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.

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

TITLE I—PROTECTION OF CONSUMERS AGAINST PRICE GOUGING

SEC. 101. PROTECTION OF CONSUMERS AGAINST PRICE GOUGING.

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

(b) JUSTIFIABLE PRICE INCREASES.—

(1) IN GENERAL.—The prohibition in subsection (a) shall not apply to the extent that the increase in the price of the road transportation fuel or domestic heating fuel is substantially attributable to—

(A) an increase in the wholesale cost of road transportation fuel or domestic heating fuel to a retail seller or reseller;
(B) an increase in the replacement costs for road transportation fuel or domestic heating fuel sold;

(C) an increase in operational costs; or

(D) local, regional, national, or international market conditions.

(2) Other mitigating factors.—In determining whether a violation of this section has occurred, there also shall be taken into account, among other factors, the price that would reasonably equate supply and demand in a competitive and freely functioning market and whether the price at which the road transportation fuel or domestic heating fuel was sold reasonably reflects other additional costs or risks, not within the control of the seller, that were paid or incurred by the seller.

SEC. 102. ENERGY EMERGENCY PROCLAMATIONS AND ORDERS.

(a) Scope and duration.—The President may issue an energy emergency proclamation when an abnormal market disruption has occurred or is reasonably expected to occur. The emergency proclamation shall specify with particularity—

(1) the period for which the proclamation applies;
(2) the area or region to which it applies; and
(3) the event, circumstance, or condition that is
the reason such a proclamation is determined to be
necessary.

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

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

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

SEC. 103. ENFORCEMENT BY FEDERAL TRADE COMMISS-
SION.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
PRACTICE.—A violation of section 101 shall be treated as
a violation of a rule defining an unfair or deceptive act
or practice prescribed under section 18(a)(1)(B) of the

(b) ACTIONS BY THE COMMISSION.—The Commiss-
sion shall prevent any supplier from violating section 101
in the same manner, by the same means, and with the
same jurisdiction, powers, and duties as though all appli-
cable terms and provisions of the Federal Trade Commis-
tion Act (15 U.S.C. 41 et seq.) were incorporated into and
made a part of this Act. Any entity that violates section
101 is subject to the penalties and entitled to the privi-
leges and immunities provided in the Federal Trade Com-
mission Act in the same manner, by the same means, and
with the same jurisdiction, power, and duties as though
all applicable terms and provisions of the Federal Trade
Commission Act were incorporated into and made a part
of this title.

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

SEC. 104. PENALTIES.

(a) Civil Penalty.—

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

(A) not more than $500,000, in the case of
an independent small business marketer of gas-
oline (within the meaning of section 324(c) of
the Clean Air Act (42 U.S.C. 7625(c))); and
(B) not more than $5,000,000 in the case
of any other supplier.
(2) Method of Assessment.—The penalty provided by paragraph (1) shall be obtained in the same manner as civil penalties obtained under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) Multiple Offenses; Mitigating Factors.—In assessing the penalty provided by subsection (a)—

(A) a court shall take into consideration the seriousness of the violation and the efforts of the supplier committing the violation to remedy the harm caused by the violation in a timely manner; and

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

(b) Criminal Penalty.—

(1) In General.—In addition to any penalty applicable under the Federal Trade Commission Act, the violation of section 101 is punishable by a fine of not more than $1,000,000, imprisonment for not more than 2 years, or both.
(2) ENFORCEMENT.—The criminal penalty provided by paragraph (1) may be imposed only pursuant to a criminal action brought by the Attorney General or other officer of the Department of Justice.

SEC. 105. DEFINITIONS.

In this Act the following definitions apply:

(1) ABNORMAL MARKET DISRUPTION.—The term “abnormal market disruption” means there is a reasonable likelihood that there will be an increase in the average price of road transportation fuel or domestic heating fuel as a result of a change in the market, whether actual or imminently threatened, resulting from extreme weather, a natural disaster, strike, civil disorder, war, military action, a national or local emergency, or other similar cause, that adversely affects the availability or delivery road transportation fuel or domestic heating fuel.

(2) ROAD TRANSPORTATION FUEL OR DOMESTIC HEATING FUEL.—The term “road transportation fuel or domestic heating fuel” means those products used as transportation fuel or for home heating but does not include jet fuel.

(3) REPLACEMENT COSTS.—The term “replacement costs” means, with respect to a supplier to
whom section 101 applies, costs to that supplier determined by referencing either—

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

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

(4) Supplier.—The term “supplier” means any person engaged in the trade or business of selling, reselling, at retail or wholesale, or distributing road transportation fuel or domestic heating fuel.

(5) Unconscionable Amount.—The term “unconscionable amount” means, with respect to any supplier to whom section 101 applies, a significant increase in the price at which road transportation fuel or domestic heating fuel are sold or offered for sale by that supplier that increases the price, for the same grade of gasoline or petroleum distillate, to an amount that—

(A) substantially exceeds the average price at which road transportation fuel or domestic heating fuel were sold or offered for sale by
that supplier during the 30-day period imme-
diately preceding the sale or offer;

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

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

SEC. 106. EFFECTIVE DATE.

This title shall take effect on the date on which a
final rule issued by the Federal Trade Commission under
section 5(c) of the Federal Trade Commission Act is pub-
ished in the Federal Register.

TITLE II—SCHEDULES FOR THE
CONSIDERATION OF PERMITS
FOR REFINERIES

SEC. 201. DEFINITIONS.

For purposes of this Act—

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

(2) the term “applicant” means a person who
is seeking a Federal refinery authorization;
(3) the term “biomass” has the meaning given that term in section 932(a)(1) of the Energy Policy Act of 2005;

(4) the term “Federal refinery authorization”—

(A) means any authorization required under Federal law, whether administered by a Federal or State administrative agency or official, with respect to siting, construction, expansion, or operation of a refinery; and

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

(5) the term “Indian lands” means lands held in trust for the benefit of an Indian tribe or individual or held by an Indian tribe or individual subject to a restriction by the United States against alienation;

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

(7) the term “refinery” means—
(A) a facility designed and operated to receive, load, unload, store, transport, process, and refine crude oil or oil originally derived from crude oil by any chemical or physical process, including distillation, fluid catalytic cracking, hydrocracking, coking, alkylation, etherification, polymerization, catalytic reforming, isomerization, hydrotreating, blending, and any combination thereof, in order to produce gasoline, distillate, or lubricating base oil;

(B) a facility designed and operated to receive, load, unload, store, transport, process, and refine coal by any chemical or physical process, including liquefaction, in order to produce gasoline or diesel as its primary output; or

(C) a facility designed and operated to receive, load, unload, store, transport, process (including biochemical, photochemical, and biotechnology processes), and refine biomass in order to produce biofuel;

(8) the term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States; and
(9) the term “tribal organization” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

SEC. 202. STATE AND TRIBAL ORGANIZATION ASSISTANCE.

(a) Financial Assistance.—At the request of a governor of a State, or at the request of a tribal organization, the Administrator is authorized to provide financial assistance to that State or Indian tribe to facilitate the hiring of additional personnel to assist the State or Indian tribe with expertise in fields relevant to consideration of Federal refinery authorizations.

(b) Other Assistance.—At the request of a governor of a State, or at the request of a tribal organization, a Federal agency responsible for a Federal refinery authorization shall provide technical, legal, or other non-financial assistance to that State or Indian tribe to facilitate its consideration of Federal refinery authorizations.

SEC. 203. REFINERY PROCESS COORDINATION AND PROCEDURES.

(a) Appointment of Federal Coordinator.—

(1) In general.—The President shall appoint a Federal coordinator to perform the responsibilities assigned to the Federal coordinator under this Act.
(2) Other Agencies.—Each Federal and State agency or official required to provide a Federal refinery authorization shall cooperate with the Federal coordinator.

(b) Federal Refinery Authorizations.—

(1) Meeting Participants.—Not later than 30 days after receiving a notification from an applicant that the applicant is seeking a Federal refinery authorization pursuant to Federal law, the Federal coordinator appointed under subsection (a) shall convene a meeting of representatives from all Federal and State agencies responsible for a Federal refinery authorization with respect to the refinery. The governor of a State shall identify each agency of that State that is responsible for a Federal refinery authorization with respect to that refinery.

(2) Memorandum of Agreement.—(A) Not later than 90 days after receipt of a notification described in paragraph (1), the Federal coordinator and the other participants at a meeting convened under paragraph (1) shall establish a memorandum of agreement setting forth the most expeditious coordinated schedule possible for completion of all Federal refinery authorizations with respect to the refinery, consistent with the full substantive and
procedural review required by Federal law. If a Federal or State agency responsible for a Federal refinery authorization with respect to the refinery is not represented at such meeting, the Federal coordinator shall ensure that the schedule accommodates those Federal refinery authorizations, consistent with Federal law. In the event of conflict among Federal refinery authorization scheduling requirements, the requirements of the Environmental Protection Agency shall be given priority.

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

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

(c) CONSOLIDATED RECORD.—The Federal coordinator shall, with the cooperation of Federal and State administrative agencies and officials, maintain a complete consolidated record of all decisions made or actions taken by the Federal coordinator or by a Federal administrative agency or officer (or State administrative agency or officer
acting under delegated Federal authority) with respect to any Federal refinery authorization. Such record shall be the record for judicial review under subsection (d) of decisions made or actions taken by Federal and State administrative agencies and officials, except that, if the Court determines that the record does not contain sufficient information, the Court may remand the proceeding to the Federal coordinator for further development of the consolidated record.

(d) Remedies.—

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

(2) Standing.—If an applicant or a party to a memorandum of agreement alleges that a failure to act described in paragraph (1) has occurred and that such failure to act would jeopardize timely completion of the entire schedule as established in the memorandum of agreement, such applicant or other party may bring a cause of action under this subsection.
(3) COURT ACTION.—If an action is brought under paragraph (2), the Court shall review whether the parties to the memorandum of agreement have been acting in good faith, whether the applicant has been cooperating fully with the agencies that are responsible for issuing a Federal refinery authorization, and any other relevant materials in the consolidated record. Taking into consideration those factors, if the Court finds that a failure to act described in paragraph (1) has occurred, and that such failure to act would jeopardize timely completion of the entire schedule as established in the memorandum of agreement, the Court shall establish a new schedule that is the most expeditious coordinated schedule possible for completion of proceedings, consistent with the full substantive and procedural review required by Federal law. The court may issue orders to enforce any schedule it establishes under this paragraph.

(4) FEDERAL COORDINATOR'S ACTION.—When any civil action is brought under this subsection, the Federal coordinator shall immediately file with the Court the consolidated record compiled by the Federal coordinator pursuant to subsection (c).
(5) EXPEDITED REVIEW.—The Court shall set any civil action brought under this subsection for expeditied consideration.

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

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

(2) on a closed military installation, or portion thereof, made available for the siting of a refinery in the manner provided by the base closure law applicable to the installation; or

(3) on Indian lands if the relevant tribal organization has submitted a request to the President for the application of the process coordination and rules of procedure under this section to the siting, construction, expansion, or operation of any refinery on that Indian land.

SEC. 204. DESIGNATION OF CLOSED MILITARY BASES.

(a) DESIGNATION REQUIREMENT.—Not later than 90 days after the date of enactment of this Act, the President shall designate no less than 3 closed military installa-
tions, or portions thereof, as potentially suitable for the
construction of a refinery. At least 1 such site shall be
designated as potentially suitable for construction of a re-
finery to refine biomass in order to produce biofuel.

(b) Redevelopment Authority.—The redevelopment
authority for each installation designated under sub-
section (a), in preparing or revising the redevelopment
plan for the installation, shall consider the feasibility and
practicability of siting a refinery on the installation.

(c) Management and Disposal of Real Proper-
ty.—The Secretary of Defense, in managing and dis-
posing of real property at an installation designated under
subsection (a) pursuant to the base closure law applicable
to the installation, shall give substantial deference to the
recommendations of the redevelopment authority, as con-
tained in the redevelopment plan for the installation, re-
garding the siting of a refinery on the installation. The
management and disposal of real property at a closed mili-
tary installation or portion thereof found to be suitable
for the siting of a refinery under subsection (a) shall be
carried out in the manner provided by the base closure
law applicable to the installation.

(d) Definitions.—For purposes of this section—

(1) the term “base closure law” means the De-
fense Base Closure and Realignment Act of 1990
(part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) and title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note); and

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

SEC. 205. SAVINGS CLAUSE.

Nothing in this Act shall be construed to affect the application of any environmental or other law, or to prevent any party from bringing a cause of action under any environmental or other law, including citizen suits.

SEC. 206. REFINERY REVITALIZATION REPEAL.

Subtitle H of title III of the Energy Policy Act of 2005 and the items relating thereto in the table of contents of such Act are repealed.

TITLE III—FUEL CONSUMPTION EDUCATION

SEC. 301. PARTNERSHIP FOR PUBLIC EDUCATION CAMPAIGN.

(a) Establishment.—The Secretary of Energy shall enter into a partnership with interested industry groups, including groups from the automotive, gasoline refining, and oil industries, to create a public education cam-
campaign that provides information to United States drivers about immediate measures that may be taken to conserve transportation fuel. This public-private partnership shall include a five member advisory board, to be chaired by the Secretary or his designee, which shall include representatives from the Department of Energy, the oil industry, the automotive industry, and the Congress, to be appointed by the Secretary. The Secretary shall appoint the advisory board not later than 30 days after the date of enactment of this Act.

(b) ACCESSIBILITY.—The public information campaign under this section shall be targeted to reach the widest audience possible. The education campaign shall include television, print, Internet website, or any other method designed to maximize the dissemination of transportation fuel savings information to drivers.

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

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary $10,000,000 for carrying out this section.
TITLE IV—BOUTIQUE FUEL REDUCTION

SEC. 401. TEMPORARY WAIVERS.

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

SEC. 402. REDUCTION IN NUMBER OF BOUTIQUE FUELS.

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

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

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

(A) in subclause (I) by striking “approved under this paragraph as of September 1, 2004, in all State implementation plans” and by inserting in lieu thereof “set forth on the list published under subclause (II), or if the list has been revised under subclause (III), on the revised list”;

(B) by amending subclause (III) to read as follows:
“(III) The Administrator shall, after notice and opportunity for comment, remove a fuel from the list published under subclause (II) if the Administrator determines that such fuel has ceased to be included in any State implementation plan or is identical to a Federal fuel control or prohibition promulgated and implemented by the Administrator. The Administrator shall publish a revised list reflecting the reduction in the number of fuels.”;

(C) in subclause (IV) by striking “Subclause (I)” and inserting “Neither subclause (I) nor subclause (V)” and by striking “not” and by striking “if such new fuel”;

(D) in item (aa) of subclause (IV) by inserting “if such new fuel” after “(aa)” and by striking “; or” and inserting “, or if the list has been revised under subclause (III), on the revised list”;

(E) in item (bb) of subclause (IV) by inserting “if such new fuel” and by striking “as of September 1, 2004.” and inserting “, or if the list has been revised under subclause (III), on the revised list, and”; and
(F) by striking so much of the last sentence of subclause (IV) as precedes the phrase “if the Administrator”, by striking “a new fuel” in such last sentence and inserting “such new fuel”, and by designating the remaining language in such last sentence as item (cc) and adjusting the left margin accordingly.