

110TH CONGRESS
2D SESSION

H. R. 6653

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 30, 2008

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Energy and Commerce, Agriculture, and the Judiciary, 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 provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer Energy Relief Act of 2008”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings.

TITLE I—TAX PROVISIONS RELATED TO OIL AND GAS

- Sec. 101. Denial of deduction for major integrated oil companies for income attributable to domestic production of oil, gas, or primary products thereof.
 Sec. 102. Elimination of the different treatment of foreign oil and gas extraction income and foreign oil related income for purposes of the foreign tax credit.
 Sec. 103. Windfall profits tax.
 Sec. 104. Energy Independence and Security Trust Fund.

TITLE II—PRICE GOUGING

- Sec. 201. Short title.
 Sec. 202. Definitions.
 Sec. 203. Jurisdiction of the commodity futures trading commission extended to derivatives involving energy commodities.
 Sec. 204. Energy emergency and additional price gouging enforcement.
 Sec. 205. Presidential declaration of energy emergency.
 Sec. 206. Enforcement by the Federal Trade Commission.
 Sec. 207. Enforcement by State attorneys general.
 Sec. 208. Penalties.
 Sec. 209. Effect on other laws.

TITLE III—NO OIL PRODUCING AND EXPORTING CARTELS

- Sec. 301. No Oil Producing and Exporting Cartels Act of 2008.

TITLE IV—MARKET SPECULATION

- Sec. 401. Speculative limits and transparency for off-shore oil trading.
 Sec. 402. Margin level for crude oil.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) excessive prices for petroleum products have
 4 created, or imminently threaten to create, severe
 5 economic dislocations and hardships, including the
 6 loss of jobs, business failures, disruption of economic
 7 activity, curtailment of vital public services, and
 8 price increases throughout the economy;

9 (2) those hardships and dislocations jeopardize
 10 the normal flow of commerce and constitute a na-

1 tional energy and economic crisis that is a threat to
2 the public health, safety, and welfare of the United
3 States;

4 (3) consumers, workers, small businesses, and
5 large businesses of the United States are particu-
6 larly vulnerable to those price increase due to the
7 failure of the President to aggressively develop alter-
8 natives to petroleum and petroleum products and to
9 promote efficiency and conservation;

10 (4) reliable and affordable supplies of crude oil
11 and products refined from crude oil (including gaso-
12 line, diesel fuel, heating oil, and jet fuel) are vital to
13 the economic and national security of the United
14 States given current energy infrastructure and tech-
15 nology;

16 (5) the price of crude oil and products refined
17 from crude oil (including gasoline, diesel fuel, heat-
18 ing oil, and jet fuel) have skyrocketed to record lev-
19 els and are continuing to rise;

20 (6) since 2001, oil prices have increased from
21 \$29 per barrel to levels near \$120 per barrel and
22 gasoline prices have more than doubled from \$1.47
23 per gallon to more than \$3.50 per gallon;

1 (7) the record prices for crude oil and products
2 refined from crude oil (including gasoline, diesel
3 fuel, heating oil, and jet fuel)—

4 (A) are hurting millions of consumers,
5 workers, small businesses, and large businesses
6 of the United States, and threaten long-term
7 damage to the economy and security of the
8 United States;

9 (B) are partially due to—

10 (i) the declining value of the dollar
11 and a widespread lack of confidence in the
12 management of economic and foreign pol-
13 icy by the President;

14 (ii) the accumulation of national debt
15 and growing budget deficits under the
16 failed economic policies of the President;
17 and

18 (iii) high levels of military expendi-
19 tures under the failed policies of the Presi-
20 dent in Iraq; and

21 (C) are no longer justified by traditional
22 forces of supply and demand;

23 (8) rampant speculation in the markets for
24 crude oil and products refined from crude oil has
25 magnified the price increases and market volatility

1 resulting from those underlying causes of price in-
2 creases; and

3 (9) Congress must take urgent action to protect
4 consumers, workers, and businesses of the United
5 States from rampant speculation in the energy mar-
6 kets and the price increases resulting from the failed
7 domestic and foreign policies of the President.

8 **TITLE I—TAX PROVISIONS**
9 **RELATED TO OIL AND GAS**

10 **SEC. 101. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED**
11 **OIL COMPANIES FOR INCOME ATTRIBUTABLE**
12 **TO DOMESTIC PRODUCTION OF OIL, GAS, OR**
13 **PRIMARY PRODUCTS THEREOF.**

14 (a) IN GENERAL.—Subparagraph (B) of section
15 199(c)(4) (relating to exceptions) is amended by striking
16 “or” at the end of clause (ii), by striking the period at
17 the end of clause (iii) and inserting “, or”, and by insert-
18 ing after clause (iii) the following new clause:

19 “(iv) in the case of any major inte-
20 grated oil company (as defined in section
21 167(h)(5)(B)), the production, refining,
22 processing, transportation, or distribution
23 of oil, gas, or any primary product thereof
24 during any taxable year described in sec-
25 tion 167(h)(5)(B).”.

1 (b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is
2 amended by adding at the end the following flush sen-
3 tence:

4 “For purposes of clause (iv), the term ‘primary
5 product’ has the same meaning as when used in
6 section 927(a)(2)(C), as in effect before its re-
7 peal.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2008.

11 **SEC. 102. ELIMINATION OF THE DIFFERENT TREATMENT**
12 **OF FOREIGN OIL AND GAS EXTRACTION IN-**
13 **COME AND FOREIGN OIL RELATED INCOME**
14 **FOR PURPOSES OF THE FOREIGN TAX CRED-**
15 **IT.**

16 (a) IN GENERAL.—Subsections (a) and (b) of section
17 907 of the Internal Revenue Code of 1986 (relating to
18 special rules in case of foreign oil and gas income) are
19 amended to read as follows:

20 “(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN
21 TAX UNDER SECTION 901.—In applying section 901, the
22 amount of any foreign oil and gas taxes paid or accrued
23 (or deemed to have been paid) during the taxable year
24 which would (but for this subsection) be taken into ac-
25 count for purposes of section 901 shall be reduced by the

1 amount (if any) by which the amount of such taxes ex-
2 ceeds the product of—

3 “(1) the amount of the combined foreign oil
4 and gas income for the taxable year,

5 “(2) multiplied by—

6 “(A) in the case of a corporation, the per-
7 centage which is equal to the highest rate of tax
8 specified under section 11(b), or

9 “(B) in the case of an individual, a frac-
10 tion the numerator of which is the tax against
11 which the credit under section 901(a) is taken
12 and the denominator of which is the taxpayer’s
13 entire taxable income.

14 “(b) COMBINED FOREIGN OIL AND GAS INCOME;
15 FOREIGN OIL AND GAS TAXES.—For purposes of this sec-
16 tion—

17 “(1) COMBINED FOREIGN OIL AND GAS IN-
18 COME.—The term ‘combined foreign oil and gas in-
19 come’ means, with respect to any taxable year, the
20 sum of—

21 “(A) foreign oil and gas extraction income,
22 and

23 “(B) foreign oil related income.

1 “(2) FOREIGN OIL AND GAS TAXES.—The term
2 ‘foreign oil and gas taxes’ means, with respect to
3 any taxable year, the sum of—

4 “(A) oil and gas extraction taxes, and

5 “(B) any income, war profits, and excess
6 profits taxes paid or accrued (or deemed to
7 have been paid or accrued under section 902 or
8 960) during the taxable year with respect to
9 foreign oil related income (determined without
10 regard to subsection (c)(4)) or loss which would
11 be taken into account for purposes of section
12 901 without regard to this section.”.

13 (b) RECAPTURE OF FOREIGN OIL AND GAS
14 LOSSES.—Paragraph (4) of section 907(e) of the Internal
15 Revenue Code of 1986 (relating to recapture of foreign
16 oil and gas extraction losses by recharacterizing later ex-
17 traction income) is amended to read as follows:

18 “(4) RECAPTURE OF FOREIGN OIL AND GAS
19 LOSSES BY RECHARACTERIZING LATER COMBINED
20 FOREIGN OIL AND GAS INCOME.—

21 “(A) IN GENERAL.—The combined foreign
22 oil and gas income of a taxpayer for a taxable
23 year (determined without regard to this para-
24 graph) shall be reduced—

1 “(i) first by the amount determined
2 under subparagraph (B), and

3 “(ii) then by the amount determined
4 under subparagraph (C).

5 The aggregate amount of such reductions shall
6 be treated as income (from sources without the
7 United States) which is not combined foreign
8 oil and gas income.

9 “(B) REDUCTION FOR PRE-2008 FOREIGN
10 OIL EXTRACTION LOSSES.—The reduction
11 under this paragraph shall be equal to the less-
12 er of—

13 “(i) the foreign oil and gas extraction
14 income of the taxpayer for the taxable year
15 (determined without regard to this para-
16 graph), or

17 “(ii) the excess of—

18 “(I) the aggregate amount of for-
19 eign oil extraction losses for preceding
20 taxable years beginning after Decem-
21 ber 31, 1982, and before January 1,
22 2008, over

23 “(II) so much of such aggregate
24 amount as was recharacterized under
25 this paragraph (as in effect before

1 and after the date of the enactment of
2 the Consumer Energy Relief Act of
3 2008) for preceding taxable years be-
4 ginning after December 31, 1982.

5 “(C) REDUCTION FOR POST-2008 FOREIGN
6 OIL AND GAS LOSSES.—The reduction under
7 this paragraph shall be equal to the lesser of—

8 “(i) the combined foreign oil and gas
9 income of the taxpayer for the taxable year
10 (determined without regard to this para-
11 graph), reduced by an amount equal to the
12 reduction under subparagraph (A) for the
13 taxable year, or

14 “(ii) the excess of—

15 “(I) the aggregate amount of for-
16 eign oil and gas losses for preceding
17 taxable years beginning after Decem-
18 ber 31, 2008, over

19 “(II) so much of such aggregate
20 amount as was recharacterized under
21 this paragraph for preceding taxable
22 years beginning after December 31,
23 2008.

24 “(D) FOREIGN OIL AND GAS LOSS DE-
25 FINED.—

1 “(i) IN GENERAL.—For purposes of
2 this paragraph, the term ‘foreign oil and
3 gas loss’ means the amount by which—

4 “(I) the gross income for the tax-
5 able year from sources without the
6 United States and its possessions
7 (whether or not the taxpayer chooses
8 the benefits of this subpart for such
9 taxable year) taken into account in
10 determining the combined foreign oil
11 and gas income for such year, is ex-
12 ceeded by

13 “(II) the sum of the deductions
14 properly apportioned or allocated
15 thereto.

16 “(ii) NET OPERATING LOSS DEDUC-
17 TION NOT TAKEN INTO ACCOUNT.—For
18 purposes of clause (i), the net operating
19 loss deduction allowable for the taxable
20 year under section 172(a) shall not be
21 taken into account.

22 “(iii) EXPROPRIATION AND CASUALTY
23 LOSSES NOT TAKEN INTO ACCOUNT.—For
24 purposes of clause (i), there shall not be
25 taken into account—

1 “(I) any foreign expropriation
2 loss (as defined in section 172(h) (as
3 in effect on the day before the date of
4 the enactment of the Revenue Rec-
5 onciliation Act of 1990)) for the tax-
6 able year, or

7 “(II) any loss for the taxable
8 year which arises from fire, storm,
9 shipwreck, or other casualty, or from
10 theft,

11 to the extent such loss is not compensated
12 for by insurance or otherwise.

13 “(iv) FOREIGN OIL EXTRACTION
14 LOSS.—For purposes of subparagraph
15 (B)(ii)(I), foreign oil extraction losses shall
16 be determined under this paragraph as in
17 effect on the day before the date of the en-
18 actment of the Consumer Energy Relief
19 Act of 2008.”.

20 (c) CARRYBACK AND CARRYOVER OF DISALLOWED
21 CREDITS.—Section 907(f) of the Internal Revenue Code
22 of 1986 (relating to carryback and carryover of disallowed
23 credits) is amended—

1 (1) by striking “oil and gas extraction taxes”
2 each place it appears and inserting “foreign oil and
3 gas taxes”, and

4 (2) by adding at the end the following new
5 paragraph:

6 “(4) TRANSITION RULES FOR PRE-2009 AND
7 2009 DISALLOWED CREDITS.—

8 “(A) PRE-2009 CREDITS.—In the case of
9 any unused credit year beginning before Janu-
10 ary 1, 2009, this subsection shall be applied to
11 any unused oil and gas extraction taxes carried
12 from such unused credit year to a year begin-
13 ning after December 31, 2008—

14 “(i) by substituting ‘oil and gas ex-
15 traction taxes’ for ‘foreign oil and gas
16 taxes’ each place it appears in paragraphs
17 (1), (2), and (3), and

18 “(ii) by computing, for purposes of
19 paragraph (2)(A), the limitation under
20 subparagraph (A) for the year to which
21 such taxes are carried by substituting ‘for-
22 eign oil and gas extraction income’ for ‘for-
23 eign oil and gas income’ in subsection (a).

24 “(B) 2009 CREDITS.—In the case of any
25 unused credit year beginning in 2009, the

1 amendments made to this subsection by the
2 Consumer Energy Relief Act of 2008 shall be
3 treated as being in effect for any preceding year
4 beginning before January 1, 2009, solely for
5 purposes of determining how much of the un-
6 used foreign oil and gas taxes for such unused
7 credit year may be deemed paid or accrued in
8 such preceding year.”.

9 (d) CONFORMING AMENDMENT.—Section 6501(i) of
10 the Internal Revenue Code of 1986 is amended by striking
11 “oil and gas extraction taxes” and inserting “foreign oil
12 and gas taxes”.

13 (e) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2008.

16 **SEC. 103. WINDFALL PROFITS TAX.**

17 (a) IN GENERAL.—Subtitle E of the Internal Rev-
18 enue Code of 1986 (relating to alcohol, tobacco, and cer-
19 tain other excise taxes) is amended by adding at the end
20 thereof the following new chapter:

21 **“CHAPTER 56—WINDFALL PROFITS ON**
22 **CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; qualified investment.

“Sec. 5898. Special rules and definitions.

1 **“SEC. 5896. IMPOSITION OF TAX.**

2 “(a) IN GENERAL.—In addition to any other tax im-
3 posed under this title, there is hereby imposed on any ap-
4 plicable taxpayer an excise tax in an amount equal to 25
5 percent of the excess of—

6 “(1) the windfall profit of such taxpayer, over

7 “(2) the excess of—

8 “(A) the amount of the qualified invest-
9 ments of such applicable taxpayer for such tax-
10 able year, over

11 “(B) the average of the qualified invest-
12 ment of such applicable taxpayer for taxable
13 years beginning during the 2002–2006 taxable
14 year period.

15 “(b) APPLICABLE TAXPAYER.—For purposes of this
16 chapter, the term ‘applicable taxpayer’ means any major
17 integrated oil company (as defined in section
18 167(h)(5)(B)).

19 **“SEC. 5897. WINDFALL PROFIT; QUALIFIED INVESTMENT.**

20 “(a) GENERAL RULE.—For purposes of this chapter,
21 the term ‘windfall profit’ means the excess of the adjusted
22 taxable income of the applicable taxpayer for the taxable
23 year over the reasonably inflated average profit for such
24 taxable year.

25 “(b) ADJUSTED TAXABLE INCOME.—For purposes of
26 this chapter, with respect to any applicable taxpayer, the

1 adjusted taxable income for any taxable year is equal to
2 the taxable income for such taxable year (within the mean-
3 ing of section 63 and determined without regard to this
4 subsection)—

5 “(1) increased by any interest expense deduc-
6 tion, charitable contribution deduction, and any net
7 operating loss deduction carried forward from any
8 prior taxable year, and

9 “(2) reduced by any interest income, dividend
10 income, and net operating losses to the extent such
11 losses exceed taxable income for the taxable year.

12 In the case of any applicable taxpayer which is a foreign
13 corporation, the adjusted taxable income shall be deter-
14 mined with respect to such income which is effectively con-
15 nected with the conduct of a trade or business in the
16 United States.

17 “(c) REASONABLY INFLATED AVERAGE PROFIT.—
18 For purposes of this chapter, with respect to any applica-
19 ble taxpayer, the reasonably inflated average profit for any
20 taxable year is an amount equal to the average of the ad-
21 justed taxable income of such taxpayer for taxable years
22 beginning during the 2002–2006 taxable year period (de-
23 termined without regard to the taxable year with the high-
24 est adjusted taxable income in such period) plus 10 per-
25 cent of such average.

1 “(d) QUALIFIED INVESTMENT.—For purposes of this
2 chapter, the term ‘qualified investment’ means, with re-
3 spect to any applicable taxpayer, any amount paid or in-
4 curred with respect to—

5 “(1) any qualified facility described in para-
6 graph (1), (2), (3), (4), (5), (6), (7), or (9) of sec-
7 tion 45(d) (determined without regard to any placed
8 in service date), or

9 “(2) any facility for the production of renewable
10 fuel or advanced biofuel (as defined in section
11 211(o) of the Clean Air Act (42 U.S.C. 7545)).

12 **“SEC. 5898. SPECIAL RULES AND DEFINITIONS.**

13 “(a) WITHHOLDING AND DEPOSIT OF TAX.—The
14 Secretary shall provide such rules as are necessary for the
15 withholding and deposit of the tax imposed under section
16 5896.

17 “(b) RECORDS AND INFORMATION.—Each taxpayer
18 liable for tax under section 5896 shall keep such records,
19 make such returns, and furnish such information as the
20 Secretary may by regulations prescribe.

21 “(c) RETURN OF WINDFALL PROFIT TAX.—The Sec-
22 retary shall provide for the filing and the time of such
23 filing of the return of the tax imposed under section 5896.

24 “(d) CRUDE OIL.—The term ‘crude oil’ includes
25 crude oil condensates and natural gasoline.

1 “(e) **BUSINESSES UNDER COMMON CONTROL.**—For
2 purposes of this chapter, all members of the same con-
3 trolled group of corporations (within the meaning of sec-
4 tion 267(f)) and all persons under common control (within
5 the meaning of section 52(b) but determined by treating
6 an interest of more than 50 percent as a controlling inter-
7 est) shall be treated as 1 person.

8 “(f) **REGULATIONS.**—The Secretary shall prescribe
9 such regulations as may be necessary or appropriate to
10 carry out the purposes of this chapter.”.

11 (b) **CLERICAL AMENDMENT.**—The table of chapters
12 for subtitle E of the Internal Revenue Code of 1986 is
13 amended by adding at the end the following new item:

“CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL.”.

14 (c) **DEDUCTIBILITY OF WINDFALL PROFIT TAX.**—
15 The first sentence of section 164(a) of the Internal Rev-
16 enue Code of 1986 (relating to deduction for taxes) is
17 amended by inserting after paragraph (5) the following
18 new paragraph:

19 “(6) The windfall profit tax imposed by section
20 5896.”.

21 (d) **EFFECTIVE DATE.**—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 2007.

1 **SEC. 104. ENERGY INDEPENDENCE AND SECURITY TRUST**
2 **FUND.**

3 (a) ESTABLISHMENT.—Subchapter A of chapter 98
4 of the Internal Revenue Code of 1986 (relating to trust
5 fund code) is amended by adding at the end the following
6 new section:

7 **“SEC. 9511. ENERGY INDEPENDENCE AND SECURITY TRUST**
8 **FUND.**

9 “(a) CREATION OF TRUST FUND.—There is estab-
10 lished in the Treasury of the United States a trust fund
11 to be known as ‘Energy Independence and Security Trust
12 Fund’ (referred to in this section as the ‘Trust Fund’),
13 consisting of such amounts as may be appropriated or
14 credited to the Trust Fund as provided in this section or
15 section 9602(b).

16 “(b) TRANSFERS TO TRUST FUND.—There is hereby
17 appropriated to the Trust Fund an amount equivalent
18 to—

19 “(1) the increase in the revenues received in the
20 Treasury as the result of the amendments made by
21 sections 101, 102, and 103 of the Consumer Energy
22 Relief Act of 2008, and

23 “(2) the penalties received under section 208 of
24 the Petroleum Consumer Price Gouging Protection
25 Act.

1 “(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—
2 Amounts in the Trust Fund shall be available, as provided
3 by appropriation Acts, to the Administrator of the Envi-
4 ronmental Protection Agency to allocate to the following:

5 “(1) Expansion of the Low Income Home En-
6 ergy Assistance Program (LIHEAP).

7 “(2) Implementation or expansion of weather-
8 ization programs.

9 “(3) Financial assistance for the purchase of
10 hybrid vehicles.

11 “(4) Financial assistance for the purchase of
12 energy efficient vehicles.

13 “(5) Financial assistance for the purchase of
14 energy efficient appliances.

15 “(6) Grants for research and development of re-
16 newable energy sources.”.

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for subchapter A of chapter 98 of such Code is amended
19 by adding at the end the following new item:

“Sec. 9511. Energy Independence and Security Trust Fund.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act.

1 **TITLE II—PRICE GOUGING**

2 **SEC. 201. SHORT TITLE.**

3 This title may be cited as the “Petroleum Consumer
4 Price Gouging Protection Act”.

5 **SEC. 202. DEFINITIONS.**

6 In this title:

7 (1) **AFFECTED AREA.**—The term “affected
8 area” means an area covered by a Presidential dec-
9 laration of energy emergency.

10 (2) **SUPPLIER.**—The term “supplier” means
11 any person engaged in the trade or business of sell-
12 ing or reselling, at retail or wholesale, or distributing
13 crude oil, gasoline, natural gas, petroleum distillates,
14 or biofuel.

15 (3) **PRICE GOUGING.**—The term “price
16 gouging” means the charging of an unconscionably
17 excessive price by a supplier in an affected area.

18 (4) **UNCONSCIONABLY EXCESSIVE PRICE.**—The
19 term “unconscionably excessive price” means an av-
20 erage price charged during an energy emergency de-
21 clared by the President in an area and for a product
22 subject to the declaration, that—

23 (A)(i)(I) constitutes a gross disparity from
24 the average price at which it was offered for
25 sale in the usual course of the supplier’s busi-

1 ness during the 30 days prior to the President’s
2 declaration of an energy emergency; and

3 (II) grossly exceeds the prices at which the
4 same or similar crude oil, gasoline, natural gas,
5 petroleum distillates, or biofuel was readily ob-
6 tainable by purchasers from other suppliers in
7 the same relevant geographic market within the
8 affected area; or

9 (ii) represents an exercise of unfair lever-
10 age or unconscionable means on the part of the
11 supplier, during a period of declared energy
12 emergency; and

13 (B) is not attributable to increased whole-
14 sale or operational costs, including replacement
15 costs, outside the control of the supplier, in-
16 curred in connection with the sale of crude oil,
17 gasoline, natural gas, petroleum distillates, or
18 biofuel, and is not attributable to local, re-
19 gional, national, or international market condi-
20 tions.

21 (5) COMMISSION.—The term “Commission”
22 means the Federal Trade Commission.

1 **SEC. 203. JURISDICTION OF THE COMMODITY FUTURES**
2 **TRADING COMMISSION EXTENDED TO DE-**
3 **RIVATIVES INVOLVING ENERGY COMMOD-**
4 **ITIES.**

5 (a) **REMOVAL OF ENERGY COMMODITIES FROM DEF-**
6 **INITION OF EXEMPT COMMODITY.**—Section 1(a)(14) of
7 the Commodity Exchange Act (7 U.S.C. 1(a)(14)) is
8 amended by inserting “, an energy commodity,” after “ex-
9 cluded commodity”.

10 (b) **ENERGY COMMODITY DEFINED.**—Section 1(a) of
11 the Commodity Exchange Act (7 U.S.C. 1(a)) is amend-
12 ed—

13 (1) by redesignating paragraphs (13) through
14 (34) as paragraphs (14) through (35), respectively;
15 and

16 (2) by inserting after paragraph (12) the fol-
17 lowing:

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

20 “(A) coal;

21 “(B) crude oil, gasoline, diesel fuel, heat-
22 ing oil, and propane;

23 “(C) electricity;

24 “(D) natural gas; and

25 “(E) any other commodity (other than an
26 excluded commodity, a metal, or an agricultural

1 commodity) that is used as a source of energy,
2 as the Commission deems appropriate.”.

3 **SEC. 204. ENERGY EMERGENCY AND ADDITIONAL PRICE**
4 **GOUGING ENFORCEMENT.**

5 During any energy emergency declared by the Presi-
6 dent under section 204 of this title, it is unlawful for any
7 supplier to sell, or offer to sell crude oil, gasoline, natural
8 gas, petroleum distillates, or biofuel subject to that dec-
9 laration in, or for use in, the area to which that declara-
10 tion applies at an unconscionably excessive price.

11 **SEC. 205. PRESIDENTIAL DECLARATION OF ENERGY EMER-**
12 **GENCY.**

13 (a) IN GENERAL.—If the President finds that the
14 health, safety, welfare, or economic well-being of the citi-
15 zens of the United States is at risk because of a shortage
16 or imminent shortage of adequate supplies of crude oil,
17 gasoline, natural gas, petroleum distillates, or biofuel due
18 to a disruption in the national or regional distribution sys-
19 tem for crude oil, gasoline, natural gas, petroleum dis-
20 tillates, or biofuel (including such a shortage related to
21 a major disaster (as defined in section 102(2) of the Rob-
22 ert T. Stafford Disaster Relief and Emergency Assistance
23 Act (42 U.S.C. 5122(2))), or significant pricing anoma-
24 lies in national energy markets for crude oil, gasoline, nat-

1 ural gas, petroleum distillates, or biofuel the President
2 may declare that a Federal energy emergency exists.

3 (b) SCOPE AND DURATION.—The emergency declara-
4 tion shall specify—

5 (1) the period, not to exceed 30 days, for which
6 the declaration applies;

7 (2) the circumstance or condition necessitating
8 the declaration;

9 (3) the area or region to which it applies which
10 may not be limited to a single State; and

11 (4) the product or products to which it applies.

12 (c) EXTENSIONS.—The President may—

13 (1) extend a declaration under subsection (a)
14 for a period of not more than 30 days;

15 (2) extend such a declaration more than once;
16 and

17 (3) discontinue such a declaration before its ex-
18 piration.

19 **SEC. 206. ENFORCEMENT BY THE FEDERAL TRADE COM-**
20 **MISSION.**

21 (a) ENFORCEMENT.—This title shall be enforced by
22 the Federal Trade Commission in the same manner, by
23 the same means, and with the same jurisdiction as though
24 all applicable terms of the Federal Trade Commission Act
25 were incorporated into and made a part of this title. In

1 enforcing section 203 of this title, the Commission shall
2 give priority to enforcement actions concerning companies
3 with total United States wholesale or retail sales of crude
4 oil, gasoline, natural gas, petroleum distillates, and biofuel
5 in excess of \$500,000,000 per year but shall not exclude
6 enforcement actions against companies with total United
7 States wholesale sales of \$500,000,000 or less per year.

8 (b) VIOLATION IS TREATED AS UNFAIR OR DECEP-
9 TIVE ACT OR PRACTICE.—The violation of any provision
10 of this title shall be treated as an unfair or deceptive act
11 or practice proscribed under a rule issued under section
12 18(a)(1)(B) of the Federal Trade Commission Act (15
13 U.S.C. 57a(a)(1)(B)).

14 (c) COMMISSION ACTIONS.—Following the declara-
15 tion of an energy emergency by the President under sec-
16 tion 204 of this title, the Commission shall—

17 (1) maintain within the Commission—

18 (A) a toll-free hotline that a consumer may
19 call to report an incident of price gouging in the
20 affected area; and

21 (B) a program to develop and distribute to
22 the public informational materials to assist resi-
23 dents of the affected area in detecting, avoid-
24 ing, and reporting price gouging;

1 (2) consult with the Attorney General, the
2 United States Attorney for the districts in which a
3 disaster occurred (if the declaration is related to a
4 major disaster), and State and local law enforcement
5 officials to determine whether any supplier in the af-
6 fected area is charging or has charged an uncon-
7 scionably excessive price for crude oil, gasoline, pe-
8 troleum distillates, or biofuel in the affected area;
9 and

10 (3) conduct investigations as appropriate to de-
11 termine whether any supplier in the affected area
12 has violated section 203 of this title, and upon such
13 finding, take any action the Commission determines
14 to be appropriate to remedy the violation.

15 **SEC. 207. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

16 (a) IN GENERAL.—A State, as *parens patriae*, may
17 bring a civil action on behalf of its residents in an appro-
18 priate district court of the United States to enforce the
19 provisions of section 203 of this title, or to impose the
20 civil penalties authorized by section 207 for violations of
21 section 203, whenever the attorney general of the State
22 has reason to believe that the interests of the residents
23 of the State have been or are being threatened or adversely
24 affected by a supplier engaged in the sale or resale, at
25 retail or wholesale, or distribution of crude oil, gasoline,

1 petroleum distillates, or biofuel in violation of section 203
2 of this title.

3 (b) NOTICE.—The State shall serve written notice to
4 the Commission of any civil action under subsection (a)
5 prior to initiating the action. The notice shall include a
6 copy of the complaint to be filed to initiate the civil action,
7 except that if it is not feasible for the State to provide
8 such prior notice, the State shall provide such notice im-
9 mediately upon instituting the civil action.

10 (c) AUTHORITY TO INTERVENE.—Upon receiving the
11 notice required by subsection (b), the Commission may in-
12 tervene in the civil action and, upon intervening—

13 (1) may be heard on all matters arising in such
14 civil action; and

15 (2) may file petitions for appeal of a decision in
16 such civil action.

17 (d) CONSTRUCTION.—For purposes of bringing any
18 civil action under subsection (a), nothing in this section
19 shall prevent the attorney general of a State from exer-
20 cising the powers conferred on the Attorney General by
21 the laws of such State to conduct investigations or to ad-
22 minister oaths or affirmations or to compel the attendance
23 of witnesses or the production of documentary and other
24 evidence.

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

3 (1) the venue shall be a judicial district in
4 which—

5 (A) the defendant operates;

6 (B) the defendant was authorized to do
7 business; or

8 (C) where the defendant in the civil action
9 is found;

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

13 (3) a person who participated with the defend-
14 ant in an alleged violation that is being litigated in
15 the civil action may be joined in the civil action with-
16 out regard to the residence of the person.

17 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
18 ACTION IS PENDING.—If the Commission has instituted
19 a civil action or an administrative action for violation of
20 this title, a State attorney general, or official or agency
21 of a State, may not bring an action under this section
22 during the pendency of that action against any defendant
23 named in the complaint of the Commission or the other
24 agency for any violation of this title alleged in the Com-
25 mission’s civil or administrative action.

1 (g) NO PREEMPTION.—Nothing contained in this
2 section shall prohibit an authorized State official from pro-
3 ceeding in State court to enforce a civil or criminal statute
4 of that State.

5 **SEC. 208. PENALTIES.**

6 (a) CIVIL PENALTY.—

7 (1) IN GENERAL.—In addition to any penalty
8 applicable under the Federal Trade Commission Act,
9 any supplier that violates section 203 of this title is
10 punishable by a civil penalty of not more than 3
11 times the profit.

12 (2) METHOD.—The penalties provided by para-
13 graph (1) shall be obtained in the same manner as
14 civil penalties imposed under section 5 of the Fed-
15 eral Trade Commission Act (15 U.S.C. 45).

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

19 (A) each day of a continuing violation shall
20 be considered a separate violation; and

21 (B) the court shall take into consideration,
22 among other factors, the seriousness of the vio-
23 lation and the efforts of the person committing
24 the violation to remedy the harm caused by the
25 violation in a timely manner.

1 (b) CRIMINAL PENALTY.—Violation of section 203 of
2 this title is punishable by a fine of not more than
3 \$5,000,000, imprisonment for not more than 5 years, or
4 both.

5 **SEC. 209. EFFECT ON OTHER LAWS.**

6 (a) OTHER AUTHORITY OF THE COMMISSION.—
7 Nothing in this title shall be construed to limit or affect
8 in any way the Commission’s authority to bring enforce-
9 ment actions or take any other measure under the Federal
10 Trade Commission Act (15 U.S.C. 41 et seq.) or any other
11 provision of law.

12 (b) STATE LAW.—Nothing in this title preempts any
13 State law.

14 **TITLE III—NO OIL PRODUCING**
15 **AND EXPORTING CARTELS**

16 **SEC. 301. NO OIL PRODUCING AND EXPORTING CARTELS**
17 **ACT OF 2008.**

18 (a) SHORT TITLE.—This section may be cited as the
19 “No Oil Producing and Exporting Cartels Act of 2008”
20 or “NOPEC”.

21 (b) SHERMAN ACT.—The Sherman Act (15 U.S.C.
22 1 et seq.) is amended by adding after section 7 the fol-
23 lowing:

1 **“SEC. 7A. OIL PRODUCING CARTELS.**

2 “(a) IN GENERAL.—It shall be illegal and a violation
3 of this Act for any foreign state, or any instrumentality
4 or agent of any foreign state, to act collectively or in com-
5 bination with any other foreign state, any instrumentality
6 or agent of any other foreign state, or any other person,
7 whether by cartel or any other association or form of co-
8 operation or joint action—

9 “(1) to limit the production or distribution of
10 oil, natural gas, or any other petroleum product;

11 “(2) to set or maintain the price of oil, natural
12 gas, or any petroleum product; or

13 “(3) to otherwise take any action in restraint of
14 trade for oil, natural gas, or any petroleum product;
15 when such action, combination, or collective action has a
16 direct, substantial, and reasonably foreseeable effect on
17 the market, supply, price, or distribution of oil, natural
18 gas, or other petroleum product in the United States.

19 “(b) SOVEREIGN IMMUNITY.—A foreign state en-
20 gaged in conduct in violation of subsection (a) shall not
21 be immune under the doctrine of sovereign immunity from
22 the jurisdiction or judgments of the courts of the United
23 States in any action brought to enforce this section.

24 “(c) INAPPLICABILITY OF ACT OF STATE DOC-
25 TRINE.—No court of the United States shall decline,

1 based on the act of state doctrine, to make a determina-
 2 tion on the merits in an action brought under this section.

3 “(d) ENFORCEMENT.—The Attorney General of the
 4 United States may bring an action to enforce this section
 5 in any district court of the United States as provided
 6 under the antitrust laws.”.

7 (c) SOVEREIGN IMMUNITY.—Section 1605(a) of title
 8 28, United States Code, is amended—

9 (1) in paragraph (6), by striking “or” after the
 10 semicolon;

11 (2) in paragraph (7), by striking the period and
 12 inserting “; or”; and

13 (3) by adding at the end the following:

14 “(8) in which the action is brought under sec-
 15 tion 7A of the Sherman Act.”.

16 **TITLE IV—MARKET**
 17 **SPECULATION**

18 **SEC. 401. SPECULATIVE LIMITS AND TRANSPARENCY FOR**
 19 **OFF-SHORE OIL TRADING.**

20 Section 4 of the Commodity Exchange Act (7 U.S.C.
 21 6) is amended by adding at the end the following:

22 “(e) FOREIGN BOARDS OF TRADE.—

23 “(1) IN GENERAL.—In the case of any foreign
 24 board of trade for which the Commission has grant-
 25 ed or is considering an application to grant a board

1 of trade located outside of the United States relief
2 from the requirement of subsection (a) to become a
3 designated contract market, derivatives transaction
4 execution facility, or other registered entity, with re-
5 spect to an energy commodity that is physically de-
6 livered in the United States, prior to continuing to
7 or initially granting the relief, the Commission shall
8 determine that the foreign board of trade—

9 “(A) applies comparable principles or re-
10 quirements regarding the daily publication of
11 trading information and position limits or ac-
12 countability levels for speculators as apply to a
13 designated contract market, derivatives trans-
14 action execution facility, or other registered en-
15 tity trading energy commodities physically deliv-
16 ered in the United States; and

17 “(B) provides such information to the
18 Commission regarding the extent of speculative
19 and nonspeculative trading in the energy com-
20 modity that is comparable to the information
21 the Commission determines necessary to publish
22 a Commitment of Traders report for a des-
23 ignated contract market, derivatives transaction
24 execution facility, or other registered entity

1 trading energy commodities physically delivered
2 in the United States.

3 “(2) EXISTING FOREIGN BOARDS OF TRADE.—
4 During the period beginning 1 year after the date of
5 enactment of this subsection and ending 18 months
6 after the date of enactment of this subsection, the
7 Commission shall determine whether to continue to
8 grant relief in accordance with paragraph (1) to any
9 foreign board of trade for which the Commission
10 granted relief prior to the date of enactment of this
11 subsection.”.

12 **SEC. 402. MARGIN LEVEL FOR CRUDE OIL.**

13 (a) IN GENERAL.—Section 2(a)(1) of the Commodity
14 Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding
15 at the end the following:

16 “(G) MARGIN LEVEL FOR CRUDE OIL.—
17 Not later than 90 days after the date of enact-
18 ment of this subparagraph, the Commission
19 shall promulgate regulations to set increases in
20 margin levels for crude oil traded on any trad-
21 ing facility or as part of any agreement, con-
22 tract, or transaction covered by this Act nec-
23 essary to reduce excessive speculation and pro-
24 tect consumers.”.

25 (b) STUDIES.—

1 (1) STUDY RELATING TO EFFECT OF CERTAIN
2 REGULATIONS.—Not later than 1 year after the date
3 of enactment of this Act, the Commodity Futures
4 Trading Commission shall submit to the appropriate
5 committees of Congress a report describing the ef-
6 fect of the amendment made by subsection (a) on
7 any trading facilities and agreements, contracts, and
8 transactions covered by the Commodity Exchange
9 Act (7 U.S.C. 1 et seq.).

10 (2) STUDY RELATING TO EFFECTS OF CHANGES
11 IN MARGIN LEVELS.—Not later than 180 days after
12 the date of enactment of this Act, the Comptroller
13 General of the United States shall submit to the ap-
14 propriate committees of Congress a report describing
15 the effect (including any effect relating to trade vol-
16 ume or volatility) of any change of a margin level
17 that occurred during the 10-year period ending on
18 the date of enactment of this Act.

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