (3) PROTECTION OF MARKET MECHANISMS.—

7 The Federal Trade Commission shall withhold from
8 public disclosure under this section any information
9 the Commission determines would, if disclosed, be
10 detrimental to the operation of an effective market
11 or jeopardize system security.

12 (c) INFORMATION SOURCES.—

13 (1) IN GENERAL.—In carrying out subsection

14 (b), the Federal Trade Commission may—

15 (A) obtain information from any market
16 participant; and

17 (B) rely on entities other than the Com-
18 mission to receive and make public the informa-
19 tion, subject to the disclosure rules in sub-
20 section (b)(3).

21 (2) PUBLISHED DATA.—In carrying out this
22 section, the Federal Trade Commission shall con-
23 sider the degree of price transparency provided by
24 existing price publishers and providers of trade proc-

1 essing services, and shall rely on such publishers and
2 services to the maximum extent possible.

3 (3) ELECTRONIC INFORMATION SYSTEMS.—The
4 Federal Trade Commission may establish an elec-
5 tronic information system if it determines that exist-
6 ing price publications are not adequately providing
7 price discovery or market transparency. Nothing in
8 this section, however, shall affect any electronic in-
9 formation filing requirements in effect under this
10 Act as of the date of enactment of this section.

11 (4) DE MINIMUS EXCEPTION.—The Federal
12 Trade Commission may not require entities who
13 have a de minimus market presence to comply with
14 the reporting requirements of this section.

15 (d) COOPERATION WITH OTHER FEDERAL AGEN-
16 CIES.—

17 (1) MEMORANDUM OF UNDERSTANDING.—
18 Within 180 days after the date of enactment of this
19 Act, the Federal Trade Commission shall conclude a
20 memorandum of understanding with the Commodity
21 Futures Trading Commission and other appropriate
22 agencies (if applicable) relating to information shar-
23 ing, which shall include provisions—

24 (A) ensuring that information requests to
25 markets within the respective jurisdiction of

1 each agency are properly coordinated to mini-
2 mize duplicative information requests; and

3 (B) regarding the treatment of proprietary
4 trading information.

5 (2) CFTC JURISDICTION.—Nothing in this sec-
6 tion may be construed to limit or affect the exclusive
7 jurisdiction of the Commodity Futures Trading
8 Commission under the Commodity Exchange Act (7
9 U.S.C. 1 et seq.).

10 (e) RULEMAKING.—Within 180 days after the date
11 of enactment of this Act, the Federal Trade Commission
12 shall initiate a rulemaking proceeding to establish such
13 rules as the Commission determines to be necessary and
14 appropriate to carry out this section.

15 **SEC. 10. REPORT ON UNITED STATES ENERGY EMERGENCY**
16 **PREPAREDNESS.**

17 (a) POTENTIAL IMPACTS REPORT.—Within 30 days
18 after the date of enactment of this Act, the Federal Trade
19 Commission shall transmit to the Congress a confidential
20 report describing the potential impact on domestic prices
21 of crude oil, residual fuel oil, and refined petroleum prod-
22 ucts that would result from the disruption for periods of
23 1 week, 1 year, and 5 years, respectively, of not less
24 than—

25 (1) 30 percent of United States oil production;

1 (2) 20 percent of United States refinery capac-
2 ity; and

3 (3) 5 percent of global oil supplies.

4 (b) PROJECTIONS AND POSSIBLE REMEDIES.—The
5 President shall include in the report—

6 (1) projections of the impact any such disrup-
7 tions would be likely to have on the United States
8 economy; and

9 (2) detailed and prioritized recommendations
10 for remedies under each scenario covered by the re-
11 port.

12 **SEC. 11. PROTECTIVE ACTION TO PREVENT FUTURE DIS-**
13 **RUPTIONS OF SUPPLY.**

14 The Secretary of Energy and the Energy Information
15 Administration shall review expenditures by, and activities
16 undertaken by, companies with total United States whole-
17 sale or retail sales of crude oil, gasoline, and petroleum
18 distillates in excess of \$500,000,000 per year to protect
19 the energy supply system from terrorist attacks, inter-
20 national supply disruptions, and natural disasters, and en-
21 sure a stable and reasonably priced supply of such prod-
22 ucts to consumers in the United States, and, not later
23 than 180 days after the date of the enactment of this title,
24 shall transmit a report of their findings to Congress. Such
25 report shall include an assessment of the companies' prep-

1 arations for the forecasted period of more frequent and
2 more intense hurricane activity in the Gulf of Mexico and
3 other vulnerable coastal areas.

4 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out the provisions of this
7 Act.

○