move research into innovative companies developing the next generation of treatments.

This legislation will also accelerate research and treatment of neurological diseases by removing key bottlenecks in the system. It will coordinate neurological research across Federal agencies, create a coordinated blueprint for neuroscience at the NIH, and streamline the FDA approval process for life changing neuro drugs—without sacrificing safety. All of this will mean more treatments faster for millions of Americans.

This act is an investment in America's neurological health. Investigation into the mechanisms and functions of the brain will lead to vastly improved understanding of brain disease and injuries and human behavior. It will give us an unprecedented ability to treat and heal those in need. The act also will dramatically reduce healthcare costs while expanding the American neurotechnology industry and creating good American jobs. Finally, this bill will help us honor our debt to the brave men and women of America's armed forces.

Today, I am proud to introduce this legislation with Senator DOMENICI. I thank him for his leadership on this issue, and I look forward to working with him and my other colleagues to pass this important legislation.

Mr. DOMENICI. Mr. President, I rise today to join my colleague, Senator MURRAY, to introduce the National Neurotechnology Initiative Act of 2008. Our bill will coordinate and accelerate federal brain and nervous system research, and will help move that research from the laboratory into the hands of patients.

It is estimated that approximately 100 million Americans—one in three—suffer from some kind of neurological illness, disorder, or injury. These include some of the most debilitating illnesses, such as Alzheimer's disease, Parkinson's disease, multiple sclerosis, autism, schizophrenia, and stroke. They include issues with a neurological basis that often goes unnoticed, such as obesity and hearing loss. They also include issues of particular importance to Senator MURRAY and me: traumatic brain injury, spinal cord injury, posttraumatic stress disorder, and other neurological effects suffered by the brave men and women of our armed forces as they execute their missions throughout the world.

The total economic burden of these neurological illnesses, disorders, and injuries is estimated to be more than one trillion dollars every year. These costs include direct medical treatment, long-term care for senior citizens who have been incapacitated by a neurological disease, addiction-related costs, secondary medical costs related to obesity, and so on.

As the baby boom generation ages, the cost associated with these illnesses will increase rapidly, straining our healthcare resources even further than they already are. Now is the time to act to promote the development of diagnostics, treatments, and cures that will restore health and reduce costs.

Our armed forces too often suffer from a traumatic brain injury, which is among the primary types of casualty that disables our service members. Some soldiers also suffer from posttraumatic stress disorder as well. We owe it to these heroic warriors to help them heal as quickly and as completely as possible.

The National Neurotechnology Initiative Act is designed to address four key issues currently slowing the development of neurological treatments, and to rapidly accelerate R&D for only three percent of the annual NIH brain research budget. The first is a lack of coordination between the many agencies that conduct brain research. The bill creates a coordinating office that will help ensure that the Department of Defense, the Department of Veterans Affairs, the National Institutes of Health, and other agencies know what every other agency is doing, and that they work together toward common goals.

The second issue is insufficient coordination within the National Institutes of Health. Sixteen different Institutes, Centers, and offices within NIH conduct research on the brain and nervous system, and they have begun to work together through a program called the Blueprint for Neuroscience Research. This bill authorizes and fully funds that program.

The third issue is the need to translate basic research into treatments. Advances in neurotechnology are useless if they merely sit in the lab. This bill boosts neuroscience-related technology transfer through the SBIR and STTR programs.

The fourth issue is regulatory approval of new neurotechnology drugs, diagnostics, and devices. Brain-related treatments take much longer and cost much more to approve than other treatments. This bill will increase the timeliness and safety of the neurotechnology review process by allowing the FDA to hire and train neuroscience experts and to work with industry to develop neurotechnology standards.

The bill also supports the analysis of societal implications of neuroscience and neurotechnology, so that we know we are proceeding thoughtfully and carefully in our research.

Brain and nervous system research is an issue that has been extremely important to me throughout my time in the Senate. I have long been a supporter of the MIND Research Network, which does amazing work on these issues in New Mexico; and I have worked hard to advance our ability to treat and cure brain and nervous system diseases and disorders. I hope that this legislation will be part of my legacy in this area.

I want to thank my good friend Senator MURRAY for asking me to join her on this very important issue. I appreciate her commitment to advancing this important research and I look forward to working with her to pass this legislation this Congress.

By Mr. KERRY (for himself, Mr. ALEXANDER, and Ms. STABENOW):

S 2990. A bill to amend title XVIII of the Social Security Act to improve access of Medicare beneficiaries to intravenous immune globulines; to the Committee on Finance.

Mr. KERRY. Mr. President, we have the opportunity this year to help a group of Medicare beneficiaries who are currently subject to costly, bureaucratic red tape which is delaying essential, life-saving treatments to some of our most vulnerable citizens. Addressing this problem will increase the quality of life for many patients and ease financial burdens for their medical providers.

Between 6,000 and 10,000 Medicare beneficiaries have primary immunodeficiency diseases, PIDD, and require intravenous immunoglobulin, IVIG treatment to maintain a healthy immune system.

Primary Immunodeficiency Diseases are disorders in which part of the body's immune system is missing or does not function properly. These disorders are caused by intrinsic or genetic defects in the immune system. Untreated primary immune deficiencies result in frequent life-threatening infections and debilitating illnesses. Even illnesses such as the common cold or the flu, while unpleasant for most of us, can be deadly for someone with PIDD.

Because of advances in our medical understanding and treatment of primary immune deficiency diseases, individuals who in the past would not have survived childhood are now able to live nearly normal lives. While there is still no cure for PIDD, there are effective treatments available. Nearly 70 percent of primary immune deficient patients use intravenous immunoglobulin to maintain their health.

Immunoglobulin is a naturally occurring collection of highly specialized proteins, known as antibodies, which strengthen the body's immune response. It is derived from human plasma donations and is administered through an IV to the patient every three to four weeks.

Currently, Medicare beneficiaries needing IVIG treatments are experiencing access problems—an unintended result of the way Medicare has determined the payment for IVIG. The current IVIG access and care issue began in January 2005 as a result of the Medicare Modernization Act under Part B, which changed the way physicians and hospital outpatient departments were paid under Medicare. The law reduced IVIG reimbursement rates such that most physicians in outpatient settings could no longer afford to treat Medicare patients requiring IVIG. In addition, access to home based infusion

therapy is limited since Medicare currently pays only for the cost of IVIG, and not nursing services and supplies required for infusion.

As a result, patients are experiencing delays in receiving this life saving treatment and are being shifted to more expensive care settings such as inpatient hospitals. In addition to incurring extra expenses, hospital-based care results in patients being in close proximity to countless microorganisms, an unsafe prospect for those who have suppressed immune systems.

In April 2007, the U.S. Department of Health and Human Services Office of the Inspector General, OIG,reported that Medicare reimbursement for IVIG was inadequate to cover the cost many providers must pay for the product. In fact, the OIG found that 44 percent of hospitals and 41 percent of physicians were unable to purchase IVIG at the Medicare reimbursements rate during the 3rd quarter of 2006. The previous quarter had been even worse—77.2 percent of hospitals and 96.5 percent of physicians were unable to purchase IVIG at the Medicare reimbursement rate.

We have a rare opportunity to fix this very real problem with a compassionate and common sense solution. We can improve the quality of life for PIDD patients and cut inpatient expenses by improving reimbursement procedures for IVIG treatments for physicians and outpatient facilities and allowing for home treatments and coverage for related services.

Today, I am introducing—along with Senators ALEXANDER and STABENOW—the bipartisan Medicare IVIG Access Act, a bill that will grant the Secretary of Health & Human Services temporary authority to update the payment for IVIG, if necessary based on new or existing data, and to provide coverage for related items and services currently excluded from the existing Medicare home infusion therapy benefit. This bill is endorsed by several national organizations from the patient and physician communities, including the Immune Deficiency Foundation, IDF, GBS/CIDP Foundation International, the Jeffrey Modell Foundation JMF, the Platelet Disorder Support Association, PDSA, the National Patient Advocate Foundation, NPAF, and the Clinical Immunology Society, CIS.

The patients, physicians, caretakers, researchers, and plasma donors have all done their part—now it's time for us to do ours.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2990

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare IVIG Access Act of 2008''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Medicare payment for intravenous immune globulins.
Sec. 4. Coverage and payment of intravenous immune globulin in the home.
Sec. 5. Reports.
Sec. 6. Offset.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Intravenous immune globulin (IVIG) is a human blood plasma derived product, which over the past 25 years has become an invaluable therapy for many primary immunodeficiency diseases, as well as a number of neurological, autoimmune, and other chronic conditions and illnesses. For many of these disorders, IVIG is the most effective and viable treatment available, and has dramatically improved the quality of life for persons with these conditions and has become a life-saving therapy for many.

(2) The Food and Drug Administration recognizes each IVIG brand as a unique biologic. The differences in basic fractionation and the addition of various modifications for further purification, stabilization, and virus inactivation/removal yield clearly different biological products. As a result, IVIG therapies are not interchangeable, with patient tolerance differing from one IVIG brand to another.

(3) The report of the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services, ''Analysis of Supply, Distribution, Demand, and Access Issues Associated with Immune Globulin Intravenous (IGIV)'', that was issued in May 2007, found that IVIG manufacturing is complex and requires substantial up-front cash outlay and planning and takes between 7 and 12 months from plasma collection at donor centers to lot release by the Food and Drug Administration.

(4) The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2066) changed Medicare's reimbursement methodology for IVIG from average wholesale price (AWP) to average sales price plus 6 percent (ASP+6 percent), effective January 1, 2005, for physicians, and January 1, 2006, for hospital outpatient departments, thereby reducing reimbursement rates paid to those providers of IVIG on behalf of Medicare beneficiaries.

(5) An April 2007 report of the Office of Inspector General of the Department of Health and Human Services, ''Intravenous Immune Globulin: Medicare Payment and Availability'', found that Medicare reimbursement for IVIG was inadequate to cover the cost many providers must pay for the product. During the third quarter of 2006, 44 percent of IVIG sales to hospitals and 41 percent of sales to physicians by the 3 largest distributors occurred at prices above Medicare payment amounts.

(6) The report of the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services, ''Analysis of Supply, Distribution, Demand, and Access Issues Associated with Immune Globulin Intravenous (IGIV)'' notes that, after the new reimbursement rules for physicians were instituted in 2005, 42 percent of Medicare beneficiaries who had received their IVIG treatment in their physician's office at the end of 2004 were shifted to the hospital outpatient setting by the beginning of 2006. This shift in site of care has resulted in a lack of continuity of care and has had an adverse impact on health outcomes and quality of life.

(7) The Office of Inspector General of the Department of Health and Human Services also reported that 61 percent of responding physicians indicated that they had sent patients to hospitals for IVIG treatment, largely because of their inability to purchase IVIG at prices below the Medicare payment amounts. In addition, the Office of Inspector General found that some physicians had stopped providing IVIG to Medicare beneficiaries altogether.

(8) The Office of Inspector General's 2007 report concluded that whatever improvement some providers saw in the relationship of Medicare reimbursement for IVIG to prices paid during the first 3 quarters of 2006 would be eroded if manufacturers were to increase prices for IVIG in the future.

(9) The Centers for Medicare & Medicaid Services, in recognition of dislocations experienced by patients and providers in obtaining IVIG since the change to the ASP+6 reimbursement methodology, has provided a temporary additional payment during 2006 and 2007 for IVIG preadministration-related services to compensate physicians and hospital outpatient departments for the extra resources they have had to expend in locating and obtaining appropriate IVIG products and in scheduling patient infusions.

(10) Approximately 10,000 Medicare beneficiaries receive IVIG treatment for their primary immunodeficiency disease in a variety of different settings. Those beneficiaries have no other effective treatment for their condition.

(11) The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 established an IVIG home infusion benefit for persons with primary immune deficiency disease, paying only for IVIG and specifically excluding coverage of items and services related to administration of the product.

(12) The report of the Office of the Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services, ''Analysis of Supply, Distribution, Demand, and Access Issues Associated with Immune Globulin Intravenous (IGIV)'', noted that, because of limitations in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provision, Medicare's IVIG home infusion benefit is not designed to provide reimbursement for more than the cost of IVIG and does not cover the cost of infusion services (such as nursing and clinical services and supplies) in the home. As a consequence, the report found that home infusion providers generally do not accept new patients who have primary immune deficiency disease and only have Medicare coverage. These limitations in service are caused by health care providers—

(A) not being able to acquire IVIG at prices at or below the Medicare part B reimbursement level; and

(B) not being reimbursed for the infusion services provided by a nurse.

(13) Access to home infusion of IVIG for patients with primary immune deficiency disease, who have a genetic or intrinsic defect in their human immune system, will reduce their exposure to infections at a time when their antibodies are compromised and will improve the quality of care and health of the patient.

SEC. 3. MEDICARE PAYMENT FOR INTRAVENOUS IMMUNE GLOBULINS.

(a) IN GENERAL.—Section 1842(o) of the Social Security Act (42 U.S.C. 1395u(o)) is amended—

(1) in paragraph (1)(E)(ii), by inserting '', plus an additional amount (if applicable) under paragraph (7)'' before the period at the end;

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following new paragraph:

''(7)(A) Not later than 6 months after the date of enactment of the Medicare IVIG Access Act of 2008, the Secretary shall—

''(i) collect data on the differences, if any, between payments to physicians for intravenous immune globulin under paragraph (1)(E)(ii) and costs incurred by physicians for furnishing such products; and

''(ii) review available data, including survey and pricing data collected by the Federal Government and data presented by members of the intravenous immune globulin community on the access of individuals eligible for services under this part to intravenous immune globulin and the differences described in clause (i).

''(B) Subject to subparagraph (C), in the case of intravenous immune globulin furnished on or after the date of enactment of this paragraph, the Secretary shall continue the IVIG preadministration-related services payment established under the final rule promulgated by the Secretary in the Federal Register on November 27, 2007 (72 Fed. Reg. 66254), until such time as the Secretary determines that payment for intravenous immune globulin is adequate.

''(C) Upon collection of data and completion of the review under subparagraph (A), the Secretary shall, during a 2-year period beginning not later than 7 months after such date of enactment, provide, if appropriate, to physicians furnishing intravenous immune globulins, a payment, in addition to the payment under paragraph (1)(E)(ii) and instead of the IVIG preadministration-related services payment under subparagraph (B), for all items related to the furnishing of intravenous immune globulin, in an amount the Secretary determines to be appropriate.''.

(b) AS PART OF HOSPITAL OUTPATIENT SERVICES.—Section 1833(t)(14) of such Act (42 U.S.C. 1395l(t)(14)) is amended—

(1) in subparagraph (A)(iii), by striking ''subparagraph (E)'' and inserting ''subparagraphs (E) and (I)''; and

(2) by adding at the end the following new subparagraph:

''(I) ADDITIONAL PAYMENT FOR INTRAVENOUS IMMUNE GLOBULIN.—

''(i) DATA COLLECTION AND REVIEW.—Not later than 6 months after the date of enactment of the Medicare IVIG Access Act of 2008, the Secretary shall—

''(I) collect data on the differences, if any, between payments of intravenous immune globulin under subparagraph (A)(iii) and costs incurred by a hospital for furnishing such products; and

''(II) review available data, including survey and pricing data collected by the Federal Government and data presented by members of the intravenous immune globulin community on the access of individuals eligible for services under this part to intravenous immune globulin and the differences described in subclause (I).

''(ii) CONTINUATION OF SPECIAL PAYMENT RULE.—Subject to clause (iii), in the case of intravenous immune globulin furnished on or after the date of enactment of this subparagraph, the Secretary shall continue the IVIG preadministration-related services payment established under the final rule promulgated by the Secretary in the Federal Register on November 27, 2007 (72 Fed. Reg. 66697), until such time as the Secretary determines that payment for intravenous immune globulin is adequate.

''(iii) ADDITIONAL PAYMENT AUTHORITY.—Upon collection of data and completion of the review under clause (i), the Secretary shall, during a 2-year period beginning not later than 7 months after such date of enactment, provide, if appropriate, to hospitals furnishing intravenous immune globulin as part of a covered OPD service, in addition to the payment under subparagraph (A)(iii) and instead of the IVIG preadministration-related services payment under clause (ii), for all items related to the furnishing of intravenous immune globulin, in an amount the Secretary determines to be appropriate.''.

SEC. 4. COVERAGE AND PAYMENT OF INTRAVENOUS IMMUNE GLOBULIN IN THE HOME.

(a) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)(Z), by inserting ''and items and services related to the administration of intravenous immune globulin'' after ''globulin''; and

(2) in subsection (zz), by striking ''but not including items or services related to the administration of the derivative,''.

(b) PAYMENT FOR INTRAVENOUS IMMUNE GLOBULIN ADMINISTRATION IN THE HOME.—Section 1842(o) of the Social Security Act (42 U.S.C. 1395u(o), as amended by section 3, is amended—

(1) in paragraph (1)(E)(ii), by striking ''paragraph (7)'' and inserting ''paragraph (7) or (8)'';

(2) by redesignating paragraph ''(8)'' as paragraph ''(9)''; and

(3) by inserting after paragraph (7) the following new paragraph:

''(8)(A) Subject to subparagraph (B), in the case of intravenous immune globulins described in section 1861(s)(2)(Z) that are furnished on or after January 1, 2008, the Secretary shall provide for a separate payment for items and services related to the administration of such intravenous immune globulins in an amount that the Secretary determines to be appropriate based on a review of available published and unpublished data and information, including the Study of Intravenous Immune Globulin Administration Options: Safety, Access, and Cost Issues conducted by the Secretary (CMS Contract #500–95–0059). Such payment amount may take into account the following:

''(i) Pharmacy overhead and related expenses.

''(ii) Patient service costs.

''(iii) Supply costs.

''(B) The separate payment amount provided under this paragraph for intravenous immune globulins furnished in 2009 or a subsequent year shall be equal to the separate payment amount determined under this paragraph for the previous year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year.''.

SEC. 5. REPORTS.

(a) REPORT BY THE SECRETARY.—Not later than 7 months after the date of enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall submit a report to Congress on the following:

(1) The results of the data collection and review conducted by the Secretary under subparagraph (A) of section 1842(o)(7) of the Social Security Act, as added by section 3(a), and clause (i) of section 1833(t)(14)(I) of such Act, as added by section 3(b).

(2) Whether the Secretary plans to use the authority under subparagraph (C) of such section 1842(o)(7) and clause (iii) of such section 1833(t)(14)(I) to provide an additional payment to physicians furnishing intravenous immune globulins.

(b) MEDPAC REPORT.—Not later than 2 years after the date of enactment of this Act, the Medicare Payment Advisory Commission shall submit a report to the Secretary and to Congress that contains the following:

(1) In the case where the Secretary has used the authority under sections 1842(o)(7)(C) and 1833(t)(14)(I)(iii) of the Social Security Act, as added by subsections (a) and (b), respectively, of section 3 to provide an additional payment to physicians furnishing intravenous immune globulins during the preceding year, an analysis of whether beneficiary access to intravenous immune globulins under the Medicare program under title XVIII of the Social Security Act has improved as a result of the Secretary's use of such authority.

(2) An analysis of the appropriateness of implementing a new methodology for payment for intravenous immune globulins under part B of title XVIII of the Social Security Act (42 U.S.C. 1395k et seq.).

(3) An analysis of the feasibility of reducing the lag time with respect to data used to determine average sales price under section 1847A of the Social Security Act (42 U.S.C. 1395w–3a).

(4) Recommendations for such legislation and administrative action as the Medicare Payment Advisory Commission determines appropriate, including recommendations for such legislation and administrative action as the Commission determines is necessary to implement any methodology analyzed under paragraph (2).

SEC. 6. OFFSET.

Section 1861(n) of the Social Security Act (42 U.S.C. 1395x(n)) is amended by adding at the end the following: ''Such term includes disposable drug delivery systems, including elastomeric infusion pumps, for the treatment of colorectal cancer.''.

By Mr. REID (for himself, Mr. SCHUMER, Mr. LEVIN, Mr. WYDEN, Mr. INOUYE, Mr. CARDIN, Ms. STABENOW, Mr. BROWN, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Mr. JOHNSON, Mr. KENNEDY, Ms. KLOBUCHAR, Mr. LAUTENBERG, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mrs. MCCASKILL, and Mr. DURBIN):

S. 2991. 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; read the first time.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 2991

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Consumer-First Energy Act of 2008''.

(b) TABLE OF CONTENTS.—The table of contents of 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. Energy emergency and additional price gouging enforcement.
Sec. 204. Presidential declaration of energy emergency.
Sec. 205. Enforcement by the Federal Trade Commission.
Sec. 206. Enforcement by State attorneys general.
Sec. 207. Penalties.
Sec. 208. Effect on other laws.

TITLE III—STRATEGIC PETROLEUM RESERVE

Sec. 301. Suspension of petroleum acquisition for Strategic Petroleum Reserve.

TITLE IV—NO OIL PRODUCING AND EXPORTING CARTELS

Sec. 401. No Oil Producing and Exporting Cartels Act of 2008.

TITLE V—MARKET SPECULATION

Sec. 501. Speculative limits and transparency for off-shore oil trading.
Sec. 502. Margin level for crude oil.

SEC. 2. FINDINGS.

Congress finds that—

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

(2) those hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy and economic crisis that is a threat to the public health, safety, and welfare of the United States;

(3) consumers, workers, small businesses, and large businesses of the United States are particularly vulnerable to those price increase due to the failure of the President to aggressively develop alternatives to petroleum and petroleum products and to promote efficiency and conservation;

(4) reliable and affordable supplies of crude oil and products refined from crude oil (including gasoline, diesel fuel, heating oil, and jet fuel) are vital to the economic and national security of the United States given current energy infrastructure and technology;

(5) the price of crude oil and products refined from crude oil (including gasoline, diesel fuel, heating oil, and jet fuel) have skyrocketed to record levels and are continuing to rise;

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

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

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

(B) are partially due to—

(i) the declining value of the dollar and a widespread lack of confidence in the management of economic and foreign policy by the President;

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

(iii) high levels of military expenditures under the failed policies of the President in Iraq; and

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

(8) rampant speculation in the markets for crude oil and products refined from crude oil has magnified the price increases and market volatility resulting from those underlying causes of price increases; and

(9) Congress must take urgent action to protect consumers, workers, and businesses of the United States from rampant speculation in the energy markets and the price increases resulting from the failed domestic and foreign policies of the President.

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.

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) (relating to exceptions) is amended by striking ''or'' at the end of clause (ii), by striking the period at the end of clause (iii) and inserting '', or'', and by inserting after clause (iii) the following new clause:

''(iv) in the case of any major integrated oil company (as defined in section 167(h)(5)(B)), the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during any taxable year described in section 167(h)(5)(B).''.

(b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is amended by adding at the end the following flush sentence:

''For purposes of clause (iv), the term 'primary product' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.''.

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

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.

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

''(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN TAX UNDER SECTION 901.—In applying section 901, the amount of any foreign oil and gas taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

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

''(2) multiplied by—

''(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

''(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

''(b) COMBINED FOREIGN OIL AND GAS INCOME; FOREIGN OIL AND GAS TAXES.—For purposes of this section—

''(1) COMBINED FOREIGN OIL AND GAS INCOME.—The term 'combined foreign oil and gas income' means, with respect to any taxable year, the sum of—

''(A) foreign oil and gas extraction income, and

''(B) foreign oil related income.

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

''(A) oil and gas extraction taxes, and

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

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

''(4) RECAPTURE OF FOREIGN OIL AND GAS LOSSES BY RECHARACTERIZING LATER COMBINED FOREIGN OIL AND GAS INCOME.—

''(A) IN GENERAL.—The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

''(i) first by the amount determined under subparagraph (B), and

''(ii) then by the amount determined under subparagraph (C).

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

''(B) REDUCTION FOR PRE-2008 FOREIGN OIL EXTRACTION LOSSES.—The reduction under this paragraph shall be equal to the lesser of—

''(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

''(ii) the excess of—

''(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, and before January 1, 2008, over

''(II) so much of such aggregate amount as was recharacterized under this paragraph (as in effect before and after the date of the enactment of the Consumer-First Energy Act of 2008) for preceding taxable years beginning after December 31, 1982.

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

''(i) the combined foreign oil and gas income of the taxpayer for the taxable year (determined without regard to this paragraph), reduced by an amount equal to the reduction under subparagraph (A) for the taxable year, or

''(ii) the excess of—

''(I) the aggregate amount of foreign oil and gas losses for preceding taxable years beginning after December 31, 2008, over

''(II) so much of such aggregate amount as was recharacterized under this paragraph for preceding taxable years beginning after December 31, 2008.

''(D) FOREIGN OIL AND GAS LOSS DEFINED.—

''(i) IN GENERAL.—For purposes of this paragraph, the term 'foreign oil and gas loss' means the amount by which—

''(I) the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the combined foreign oil and gas income for such year, is exceeded by

''(II) the sum of the deductions properly apportioned or allocated thereto.

''(ii) NET OPERATING LOSS DEDUCTION NOT TAKEN INTO ACCOUNT.—For purposes of clause (i), the net operating loss deduction allowable for the taxable year under section 172(a) shall not be taken into account.

''(iii) EXPROPRIATION AND CASUALTY LOSSES NOT TAKEN INTO ACCOUNT.—For purposes of

clause (i), there shall not be taken into account—

''(I) any foreign expropriation loss (as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)) for the taxable year, or

''(II) any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft,

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

''(iv) FOREIGN OIL EXTRACTION LOSS.—For purposes of subparagraph (B)(ii)(I), foreign oil extraction losses shall be determined under this paragraph as in effect on the day before the date of the enactment of the Consumer-First Energy Act of 2008.''.

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

(1) by striking ''oil and gas extraction taxes'' each place it appears and inserting ''foreign oil and gas taxes'', and

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

''(4) TRANSITION RULES FOR PRE-2009 AND 2009 DISALLOWED CREDITS.—

''(A) PRE-2009 CREDITS.—In the case of any unused credit year beginning before January 1, 2009, this subsection shall be applied to any unused oil and gas extraction taxes carried from such unused credit year to a year beginning after December 31, 2008—

''(i) by substituting 'oil and gas extraction taxes' for 'foreign oil and gas taxes' each place it appears in paragraphs (1), (2), and (3), and

''(ii) by computing, for purposes of paragraph (2)(A), the limitation under subparagraph (A) for the year to which such taxes are carried by substituting 'foreign oil and gas extraction income' for 'foreign oil and gas income' in subsection (a).

''(B) 2009 CREDITS.—In the case of any unused credit year beginning in 2009, the amendments made to this subsection by the Consumer-First Energy Act of 2008 shall be treated as being in effect for any preceding year beginning before January 1, 2009, solely for purposes of determining how much of the unused foreign oil and gas taxes for such unused credit year may be deemed paid or accrued in such preceding year.''.

(d) CONFORMING AMENDMENT.—Section 6501(i) of the Internal Revenue Code of 1986 is amended by striking ''oil and gas extraction taxes'' and inserting ''foreign oil and gas taxes''.

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

SEC. 103. WINDFALL PROFITS TAX.

(a) IN GENERAL.—Subtitle E of the Internal Revenue Code of 1986 (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

''CHAPTER 56—WINDFALL PROFITS ON CRUDE OIL

''Sec. 5896. Imposition of tax.
''Sec. 5897. Windfall profit; qualified investment.
''Sec. 5898. Special rules and definitions.

''SEC. 5896. IMPOSITION OF TAX.

''(a) IN GENERAL.—In addition to any other tax imposed under this title, there is hereby imposed on any applicable taxpayer an excise tax in an amount equal to 25 percent of the excess of—

''(1) the windfall profit of such taxpayer, over

''(2) the amount of the qualified investment of such applicable taxpayer.

''(b) APPLICABLE TAXPAYER.—For purposes of this chapter, the term 'applicable taxpayer' means any major integrated oil company (as defined in section 167(h)(5)(B)).

''SEC. 5897. WINDFALL PROFIT; QUALIFIED INVESTMENT.

''(a) GENERAL RULE.—For purposes of this chapter, the term 'windfall profit' means the excess of the adjusted taxable income of the applicable taxpayer for the taxable year over the reasonably inflated average profit for such taxable year.

''(b) ADJUSTED TAXABLE INCOME.—For purposes of this chapter, with respect to any applicable taxpayer, the adjusted taxable income for any taxable year is equal to the taxable income for such taxable year (within the meaning of section 63 and determined without regard to this subsection)—

''(1) increased by any interest expense deduction, charitable contribution deduction, and any net operating loss deduction carried forward from any prior taxable year, and

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

In the case of any applicable taxpayer which is a foreign corporation, the adjusted taxable income shall be determined with respect to such income which is effectively connected with the conduct of a trade or business in the United States.

''(c) REASONABLY INFLATED AVERAGE PROFIT.—For purposes of this chapter, with respect to any applicable taxpayer, the reasonably inflated average profit for any taxable year is an amount equal to the average of the adjusted taxable income of such taxpayer for taxable years beginning during the 2001–2005 taxable year period (determined without regard to the taxable year with the highest adjusted taxable income in such period) plus 10 percent of such average.

''(d) QUALIFIED INVESTMENT.—For purposes of this chapter—

''(1) IN GENERAL.—The term 'qualified investment' means, with respect to any applicable taxpayer, means any amount paid or incurred with respect to—

''(A) section 263(c) costs,

''(B) qualified refinery property (as defined in section 179C(c) and determined without regard to any termination date),

''(C) any qualified facility described in paragraph (1), (2), (3), or (4) of section 45(d) (determined without regard to any placed in service date), or

''(D) any facility for the production renewable fuel or advanced biofuel (as defined in section 211(o) of the Clean Air Act 942 U.S.C. 7545).

''(2) SECTION 263(c) COSTS.—For purposes of this subsection, the term 'section 263(c) costs' means intangible drilling and development costs incurred by the taxpayer which (by reason of an election under section 263(c)) may be deducted as expenses for purposes of this title (other than this paragraph). Such term shall not include costs incurred in drilling a nonproductive well.

''SEC. 5898. SPECIAL RULES AND DEFINITIONS.

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

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

''(c) RETURN OF WINDFALL PROFIT TAX.—The Secretary shall provide for the filing and the time of such filing of the return of the tax imposed under section 5896.

''(d) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

''(e) BUSINESSES UNDER COMMON CONTROL.—For purposes of this chapter, all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter.''.

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

''CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL.''.

(c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—The first sentence of section 164(a) of the Internal Revenue Code of 1986 (relating to deduction for taxes) is amended by inserting after paragraph (5) the following new paragraph:

''(6) The windfall profit tax imposed by section 5896.''.

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

SEC. 104. ENERGY INDEPENDENCE AND SECURITY TRUST FUND.

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

''SEC. 9511. ENERGY INDEPENDENCE AND SECURITY TRUST FUND.

''(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as 'Energy Independence and Security Trust Fund' (referred to in this section as the 'Trust Fund'), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

''(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Trust Fund an amount equivalent to the increase in the revenues received in the Treasury as the result of the amendments made by sections 101, 102, and 103 of the Consumer-First Energy Act of 2008.

''(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, for the purposes of reducing the dependence of the United States on foreign and unsustainable energy sources and reducing the risks of global warming through programs and measures that—

''(1) reduce the burdens on consumers of rising energy prices;

''(2) diversify and expand the use of secure, efficient, and environmentally-friendly energy supplies and technologies;

''(3) result in net reductions in emissions of greenhouse gases; and

''(4) prevent energy price gouging, profiteering, and market manipulation.''.

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

''Sec. 9511. Energy Independence and Security Trust Fund.''.

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

TITLE II—PRICE GOUGING

SEC. 201. SHORT TITLE.

This title may be cited as the ''Petroleum Consumer Price Gouging Protection Act''.

SEC. 202. DEFINITIONS.

In this title:

(1) AFFECTED AREA.—The term ''affected area'' means an area covered by a Presidential declaration of energy emergency.

(2) SUPPLIER.—The term ''supplier'' means any person engaged in the trade or business of selling or reselling, at retail or wholesale, or distributing crude oil, gasoline, petroleum distillates, or biofuel.

(3) PRICE GOUGING.—The term ''price gouging'' means the charging of an unconscionably excessive price by a supplier in an affected area.

(4) UNCONSCIONABLY EXCESSIVE PRICE.—The term ''unconscionably excessive price'' means an average price charged during an energy emergency declared by the President in an area and for a product subject to the declaration, that—

(A)(i)(I) constitutes a gross disparity from the average price at which it was offered for sale in the usual course of the supplier's business during the 30 days prior to the President's declaration of an energy emergency; and

(II) grossly exceeds the prices at which the same or similar crude oil, gasoline, petroleum distillates, or biofuel was readily obtainable by purchasers from other suppliers in the same relevant geographic market within the affected area; or

(ii) represents an exercise of unfair leverage or unconscionable means on the part of the supplier, during a period of declared energy emergency; and

(B) is not attributable to increased wholesale or operational costs, including replacement costs, outside the control of the supplier, incurred in connection with the sale of crude oil, gasoline, petroleum distillates, or biofuel, and is not attributable to local, regional, national, or international market conditions.

(5) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

SEC. 203. ENERGY EMERGENCY AND ADDITIONAL PRICE GOUGING ENFORCEMENT.

(a) IN GENERAL.—During any energy emergency declared by the President under section 204 of this title, it is unlawful for any supplier to sell, or offer to sell crude oil, gasoline, petroleum distillates, or biofuel subject to that declaration in, or for use in, the area to which that declaration applies at an unconscionably excessive price.

(b) FACTORS CONSIDERED.—In determining whether a violation of subsection (a) has occurred, there shall be taken into account, among other factors, whether—

(1) the price charged was a price that would reasonably exist in a competitive and freely functioning market; and

(2) the amount of gasoline, other petroleum distillates, or biofuel the seller produced, distributed, or sold during the period the Proclamation was in effect increased over the average amount during the preceding 30 days.

SEC. 204. PRESIDENTIAL DECLARATION OF ENERGY EMERGENCY.

(a) IN GENERAL.—If the President finds that the health, safety, welfare, or economic well-being of the citizens of the United States is at risk because of a shortage or imminent shortage of adequate supplies of crude oil, gasoline, petroleum distillates, or biofuel due to a disruption in the national distribution system for crude oil, gasoline, petroleum distillates, or biofuel (including such a shortage related to a major disaster (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))), or significant pricing anomalies in national energy markets for crude oil, gasoline, petroleum distillates, or biofuel the President may declare that a Federal energy emergency exists.

(b) SCOPE AND DURATION.—The emergency declaration shall specify—

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

(2) the circumstance or condition necessitating the declaration; and

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

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

(c) EXTENSIONS.—The President may—

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

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

(3) discontinue such a declaration before its expiration.

SEC. 205. ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.

(a) ENFORCEMENT.—This title shall be enforced by the Federal Trade Commission in the same manner, by the same means, and with the same jurisdiction as though all applicable terms of the Federal Trade Commission Act were incorporated into and made a part of this title. In enforcing section 203 of this title, the Commission shall give priority to enforcement actions concerning companies with total United States wholesale or retail sales of crude oil, gasoline, petroleum distillates, and biofuel in excess of $500,000,000 per year but shall not exclude enforcement actions against companies with total United States wholesale sales of $500,000,000 or less per year.

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

(c) COMMISSION ACTIONS.—Following the declaration of an energy emergency by the President under section 204 of this title, the Commission shall—

(1) maintain within the Commission—

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

(B) a program to develop and distribute to the public informational materials to assist residents of the affected area in detecting, avoiding, and reporting price gouging;

(2) consult with the Attorney General, the United States Attorney for the districts in which a disaster occurred (if the declaration is related to a major disaster), and State and local law enforcement officials to determine whether any supplier in the affected area is charging or has charged an unconscionably excessive price for crude oil, gasoline, petroleum distillates, or biofuel in the affected area; and

(3) conduct investigations as appropriate to determine whether any supplier in the affected area has violated section 203 of this title, and upon such finding, take any action the Commission determines to be appropriate to remedy the violation.

SEC. 206. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the provisions of section 203 of this title, or to impose the civil penalties authorized by section 207 for violations of section 203, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a supplier engaged in the sale or resale, at retail or wholesale, or distribution of crude oil, gasoline, petroleum distillates, or biofuel in violation of section 203 of this title.

(b) NOTICE.—The State shall serve written notice to the Commission of any civil action under subsection (a) prior to initiating the action. The notice shall include a copy of the complaint to be filed to initiate the civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting the civil action.

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

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

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

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the Attorney General by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

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

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

(A) the defendant operates;

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

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

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

(3) a person who participated with the defendant in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action or an administrative action for violation of this title, a State attorney general, or official or agency of a State, may not bring an action under this section during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this title alleged in the Commission's civil or administrative action.

(g) NO PREEMPTION.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a civil or criminal statute of that State.

SEC. 207. PENALTIES.

(a) CIVIL PENALTY.—

(1) IN GENERAL.—In addition to any penalty applicable under the Federal Trade Commission Act, any supplier—

(A) that violates section 203 of this title is punishable by a civil penalty of not more than $1,000,000; and

(B) that violates section 203 of this title is punishable by a civil penalty of—

(i) not more than $500,000, in the case of an independent small business marketer of gasoline (within the meaning of section 324(c) of the Clean Air Act (42 U.S.C. 7625(c))); and

(ii) not more than $5,000,000 in the case of any other supplier.

(2) METHOD.—The penalties provided by paragraph (1) shall be obtained in the same manner as civil penalties imposed 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) each day of a continuing violation shall be considered a separate violation; and

(B) the court shall take into consideration, among other factors, the seriousness of the violation and the efforts of the person committing the violation to remedy the harm caused by the violation in a timely manner.

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

SEC. 208. EFFECT ON OTHER LAWS.

(a) OTHER AUTHORITY OF THE COMMISSION.—Nothing in this title shall be construed to limit or affect in any way the Commission's authority to bring enforcement actions or take any other measure under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any other provision of law.

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

TITLE III—STRATEGIC PETROLEUM RESERVE

SEC. 301. SUSPENSION OF PETROLEUM ACQUISITION FOR STRATEGIC PETROLEUM RESERVE.

(a) IN GENERAL.—Except as provided in subsection (b) and notwithstanding any other provision of law, during the period beginning on the date of enactment of this Act and ending on December 31, 2008—

(1) the Secretary of the Interior shall suspend acquisition of petroleum for the Strategic Petroleum Reserve through the royalty-in-kind program; and

(2) the Secretary of Energy shall suspend acquisition of petroleum for the Strategic Petroleum Reserve through any other acquisition method.

(b) RESUMPTION.—Not earlier than 30 days after the date on which the President notifies Congress that the President has determined that the weighted average price of petroleum in the United States for the most recent 90-day period is $75 or less per barrel—

(1) the Secretary of the Interior may resume acquisition of petroleum for the Strategic Petroleum Reserve through the royalty-in-kind program; and

(2) the Secretary of Energy may resume acquisition of petroleum for the Strategic Petroleum Reserve through any other acquisition method.

(c) EXISTING CONTRACTS.—In the case of any oil scheduled to be delivered to the Strategic Petroleum Reserve pursuant to a contract entered into by the Secretary of Energy prior to, and in effect on, the date of enactment of this Act, the Secretary shall, to the maximum extent practicable, negotiate a deferral of the delivery of the oil for a period of not less than 1 year, in accordance with procedures of the Department of Energy in effect on the date of enactment of this Act for deferrals of oil.

TITLE IV—NO OIL PRODUCING AND EXPORTING CARTELS

SEC. 401. NO OIL PRODUCING AND EXPORTING CARTELS ACT OF 2008.

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

(b) SHERMAN ACT.—The Sherman Act (15 U.S.C. 1 et seq.) is amended by adding after section 7 the following:

''SEC. 7A. OIL PRODUCING CARTELS.

''(a) IN GENERAL.—It shall be illegal and a violation of this Act for any foreign state, or any instrumentality or agent of any foreign state, to act collectively or in combination with any other foreign state, any instrumentality or agent of any other foreign state, or any other person, whether by cartel or any other association or form of cooperation or joint action—

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

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

''(3) to otherwise take any action in restraint of trade for oil, natural gas, or any petroleum product;

when such action, combination, or collective action has a direct, substantial, and reasonably foreseeable effect on the market, supply, price, or distribution of oil, natural gas, or other petroleum product in the United States.

''(b) SOVEREIGN IMMUNITY.—A foreign state engaged in conduct in violation of subsection (a) shall not be immune under the doctrine of sovereign immunity from the jurisdiction or judgments of the courts of the United States in any action brought to enforce this section.

''(c) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based on the act of state doctrine, to make a determination on the merits in an action brought under this section.

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

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

(1) in paragraph (6), by striking ''or'' after the semicolon;

(2) in paragraph (7), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(8) in which the action is brought under section 7A of the Sherman Act.''.

TITLE V—MARKET SPECULATION

SEC. 501. SPECULATIVE LIMITS AND TRANSPARENCY FOR OFF-SHORE OIL TRADING.

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

''(e) FOREIGN BOARDS OF TRADE.—

''(1) IN GENERAL.—In the case of any foreign board of trade for which the Commission has granted or is considering an application to grant a board of trade located outside of the United States relief from the requirement of subsection (a) to become a designated contract market, derivatives transaction execution facility, or other registered entity, with respect to an energy commodity that is physically delivered in the United States, prior to continuing to or initially granting the relief, the Commission shall determine that the foreign board of trade—

''(A) applies comparable principles or requirements regarding the daily publication of trading information and position limits or accountability levels for speculators as apply to a designated contract market, derivatives transaction execution facility, or other registered entity trading energy commodities physically delivered in the United States; and

''(B) provides such information to the Commission regarding the extent of speculative and nonspeculative trading in the energy commodity that is comparable to the information the Commission determines necessary to publish a Commitment of Traders report for a designated contract market, derivatives transaction execution facility, or other registered entity trading energy commodities physically delivered in the United States.

''(2) EXISTING FOREIGN BOARDS OF TRADE.—During the period beginning 1 year after the date of enactment of this subsection and ending 18 months after the date of enactment of this subsection, the Commission shall determine whether to continue to grant relief in accordance with paragraph (1) to any foreign board of trade for which the Commission granted relief prior to the date of enactment of this subsection.''.

SEC. 502. MARGIN LEVEL FOR CRUDE OIL.

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

''(G) MARGIN LEVEL FOR CRUDE OIL.—Not later than 90 days after the date of enactment of this subparagraph, the Commission shall promulgate regulations to set a substantial increase in margin levels for crude oil traded on any trading facility or as part of any agreement, contract, or transaction covered by this Act in order to reduce excessive speculation and protect consumers.''.

(b) STUDIES.—

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

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

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 554—EXPRESSING THE SENSE OF THE SENATE ON HUMANITARIAN ASSISTANCE TO BURMA AFTER CYCLONE NARGIS

Mr. KERRY (for himself, Mr. LUGAR, Mr. BIDEN, Mr. MCCONNELL, Mrs. FEINSTEIN, Mr. DURBIN, Mr. DODD, Mr. OBAMA, Mr. WEBB, Ms. MURKOWSKI, Mr. KENNEDY, Mr. MENENDEZ, Mr. FEINGOLD, Mr. LIEBERMAN, Mr. HAGEL, Mrs. BOXER, Mrs. CLINTON, Mrs. DOLE, Mr. MCCAIN, and Mr. COLEMAN) submitted the following resolution; which was considered and agreed to:

S. RES. 554

Whereas, on May 3, 2008, Cyclone Nargis devastated Burma, leaving an estimated 22,500 people dead, 41,000 missing, and 1,000,000 homeless;

Whereas, on May 5, 2008, the United States embassy in Burma issued a disaster declaration authorizing $250,000 in immediate humanitarian assistance to the people of Burma;

Whereas, on May 5, 2008, First Lady Laura Bush stated that the United States will ''work with the U.N. and other international nongovernmental organizations to provide water, sanitation, food, and shelter. More assistance will be forthcoming'';

Whereas, on May 5, 2008, Department of State Deputy Spokesman Tom Casey stated that the United States has ''a disaster assistance response team that is standing by and ready to go in to Burma to help try to assess need there'';

Whereas, on May 6, 2008, President George W. Bush said, ''The United States has made an initial aid contribution, but we want to do a lot more. We're prepared to move U.S. Navy assets to help find those who've lost their lives, to help find the missing, to help stabilize the situation. But in order to do so, the military junta must allow our disaster assessment teams into the country.'';