

110TH CONGRESS
1ST SESSION

H. R. 2492

To protect the welfare of consumers by prohibiting price gouging with respect to road transportation fuel or domestic heating fuel during certain abnormal market disruptions.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. UPTON (for himself, Mr. BLUNT, Mr. ADERHOLT, Mr. SHIMKUS, Mr. ROSKAM, Mr. CAMP of Michigan, Mr. ENGLISH of Pennsylvania, Mr. PICKERING, Mr. HALL of Texas, Mr. KIRK, Mr. TERRY, and Mr. WALDEN of Oregon) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Armed 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

A BILL

To protect the welfare of consumers by prohibiting price gouging with respect to road transportation fuel or domestic heating fuel during certain abnormal market disruptions.

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 “The Motorist’s Bill
3 of Rights: Increasing Gas Supply, Reducing Demand, and
4 Protecting Consumers from Gouging”.

5 **TITLE I—PROTECTION OF CON-**
6 **SUMERS AGAINST PRICE**
7 **GOUGING**

8 **SEC. 101. PROTECTION OF CONSUMERS AGAINST PRICE**
9 **GOUGING.**

10 (a) CONDUCT PROHIBITED.—It shall be unlawful for
11 any supplier to increase the price at which that supplier
12 sells, or offers to sell, road transportation fuel or domestic
13 heating fuel in an area covered by a Presidential procla-
14 mation issued under section 102 by an unconscionable
15 amount during the period beginning on the date the proc-
16 lamation is issued and ending on the date specified in the
17 proclamation.

18 (b) JUSTIFIABLE PRICE INCREASES.—

19 (1) IN GENERAL.—The prohibition in sub-
20 section (a) shall not apply to the extent that the in-
21 crease in the price of the road transportation fuel or
22 domestic heating fuel is substantially attributable
23 to—

24 (A) an increase in the wholesale cost of
25 road transportation fuel or domestic heating
26 fuel to a retail seller or reseller;

1 (B) an increase in the replacement costs
2 for road transportation fuel or domestic heating
3 fuel sold;

4 (C) an increase in operational costs; or

5 (D) local, regional, national, or inter-
6 national market conditions.

7 (2) OTHER MITIGATING FACTORS.—In deter-
8 mining whether a violation of this section has oc-
9 curred, there also shall be taken into account,
10 among other factors, the price that would reasonably
11 equate supply and demand in a competitive and free-
12 ly functioning market and whether the price at
13 which the road transportation fuel or domestic heat-
14 ing fuel was sold reasonably reflects other additional
15 costs or risks, not within the control of the seller,
16 that were paid or incurred by the seller.

17 **SEC. 102. ENERGY EMERGENCY PROCLAMATIONS AND OR-**
18 **DERS.**

19 (a) SCOPE AND DURATION.—The President may
20 issue an energy emergency proclamation when an abnor-
21 mal market disruption has occurred or is reasonably ex-
22 pected to occur. The emergency proclamation shall specify
23 with particularity—

24 (1) the period for which the proclamation ap-
25 plies;

1 (2) the area or region to which it applies; and

2 (3) the event, circumstance, or condition that is
3 the reason such a proclamation is determined to be
4 necessary.

5 (b) LIMITATIONS.—An emergency proclamation
6 issued under subsection (a)—

7 (1) may not apply for a period of more than 30
8 consecutive days, but may be renewed for a consecu-
9 tive 30-day period; and

10 (2) may be issued not more than 7 days pre-
11 ceding the reasonably expected occurrence of the
12 event, circumstance, or condition that is the reason
13 such a proclamation is determined to be necessary.

14 **SEC. 103. ENFORCEMENT BY FEDERAL TRADE COMMIS-**
15 **SION.**

16 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
17 PRACTICE.—A violation of section 101 shall be treated as
18 a violation of a rule defining an unfair or deceptive act
19 or practice prescribed under section 18(a)(1)(B) of the
20 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

21 (b) ACTIONS BY THE COMMISSION.—The Commis-
22 sion shall prevent any supplier from violating section 101
23 in the same manner, by the same means, and with the
24 same jurisdiction, powers, and duties as though all appli-
25 cable terms and provisions of the Federal Trade Commis-

1 sion Act (15 U.S.C. 41 et seq.) were incorporated into and
2 made a part of this Act. Any entity that violates section
3 101 is subject to the penalties and entitled to the privi-
4 leges and immunities provided in the Federal Trade Com-
5 mission Act in the same manner, by the same means, and
6 with the same jurisdiction, power, and duties as though
7 all applicable terms and provisions of the Federal Trade
8 Commission Act were incorporated into and made a part
9 of this title.

10 (c) REGULATIONS.—Not later than 180 days after
11 the date of enactment of this title, the Federal Trade
12 Commission shall prescribe such regulations as may be
13 necessary or appropriate to implement this title.

14 **SEC. 104. PENALTIES.**

15 (a) CIVIL PENALTY.—

16 (1) IN GENERAL.—In addition to any penalty
17 applicable under the Federal Trade Commission Act
18 any supplier who violates this title is punishable by
19 a civil penalty of—

20 (A) not more than \$500,000, in the case of
21 an independent small business marketer of gas-
22 oline (within the meaning of section 324(c) of
23 the Clean Air Act (42 U.S.C. 7625(c))); and

24 (B) not more than \$5,000,000 in the case
25 of any other supplier.

1 (2) METHOD OF ASSESSMENT.—The penalty
2 provided by paragraph (1) shall be obtained in the
3 same manner as civil penalties obtained under sec-
4 tion 5 of the Federal Trade Commission Act (15
5 U.S.C. 45).

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

9 (A) a court shall take into consideration
10 the seriousness of the violation and the efforts
11 of the supplier committing the violation to rem-
12 edy the harm caused by the violation in a time-
13 ly manner; and

14 (B) each determination that road transpor-
15 tation fuel or domestic heating fuel have been
16 sold or offered for sale in the area and during
17 the period covered by a proclamation issued
18 under section 102 by an unconscionable amount
19 shall be considered a single violation.

20 (b) CRIMINAL PENALTY.—

21 (1) IN GENERAL.—In addition to any penalty
22 applicable under the Federal Trade Commission Act,
23 the violation of section 101 is punishable by a fine
24 of not more than \$1,000,000, imprisonment for not
25 more than 2 years, or both.

1 (2) ENFORCEMENT.—The criminal penalty pro-
2 vided by paragraph (1) may be imposed only pursu-
3 ant to a criminal action brought by the Attorney
4 General or other officer of the Department of Jus-
5 tice.

6 **SEC. 105. DEFINITIONS.**

7 In this Act the following definitions apply:

8 (1) ABNORMAL MARKET DISRUPTION.—The
9 term “abnormal market disruption” means there is
10 a reasonable likelihood that there will be an increase
11 in the average price of road transportation fuel or
12 domestic heating fuel as a result of a change in the
13 market, whether actual or imminently threatened,
14 resulting from extreme weather, a natural disaster,
15 strike, civil disorder, war, military action, a national
16 or local emergency, or other similar cause, that ad-
17 versely affects the availability or delivery road trans-
18 portation fuel or domestic heating fuel.

19 (2) ROAD TRANSPORTATION FUEL OR DOMES-
20 TIC HEATING FUEL.—The term “road transportation
21 fuel or domestic heating fuel” means those products
22 used as transportation fuel or for home heating but
23 does not include jet fuel.

24 (3) REPLACEMENT COSTS.—The term “replac-
25 ment costs” means, with respect to a supplier to

1 whom section 101 applies, costs to that supplier de-
2 termined by referencing either—

3 (A) the actual or anticipated replacement
4 cost as evidenced by bills of sale, invoices, or
5 other appropriate documentation; or

6 (B) the cost for road transportation fuel or
7 domestic heating fuel in the relevant market at
8 the time of the sale or offer for sale that is the
9 subject of a violation of section 101, plus actual
10 storage, transportation, and delivery costs.

11 (4) SUPPLIER.—The term “supplier” means
12 any person engaged in the trade or business of sell-
13 ing, reselling, at retail or wholesale, or distributing
14 road transportation fuel or domestic heating fuel.

15 (5) UNCONSCIONABLE AMOUNT.—The term
16 “unconscionable amount” means, with respect to
17 any supplier to whom section 101 applies, a signifi-
18 cant increase in the price at which road transpor-
19 tation fuel or domestic heating fuel are sold or of-
20 fered for sale by that supplier that increases the
21 price, for the same grade of gasoline or petroleum
22 distillate, to an amount that—

23 (A) substantially exceeds the average price
24 at which road transportation fuel or domestic
25 heating fuel were sold or offered for sale by

1 that supplier during the 30-day period imme-
2 diately preceding the sale or offer;

3 (B) substantially exceeds the average price
4 at which road transportation fuel or domestic
5 heating fuel were sold or offered for sale by
6 that supplier's competitors during the period
7 for which the emergency proclamation applies;
8 and

9 (C) cannot be justified by taking into ac-
10 count the factors described in section 101(b).

11 **SEC. 106. EFFECTIVE DATE.**

12 This title shall take effect on the date on which a
13 final rule issued by the Federal Trade Commission under
14 section 5(e) of the Federal Trade Commission Act is pub-
15 lished in the Federal Register.

16 **TITLE II—SCHEDULES FOR THE**
17 **CONSIDERATION OF PERMITS**
18 **FOR REFINERIES**

19 **SEC. 201. DEFINITIONS.**

20 For purposes of this Act—

21 (1) the term “Administrator” means the Ad-
22 ministrator of the Environmental Protection Agency;

23 (2) the term “applicant” means a person who
24 is seeking a Federal refinery authorization;

1 (3) the term “biomass” has the meaning given
2 that term in section 932(a)(1) of the Energy Policy
3 Act of 2005;

4 (4) the term “Federal refinery authorization”—

5 (A) means any authorization required
6 under Federal law, whether administered by a
7 Federal or State administrative agency or offi-
8 cial, with respect to siting, construction, expan-
9 sion, or operation of a refinery; and

10 (B) includes any permits, licenses, special
11 use authorizations, certifications, opinions, or
12 other approvals required under Federal law
13 with respect to siting, construction, expansion,
14 or operation of a refinery;

15 (5) the term “Indian lands” means lands held
16 in trust for the benefit of an Indian tribe or indi-
17 vidual or held by an Indian tribe or individual sub-
18 ject to a restriction by the United States against
19 alienation;

20 (6) the term “Indian tribe” has the meaning
21 given the term in section 4 of the Indian Self-Deter-
22 mination and Education Assistance Act (25 U.S.C.
23 450b);

24 (7) the term “refinery” means—

1 (A) a facility designed and operated to re-
2 ceive, load, unload, store, transport, process,
3 and refine crude oil or oil originally derived
4 from crude oil by any chemical or physical proc-
5 ess, including distillation, fluid catalytic crack-
6 ing, hydrocracking, coking, alkylation,
7 etherification, polymerization, catalytic reform-
8 ing, isomerization, hydrotreating, blending, and
9 any combination thereof, in order to produce
10 gasoline, distillate, or lubricating base oil;

11 (B) a facility designed and operated to re-
12 ceive, load, unload, store, transport, process,
13 and refine coal by any chemical or physical
14 process, including liquefaction, in order to
15 produce gasoline or diesel as its primary out-
16 put; or

17 (C) a facility designed and operated to re-
18 ceive, load, unload, store, transport, process (in-
19 cluding biochemical, photochemical, and bio-
20 technology processes), and refine biomass in
21 order to produce biofuel;

22 (8) the term “State” means a State, the Dis-
23 trict of Columbia, the Commonwealth of Puerto
24 Rico, and any other territory or possession of the
25 United States; and

1 (2) OTHER AGENCIES.—Each Federal and
2 State agency or official required to provide a Fed-
3 eral refinery authorization shall cooperate with the
4 Federal coordinator.

5 (b) FEDERAL REFINERY AUTHORIZATIONS.—

6 (1) MEETING PARTICIPANTS.—Not later than
7 30 days after receiving a notification from an appli-
8 cant that the applicant is seeking a Federal refinery
9 authorization pursuant to Federal law, the Federal
10 coordinator appointed under subsection (a) shall
11 convene a meeting of representatives from all Fed-
12 eral and State agencies responsible for a Federal re-
13 finery authorization with respect to the refinery. The
14 governor of a State shall identify each agency of
15 that State that is responsible for a Federal refinery
16 authorization with respect to that refinery.

17 (2) MEMORANDUM OF AGREEMENT.—(A) Not
18 later than 90 days after receipt of a notification de-
19 scribed in paragraph (1), the Federal coordinator
20 and the other participants at a meeting convened
21 under paragraph (1) shall establish a memorandum
22 of agreement setting forth the most expeditious co-
23 ordinated schedule possible for completion of all
24 Federal refinery authorizations with respect to the
25 refinery, consistent with the full substantive and

1 procedural review required by Federal law. If a Fed-
2 eral or State agency responsible for a Federal refin-
3 ery authorization with respect to the refinery is not
4 represented at such meeting, the Federal coordinator
5 shall ensure that the schedule accommodates those
6 Federal refinery authorizations, consistent with Fed-
7 eral law. In the event of conflict among Federal re-
8 finery authorization scheduling requirements, the re-
9 quirements of the Environmental Protection Agency
10 shall be given priority.

11 (B) Not later than 15 days after completing the
12 memorandum of agreement, the Federal coordinator
13 shall publish the memorandum of agreement in the
14 Federal Register.

15 (C) The Federal coordinator shall ensure that
16 all parties to the memorandum of agreement are
17 working in good faith to carry out the memorandum
18 of agreement, and shall facilitate the maintenance of
19 the schedule established therein.

20 (e) CONSOLIDATED RECORD.—The Federal coordi-
21 nator shall, with the cooperation of Federal and State ad-
22 ministrative agencies and officials, maintain a complete
23 consolidated record of all decisions made or actions taken
24 by the Federal coordinator or by a Federal administrative
25 agency or officer (or State administrative agency or officer

1 acting under delegated Federal authority) with respect to
2 any Federal refinery authorization. Such record shall be
3 the record for judicial review under subsection (d) of deci-
4 sions made or actions taken by Federal and State adminis-
5 trative agencies and officials, except that, if the Court de-
6 termines that the record does not contain sufficient infor-
7 mation, the Court may remand the proceeding to the Fed-
8 eral coordinator for further development of the consoli-
9 dated record.

10 (d) REMEDIES.—

11 (1) IN GENERAL.—The United States District
12 Court for the district in which the proposed refinery
13 is located shall have exclusive jurisdiction over any
14 civil action for the review of the failure of an agency
15 or official to act on a Federal refinery authorization
16 in accordance with the schedule established pursuant
17 to the memorandum of agreement.

18 (2) STANDING.—If an applicant or a party to
19 a memorandum of agreement alleges that a failure
20 to act described in paragraph (1) has occurred and
21 that such failure to act would jeopardize timely com-
22 pletion of the entire schedule as established in the
23 memorandum of agreement, such applicant or other
24 party may bring a cause of action under this sub-
25 section.

1 (3) COURT ACTION.—If an action is brought
2 under paragraph (2), the Court shall review whether
3 the parties to the memorandum of agreement have
4 been acting in good faith, whether the applicant has
5 been cooperating fully with the agencies that are re-
6 sponsible for issuing a Federal refinery authoriza-
7 tion, and any other relevant materials in the consoli-
8 dated record. Taking into consideration those fac-
9 tors, if the Court finds that a failure to act de-
10 scribed in paragraph (1) has occurred, and that such
11 failure to act would jeopardize timely completion of
12 the entire schedule as established in the memo-
13 randum of agreement, the Court shall establish a
14 new schedule that is the most expeditious coordi-
15 nated schedule possible for completion of pro-
16 ceedings, consistent with the full substantive and
17 procedural review required by Federal law. The
18 court may issue orders to enforce any schedule it es-
19 tablishes under this paragraph.

20 (4) FEDERAL COORDINATOR'S ACTION.—When
21 any civil action is brought under this subsection, the
22 Federal coordinator shall immediately file with the
23 Court the consolidated record compiled by the Fed-
24 eral coordinator pursuant to subsection (c).

1 (5) EXPEDITED REVIEW.—The Court shall set
2 any civil action brought under this subsection for ex-
3 pedited consideration.

4 (e) APPLICABILITY.—This section shall only apply to
5 a refinery sited or proposed to be sited or expanded or
6 proposed to be expanded—

7 (1) in a State whose governor has submitted a
8 request to the President for the application of the
9 process coordination and rules of procedure under
10 this section to the siting, construction, expansion, or
11 operation of any refinery in that State;

12 (2) on a closed military installation, or portion
13 thereof, made available for the siting of a refinery in
14 the manner provided by the base closure law applica-
15 ble to the installation; or

16 (3) on Indian lands if the relevant tribal organi-
17 zation has submitted a request to the President for
18 the application of the process coordination and rules
19 of procedure under this section to the siting, con-
20 struction, expansion, or operation of any refinery on
21 that Indian land.

22 **SEC. 204. DESIGNATION OF CLOSED MILITARY BASES.**

23 (a) DESIGNATION REQUIREMENT.—Not later than
24 90 days after the date of enactment of this Act, the Presi-
25 dent shall designate no less than 3 closed military installa-

1 tions, or portions thereof, as potentially suitable for the
2 construction of a refinery. At least 1 such site shall be
3 designated as potentially suitable for construction of a re-
4 finery to refine biomass in order to produce biofuel.

5 (b) REDEVELOPMENT AUTHORITY.—The redevelop-
6 ment authority for each installation designated under sub-
7 section (a), in preparing or revising the redevelopment
8 plan for the installation, shall consider the feasibility and
9 practicability of siting a refinery on the installation.

10 (c) MANAGEMENT AND DISPOSAL OF REAL PROP-
11 erty.—The Secretary of Defense, in managing and dis-
12 posing of real property at an installation designated under
13 subsection (a) pursuant to the base closure law applicable
14 to the installation, shall give substantial deference to the
15 recommendations of the redevelopment authority, as con-
16 tained in the redevelopment plan for the installation, re-
17 garding the siting of a refinery on the installation. The
18 management and disposal of real property at a closed mili-
19 tary installation or portion thereof found to be suitable
20 for the siting of a refinery under subsection (a) shall be
21 carried out in the manner provided by the base closure
22 law applicable to the installation.

23 (d) DEFINITIONS.—For purposes of this section—

24 (1) the term “base closure law” means the De-
25 fense Base Closure and Realignment Act of 1990

1 (part A of title XXIX of Public Law 101–510; 10
2 U.S.C. 2687 note) and title II of the Defense Au-
3 thorization Amendments and Base Closure and Re-
4 alignment Act (Public Law 100–526; 10 U.S.C.
5 2687 note); and

6 (2) the term “closed military installation”
7 means a military installation closed or approved for
8 closure pursuant to a base closure law.

9 **SEC. 205. SAVINGS CLAUSE.**

10 Nothing in this Act shall be construed to affect the
11 application of any environmental or other law, or to pre-
12 vent any party from bringing a cause of action under any
13 environmental or other law, including citizen suits.

14 **SEC. 206. REFINERY REVITALIZATION REPEAL.**

15 Subtitle H of title III of the Energy Policy Act of
16 2005 and the items relating thereto in the table of con-
17 tents of such Act are repealed.

18 **TITLE III—FUEL CONSUMPTION**
19 **EDUCATION**

20 **SEC. 301. PARTNERSHIP FOR PUBLIC EDUCATION CAM-**
21 **PAIGN.**

22 (a) **ESTABLISHMENT.**—The Secretary of Energy
23 shall enter into a partnership with interested industry
24 groups, including groups from the automotive, gasoline re-
25 fining, and oil industries, to create a public education cam-

1 paign that provides information to United States drivers
2 about immediate measures that may be taken to conserve
3 transportation fuel. This public-private partnership shall
4 include a five member advisory board, to be chaired by
5 the Secretary or his designee, which shall include rep-
6 resentatives from the Department of Energy, the oil in-
7 dustry, the automotive industry, and the Congress, to be
8 appointed by the Secretary. The Secretary shall appoint
9 the advisory board not later than 30 days after the date
10 of enactment of this Act.

11 (b) ACCESSIBILITY.—The public information cam-
12 paign under this section shall be targeted to reach the
13 widest audience possible. The education campaign shall in-
14 clude television, print, Internet website, or any other
15 method designed to maximize the dissemination of trans-
16 portation fuel savings information to drivers.

17 (c) COST SHARING.—The Secretary shall provide no
18 more than 50 percent of the cost of the campaign created
19 under this section.

20 (d) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to the Secretary
22 \$10,000,000 for carrying out this section.

1 **TITLE IV—BOUTIQUE FUEL**
2 **REDUCTION**

3 **SEC. 401. TEMPORARY WAIVERS.**

4 Section 211(c)(4)(C)(ii)(II) of the Clean Air Act (42
5 U.S.C.7545(c)(4)(C)(ii)(II)) is amended by inserting after
6 “equipment failure” the following: “, unexpected problems
7 with distribution or delivery equipment that is necessary
8 for transportation and delivery of fuel or fuel additives”.

9 **SEC. 402. REDUCTION IN NUMBER OF BOUTIQUE FUELS.**

10 Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C.
11 7545(c)(4)(C)) is amended as follows:

12 (1) By redesignating the clause (v) added by
13 section 1541(b) of the Energy Policy Act of 2005
14 (Public Law 109–58; 119 Stat. 1106) as clause (vi).

15 (2) In clause (vi) (as so redesignated)—

16 (A) in subclause (I) by striking “approved
17 under this paragraph as of September 1, 2004,
18 in all State implementation plans” and by in-
19 serting in lieu there of “set forth on the list
20 published under subclause (II), or if the list has
21 been revised under subclause (III), on the re-
22 vised list”;

23 (B) by amending subclause (III) to read as
24 follows:

1 “(III) The Administrator shall, after notice
2 and opportunity for comment, remove a fuel
3 from the list published under subclause (II) if
4 the Administrator determines that such fuel has
5 ceased to be included in any State implementa-
6 tion plan or is identical to a Federal fuel con-
7 trol or prohibition promulgated and imple-
8 mented by the Administrator. The Adminis-
9 trator shall publish a revised list reflecting the
10 reduction in the number of fuels.”;

11 (C) in subclause (IV) by striking “Sub-
12 clause (I)” and inserting “Neither subclause (I)
13 nor subclause (V)” and by striking “not” and
14 by striking “if such new fuel”;

15 (D) in item (aa) of subclause (IV) by in-
16 serting “if such new fuel” after “(aa)” and by
17 striking “; or” and inserting “, or if the list has
18 been revised under subclause (III), on the re-
19 vised list”;

20 (E) in item (bb) of subclause (IV) by in-
21 serting “if such new fuel” and by striking “as
22 of September 1, 2004.” and inserting “, or if
23 the list has been revised under subclause (III),
24 on the revised list, and”; and

1 (F) by striking so much of the last sen-
2 tence of subclause (IV) as precedes the phrase
3 “if the Administrator”, by striking “a new
4 fuel” in such last sentence and inserting “such
5 new fuel”, and by designating the remaining
6 language in such last sentence as item (cc) and
7 adjusting the left margin accordingly.

○