

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3893, AS REPORTED
OFFERED BY MR. STUPAK OF MICHIGAN**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Federal Response to Energy Emergencies Act of 2005”.

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

Sec. 1 Short title; table of contents.

**TITLE I—PROTECTING CONSUMERS FROM ENERGY PRICE
GOUGING**

Sec. 101. Unconscionable pricing of gasoline, oil, natural gas, and petroleum distillates during emergencies.

Sec. 102. Declaration of energy emergency.

Sec. 103. Enforcement by the Federal Trade Commission.

Sec. 104. Enforcement at retail level by State attorneys general.

Sec. 105. Low Income energy assistance.

Sec. 106. Effect on other laws.

Sec. 107. Market transparency for crude oil, gasoline, and petroleum distillates.

Sec. 108. Report on United States energy emergency preparedness.

Sec. 109. Protective action to prevent future disruptions of supply.

Sec. 110. Authorization of Appropriations.

**TITLE II—ENSURING EMERGENCY SUPPLY OF REFINED
PETROLEUM PRODUCTS**

Sec. 201. Refineries.



1 **TITLE I—PROTECTING CON-**
 2 **SUMERS FROM ENERGY**
 3 **PRICE GOUGING**

4 **SEC. 101. UNCONSCIONABLE PRICING OF GASOLINE, OIL,**
 5 **NATURAL GAS, AND PETROLEUM DIS-**
 6 **TILLATES DURING EMERGENCIES.**

7 (a) UNCONSCIONABLE PRICING.—

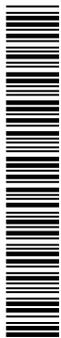
8 (1) IN GENERAL.—During any energy emer-
 9 gency declared by the President under section 102,
 10 it is unlawful for any person to sell crude oil, gaso-
 11 line, natural gas, or petroleum distillates in, or for
 12 use in, the area to which that declaration applies at
 13 a price that—

14 (A) is unconscionably excessive; or

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

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

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



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

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

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

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

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

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

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



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

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

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

17 **SEC. 102. DECLARATION OF ENERGY EMERGENCY.**

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



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

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

11 (c) EXTENSIONS.—The President may—

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

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

15 **SEC. 103. ENFORCEMENT BY THE FEDERAL TRADE COM-**
16 **MISSION.**

17 (a) ENFORCEMENT BY FTC.—A violation of section
18 101 shall be treated as a violation of a rule defining an
19 unfair or deceptive act or practice prescribed under section
20 18(a)(1)(B) of the Federal Trade Commission Act (15
21 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
22 shall enforce this title in the same manner, by the same
23 means, and with the same jurisdiction as though all appli-
24 cable terms and provisions of the Federal Trade Commis-
25 sion Act were incorporated into and made a part of this



1 title. In enforcing section 101(a) of this title, the Commis-
2 sion shall give priority to enforcement actions concerning
3 companies with total United States wholesale or retail
4 sales of crude oil, gasoline, and petroleum distillates in
5 excess of \$500,000,000 per year.

6 (b) CIVIL PENALTIES.—

7 (1) IN GENERAL.—Notwithstanding the pen-
8 alties set forth under the Federal Trade Commission
9 Act, any person who violates section 101 shall be
10 subject to the following penalties:

11 (A) PRICE GOUGING; UNJUST PROFITS.—

12 Any person who violates section 101(a) shall be
13 subject to—

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

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

19 (B) FALSE INFORMATION; MARKET MANIP-

20 ULATION.—Any person who violates section
21 101(b) or 101(c) shall be subject to a civil pen-
22 alty of not more than \$1,000,000.

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



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

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

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

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

13 **SEC. 104. ENFORCEMENT AT RETAIL LEVEL BY STATE AT-**
14 **TORNEYS GENERAL.**

15 (a) IN GENERAL.—A State, as *parens patriae*, may
16 bring a civil action on behalf of its residents in an appro-
17 priate district court of the United States to enforce the
18 provisions of section 101(a) of this title, or to impose the
19 civil penalties authorized by section 103(b)(1)(B), when-
20 ever the attorney general of the State has reason to believe
21 that the interests of the residents of the State have been
22 or are being threatened or adversely affected by a violation
23 of this title or a regulation under this title.

24 (b) NOTICE.—The State shall serve written notice to
25 the Federal Trade Commission of any civil action under



1 subsection (a) prior to initiating such civil action. The no-
2 tice shall include a copy of the complaint to be filed to
3 initiate such civil action, except that if it is not feasible
4 for the State to provide such prior notice, the State shall
5 provide such notice immediately upon instituting such civil
6 action.

7 (c) AUTHORITY TO INTERVENE.—Upon receiving the
8 notice required by subsection (b), the Federal Trade Com-
9 mission may intervene in such civil action and upon
10 intervening—

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

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

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

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



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

3 (A) the defendant operates;

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

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

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

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

15 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
16 ACTION IS PENDING.—If the Federal Trade Commission
17 has instituted a civil action or an administrative action
18 for violation of this title, no State attorney general, or offi-
19 cial or agency of a State, may bring an action under this
20 subsection during the pendency of that action against any
21 defendant named in the complaint of the Federal Trade
22 Commission or the other agency for any violation of this
23 title alleged in the complaint.

24 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
25 tained in this section shall prohibit an authorized State



1 official from proceeding in State court to enforce a civil
2 or criminal statute of such State.

3 **SEC. 105. LOW INCOME ENERGY ASSISTANCE.**

4 Amounts collected in fines and penalties under sec-
5 tions 103 of this title shall be deposited in a separate fund
6 in the treasury to be known as the Consumer Relief Trust
7 Fund. To the extent provided for in advance in appropria-
8 tions Acts, such fund shall be used to provide assistance
9 under the Low Income Home Energy Assistance Program
10 established under title XXVI of the Omnibus Budget Rec-
11 onciliation Act of 1981 (42 U.S.C. 8621 et seq.).

12 **SEC. 106. EFFECT ON OTHER LAWS.**

13 (a) OTHER AUTHORITY OF FEDERAL TRADE COM-
14 MISSION.—Nothing in this title shall be construed to limit
15 or affect in any way the Federal Trade Commission's au-
16 thority to bring enforcement actions or take any other
17 measure under the Federal Trade Commission Act (15
18 U.S.C. 41 et seq.) or any other provision of law.

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

21 **SEC. 107. MARKET TRANSPARENCY FOR CRUDE OIL, GASO-**
22 **LINE, AND PETROLEUM DISTILLATES.**

23 (a) IN GENERAL.—The Federal Trade Commission
24 shall facilitate price transparency in markets for the sale
25 of crude oil and essential petroleum products at wholesale,



1 having due regard for the public interest, the integrity of
2 those markets, fair competition, and the protection of con-
3 sumers.

4 (b) MARKETPLACE TRANSPARENCY.—

5 (1) DISSEMINATION OF INFORMATION.—In car-
6 rying out this section, the Federal Trade Commis-
7 sion shall provide by rule for the dissemination, on
8 a timely basis, of information about the availability
9 and prices of wholesale crude oil, gasoline, and pe-
10 troleum distillates to the Federal Trade Commission,
11 States, wholesale buyers and sellers, and the public.

12 (2) PROTECTION OF PUBLIC FROM ANTI-
13 COMPETITIVE ACTIVITY.—In determining the infor-
14 mation to be made available under this section and
15 time to make the information available, the Federal
16 Trade Commission shall seek to ensure that con-
17 sumers and competitive markets are protected from
18 the adverse effects of potential collusion or other
19 anticompetitive behaviors that can be facilitated by
20 untimely public disclosure of transaction-specific in-
21 formation.

22 (3) PROTECTION OF MARKET MECHANISMS.—
23 The Federal Trade Commission shall withhold from
24 public disclosure under this section any information
25 the Commission determines would, if disclosed, be



1 detrimental to the operation of an effective market
2 or jeopardize system security.

3 (c) INFORMATION SOURCES.—

4 (1) IN GENERAL.—In carrying out subsection
5 (b), the Federal Trade Commission may—

6 (A) obtain information from any market
7 participant; and

8 (B) rely on entities other than the Com-
9 mission to receive and make public the informa-
10 tion, subject to the disclosure rules in sub-
11 section (b)(3).

12 (2) PUBLISHED DATA.—In carrying out this
13 section, the Federal Trade Commission shall con-
14 sider the degree of price transparency provided by
15 existing price publishers and providers of trade proc-
16 essing services, and shall rely on such publishers and
17 services to the maximum extent possible.

18 (3) ELECTRONIC INFORMATION SYSTEMS.—The
19 Federal Trade Commission may establish an elec-
20 tronic information system if it determines that exist-
21 ing price publications are not adequately providing
22 price discovery or market transparency. Nothing in
23 this section, however, shall affect any electronic in-
24 formation filing requirements in effect under this
25 title as of the date of enactment of this section.



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

5 (d) COOPERATION WITH OTHER FEDERAL AGEN-
6 CIES.—

7 (1) MEMORANDUM OF UNDERSTANDING.—
8 Within 180 days after the date of enactment of this
9 title, the Federal Trade Commission shall conclude
10 a memorandum of understanding with the Com-
11 modity Futures Trading Commission and other ap-
12 propriate agencies (if applicable) relating to informa-
13 tion sharing, which shall include provisions—

14 (A) ensuring that information requests to
15 markets within the respective jurisdiction of
16 each agency are properly coordinated to mini-
17 mize duplicative information requests; and

18 (B) regarding the treatment of proprietary
19 trading information.

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



1 (e) RULEMAKING.—Within 180 days after the date
2 of enactment of this title, the Federal Trade Commission
3 shall initiate a rulemaking proceeding to establish such
4 rules as the Commission determines to be necessary and
5 appropriate to carry out this section.

6 **SEC. 108. REPORT ON UNITED STATES ENERGY EMER-**
7 **GENCY PREPAREDNESS.**

8 (a) POTENTIAL IMPACTS REPORT.—Within 30 days
9 after the date of enactment of this title, the Federal Trade
10 Commission shall transmit to the Congress a confidential
11 report describing the potential impact on domestic prices
12 of crude oil, residual fuel oil, and refined petroleum prod-
13 ucts that would result from the disruption for periods of
14 1 week, 1 year, and 5 years, respectively, of not less
15 than—

16 (1) 30 percent of United States oil production;

17 (2) 20 percent of United States refinery capac-
18 ity; and

19 (3) 5 percent of global oil supplies.

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

22 (1) projections of the impact any such disrup-
23 tions would be likely to have on the United States
24 economy; and



1 (2) detailed and prioritized recommendations
2 for remedies under each scenario covered by the re-
3 port.

4 **SEC. 109. PROTECTIVE ACTION TO PREVENT FUTURE DIS-**
5 **RUPTIONS OF SUPPLY.**

6 The Secretary of Energy and the Energy Information
7 Administration shall review expenditures by, and activities
8 undertaken by, companies with total United States whole-
9 sale or retail sales of crude oil, gasoline, and petroleum
10 distillates in excess of \$500,000,000 per year to protect
11 the energy supply system from terrorist attacks, inter-
12 national supply disruptions, and natural disasters, and en-
13 sure a stable and reasonably priced supply of such prod-
14 ucts to consumers in the United States, and, not later
15 than 180 days after the date of the enactment of this title,
16 shall transmit a report of their findings to Congress. Such
17 report shall include an assessment of the companies' prep-
18 arations for the forecasted period of more frequent and
19 more intense hurricane activity in the Gulf of Mexico and
20 other vulnerable coastal areas.

21 **SEC. 110. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated such sums
23 as may be necessary to carry out the provisions of this
24 title.



1 **TITLE II—REFINERIES**

2 **SEC. 201. REFINERIES.**

3 Title I of the Energy Policy and Conservation Act
4 is amended by adding at the end the following new part:

5 **“PART E—REFINERIES**

6 **“SEC. 191. STRATEGIC REFINERY RESERVE.**

7 “(a) ESTABLISHMENT.—The Secretary shall estab-
8 lish and operate a Strategic Refinery Reserve in the
9 United States. The Secretary may design and construct
10 new refineries, or acquire closed refineries and reopen
11 them, to carry out this section.

12 “(b) OPERATION.—The Secretary shall operate refin-
13 eries in the Strategic Refinery Reserve for the following
14 purposes:

15 “(1) During any period described in subsection
16 (c), to provide petroleum products to the general
17 public.

18 “(2) To provide petroleum products to the Fed-
19 eral Government, including the Department of De-
20 fense, as well as State governments and political
21 subdivisions thereof who choose to purchase refined
22 petroleum products from the Strategic Refinery Re-
23 serve.



1 “(c) EMERGENCY PERIODS.—The Secretary shall
2 make petroleum products from the Strategic Refinery Re-
3 serve available under subsection (b)(1) only—

4 “(1) during a severe energy supply interruption,
5 within the meaning of such term under part B; or

6 “(2) if the President determines that there is a
7 regional petroleum product supply shortage of sig-
8 nificant scope and duration and that action taken
9 under subsection (b)(1) would assist directly and
10 significantly in reducing the adverse impact of such
11 shortage.

12 “(d) LOCATIONS.—In determining the location of a
13 refinery for the Strategic Refinery Reserve, the Secretary
14 shall take into account the following factors:

15 “(1) Impact on the local community (deter-
16 mined after requesting and receiving comments from
17 State, county or parish, and municipal governments,
18 and the public).

19 “(2) Regional vulnerability to a natural dis-
20 aster.

21 “(3) Regional vulnerability to terrorist attacks.

22 “(4) Proximity to the Strategic Petroleum Re-
23 serve.

24 “(5) Accessibility to energy infrastructure.



1 “(6) The need to minimize adverse public
2 health and environmental impacts.

3 “(7) The energy needs of the Federal Govern-
4 ment, including the Department of Defense.

5 “(e) INCREASED CAPACITY.—The Secretary shall en-
6 sure that refineries in the Strategic Refinery Reserve are
7 designed to enable a rapid increase in production capacity
8 during periods described in subsection (c).

9 “(f) IMPLEMENTATION PLAN.—Not later than 6
10 months after the date of enactment of this section, the
11 Secretary shall transmit to the Congress a plan for the
12 establishment and operation of the Strategic Refinery Re-
13 serve under this section. Such plan shall provide for estab-
14 lishing, within 2 years after the date of enactment of this
15 section, and maintaining a capacity for the Reserve equal
16 to 5 percent of the total United States daily demand for
17 gasoline, home heating oil, and other refined petroleum
18 products. If the Secretary finds that achieving such capac-
19 ity within 2 years is not feasible, the Secretary shall ex-
20 plain in the plan the reasons therefor, and shall include
21 provisions for achieving such capacity as soon as prac-
22 ticable. Such plan shall also provide for adequate delivery
23 systems capable of providing Strategic Refinery Reserve
24 product to the entities described in subsection (b)(2).



1 “(g) COMPLIANCE WITH FEDERAL ENVIRONMENTAL
2 REQUIREMENTS.—Nothing in this section shall affect any
3 requirement to comply with Federal or State environ-
4 mental or other law.

5 **“SEC. 192. REFINERY CLOSING REPORTS.**

6 “(a) CLOSING REPORTS.—The owner or operator of
7 a refinery in the United States shall notify the Secretary
8 at least 6 months in advance of permanently closing the
9 refinery, and shall include in such notice an explanation
10 of the reasons for the proposed closing.

11 “(b) REPORTS TO CONGRESS.—The Secretary, in
12 consultation with the Federal Trade Commission, shall
13 promptly report to the Congress any report received under
14 subsection (a), along with an analysis of the effects the
15 proposed closing would have on petroleum product prices,
16 competition in the refining industry, the national economy,
17 regional economies and regional supplies of refined petro-
18 leum products, and United States energy security.”.

