Legislative History

Department of Energy Organization Act

P.L. 95-91

Volume 5 of 6

Department of Energy
Office of Congressional Affairs
Office of Special Counsel

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April 1979

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FEDERAL PERSONNEL FOR THE PROPOSED DEPARTMENT OF ENERGY

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION

OF THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 4263

A BILL TO ESTABLISH A DEPARTMENT OF ENERGY IN THE EXECUTIVE BRANCH BY THE REORGANIZATION OF ENERGY FUNCTIONS WITHIN THE FEDERAL GOVERNMENT IN ORDER TO SECURE EFFECTIVE MANAGEMENT TO ASSURE A COORDINATED NATIONAL ENERGY POLICY, AND FOR OTHER PURPOSES

APRIL 19, 1977

Serial No. 95–6

Printed for the use of the
Committee on Post Office and Civil Service

U.S. GOVERNMENT PRINTING OFFICE
88-657 WASHINGTON : 1977

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FEDERAL PERSONNEL FOR THE PROPOSED DEPARTMENT OF ENERGY

TUESDAY, APRIL 19, 1977

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEE ETHICS AND UTILIZATION,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 304–A, Cannon House Office Building, Hon. Patricia Schroeder (chairwoman of the subcommittee) presiding.

Mrs. SCHROEDER. The subcommittee is called to order.

Today, the subcommittee is going to review and we hope find answers to some of the problems of governmental reorganization contained in H.R. 4263, a bill to create a new Department of Energy.

I want at this time to place in the record two letters which have been exchanged between Jack Brooks, chairman of the House Goverment Operations Committee and myself regarding this subcommittee's concern over the bill. We plan within this week to send Chairman Brooks our recommendations for changes in the bill as it affects Federal employees. We hope that the committee will use these amendments in marking up the bill so that we will be saved a lot of time later.

[The letters follow:]

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON EMPLOYEES ETHICS AND UTILIZATION,
Washington, D.C., April 1, 1977.

Hon. JACK BROOKS,
Chairman, Committee on Government Operations, Rayburn House Office Building, Washington, D.C.

DEAR JACK: My Subcommittee has a great many concerns with those sections of H.R. 4263 which deal with civil service laws and the treatment of employees within the proposed new Department of Energy.

Some of these concerns have been voiced to your committee by Congressman Udall. Many of the other questions are included in the enclosed draft staff analysis of the bill.

My subcommittee soon hopes to have developed a list of recommended changes with regard to sections of the bill deserving them. We will submit them to you before your markup of the bill so that they may be taken into consideration and we hope, accepted by your committee. We believe that too much of the subject matter of this bill has direct impact upon our jurisdiction for it not to receive this attention.

With kind regards,
Sincerely,

PATRICIA SCHROEDER, *Chairwoman.*

U.S. HOUSE OF REPRESENTATIVES,
LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., April 7, 1977.

Hon. PATRICIA SCHROEDER,
Chairwoman, Subcommittee on Employee Ethics and Utilization, Committee on Post Office and Civil Service, U.S. House of Representatives, House Office Building Annex 1, Washington, D.C.

DEAR PATRICIA: I have your letter voicing your concern on the provisions of H.R. 4263, the Department of Energy Organization Act, dealing with civil service laws and the treatment of employees. We shal be pleased to have the comments of your subcommittee on the bill and I shall present them to our subcommittee when you forward them to me. We expect to complete our hearings during the week of April 18 and hope that you can get your comments to us as soon as possible.

Thanks also for enclosing a copy of an analysis made by your staff.

Sincerely yours,

JACK BROOKS, *Chairman*

Mrs. SCHROEDER. I also want to note that although they will not be testifying, the National Treasury Employees Union, which represents Federal Energy Administration employees, is submitting written testimony to us on this bill, which should become a part of the record as well.

Our witnesses this morning are Robert Allnutt of the Energy Research and Development Administration and Raymond Jacobson of the Civil Service Commission. Our first witness is Mr. Allnutt, who is the Acting Assistant Administrator for Administration.

We are delighted to have you with us this morning.

Mr. ALLNUTT. Thank you.

STATEMENT OF ROBERT F. ALLNUTT, ACTING ASSISTANT ADMINISTRATOR FOR ADMINISTRATION, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, ACCOMPANIED BY LLOYD GRABLE, DIRECTOR OF PERSONNEL AND JOHN CHO, ASSISTANT GENERAL COUNSEL FOR LEGISLATION

Mr. ALLNUTT. If you would like, Madam Chairwoman, I will try to summarize my statement—I know that the committee is on a short deadline—if you want to proceed that way.

Mrs. SCHROEDER. We'd be delighted.

Mr. ALLNUTT. The Administration does place very high priority on creating a Department of Energy to give the Government a coherent structure for implementing the policy and program that you'll all be focusing on over the next few months, as it comes forward to the Congress this week.

Since the Department of Energy will be the first new department in a decade, it is important that the Congress consider the legislation very carefully, and make sure that it will provide the continuing authority that a permanent department should have, and that it will have adequate safeguards on that authority.

We appreciate very much this subcommittee's role in taking the matter up in this manner, to review the legislation concurrently with the Government Operations Committee and provide your advice to them.

I know you're on a short deadline. We'll try to respond to everything you want us to here today, and if there's anything we can't respond to we'll certainly try to be a little quicker than agencies usually are in getting answers for the record back to you this afternoon or tomorrow.

I will start summarizing on page 2, starting first with section 607. The statement is a little hard to summarize, because it is like a tour with "gun and camera" through the legislation, picking out special provisions that relate, as a number of them do, to personnel administration. So, I'll have to summarize each one rather than summarize in total.

First, let me start with section 607. The Secretary is to employ all persons in the Department in accordance with the civil service laws, with the exception of 600 of the scientific, engineering, professional, and administrative personnel who may be compensated up to the GS–18 rate and separate from the civil service system.

As you know, the entire ERDA employee workforce is currently exempted from civil service. The bill would bring an end to that exemption and bring those ERDA employees into the civil service system with the exception of 600, some of whom would be from ERDA and some from the other constituent parts of DOE.

These 600 would be exempted in order to give the flexibility at the key management levels for maintaining a hard-hitting team to drive what are really going to be complex and varied programs. Given the critical national importance of energy, DOE needs to be able to do that, in the view of the Administration.

And, the statement points out, this exemption is patterned after those that have been used successfully at NASA and the Atomic Energy Commission and ERDA.

Section 608 authorizes positions for 14 additional officers at level 4 and 5 of the executive schedule, and the additional 150 positions in GS–16, 17, and 18.

The Department's supervisory positions—executive level positions—are, obviously, vital positions in the direct operations of the Department. The proposed legislation would provide a total of 32. You have to kind of pick through the bill to get all of those, but there are 32, which should be compared to 42 presently authorized for the constituent agencies that are coming into the Department of Energy.

Eighteen of the thirty-two positions are assigned specifically by the legislation, leaving flexibility in the Secretary to determine the utilization of the other fourteen. In my view it is an important kind of flexibility to have—for any department to have—over time, as priorities change and programs change, to have the ability to deal with these positions in that way.

The 150 supergrade positions, coupled with the exemption authority of section 607, I think, should be adequate to get the Department started, and does allow for some growth.

As my statement points out, depending on how you count, there are about 700 positions currently authorized to the agencies coming into the Department; so this leaves, roughly, 50 additional positions, which we believe is adequate, particularly in view of the fact that over the first couple of years it's anticipated there will be some savings of supergrade positions because of the consolidation.

Section 611 authorizes the Secretary to utilize the services of volunteers. I know that this provision has caused some concern. I think the best way to view that authority is as a standby authority for use in emergencies or limited circumstances. There is no plan to go into some massive nationwide volunteer program.

Section 612 authorizes the detail of armed services uniformed personnel to the Department of Energy. This authority provides the Department with the opportunity of providing on detail these skilled military personnel who have experience. A number of agencies and departments have that authority, including ERDA.

At ERDA most of the military officers who are detailed are presently working on the nuclear weapons part of the ERDA program. As you know, the Department of Energy will continue responsibility for the nuclear weapons testing and production for the Department of Defense.

But, in addition, I think it's important to have the authority to use military personnel in those cases in the energy fields where they can particularly be of assistance to the Department of Energy.

In my view there is also considerable advantage back to the Department of Defense, for those officers who, having learned, for example, about military construction in their military jobs, to learn energy conservation while in the Department of Energy, and then to take that knowledge back to the Department of Defense to be a user for the Government of that energy knowledge.

The Secretary is provided authority under section 614 to enter into and perform contracts, leases, grants, and so forth. Turning over to page 6 now, that authority is subject to, really, a host of other Federal statutes and executive branch requirements, including the Federal Property and Administrative Services Act and other statutes that exist, limiting contractual authoriy with the various executive branch regulations, directives, and so forth.

Section 614 does not authorize securing personal services in a way that would be contrary to the civil service laws. And it is not the intent of section 614 to provide authority to secure the services of the personnel on a contractual basis at the expense of adversely affecting normal Federal employment.

Section 706 deals with the authority of OMB to make miscellaneous transfers and other transfers of authorities, records, personnel, and so forth.

The question has been raised about the role of the Civil Service Commission in those kinds of transfers where personnel are concerned; and, clearly, where there was that kind of concern, there would be consulting with the Civil Service Commission.

Section 401 establishes a Board of Hearings and Appeals within the Department; 401(c) speaks to the authority of each member of that Board to appoint his own staff, to be the selection official for the staff, rather than have the Secretary of the Department or the Chairman of the Board appoint personal staff.

This authorization does not create a separate personnel system. It is subject to the provisions of section 607, putting everyone under civil service.

Section 622 authorizes the establishment of a working capital fund. In the event such a fund is created, and in the event personnel pay into that fund, they would have to be personnel hired under the system of section 607, the civil service system. This is, again, not a separate public employee system under the bill.

The subcommittee has raised the question of the amendment of the Presidential order of succession, provision in title 3. And the subcommittee is right. The bill is wrong in the sense that the Secretary of Energy should be put in that order. He or she would fill in last in that order. We would support an amendment of the bill for that purpose.

This completes my statement. I've kind of hustled through a lot of somewhat unrelated provisions.

There is an attachment to the statement that deals in somewhat more detail with the provisions of substance the staff raised, and we'd be glad to discuss that or answer any questions you might have.

[The prepared statement and attachment follow:]

PREPARED STATEMENT OF ROBERT F. ALLNUTT, ACTING ASSISTANT ADMINISTRATOR FOR ADMINISTRATION, ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Madam Chairwoman and members of the subcommittee, I am pleased to have this opportunity, on behalf of Dr. Schlesinger, to discuss with the committee the personnel related provisions of H.R. 4263 and H.R. 4806, bills to create the Department of Energy.

As President Carter said in proposing this legislation, a basic purpose is to clear away existing inefficiency, fragmentation and somewhat poor coordination of government activities dealing with the energy problem, and to replace these conditions with a vigorous and well-coordinated national energy program and organization. The legislation is designed to provide a rational organizational framework within which energy programs can be carried out, and with respect to personnel matters, it is specifically drafted to enable the Secretary to utilize the Department's human resources with maximum effectiveness, flexibility, and with full regard to the importance of maintaining a competent, fairly treated, and dedicated staff.

I will highlight some of the specific provisions in the legislation which relate to the utilization of personnel in the Department, and which I understand are of special interest to the subcommittee. I am also submitting supplemental material in response to the subcommittee staff's request for detailed clarification of the intent of several provisions. You may wish to include this material in the hearing record.

First, let me turn to section 607, which provides the basic employment authority for the Department. The Secretary is to employ all persons in the Department in accordance with the Civil Service laws, with the exception of 600 of the scientific, engineering, professional, and administrative personnel who may be employed without regard to such laws at salaries up to the rate for grade 18 of the General Schedule. As you know, the entire ERDA employee workforce is exempt from the Civil Service System. Section 607 would bring an end to this exemption, and place all but 600 DOE employees within the Civil Service System. These 600 employees would be exempted in order to ensure that DOE could shape, deploy and maintain an effective, hard-hitting management team to drive its varied, complex programs. Given the critical national importance of energy, DOE needs to be able to continue for its existing key managerial workforce the flexibility and quick response in recruiting, assigning and using top quality men and women to manage energy programs, many of which have a high technological content. This exemption is patterned after the successful experience of NASA, AEC and ERDA utilizing such authority to employ nonpolitical, key scientific and professional managers. The exemption will be used for covering the current managerial and professional key personnel and for continuing to obtain the best talent that is available nationally, and will also allow the Department to staff short-term projects with known beginning and ending dates that entail new technologies which need to be exploited quickly

when their promise is assured. It should be noted that the exemption will be used for employing persons at varying salary levels. The Department will be better able to fulfill urgent needs for technological and managerial expertise with this exemption authority, and we view it as highly important.

Section 608 authorizes positions for not more than 14 additional officers at level IV and V of the executive salary schedule of title 5 of the United States Code, and establishes up to 150 additional positions to be placed in GS–16, 17, and 18.

The Department's executive level positions—levels I–V—are vital positions needed to direct operations, programs, and policy-formulation in DOE. The proposed legislation provides for a total of 32 such positions. This should be compared with the 42 in ERDA, FEA, FPC, and the other components of DOE. Eighteen of these thirty-two positions are assigned to specific functions by the legislation itself, leaving fourteen available to the Secretary for his determination as to the most appropriate utilization. The Secretary should be afforded discretion in the allocation of these vital resources, especially in view of the evolving nature of the energy problem and the long-term nature of a Department. Successful use of such authority has precedent in the operations of ERDA, FEA, and other agencies.

The authorization of 150 supergrade positions, coupled with the exemption authority of section 607 appears adequate at this time to accommodate the Department's supergrade or supergrade equivalent employees. There are approximately 700 employees in the range of GS–16 through 18 presently assigned to the agencies being consolidated to form the Department. Although the authorization of 750 employees would allow in the future only a limited increase, it would be anticipated that some existing supergrades could be redeployed to meet expected program growth in such areas as conservation, environment, energy data, leasing, and other changing needs.

Under 611 the Secretary is authorized to utilize the services of volunteers to further the mission of the Department. This authority perhaps can be best understood as a standby authority for use in emergencies or in very specialized circumstances where a particular program or project can be determined to be best carried out by such individuals such as a local community effort. For the protection of the public, volunteers that are utilized would be considered Federal employees for purposes of tort claims and for conflict-of-interest restrictions, volunteers would also be required to file statements regarding their financial interests.

Section 612 authorizes the Secretary to arrange for Armed Forces personnel to be detailed to the Department to perform functions of the Department. While assigned to the Department, the military personnel would be under the control of the Secretary of Energy. However, the military individual's rank or grade or other military benefits would be unaffected by his or her assignment to the Department of Energy.

In short, this authority provides the Department with the opportunity to obtain, on detail, highly skilled military personnel with unique experience. The AEC long had such authority and had good experience under it. Essentially similar authority is found in section 106(c) of the Energy Reorganization Act of 1974, the act that created ERDA. Under the existing authority, most Armed Forces personnel assigned to ERDA are used in areas of defense-related research, development and production. The Department will assume ERDA's responsibilities for nuclear weapons development and other defense activities. Further, with the energy problems becoming increasingly critical, it is highly desirable for the Secretary to be able to utilize the special skills of Armed Services personnel in connection with any of the Department's functions as he may find desirable or necessary. This provides direct assistance to DOE. Additionally, when such personnel return to DOD they provide a direct means of transferring energy-related technology to the beneficial use of the Armed Forces, for example in energy conservation.

The Secretary is provided authority under section 614 to enter into and perform such contracts, leases, grants, cooperative agreements and similar transactions with public agencies and private organizations and persons as he deems necessary or appropriate to carry out his functions.

While section 107(a) of the Energy Reorganization Act of 1974 contains generally equivalent authority in connection with the conduct of research and development activities, section 614 of the proposed legislation would assure that

as a minimum the Secretary will have the contractual and other authority of that section to carry out the Department's functions, including those transferred to the Department from agencies other than ERDA. The broader coverage of section 614 provides consistent contractual authority for all Department of Energy activities. The basic authority of section 614 is subject to a host of Federal statutes and executive branch requirements, including the Federal Property and Administrative Services Act, various labor and small business laws, and executive directives.

Thus, section 614 does not authorize securing personal services which would be contrary to the civil service laws. In other words, it is not the intent of section 614 to provide authority to secure the services of personnel on a contractual basis at the expense of adversely impacting normal Federal employment.

Section 706 directs the Director of the Office of Management and Budget to make the necessary determinations involved in the transferring of functions under this act and to consult with the secretary in the process. It is my understanding that this provision is necessary for administrative matters and to enable the OMB to direct certain transfer activities, including the transfer of personnel. Consultation with the Civil Service Commission, as necessary, on any personnel matters would certainly be appropriate.

Section 401 establishes within the Department a Board of Hearings and Appeals which has several functions, including serving as an independent review authority. Section 401(c) authorizes each member of the Board to select and supervise personnel for his personal staff. It is the intent of section 401(c) to help assure the independence of operation of the Board members by making it explicit that Board members themselves are the selecting officials for their respective staffs. This authorization to select does not create a personnel system separate from that of the Department. The personnel system under which employees of the Board would be employed would be the same as that for the rest of the Department.

Section 622 authorizes the establishment of a working capital fund without fiscal year limitation for the necessary expenses involved in the operation of common administrative services. The purpose of a working capital fund is to permit economies to be achieved by mass purchasing and centralization of common administrative services. The use of working capital funds is common among the large Government agencies. The provisions of civil service rules and regulations would be controlling if personnel were paid out of this fund. Thus the fund does not create another category of Federal employees in the Department.

A question has been raised by this subcommittee with respect to the need for including a provision in the legislation amending 3 U.S.C. 19(d), providing for the Secretary of Energy's place in the order of Presidential succession. To treat the Secretary of Energy similarly to other Cabinet heads, Congress may wish to include the Secretary of Energy in the line of Presidential succession by amending 3 U.S.C. 19(d).

Madam Chairwoman, this concludes my prepared statement, I would only make the final observation that the personnel provisions for this legislation have been drafted with the goal of carefully balancing the needs of the Department for effective personnel support with the needs of applicants and employees for fair and equitable treatment and job satisfaction. The success of the Department will in large measure depend on the individual and collective contributions of each of its employees, and will depend on how effectively the Secretary is able to utilize the vital personnel resources available to him. We hope that the personnel authorities as they have been presented to you will make the extremely difficult task of the Secretary and of all Department employees more readily achievable.

I would be glad to answer any questions you may have.

ATTACHMENT

SECTION 602

Question. Since the committee is working on a financial disclosure bill, as is the President, should this section be eliminated, pending these other developments, so as not to be inconsistent?

Answer. To instill public confidence in the decisions of the Department of Energy, it is important for the public to have some sort of mechanism of assuring that Department employees do not have conflicting financial interests when making decisions or participating in the decisionmaking process. Accordingly, it was determined necessary for the bill to include a provision for financial disclosure. However, ad hoc legislative treatment of this subject does have the disadvantages of possible inconsistencies and singling out one group of employees over others for special treatment. The judgment which Congress should make is whether it is better to go forward with the inclusion of the financial disclosure provision in this bill, which would be subject to being overridden by any future general legislation—either at the recommendation of the President or at the initiative of the Congress—or eliminate the provision from this bill and await general legislation. In our view a financial disclosure provision is of such crtical importance that the provision should remain in the bill pending more general action by the Congress.

SECTIONS 603 AND 607

Question. If read together, is there confusion with regard to the extent to which Civil Service regulations apply to Departmental personnel?

Answer. Section 603 grants to the Secretary of Energy the authority to prescribe necessary policies, standards, criteria, procedures, rules and regulations. Section 607 permits the Secretary to appoint and fix the salary for the Department's employees in accordance with the Civil Service laws. However, the Secretary under this section may appoint up to 600 scientific, engineering, professional and administrative personnel without regard to such laws, although the salaries may not exceed the rate prescribed for grade 18 of the General Schedule.

We interpret the general authority of the Secretary to prescribe rules and regulations under section 603 to be subject in the personnel area to the requirement specified in section 607 requiring adherence to the Civil Service laws. Since the Civil Service laws place jurisdiction in the Civil Service Commission to administer those laws, the Civil Service regulations would apply to Departmental personnel. An exception would be with respect to the 600 exempt employees provided for in the bill.

SECTIONS 604–606

Question. Are these sectons needed n view of the President's new rorganization authority? Is there a problem regarding the treatment of Civil Service employees under these sections?

Answer. Section 604 provides the Secretary with general delegational authority. In addition, it authorizes inter-departmental delegations of authority by the Secretary. Section 605 authorizes the Secretary to establish, change, or discontinue any state, regional or other field office. Section 606 grants similar authority to the Secretary with respect to organizational units or components within the Department.

Section 604 would make clear the Secretary's authority to delegate to others the carrying out of any function (other than those specifically reserved to him by law). Many actions of the Department affecting the public would of necessity be made by other officials. A clear line of authority from the Secretary to the employee, starting with the Secretary's power to delegate that authority, is essential for legal efficacy.

Sections 605 and 606 deal with internal Department organization and reorganization. On the other hand, the new reorganization legislation deals mainly with interagency type of transfer. Moreover, the reorganization legislation has a 3-year life span. Thus, there is a need for separate permanent authority in the Secretary to organize the Department in the most efficient and effective way as changes develop in the energy situation. This is a normal managerial power necessary to problem solving. This authority, of course, does not extend to offices and units specifically established by law.

Turning to the second part of the question, employees affected by any reorganization would have the normal rights accorded to employees under the Civil Service system. Generally speaking, these rights would include salary retention rights, where appropriate, bumping rights, etc.

SECTION 613

Question. Does this section conflict with the Intergovernmental Personnel Act? Shouldn't the IPA apply?

Answer. This Section authorizes the Secretary of Energy to utilize the services and facilities of any person or organization, including any Federal, state or local government. It also authorizes the Secretary to provide srevices and facilities to any person or organization. The Intergovernmental Personnel Act (5 U.S.C. 3371, et seq.), however, is limited in its application to states and local governments and to universities and applies only to the use of personnel.

Authority somewhat similar to Section 613 is found in the Atomic Energy Act (section 161f). Section 106(f) of the Energy Reorganization Act authorizes ERDA to utilize employees of other agencies and departments of the Federal Government. Section 613 of the bill would assure the continued availability of the authority to use the services, facilities and personnel of other organizations where circumstances warrant.

SECTION 702

Question. Is there a problem with providing only one year in this section? Isn't there two years of protection already in the Code?

Answer. Section 702 provides generally that employees transferred into the Department of Energy will not be separated or reduced in grade or compensation for one year.

Under general Civil Service laws, employees are generally given protection from loss of pay when reduced in grade for a period of two years (5 U.S.C. 5337). To qualify for the protection, however, the employee must meet several requirements including service in the grade from which reduced for a period of at least two years and continuation in the same agency without break in service.

Section 702 is thus broader and affords greater protection during the first year after enactment since it prevents separations or reductions in grade. A similar provision was successfully used in the Energy Reorganization Act of 1974. The Savings provisions of 5 U.S.C. 5337 would, of course, be applicable after the initial one year period.

SECTION 703

Question. Why should executives be treated differently with regard to save pay provisions? Doesn't this conflict with provisions in other statutes?

Answer. Under the bill, an Executive Schedule employee does not have any job retention rights. Accordingly, the executive is without protection unless he is reappointed to another position having comparable duties to the previous position. In that case, under Section 703, he cannot suffer a loss in salary for the duration of his services in the new position. Since the Executive's new duties must be comparable to the old to be entitled to the pay saving provision of Section 703, the pay saving provision seems equitable. This is not a novel provision but is similar to the provision in the act which established the Department of Transportation. 49 U.S.C. 1657(i).

We are not aware of any conflict that this provision creates with other statutes.

Mrs. SCHROEDER. Thank you, very much. We appreciate that, and I am sitting here on a stack of questions "yea" tall, so I'm not quite sure how to proceed at this point. But let me first see if some of the other members have some questions, and see what we do with all the ones that are left over.

Congressman Lehman?

Mr. LEHMAN. Just briefly, I am also the chairman of the Subcommittee on Census and Population of which Mrs. Schroeder was the previous chairperson. We have general oversight of governmental data collection—and people are data.

I just wonder—in terms of numbers with the new Department of Energy—what kind of data will you be able to provide us in actual numbers of transfers, and also any connecting information as to other information you have oversight of in regard to the collection of general information on the energy situation, both in supply and demand, resources, and so forth.

What I'm probably trying to lead up to is in terms of types of hearings, we could hold in regard to the collection of Government statistics and data that are similar to today's in regard to the transfer of people and the reorganization of the energy field?

Mr. ALLNUTT. Let me respond to the first part.

Mr. LEHMAN. It's a broad question.

Mr. ALLNUTT. We do have data, not necessarily the most accurate in the world, on the transfer of people and functions into the Department, which we have provided.

To the broader question you asked, I would say that I agree with you completely. Once the Department is set up, it does have as an important constituent, the data administration, which is designed to provide the kind of objective and believable data that will have the confidence of the public. As the President mentioned last evening, and as many people on the Hill have, we don't know whose data to believe.

There's an awful lot of data to be gathered and analyzed, not unlike the task of the Bureau of Labor Statistics in the Department of Labor. We'd very much like to have that data for the Administration and for others.

Mr. LEHMAN. But so far the different departments of the Government that have dealt with the energy problem have certainly come up with conflicting information in regard to reserves, consumption, and everything else in the energy field.

As a member, also, of the Budget Committee, the more I explore the way the data is collected on which we base our Federal budget activities, the less credibility I feel that we can give this information.

I think that we need to have any really believable data at this time. Any really believable statistics we're going to have to have in the energy field in order to form this new energy policy that the President is working on at this time. Because whatever you do, you're going to have to begin with information that is hard information that the people also can believe in, because if they don't believe it, they're not going to offer the kind of cooperation and support necessary to make any kind of energy policy work.

Mr. ALLNUTT. You're right.

Mr. LEHMAN. That's my propaganda for today.

Mr. ALLNUTT. That's well stated. I accept it as your propaganda and adopt it. That is a basic purpose—one basic purpose—of the legislation, to create a separate, independent data administration within the Department, a credible source for the Department and for everyone else.

Mr. LEHMAN. But the first concern is the positioning of people in these departments. And I know how, when, with the first Federal Energy Administration first got started, it was begun as a very emergency, time-limited organization that borrowed a few people from a few departments to just take care of the immediate situation. And, the first thing you know, it had grown out of proportion before anybody knew it.

I'll work with the chairperson so we won't have any overlap.

Mrs. SCHROEDER. Thank you very much.

Congressman Gilman?

Mr. GILMAN. Thank you, Madam Chairman.

Mr. Allnutt, I note that you talk about decreasing the number of top-level positions from, I guess, a number of some 40 or 50 down to 32 in the consolidation process, which I think is certainly credible.

But I note when you get to the middle-executive position you increase from 700 to 750. What about the lower level, also? Is there an increase there? What are the total employees?

Mr. ALLNUTT. The total number of Federal employees involved is in the neighborhood of 20,000, just short of 20,000.

Mr. GILMAN. That's existing in the Energy agency. And what do you propose?

Mr. ALLNUTT. The bill does not authorize more or less; it simply transfers these people into the Department. Dr. Schlesinger has testified before other committees that there's no intention to increase this in a significant way.

The first order of business will be to sort through what the Department has. Obviously, there can be some economies in the total employment, particularly in the support areas of the Department. You have now a number of separate agencies. Each has to have its own support elements, and, over time, there can be economies.

You realize though that positions will be freed up to be used in other ways.

Mr. GILMAN. Well, you're not suggesting any limitation being imposed in this legislation?

Mr. ALLNUT. No; there's no limitation.

Mr. GILMAN. Why did you do that at the top level, and not at the lower level?

Mr. ALLNUTT. By law you have to provide for the executive level and supergrade resources of the agency. The ceiling for the agency in total employment is dealt with in the annual authorization and appropriation process, and is not required in the legislation. So that is not dealt with.

In other words, there would be no executive level force—level 4 or level 5, 1, 2, or 3—unless the bill sets a quota. The bill does not need to set forth other than general hiring authority to provide for the agency total work force.

Mr. GRABLE. That's something, in other words, the Congress will review each year as appropriations come up for the Department of Energy. And it is a process that all——

Mr. GILMAN. When you make your appropriation request, I would assume that you would have to make a demand on the total number of employees for the entire agency.

Mr. GRABLE. That's right.

Mr. GILMAN. What is your proposal?

Mr. ALLNUTT. There is no appropriation request for the Department right now, as opposed to the appropriation request for the individual agencies, ERDA, FEA, and so forth, that are coming into the DOE.

Mr. GILMAN. I'm talking about the new DOE. What would be your proposal for total number of employees?

Mr. ALLNUTT. The proposal for 1978 would be the total of those people transferred in. The background information with the President's message gave a total of 19,767. Now that is the number moved from the various agencies.

Mr. GILMAN. You don't propose to increase that number, at least in your first year of operation?

Mr. ALLNUTT. That is right.

Mr. GILMAN. There are some savings in personnel, I would hope.

Mr. ALLNUTT. That's right, or at least savings in the sense of people being able to be diverted to other work, where there's overlap, from the things they're now doing.

Mr. GRABLE. We really see an upsurge of work in areas like the data administration, conservation, environment and so forth, in which we'll have to redeploy the resources we've acquired to these other increased workloads.

So, we're hoping that within that total we'll have available some that can be redeployed to meet the rise in workload.

Mr. LEHMAN. Would the gentleman yield?

Mr. GILMAN. I would be pleased to.

Mr. LEHMAN. Regarding the 20,000 people being transferred into this new department, could you get me information on how many of those people will actually be doing any kind of data collection and any kind of information gathering that would be of help to you?

Mr. ALLNUTT. Yes.

Mr. GRABLE. We'll do our best. It'll be a little bit rough in the short run here.

Mr. GILMAN. I know that you're suggesting a special financial disclosure section. Why do you feel that the Energy Department needs a special one, in light of the existing Executive Order 11222?

Mr. ALLNUTT. The determination in drafting this legislation, for consideration of Congress, was that Congress and the people would want to be assured that, particularly, those people in the Department who have a regulatory function or a policymaking function were covered by a specific statuatory provision. And that's the reason for the provision in the bill.

If Congress, which as you know, is working on governmentwide conflict provisions, came along later with those provisions and wanted to cancel the one that's in this bill in favor of general governmentwide provisions on that subject, I'm sure that would be fine.

Our feeling was that Congress wouldn't want to move this bill through with no coverage, looking toward coverage later.

Mr. GILMAN. You don't intend to substitute this for the Executive order that's now in existence?

Mr. ALLNUTT. No; this would be in addition to the current Executive order.

Mr. GILMAN. Does this overlap the Executive order in any way?

Mr. ALLNUTT. It does not overlap it so much as it provides a more strict reporting requirement to people who are engaged in the regulatory aspects of the agency.

Mr. GILMAN. Then is this superseding the Executive order?

Mr. ALLNUTT. No; the requirements of the Executive order would also apply.

Mr. GILMAN. Does it conform with it?

Mr. ALLNUTT. No; it is a more strict reporting requirement on people involved in regulatory policymaking.

Mr. CHO. One key difference, I might add, is that this bill provides for public disclosure while under the Executive order disclosure is made only within the Administration.

Mr. GILMAN. In section 611 you apply that section to volunteers, but you don't apply it to uniformed military detailed to the energy section. Can you tell us why?

Mr. ALLNUTT. Let me tell you, if I may, how it works in ERDA today. When a military officer is detailed for a year or whatever period to ERDA, he does, then, comply with the ERDA conflict of interest regulations for that period.

And that would be the plan for handling military officers who were detailed to DOE.

The thought, however, was not to get specifically into that matter in the legislation, because military officers under one provision of law or regulation which can change over time have their own standards they are living with. And if you by law impose a different one, you might get into a position you couldn't live with.

The plan would be to have them conform, assuming that was not inconsistent with what they were obligated to do in the Department of Defense.

Mr. CHO. Can I supplement that?

Insofar as military personnel are concerned, they are Government employees and are already subject to the Federal criminal conflict of interest statute. The conflicts statute would not apply to volunteers who are not employees of the Government. The conflict statutes would apply to them by the bill.

Insofar as the reporting requirement is concerned, presently under the Executive order, the agencies can take care of the military personnel who are assigned to their agencies. In fact, ERDA already covers them.

Mr. GILMAN. Thank you.

The ERDA agency presently permits its employees to have up to a $5,000 investment in projects of the company that they might be with.

Do you intend to continue to permit that sort of an investment?

Mr. ALLNUTT. I'm going to ask John Cho, who understands our conflict provisions better than I do, to elaborate a little bit.

But, basically, the difference is this: ERDA's conflict regulations require reporting of all financial interests, whether above or below $5,000. The significance of the $5,000 level is that it is a level at which sanctions become applicable. Below $5,000, in an administrative way, if, for example, someone who works for me has $1,000 worth of stock in a company, I can determine when I have that report from him that he should not deal with that company.

But that would be the administrative determination, as opposed to an invocation of the criminal statutes. So, for example, contracting officers with any interest are typically ruled out of dealing with those with whom they have an interest. The criminal statute applies at and above $5,000.

John can probably say that better than I can.

Mr. CHO. I think you've done very well.

Mr. GILMAN. I assume, then, you are going to continue that type of regulation?

Mr. ALLNUTT. Yes.

Mr. GILMAN. Then why, if you're going that far, aren't you going to include a revolving door prohibition; or do you not?

FEA has been noted for employing some people and some attorneys from some of the industry——

Mr. ALLNUTT. Let me ask John to respond to that. But do you mean in the ERDA regulations, or in the bill, I'm not sure which——

Mr. GILMAN. I'm talking about the provisions in the bill now.

Mr. ALLNUTT. John, do you want to respond to that?

Mr. CHO. I think the President is considering that problem, Mr. Gilman. In fact, perhaps, it's better left to general regulation of the entire executive branch rather than to ad hoc treatment.

Mr. GILMAN. Well, if I can understand that. If you're refining disclosure, and you feel you could go further on financial disclosure, then why don't you go a little further with this sort of a prohibition?

Mr. CHO. Well, I'm not sure we're going further in the financial disclosure area, unless you say we're applying it to volunteers.

Mr. GILMAN. Well, you're imposing your own financial disclosure section. In light of the fact that there's an Executive order, you feel that you should go a bit further than the Executive order, based upon Mr. Allnutt's statement.

Why not impose some sort of a restriction on the revolving door type of method for prohibiting the exchange?

Mr. CHO. Well, all I can say, Mr. Gilman, is that the President is considering that problem. I think he's issued a draft Executive order.

Mr. GILMAN. But your agency is not making a recommendation?

Mr. CHO. No.

Mr. GILMAN. Have you had any thoughts about that?

Mr. ALLNUTT. No; I think that's correct.

There is in my mind a difference, if by revolving door you mean postgovernment employment. There is more of a reason for uniform Federal pattern there in view of the movement of people between agencies. You can temporarily have yourself barred from something you'll get unbarred from if you go back to another agency. So there is more reason for uniformity here, than the disclosure provisions. That's all.

Mr. GILMAN. Are the disclosure provisions of your agency more stringent than the Executive order disclosure provisions?

Mr. CHO. The Executive order just lays down general guidelines, and each agency is left to implement that. And——

Mr. GILMAN. Well, in your implementation, have you imposed more strict regulations than the general order?

Mr. CHO. Well, I think we're consistent with the Executive order. We are strict in the sense that we require complete disclosure, not only financial interests in the energy field, but all outside financial interest.

Mr. GILMAN. In that sense, then, you've gone a little further than the Executive order.

Mr. CHO. Yes.

Mr. GILMAN. Thank you.

Thank you, Madam Chairman.

Mrs. SCHROEDER. Thank you, Congressman Gilman.

Some of my concerns come out of sections 607 and 608(b), excepting the GS–18—608(b)—and 150 from the GS–16, 17, 18, and I've got several different questions.

Apparently you believe an executive department requires this pool of excepted positions, but in looking at ERDA and NASA, and other agencies, it appears that the excepted positions have been for people who are on specific mission, normally quite scientific.

I'm wondering why you think that the professional and administrative jobs should be excepted jobs when they're not in that scientific area. It seems to me kind of a dangerous precedent.

Mr. ALLNUTT. Let me say a word about that, and Lloyd Grable may want to elaborate.

One approach could be, if the only desire was to look at people in scientific technological jobs, to carve out the exemptions just for them. The National Science Foundation legislation does have that kind of provision.

To me, from terms of considering management of the Department, that can be a very awkward kind of thing to do, and it has caused problems at the NSF. However, of more importance to me, is the fact that when you get into complex kinds of activities the Department of Energy will be involved in, scientists and engineers are very important people, but managers are also.

So, it would be putting undue emphasis on technological content simply to consider those provisions. NASA, which has the exemptions, for example, does not simply apply them to scientists and engineers, but to the entire management structure of that agency—the entire supergrade structure.

ERDA, of course, is a little harder to talk about, because the whole agency has been exempt, not just people in certain categories. But the NASA model, which this bill essentially follows, is that the total management of the agency be exempt, not just the scientists and engineers. I, personally, feel that that's better.

Mrs. SCHROEDER. Why didn't you ask the Civil Service Commission to except the positions, or the President, also, has the authority to do that.

Mr. GRABLE. The Commission's rules and regulations, as I understand them, are quite specific about exceptions. In other words, case type exception basis—they don't really relate to the exception of a managerial group.

Mrs. SCHROEDER. I think that's the point I'm getting to. In other words, I feel it's a very dangerous precedent, because I don't know any agency of government that's going to say they're really dealing with things that aren't complex, and, therefore, they can't have their people under civil service.

I think almost every agency is dealing with a very complex area, and the exceptions which have, traditionally, been very scientific or very technical things; and so when you come in and want a whole executive administrative level accepted, why——

Mr. GRABLE. For the management of large, technical, complex organizations, like the DOE, it also suggests that the success of those agencies in accomplishing their missions—the success of those agencies has been ascribed, in part, to the fact that they did have that sort of exception in managing their affairs.

Mrs. SCHROEDER. The converse of that is you're really saying those agencies are better run than the civil service, and we should exempt everyone.

Mr. GRABLE. I really didn't, of course, know that about the others. All I'm saying is that the management pattern—matter of fact, the exception, in a way—is a kind of model for what the Commission itself and other study groups have said ought to be the treatment for the Federal executive service.

While not exactly the same thing, but the fact of a greater degree of flexibility concerning the managerial positions—the top of the Government structure—has had 20 or 25 years study by various study groups. And the Rockefeller Commission, I think, provides in its recommendations some, if not all, of the kinds of approaches this kind of exemption would give to the Department of Energy.

Mrs. SCHROEDER. Well, we've never had Congress look at that approach. It's been around, and we haven't gone down that path, and we see a dangerous thing of starting to exempt it through legislation.

Let me ask, what if this committee were to do something such as allowing the excepting authority to lie with the Secretary for a very specific length of time, like 240 days or something, and then have it revert to the Civil Service Commission?

Mr. GRABLE. I can respond. A limitation of that sort would not really meet what we believe it should meet in terms of managing for any particular period of time. The provision itself is for the beginning and continuing management of the department, not for any short-range portion. This is considered to be a long-range matter.

Mr. ALLNUTT. We wouldn't want your committee to get the impression that we're talking about this as a way just to get through the transition to DOF. I think there are other provisions in the bill, including the salary savings provision, that take care of that. I'm really talking about the long-term continuing need for the Department.

Mrs. SCHROEDER. What if we transferred the same authority for supergrades to the Department of Energy as is currently with the agencies—being transferred to it which would mean we give an authorization for 661? Could you deal with that?

Mr. ALLNUTT. Obviously, the department will deal with whatever its ceilings are. What that would allow is no room for growth, the kind that we think will be necessary to implement the programs that the President has recommended.

Mrs. SCHROEDER. Except that you can always come back and ask for additional.

Mr. ALLNUTT. That's correct.

Mr. GRABLE. We could, but I think the track record for getting additional executive positions is very poor.

Mrs. SCHROEDER. Let me ask for one minor thing. It appears that the functions of one of the executive level positions in the Department of the Interior has been abolished, and yet you don't abolish that executive level position in the Department of the Interior. Was that an oversight?

Mr. ALLNUTT. I'm not familiar with that.

Mr. GRABLE. All executive schedule positions of constituent agencies are abolished by this bill.

Mrs. SCHROEDER. So that probably was an oversight, then.

Let me ask about the volunteers. Who is going to supervise the volunteers? What numbers are you projecting you will have? Who do you think these people are going to be?

Mr. ALLNUTT. There really isn't any plan for on the day the Department starts to go out for volunteers in a certain field, in a certain area, or anything of that sort. It's more like a kind of continuing authority we feel the Department should have.

As you know, the bill also provides continuing authority for buying property. It's not that we have some specific real property we want to buy.

Although there's been talk of various volunteer activities, I can tell you that there isn't a national volunteer plan.

Mrs. SCHROEDER. So you're not going to have an energy corps like the Peace Corps?

Mr. ALLNUTT. No; there's no plan for that. I can't tell you there's a plan to go ask for one volunteer. There really is not a planned volunteer activity. It's though it could be a useful thing to have, that agencies do need the authority to accept that kind of help in a given situation. We can imagine situations in which it might be useful, not to have to, at the time we have both the need and the existence of volunteers, to then come seek legislation which would take months or years.

Mrs. SCHROEDER. So you have no projection as to numbers, or whether military people would supervise them or civilians would supervise them, or whether you'd send them overseas?

Mr. ALLNUTT. I, personally, can't imagine a situation in which they would be sent overseas, but I don't know who they are or why they would be taken as volunteers.

It really is a continuing authority to use volunteers if the need arises and there are volunteers who want to volunteer for whatever there is.

Mrs. SCHROEDER. What if the petroleum industry or coal industry or somebody decided to use the volunteers?

Mr. ALLNUTT. Well, if there was a circumstance where—take the oil industry, people who were employed by the oil industry with their salary still paid at home—if there were some legitimate reason for accepting that help, this would give authority to do that.

Those volunteers would be subjected, however, to the conflicts provision that we were discussing earlier. It wouldn't be kind of a license to steal, or to come in and look through the files and go home. It would have to be a very controlled situation, and would be subject to the conflict regulations of the agency.

Mrs. SCHROEDER. But that revolving door thing, that concerns me, too, as to where the volunteers could then go for later jobs.

Mr. ALLNUTT. Obviously, the concept of a volunteer would be a temporary measure, and they would, presumably, whoever it was, would go back to whatever he or she had been doing.

Mrs. SCHROEDER. Can they be reimbursed under section 611(b), if you read the act to allow that which permits incidental expenses?

Mr. ALLNUTT. They can be reimbursed for expenses. I think the concept of the volunteer would mean that they were not being paid a salary.

Mrs. SCHROEDER. So, you really don' tknow how much these volunteers might cost since you have no projection of where they might be stationed.

Mr. ALLNUTT. That's right. If there was a use of volunteers, it would be subject to the authorization of sums for that purpose and the appropriation of funds through the annual process.

Mrs. SCHROEDER. Let me ask, in sections 615 and 617, it says that the Secretary of Energy will be allowed to build, lease, buy, and maintain employee quarters, mess halls, and things like that.

Do you intend those sections to give more benefits to your employees than those available to other employees. I mean, would volunteers be allowed to use those facilities and so forth?

Mr. ALLNUTT. The answer to the first part of the question is no, there's no intent to give benefits that wouldn't be the normal kind of thing to be expected. If there's to be a facility somewhere—and if there's not, for example, a place to eat—typically we provide a cafeteria for that purpose. I'll have to look at the section to see if you could use it for volunteer housing. I think the answer is no.

Mrs. SCHROEDER. I don't think it specifically excludes it.

Mr. GRABLE. It would have to be, I think, a circumstance where the individual, either employees, volunteers, or military, were in a situation where there's nothing else for them to sustain them other than what the Government's authorized to be built there.

Mrs. SCHROEDER. Well, my concern is, as I read title 5 of the United States Code, it says that they do permit certain benefits from all areas. I wonder why that isn't adequate. What are sections 615 and 617 giving you that you don't already have?

Mr. GRABLE. We have to build the test site or the building. That's what 615 is all about—building laboratories.

Mrs. SCHROEDER. I think you're already allowed to do that if you're in a remote area.

Mr. CHO. You're talking about title 5 of the existing Code? I haven't looked at all of title 5 for quite a while, but I believe it's fairly limited.

I think there are some circumstances where you need the kind of facilities for the health and welfare of employees that we're talking about in 617 of the bill that are not provided in title 5.

Mrs. SCHROEDER. You might look at that, because I really see it as being redundant.

Mr. ALLNUTT. Could I just respond to the last part of your question?

Mrs. SCHROEDER. Sure.

Mr. ALLNUTT. As I read section 617, it says the facilities we are talking about are for employees, which volunteers are not, except for those limited things like workmen's compensation spelled out in section 611.

Mr. GILMAN. Mr. Allnutt, under the administrative provision, section 613 of the bill, permits the Secretary of Energy to give services and personnel, public and private organizations and agencies in the United States and internationally.

Why wouldn't the intergovernmental personnel fill these needs? I assume it's not your intent to override that act.

Mr. ALLNUTT. No; that's not the intent. I think part of the problem we get in a section like 613 is the kind of thing you frequently get in statutes where you have a whole lot of words modifying a whole lot of other words.

The Intergovernmental Personnel Act is adequate authority for exchange between units where there is a determination for mutual benefit, say to the State and Federal agency that are sending employees one way or the other for some length of time.

But there's no intent to override that act or express any displeasure with it. The provision, in dealing with services, equipment, personnel, and so forth, and in all the places they might be, has some redundancy with that act.

Mr. GILMAN. Is there some special need that this new agency will have that IPA couldn't fulfill?

Mr. ALLNUTT. Not that I'm aware of in the sense that the IPA looks to exchange or to a person moving from one government to another where there's mutual benefit; there may be cases where there was not mutual benefit and you need a different authority from the IPA, as I understand IPA.

There's also other purposes in section 613. For example, use of equipment, that IPA, obviously, doesn't deal with, so you need a provision for matters other than personnel. It's not simply the personnel provision that controls.

Mr. CHO. IPA is limited to State and local governments and higher educational institutions, and does not deal with any other organizations from which the new department might need services, equipment, or facilities.

Mr. GILMAN. What's the purpose of borrowing foreign nationals, personnel of other nations?

Mr. ALLNUTT. Again, this is not unlike the volunteer question. It's thought that if and when the situation arises where, for some reason, a foreign national would be usefully borrowed for some purpose, the authority would be here to do it.

Similarly, section 613(b) allows things to go the other way. It will allow the Department of Energy to lend or detail someone to work for, say, the International Energy Agency on the question of nuclear safeguards for a period of time. It would be mutually agreed to by all concerned.

So, what you are looking for is a situation where there's some special expertise, one place or the other, that could be useful to the other party.

Mr. GILMAN. Would it be the intention of this agency to do that without obtaining a clearance, say, from the State Department, or is there some provision in there that would require the agreement of the State Department regarding utilization of nationals?

Mr. ALLNUTT. We at ERDA have active exchange programs now, including training for a variety of purposes, and we work closely with the State Department. There is no intention here to "back door" foreign policy.

The State Department doesn't get involved with each transaction, each individual person coming to this country, through the visa process, or leaving. But it's more of a general coordination than a case-by-case control, much as we work with State the on application of foreign policy, in a particular case.

Mr. GILMAN. Would it be your intention to take volunteers or uniformed military personnel and take them overseas?

Mr. ALLNUTT. I'd hate to say that would never happen. But, unlike the provision we're talking about here, where we might well want a DOE employee to go abroad for some purpose; in case of volunteers or military officers there's certainly no general intention to use them in that way. That's not the kind of thing we have in mind.

I'd hate to say we'd never do that, but I certainly don't have any intention or and knowledge of any plan to collect up a bunch of volunteers and send them abroad. I can't imagine what we'd be doing it for. ERDA has a total of five civil servants, stationed abroad.

Mr. GILMAN. What are they doing?

Mr. ALLNUTT. They're in offices in Europe and Japan where they work with the International Energy Agency, for example, or work with activities, for example, in Brussels or with NATO, depending on what's happening in the country they're in. So, it's a kind of contact between ERDA and the activities in that country.

I just don't think we need to send a bunch of people abroad.

Mr. GILMAN. Are they working on research, or are they in a reporting capacity?

Mr. ALLNUTT. They're typically in the mode of information exchange.

Mr. GRABLE. A research liason, because of the nature of the International Energy Agency.

Mr. ALLNUTT. Mainly in the nuclear end of the business.

Mr. GILMAN. I would assume that it's your intention to utilize IPA wherever possible, and utilize your new positions here only where IPA does not apply. Is that your intent?

Mr. ALLNUTT. Yes.

Mr. GILMAN. Thank you.

Thank you, Madam Chairman.

Mrs. SCHROEDER. Thank you, Congressman Gilman.

I have some more questions about the uniformed service personnel.

Do you have any idea how many we are using, or what they will be doing specifically? Why you have a need for uniformed personnel?

Mr. ALLNUTT. We have 35 now in ERDA, to give you the order of magnitude we're talking about, most of whom are involved in the nuclear weapons end of ERDA's activities.

And I would assume that in the Department of Energy the needs would be generally similar. The ERDA level has been constant relative to what it was 2 years ago in terms of the Atomic Energy Commission. Long before my time, I believe it's been as high as 40, but it's 25 or 28 now. I think that sort of level would probably—depending on the level of nuclear weapons business—be a relatively continuing need. The others are much more case-by-case kind of determination that a certain person is particularly well qualified to do a job.

Or, as I was trying to say in the prepared statement, I believe there are opportunities for defense people to learn something at the Department of Energy, and take that back to the Defense Department to the benefit of everyone, particularly in the area of energy conservation.

Mr. GRABLE. One of the aims of the Department is to make maximum utilization of what already exists in the Federal Government,

and not duplicate. It often happens that either a civilian employee or a military member has something we need in the energy business. Many of these are short-term assignments.

Mr. ALLNUTT. We also have 20 civilian Federal employees of other agencies currently on detail to ERDA.

Mr. GRABLE. People of HUD, DOD or DOT, so we have a fair amount of movement continuously among the Federal Government in the energy filed.

Mrs. SCHROEDER. Will these people be outside the manpower limits?

Mr. ALLNUTT. The provision, as the bill reads, would exclude them from the ceilings.

Mrs. SCHROEDER. And you assume they would be active, and not retired.

Mr. GRABLE. These are active duty people.

Mrs. SCHROEDER. I'm a little concerned about section 702 and section 703.

Section 702 says a full-time employee shall not be "separated or reduced in grade or compensation for 1 year after the date of enactment" of the act transferring function, whereas 703 says that any executive level employee who is with FEA, ERDA, FEC, or the Department of the Interior, shall never be reduced in rank. Why are executive level employees being treated differently from civil service employees?

Mr. ALLNUT. They're being treated differently in two ways, as I understand those provisions.

First of all, the people who are nonexecutive level, the day the Department comes into being, are all transferred, and then have the 1-year protection.

People who are in the executive level, unless they are picked up by the Department, lose their jobs the day the Department comes into being.

And there is, on the other hand, protection for as long as they are in that particular job or a comparable position. They would stay at that level, which currently, of course, in the case of level 5, means GS–18 pay. Level 4's—there are very few around anymore—would have a somewhat higher rate. For 3's and 2's, there won't be a comparable position.

So, I guess we're really talking about level 4's and 5's and thus talking about a few people.

Mrs. SCHROEDER. Do you really feel that giving them lifetime jobs, where they will take them, is justified?

Mr. ALLNUT. It's not a lifetime job. It's saying that as long as they continue to perform the same or a closely similar job, they keep that salary. If they're hired for a different job in the Department of Energy or if they change jobs once in the Department of Energy, they would not.

Of course, if they're not hired at all the section doesn't apply. It's just if they stay; say, if you're making x at an executive level, and you're transferred to do that same job or something closely similar to it, you keep that salary.

Mrs. SCHROEDER We don't allow anyone else to ever have that kind of privilege.

Mr. ALLNUT. This bill would not give anyone else the lifetime salary in the same position. However, it does have other protections in the sense of 2-year salary retention beyond the 1 year in case of reduction of force and other protections in the civil service nonexecutive levels.

Mr. CHO. Madam Chairperson, there is precedent for this particular provision, I might add. The Department of Transportation Act contains that identical provision.

Mrs. SCHROEDER. I think I just have some question as to why we should give that favored treatment.

Section 302(b) allows the Secretary of Energy to retransfer certain projects back to the Secretary of the Interior. Do you have any idea how many employees would be affected by the transfer and retransfer?

Mr. ALLNUT. Can I respond once more to your last point?

I'm not sure that I agree with you that it's a special privilege. If a civil servant—not at the executive level—say from the Federal Power Commission, transfers into the Department of Energy and continues to do the same job, he or she would, unless the job were misclassified or something, keep that salary or whatever happens later in terms of raises as long as he or she is performing that job. I think that's all the provision says about executive level.

So, I'm not sure there's really a difference. If the executive level person changes jobs, then he or she would go to the salaried rate of the new job. If a civil servant changes jobs, he would go to that new salary. So, I don't really think there's a difference, in that sense, one way or the other.

Now, you were asking about the——

Mrs. SCHROEDER. Section 302(b).

Mr. ALLNUTT. My understanding is that that's the provision for people——

Mrs. SCHROEDER. It allows the Secretary of Energy to have things transferred to him, but it also gives him the authority to retransfer them back out.

Mr. ALLNUTT. All right, it's my understanding that there are about 10 people whom this might affect. The intention is to reach agreement before the Department comes into effect—what it would do—so that there would not be transfer or retransfer.

I was not party to this particular part of the act, but I read it to mean that no agreement was reached by the time the bill was written on what was the most effective way and the fair way for those employees, and that will be worked out before we transfer people one way then another.

Mrs. SCHROEDER. Thank you very much.

Counsel, do you have any questions?

Mr. KNULL. I've got one on section 28 of the FEA act.

Section 704 of the bill says that FEA employees shall have up to 120 days after the effective date unless the President declares otherwise, to decide whether to go back to their old agencies. Why did you pick that 120- or 240-day period?

Mr. ALLNUTT. The basic point there is that there are people in the FEA who went into it with the guarantee of the ability to go back from whence they came, back to the time FEA was set up.

There's no particular magic to 120 days. I think the thought is that sooner or later people should decide, not have the permanent right to go back. So, it would give them a period of reasonable notice that if

they intended to go back to IRS or the other agency they came from, they should do that, which would be 120 days after the effective date of the act, which, in total, means notice of about half a year from the passage of the act.

Mr. KNULL. Wouldn't more appropriate date be December 31 of this year when FEA would expire by its own terms?

Mr. ALLNUTT. We may have a law before that time.

Mr. KNULL. But wouldn't that be a good date just to place in this bill so that whether or not the bill is enacted by then, employees would have notice.

Mr. GRABLE. It would be rough to have a date like that if we didn't have a bill, because that would leave everybody not knowing where they're going to go. That's why tying it into the future of the Department just seemed appropriate.

Mr. KNULL. But there would be no FEA after December 31, 1977.

Mr. ALLNUTT. Except if, by some reason, this bill doesn't pass I assume the Administration would want to extend the FEA.

Mr. GRABLE. We would probably be here trying to get an extension of that date.

Mr. KNULL. There has been a suggestion made that it would be better just to remove the reemployment at the date of enactment.

Mr. ALLNUTT. This was simply intent to give a longer period for people to make that decision.

Mr. KNULL. There's been some complaint that rather than really helping employees, the reemployment right is used by managerial people to move people out, saying, "Look, you've got this right to a job elsewhere. Get out of here or we'll make it hard for you."

Mr. ALLNUTT. I guess the other side of that coin is this. I'm not one of the people who has that right, but if I were, I think I would, unless I knew now what I would want to go back, in which case I would go back to where I came from, I would rather have a little time in the new department to see what things are really going to be like—where there would be a lot of shuffling around of offices, and so forth—and give me some time to make a decision rather than forcing it the day before I could begin to find out what the Department is going to be like.

Mr. KNULL. Since section 28 only permits employees to return to the agencies of their former grade levels, can you give me an idea of how many FEA employees have moved up a grade in the last 3 years?

Mr. ALLNUTT. We'd have to get that information.

Mr. KNULL. If there was transfer back they would effectively be downgraded in the process.

Mr. ALLNUTT. If they elected to go back.

Mr. KNULL. That's all I have.

Mrs. SCHROEDER. I thank you very much for your patience and time.

Mr. ALLNUTT. Thank you very much.

Mrs. SCHROEDER. We appreciate your cooperation on this tight deadline.

Mr. ALLNUTT. We very much appreciate your doing what we think is a very important function. It's important that the provisions be looked at carefully, and I'm glad that you're willing to do it on such short notice and report on short notice. We'll try to cooperate with the staff to get answers up here quickly.

[The following response was furnished.]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,
Washington, D.C., April 20, 1977.

Hon. PATRICIA S. SCHROEDER,
Chairwoman, Post Office and Civil Service Subcommittee on Employee Ethics and Utilization, House of Representatives.

DEAR MRS. SCHROEDER: In response to the questions raised at the hearings on April 19, 1977 on H.R. 4263 and H.R. 4806 to create the Department of Energy, we are pleased to provide the following information.

We were requested to provide the number of employees in the Department of Energy who would be engaged in data collection and analysis. As we indicated, it would be most difficult to be very precise at this time. The figures we have are very tentative in nature and do not reflect a detailed review of the duties of personnel performing this type of work. Our best current estimate is that the constituent agencies which will come into the Department have somewhere between 650 and 750 employees performing energy data work. We do not know at this time how many will be required by the Department, but this is an area of indicated growth to improve our energy data and information capabilities.

Regarding section 704, we were unable to examine all the records of individuals with return rights to other agencies. However, a sample check and our judgment leads to a conclusion that of the approximately 2200 employees affected more than three-quarters would have return rights to a lower grade.

We were asked whether section 617 of the bill relating to DOE employees stationed at remote locations duplicated existing authority in title V of the United States Code. Our response was essentially that Section 617 was not duplicative of the provisions in title V. At your suggestion we agreed to review the existing authority of title V of the United States Code to confirm our answer on this important question. The Department of Transportation also has similar authority (See 49 U.S.C. 1657(L.)).

Section 617 authorizes the Secretary to provide its employees and their dependents generally with medical services and supplies; food and other subsistence supplies; messing facilities; recreational and training equipment; living facilities; and transportation for school age dependents. This authority is available, however, only at remote locations and as necessary and when the services and facilities are not otherwise available.

Other than 5 U.S.C. 5911(b), there is no provision in title V of the United States Code which would be available to the Department of Energy on the matters covered by sectin 617 of the bill. 5 U.S.C. 5911(b) authorizes the heads of agencies to provide employees stationed in the United States with quarters and facilities when they are not available or when job conditions warrant the action. There are other provisions which deal with foreign duty stations or with allowances for living costs for employees stationed outside the continental United States or in Alaska. However, these have no application to work locations within the United States.

Without section 617 in the bill, the Department will not be able with clear Department-wide authority to provide medical, recreational, and other such services and facilities to its employees who may be stationed in remote locations where such facilities and services are not available. As the Department of Energy becomes more deeply involved in various types of coal, oil shale and other energy research, development and demonstration, the need for such authority will be significant. Large-scale development and demonstration of commercial feasibility of energy production of such resources is likely to take place in remote areas where housing, medical, educational and recreational facilities will be inadequate or even nonexistent. To enable the Department of Energy to attract the necessary personnel for duty in such areas, provision will have to be made for their housing, health and welfare. Section 617 of the bill will assure that the Department will have sufficient authority to meet these needs. In this regard, this authority will not be unique to the new Department. There is such a provision in the Energy Reorganization Act. The Department of Transportation also has similar authority (see 49 U.S.C. 1657(L.)).

We would like to clarify one other matter regarding the appointment and status of employees changing from the ERDA excepted service to the competitive service. Rather than the views expressed in the statement of the Executive Director of the Civil Service Commission, we consider the appropriate interpretation is as we pointed out to Chaiman Brooks in a letter of April 8, 1977, to the Committee on Government Operations:

"Section 701.—This provision would effect the transfer of ERDA and other agency staffs to the Secretary of Energy. The full effect of this provision, however, is unclear, particularly as to ERDA since ERDA employees are not under the Competitive Civil Service System. We interpret this provision to mean that all ERDA employees (other than Executive employees) achieve competitive civil service status, or status under an excepted schedule administered by the Civil Service Commission, as a matter of law when the bill becomes effective. To make this clear, we suggest inclusion of language such as the following in the report of the bill. This suggested language is intended to recognize the employees of ERDA have been employed under a public merit system that is essentially equivalent to the civil service system administered by the Civil Service Commission.

"The Committee intends that effective with transfer under Section 701(a) employees in ERDA's excepted service on other than temporary appointments shall come into the career civil service system with the rights associated therewith; however, the Secretary is authorized to place employees transferred to the Department from any agency, administration, commission, or department in excepted appointments under the authority of Section 607 or the authorities administered by the Civil Service Commission."

In our view the existing interchange agreement between ERDA and the CSC is not governing for the purposes of conversion under the provisions of the bill.

We stand ready to provide any other information which would assist the Subcommittee in your consideration of this legislation.

Sincerely,

LLOYD W. GRABLE,
Director, Division of Personnel.

Mrs. SCHROEDER. The next witness is Mr. Raymond Jacobson, Executive Director of the Civil Service Commission.

We welcome you, and if you will summarize your statement, the entire statement will be made a part of the record after your comments.

STATEMENT OF RAYMOND JACOBSON, EXECUTIVE DIRECTOR, CIVIL SERVICE COMMISSION

Mr. JACOBSON. The statement we have is a relatively brief one. I think it touches on most of the subjects on which questions have been raised in the discussions with the ERDA representatives.

Basically, the Commission has supported the bill the Administration has submitted to the Congress which includes bringing 8,500 employees who have been in the excepted personnel system of the Energy Research and Development Administration into the general, competitive civil service.

We know this will be a matter of concern to employees and their representatives, and we plan to be working closely with those agencies in the creation of a new department, so that that transition is as smooth as possible.

The general requirement of putting the new department under the provisions of title 5 of the United States Code we find a very good one, and we think this would be in the overall interest of the Government. There is an exception of some 600 scientific and professional positions which permits, in section 607, the Secretary of the new Department to make appointments and fix their compensation up to GS–18.

This is an exception which normally the Civil Service Commission would consider unnecessary, and only appropriate in unusual circumstances. The Administration's determination, however, has been that the urgency and critical importance of the energy problem makes this exception necessary.

My understanding is that these jobs will be filled by recruitment of high quality people without regard to political considerations, and the Commissioners have, therefore, interposed no objection to this provision.

The 150 additional GS–16's, 17's and 18's would be filled in accordance with the usual supergrade procedures under title 5, and the Civil Service Commission will have full responsibility for those jobs and people.

The transfer features to the new Department provide, we think, adequate protections to the employees involved, and, of course, the bulk of the new Department's employees are already in the competitive civil service. The ones coming in, essentially those from ERDA, into the civil service system, will get some additional protections, which are provided for in the legislation and that we think, generally, are quite properly handled.

I think the use of the authority given to the Secretary in section 609, to use experts and consultants, and to use members of the Armed Forces in section 612, are generally consistent with existing law and governmentwide policy.

Section 613, on which there has been some discussion, we think is an appropriate section, and we understand that the personnel portions of 613, in relation to interchange between the Department of Energy and State and local governments, will be made under the Intergovernmental Government Personnel Act provisions.

The authority in 611 provides for the use of volunteers without regard to the Civil Service laws. It's been customary in the past that such provisions carry a prohibition against using volunteers to displace Federal employees. That's obviously the intent, but it's not specifically so stated.

I think the reemployment rights termination under section 704, which was just covered in the previous testimony, is a needed provision because at the time the reemployment rights were granted, those rights were needed because the Federal Energy Administration was assumed then to be a temporary agency.

That, obviously, is not true, and we feel that it would be appropriate to deal with this, because we have about 2,500 FEA employees who have statutory rights to return to their former positions. This has required the agencies from which they transferred to obligate those positions and to either hold them open or to fill them on a temporary basis. We don't think this ought to be allowed to continue very much longer.

So, we're hoping that section 704 will operate in the interest both of the employees and in the interest of the other agencies of Government, some of whom supply very significant numbers of people.

Defense Contract Audit Agency, mentioned in the testimony, has almost 100 auditors who have been transferred to FEA. We think this continuing obligation to hold those jobs open really should not be allowed to continue much past the creation of the new Department.

The 120-day period is one that we suggested as a reasonable period, which really could be 8 months after enactment of the law, and would give adequate time for people to make up their minds.

That, I think, is a general summary. I'll be glad to answer any questions.

[Complete statement follows:]

PREPARED STATEMENT OF RAYMOND JACOBSON, EXECUTIVE DIRECTOR OF THE CIVIL SERVICE COMMISSION

Madam Chairwoman and members of the committee, I am pleased to be here today to discuss the personnel aspects of H.R. 4263, a proposal to create a new cabinet Department of Energy. With your permission, I would like to have a copy of this statement placed in the record.

This proposal has been called "a major step" in the Administration's program for a comprehensive reorganization of the Executive Branch. And indeed it is. This would be the first cabinet Department established since the Department of Transportation became operational in 1967. Although the Civil Service Commission has not submitted formal comments to either of the congressional committees considering this legislation, we have followed its development closely.

This legislation would combine many of the energy-related programs now operated by more than 20 executive departments and agencies. The Federal Energy Administration, the Energy Research and Development Administration, the Federal Power Commission, and certain programs and functions of the Interior Department, the Department of Housing and Urban Development, the Department of Commerce, the Securities and Exchange Commission, the Interstate Commerce Commission, and the Department of Defense would be among those transferred to a new Department of Energy.

The Civil Service Commission supports this effort and stands ready to provide the advice and assistance needed to get the new Department underway.

The proposed reorganization has major implications from a personnel standpoint. An estimated 20,000 employees now serving in different agencies would be brought into the new Department under a single integrated personnel system. While the bulk of these employees are now part of the general competitive civil service, about 8,500 are under a separate excepted personnel system in the Energy Research and Development Administration (ERDA). The realinement of functions and reassignment of personnel resulting from the reorganization will no doubt be a major concern of employees, their representatives, and the Civil Service Commission in the months ahead.

With regard to the specific personnel provisions of H.R. 4263, Madam Chairwoman, we are indeed pleased that the legislation establishes the competitive civil service as the framework for the new Department's personnel system. From our standpoint this is a key element in the transition to a new Department of Energy. We believe that only through a unified civil service system can effective and efficient personnel administration in the new Department be assured.

This legislation takes the right approach, that is by generally placing hiring and other personnel functions under the competitive provisions of title 5, United States Code. This will insure greater accountability and improved personnel controls. The use of governmentwide systems and procedures, rather than separate ones, should also bring greater cost effectiveness.

I should point out that H.R. 4263 does provide for one exception from overall competitive service coverage. Section 604 permits the Secretary of the new Department to appoint up to 600 scientific, engineering, professional, and administrative personnel without regard to the civil service laws and fix their compensation at pay rates up to GS–18.

Normally we consider statutory exceptions unnecessary and undesirable because considerations other than merit could enter into the hiring process. Only in unusual circumstances should exceptions be considered.

The Administration has determined, however, that the urgency and critical importance of the energy problem make this exception necessary. Aside from some confidential and policy determining positions, these jobs will be primarily scientific or technical in nature, and would be filled by recruitment of high quality talent, without regard to political considerations.

One hundred fifty additional positions at GS–16, 17, or 18 are established by section 608(b) of the legislation, subject to the requirements of chapter 51 of title 5, United States Code. These positions will be filled in accordance with the usual supergrade procedures.

I am sure that a major concern of this committee is what will happen to the employees transferred to the new Department.

This legislation, in combination with current civil service law and policy, appears to provide extensive protections to the employees involved. Section 702 provides that transferred full-time and part-time personnel occupying permanent positions could not be separated or reduced in grade or compensation for at least 1 year after the date of the bill's enactment. The bulk of the new Depart-

ment's employees are, of course, already in the competitive service, and would continue to receive the benefits and protections provided by our system.

Those employees coming into the competitive civil service from ERDA would also be afforded substantial protections. I would like to explain this in detail.

EMPLOYEE PAY

There would be no change in the pay received by ERDA employees transferred to a consolidated, competitive service Energy Department. Following the transfer, wages of blue collar employees would continue to be based on local prevailing rates under the applicable local wage system schedules. Any white collar employees who, under proper general schedule position classifications, later end up in grades lower than their present grades would be entitled to permanent saved pay, as long as they remain in their present positions, and would also benefit from future general schedule pay comparability adjustments.

APPOINTMENT AND STATUS

Under an interchange agreement in effect since 1957, employees holding nontemporary appointments with ERDA will be able to transfer to regular civil service career or career-conditional appointments without having to compete for their positions. Employees holding temporary or other nonpermanent appointments with ERDA could retain their employment status with the new Energy Department for up to 3 years.

RETENTION AND APPEALS

With their transfer to the competitive civil service, current ERDA employees will be afforded somewhat broader retention rights than they presently hold. Under the competitive civil service system, employees will also be given the right to appeal adverse actions taken against them to the Civil Service Commission.

EMPLOYEE FRINGE BENEFITS

Employee transferring to the new Energy Department would face no changes in fringe benefit coverage. ERDA employees already participate in the leave, life and health insurance and retirement programs administered by the Civil Service Commission.

This legislation also contains a number of other personnel provisions which are generally consistent with existing law, governmentwide policy, and the authority of the Administrators of ERDA and the Federal Energy Administration.

In this category are sections giving the Secretary authority for the use of experts and consultants (section 609) and members of the Armed Forces (section 612).

Section 613 authorizes the Secretary to use the personnel of State and local governments and also provide Department of Energy personnel to such entities as is deemed necessary. Although H.R. 4263 does not specify that such assignments be made under the personnel interchange provisions of the Intergovernmental Personnel Act, we would hope that the legislative history would so indicated.

The Secretary is given authority in section 611 to use volunteers without limitation. It is customary that such provisions carry a prohibition against using volunteers to displace Federal employees.

Finally section 704 requires that employees transferred to the new Department holding reemployment rights under section 28 of the Federal Energy Administration Act of 1974, or any other provision, must exercise such rights within 120 days from the effective date of the energy reorganization act.

This will resolve what is becoming a significant problem in certain Federal agencies. As many as 2,500 of the Federal Energy Administration's current employees have transferred there from other Federal agencies and hold statutory rights to return to their former positions. This has required their previous employers to obligate their positions, pending return, and either hold them open or fill them on a temporary basis.

Some agencies have experienced substantial staff losses to the Federal Energy Administration, for example, almost 100 auditors have transferred from the Defense Contract Audit Agency. Section 704 will give such employees holding reemployment rights a 120-day period in which to decide whether to return to their previous agency or transfer to the Department of Energy.

I will be pleased to answer any questions you may have.

Mrs. SCHROEDER. Thank you.

I suppose I'd like to start with section 607, which creates the 600 excepted positions of grade 18, and 608(b), which creates 150 supergrades. And I'd like to know how many supergrades that FEC, FEA, ERDA, which have been involved in the functions that are being transferred, are currently out of your supergrade pool.

Mr. JACOBSON. Let me see if I have that with me. Your question was regarding the Federal Energy Administration?

Mrs. SCHROEDER. Well, FEA, FPC, and ERDA, and the Department of the Interior.

Mr. JACOBSON. Yes; in FEA we have 105 supergrades; in Federal Power we have 53; and, in Interior, we have 11.

Mrs. SCHROEDER. That are outside?

Mr. JACOBSON. Pardon me, I'm going to ask your indulgence to let me check on any of those that are out of the pool and how many of those are specifically earmarked for those agencies in their legislation.

Mr. Davis of our Bureau of Executive Personnel can help you.

Mr. DAVIS. The Federal Energy Administration has no supergrades out of the pool. Federal Power Commission has 50 authorized from the pool. Forty-five of those are filled. And Department of the Interior has six authorized from the pool. Five of those have been filled.

Mr. JACOBSON. Essentially all of the jobs except the Federal Energy Administration jobs are out of the regular pool of supergrades.

Mrs. SCHROEDER. How about ERDA?

Mr. JACOBSON. ERDA has no jobs out of the pool since they are excepted generally.

Mrs. SCHROEDER. Well, if the Energy Department receives the authority that they want, wouldn't all of these positions soon be free to go back into the pool?

Mr. JACOBSON. The size of the pool, of course, is determined by statute. And the size of the pool remained unchanged. So; yes, I think the answer is correct.

Mrs. SCHROEDER. So, you're giving a large number of extra supergrades in the pool to the Government by the enactment of this bill.

Mr. JACOBSON. Well, the 105 FEA jobs, which are not in the pool, of course, don't go back.

Mrs. SCHROEDER. That's right, but I'm saying the ones that are.

Mr. JACOBSON. The others; yes.

Mrs. SCHROEDER. You would be giving more supergrades.

Mr. JACOBSON. Yes.

Mrs. SCHROEDER. Do you know other departments that have specific supergrade authorities, or excepted authorities like the Energy Department is asking?

Mr. JACOBSON. Well, as for excepted authority such as this bill would provide for the Energy Department for 600 positions, NASA has a very similar authority—the number, I believe, is 425. It is an authority which is quite similar in terms of its coverage and in terms of the authority of the administrator both to employ and to pay people without regard to the civil service law.

So, NASA is the principal exception that comes to mind. I think in the Department of Defense and in the Department of Health, Education, and Welfare there's a somewhat similar exception known as Public Law 313. But, basically, these are for scientific and technical positions.

I don't have a number in my head, but we can provide a number for the record in which the authority to employ and to determine pay is vested in the head of the department and not in the Civil Service Commission.

But it's not quite as extensive as the Department of Energy proposed authority and the NASA existing authority, and it is limited to scientific and technical jobs.

Mrs. SCHROEDER. But are administrative employees excepted, generally?

Mr. JACOBSON. Administrative professional jobs? No; they are unusual.

Mrs. SCHROEDER. So, this would be an unusual request.

Mr. JACOBSON. The term professional, of course, frequently is used to include scientists and engineers, considered professional people; so I would say that the administrative managerial jobs are not commonly excepted.

Mrs. SCHROEDER. What about the provisions to allow uniformed service personnel to work there? Have you had any problems? Has civil service ever had any problems having the mix?

Mr. JACOBSON. Well, of course, the major place we have a mix is the Department of Defense itself. It does create some problems.

My understanding—and I'm not closely familiar with the way in which ERDA has used military personnel—is that they have not typically used them in continuing operational and supervisory or managerial capacities in which they are directing the work of the regular work force. They've been used in project teams or in coordination or liaison capacities; and, in that sense, It would not except, and have not heard of, specific problems.

Mrs. SCHROEDER. What about the volunteers in section 611—allowing volunteers? One of the questions I have is whether the volunteers would be permitted "time credit" toward possible civil service retirement pensions.

Mr. JACOBSON. As this bill is worded, that clearly would not be permitted, and we would oppose, of course, any such provisions. I do not believe it's even being considered.

Mrs. SCHROEDER. Well, I'm not sure that it's that clear. Because the way I read the bill, and the way I read the law, "Federal service" for retirement only involves serving under an authority of the Federal law. And so 611 would be an authority under the Federal law, I think.

Mr. JACOBSON. Well, it's my understanding that the way 611 is worded, these volunteers are not Federal employees, and there's a specific provision, 611(c), that they shall not be subject to the provisions regarding Federal employment, including those related to hours of work, rates of compensation, employee benefits.

So, I think specifically they will not be Federal employees—except for the tort claims, and the provisions of the subchapter I of 81 of title 5, which is for injury compensation.

Mrs. SCHROEDER. So, you think this will be different from the National Guard technician problems.

Mr. JACOBSON. Yes; very much so.

Mrs. SCHROEDER. Sections 615 and 617 allow the Secretary of Energy to bind, lease, build, retain quarters, mess halls, and the like. Right now title 5 gives and allows certain benefits in remote areas.

In your opinion would employees of the Department of Energy be entitled to more benefits than those of other departments and agencies because of sections 615 and 617?

Mr. JACOBSON. Authority such as the 615 general authority, and I have to get specific citations, are quite common in departments and agencies that have isolated, highly specialized, establishments.

So, I do think it's quite common to have these. The Defense Department certainly has this kind of provision. And the provision in 617 for employees and their dependents at remote locations is also common to departments that have that situation.

Now, the remote locations legislation, in title 5, deals, on the other hand, with paying people an allowance who have to travel rather long distances because of the remoteness of the worksite.

In effect, providing for, let's say, housing, food, medical services, and other matters, makes it possible for people to live at those remote locations rather than to travel to and from them.

Therefore, I think it's kind of a tradeoff, and not really, a special benefit.

Mrs. SCHROEDER. Section 613 allows the Secretary of Energy to give, loan, borrow services and personnel from public and private organizations and agencies in the United States and international. Do you see any problem with the civil service laws with regard to this section? I think you testified that you didn't, but I just want to make sure.

Mr. JACOBSON. I did mention in my opening statement that 613, I think, is appropriate. We do not see any conflict with the Intergovernmental Personnel Act. It overlaps a little bit, in that the Intergovernmental Personnel Act deals with the movement of people back and forth, but this adds to that, services and facilities which of course, IPA does not have anything to do with.

But, other than that particular overlap provision, I don't particularly see any problem.

There is one other additional use of people that is not in the present laws, and that is the inclusion of private, nonprofit agencies and organizations. This is not permitted under the Intergovernmental Personnel Act.

In that sense it's an additional authority for the Secretary which is not available to other departments unless they have something in their enabling legislation at this time. I believe Agriculture may have something like this.

So, we have not felt, in our review of the legislation, that this represented a significant concern; but I must say that I do not feel very knowledgeable about what the plans might be for the use of this.

Mrs. SCHROEDER. Counsel, do you have any questions?

Mr. KNULL. Yes.

What if the subcommittee would give supergrade authority to the Civil Service Commission, so as needed positions could be excepted by the Civil Service Commission. Could the Civil Service Commission handle exceptions as expeditiously as Energy might need, and, at the same time, guarantee that we have the control of the top-level employees that we attempt to have in other departments?

Mr. JACOBSON. Certainly the Commission would want to, and has been reasonably successful in providing service to other agencies. If

that were the will of Congress, we would, obviously, do that, and I think we could do an effective job with it.

Placing of that authority with the Commission would, of course, require us and the Department to cooperate very closely in terms of the Department's needs. We, obviously, would pledge our cooperation.

Mr. KNULL. But, say in maybe 3 or 4 years, when things had settled down—or we hope they would have settled down—we wouldn't have, in the meantime, created a special authority that would be on the book and very hard to get at. The Civil Service Commission would then have the authority to pull out some of these excepted positions, or move some of the supergrades around, as the case might require.

Mr. JACOBSON. Obviously, the creation of permanent numbers in authorizing legislation like this, runs a danger of becoming outdated over a period of time. I assume the Administration would be watching that and coming to the Congress with a need for a change over a period of time.

So, a certain amount of inflexibility arises out of putting that kind of numbers in. On the other hand, the tradeoff is the very flexibility that the Department gains by being able to move on its own initiative by having the authority provided for that.

What you have to look at is the fact the Energy Research and Development Administration has had this authority for their entire staff of some 8,500, and this would narrow down to some 600.

So, we say that it's moving in the direction of bringing the structure, generally, into the system. Because of the urgency of the situation. The Commission did not feel it appropriate to object to this request for the exception.

Mr. KNULL. Didn't the AEC act, which was created in the Civil Service Commission, fight the exception of the agency?

Mr. JACOBSON. When the AEC was originally created, which was in 1946, as I recall there was no blanket exception. It was in the authority given to the heads of the Commission—the Atomic Energy Commission—to make, on its own motion, a decision to except. And that decision was made some months or a year or so after the original creation of the Commission.

Frankly, I didn't do enough research to be able to tell you whether we went on record with objection at that time or not.

Mr. KNULL. I think you did.

Mr. JACOBSON. I wouldn't be surprised.

Mr. KNULL. I am not sure about when the ERDA act was created, whether you went on record, but I think you maybe went on then, too—to the exception of the agency.

Mr. JACOBSON. No; we did not. That's recent enough for me to remember.

Mr. KNULL. Section 706 authorizes the Director of the Office of Management and Budget to consult with the Energy Secretary regarding transfers and functions, including personnel connected functions.

Don't you think the Civil Service Commission has better authority and expertise over employee transfers than OMB?

Mr. JACOBSON. Well, let me make a point that this has to do with a decision as to the transfer of functions, and, then, incidental to that, personnel, assets, liabilities, and so on that flow from that.

This has typically and traditionally been the responsibility of the Office of Management and Budget, and we are always consulted by them in terms of the personnel implications.

But, basically, the decision as to the transfer, of the activities, we do not think a Civil Service Commission function. What the relationships of certain activities of, say, the Department of the Interior to be transferred, is an appropriate function for OMB, and not the Civil Service Commission.

Mr. KNULL. Even, say, setting up personnel officers for the new Department?

Mr. JACOBSON. This would not include, for example, that kind of determination, as I understand it. The new department would determine whether it needed additional headquarters personnel officers and haw many other personnel offices they would need.

They would not be dealing with OMB on that, and they might be asking us for advice or they might not, but that would be, certainly, within the discretion of the head of every department and agency. I don't think that's what's intended by this in any way.

Mr. KNULL. When the FEA was created they contracted out management service to a group, the Korn-Ferry Corp. I think the chairwoman has had some correspondence with the Civil Service Commission about this contract.

And I'm wondering—you might not be exactly the right person to ask—whether you will offer your management abilities to the Energy Department to set it up, rather than have it go out in contract with consultants. You may have been aware of this.

Mr. JACOBSON. Well, yes, we will, and we have already been discussing with the task force people involved what services we can provide. We have some tentative understandings on that. I would go agree that that would be a very desirable thing to have.

Mr. KNULL. Just one more question, it deals with section 401(c), which permits Board members to select and supervise personnel on their personal staff.

According to Mr. Allnutt's written testimony, he said that that's not meant to override Civil Service Commission authority. And, I believe, he said the staffing for each Board member would be through the personnel office of the Department.

Now, the personnel office of the Department would be under the control of the Secretary of the Department, so, in a round about way, I think the intentions of having an independent staff for each Board member are thwarted.

Would you, possibly, consider placing that authority somewhere else, say, the Civil Service Commission, for the Board members staff so that they do have an independent staff under them?

Mr. JACOBSON. I'm not quite sure what you'd expect us to place with the Commission. As I read the language, it clearly says that the selection and supervision of people on the personal staff of each Board member is clearly the responsibility of that member of the Board.

It seems to me that guarantees the independence of those decisions. It would seem, frankly, unwise to have the personnel processing and the assurance of adherence to Civil Service laws and regulations OKd any place but in the personnel office of the Department.

I really feel that that is an inherent management requirement. I do not think it interferes with the right of the member of the Board to select people and to supervise them. It's simply to insure that there is conformance, not only with the general personnel laws, but also with any personnel regulations of the Secretary.

Mr. KNULL. You don't see that section as overriding your authority?

Mr. JACOBSON. Oh, no. We have the jobs filled under title 5 and classified under title 5. In all other respects they are subject to the normal civil service rules and regulations and to our evaluations, and to appeal to us, and so on. All of those normal rights are there, and I see nothing in this section that would take them out of that, because they are employees of the Department. And, in another section of the bill, it says that all employees of the Department will be under title 5 except the 600 that we've been talking about.

Mr. KNULL. That's all.

Mrs. SCHROEDER. Thank you very much.

The hearing is adjourned.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

[The following statements were received for the record:]

STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

I am Vincent L. Connery, president of the National Treasury Employees Union. Our union is the exclusive representative of nearly 95,000 employees in the Treasury Department and the Federal Energy Administration, including the Internal Revenue Service, Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Public Debt.

On behalf of the employees we represent in the Federal Energy Administration, we appreciate the opportunity to comment on the President's proposal to consolidate the FEA and other energy agencies into a new Federal Energy Department.

While we do not wish to minimize the significant, fundamental purpose of the bill—the creation of a cabinet level agency to deal with our nation's energy problems—we would like to direct our remarks to those sections which will significantly impact upon the employees who will be affected by the consolidation.

Within this area, we believe that H.R. 4263 contains numerous deficiencies. It fails to give adequate consideration and protection to the needs of the employees whose jobs and careers will be directly affected by the reorganization.

For example, section 704 of the bill grants to employees from the consolidated agencies reemployment rights for 120 days from the effective date of the act. In our opinion, this is an unrealistically short period of time.

As a new agency, the Energy Department will be going through a shakedown period. In the beginning, the new Department will take under its umbrella all those who were employed in the various agencies being consolidated. However, there can be no doubt that within a reasonable period of time after reorganization it will become apparent that not everyone is needed. Thus, the question is really what constitutes a reasonable period of time in which to extend to employees reemployment rights.

Title 5 of the Code of Federal Regulations, section 352.206 provides that reemployment rights in executive agencies normally expire at the end of a 2-year period unless exercised before that time. We believe that this same 2-year period is appropriate for the new Energy Department. It would give the consolidated agency adequate startup time and afford an employee sufficient opportunity to determine if he or she wishes a career in the Energy Department.

Additionally, our experience in representing FEA employees has uncovered what we believe to be abuses in the exercise of reemployment rights. FEA management has utilized this right to circumvent reduction in force and adverse action protections.

For example, NTEU has filed suit on behalf of an FEA employee whose reemployment rights were involuntarily exercised by FEA after the employee was notified that his position was being eliminated. On the surface, it might seem that the agency was being benevolent in exercising his reemployment rights rather than going through a RIF. However, this ignores the fact that title 5 of the CFR part 351 sets forth procedural protections for employees who are the subjects of a RIF. The agency must set up retention registers based, in part, on length of service.

Under this procedure, because of his length of service, this employee may have been entitled to remain with FFA by bumping other employees with less service. But he was denied this option simply through an arbitrary determination that he should be sent back to his previous agency.

Another example involves an employee whose reemployment rights were exercised because of the agency's determination that her performance and attitude were lacking. It was decided by FEA management that instead of proposing an adverse action she would simply be returned to her former agency. By so doing, FEA deprived the employee of the procedural protections to which she was clearly entitled.

An adverse action can only be taken against an employee when it promotes the efficiency of the service and the employee must be afforded notice and a hearing. This employee would have preferred to remain with FEA and defend her position. However, FEA successfully avoided proving the merits of their case by shunting her back to her original agency.

Reemployment rights were intended as a protection against interruptions in the careers of Federal employees and, moreover, as an inducement for employees to take a chance and accept a position in a new agency. FEA has turned this shield into a sword to be used against its employees and to circumvent their procedural protections. The result has been widespread distrust and low morale among the employees.

In order to prevent such abuses from occurring in the new Department, it is imperative that this legislation clearly specify that reemployment rights may only be exercised by the employee if he or she chooses to return to the parent agency.

Another provision of the bill which is inadequate in its protection is section 702. It provides that transferred, permanent personnel could not be separated or reduced in grade or compensation for 1 year after the date of enactment. For the same reason that we propose a 2-year period for reemployment rights we believe that employees should be protected against separation for this same period of time. One year is not sufficient for the agency to make a determination on separation. Furthermore, an employee who has taken a chance on a new agency and has helped to charter the course of that agency is deserving of a greater degree of protection.

In terms of reductions in grade and pay, the Administration has repeatedly made assurances to the Federal workforce that it would make every attempt to prevent massive downgrading. This can be accomplished by incorporating into this bill the concept of "saved grade."

There have been a number of such bills already introduced into this Congress. They provide that an employee whose position is reclassified downward without cause, will permanently retain grade and salary as long as he or she is the incumbent.

Incorporating this concept into this legislation, rather than waiting until separate legislation is enacted, will help to provide the assurances necessary to rally the employees of the affected agencies to support the reorganization and to maintain the high morale vital for an effective Energy Department.

Moreover, equity demands that these employees retain grade and pay indefinitely. They accepted their positions in the parent agencies with the expectation of furthering their career objectives and financial well being. Thus, they should not now be asked to shoulder the cost of reorganization by loss of income and possible promotional opportunity after 2 years; instead they should be assured their current grade and salary as long as they hold their position.

Furthermore, the 2-year limitation could result in the exodus of many experienced employees within the Department. Rather than suffer a loss in income it is very probable that they will seek employment elsewhere.

Title VI, section 607 of the bill authorizes the Secretary to appoint up to 600 "scientific, engineering, professional and administrative" personnel without regard to civil service laws or regulations and without approval of the civil Service Commission. Although certain agencies have the authority to hire scientific and professional employees without competition, no agency has the authority to fill 600 such positions, and no agency can do so without prior Civil Service Commission approval.

Title 5 of the United States Code, section 3104 lists the agencies with this authority. the Department of Interior, with a total employee population of 77,649, can hire only 8 such employees; the Department of Agriculture may hire 20, out of its 111,247 employees; the Department of Commerce, 30 out of 38,352 employees; and the Department of Health, Education, and Welfare which has 156,527 employees, may hire only 13 such employees.

In addition, only three other agencies, the U.S. Arms Control and Disarmament Agency, the Library of Congress, and the National Aeronautics and Space Administration, may employ such personnel—14, 8 and 12 respectively. Furthermore, although these positions are filled without competitive examinations, they are in the competitive service and section 3325, 5 United States Codes requires that these positions be approved by the Civil Service Commission.

We firmly believe that all employees of the Federal Government—regardless of their function—should be entitled to the rights, privileges and protections of the competitive service. We view section 607 as nothing more than an unwarranted assault on the merit system.

This provision of the bill is particularly onerous to those career civil servants who have worked diligently to secure professional advancement. For example, under section 607, the Secretary would have a license to circumvent these employees by hiring persons from outside the civil service, thus denying career employees promotional opportunities and other job rights. Needless to say, such practices would ultimately result in low employee morale and decreased efficiency.

We believe that if the Secretary demonstrates a need for specially qualified personnel in scientific or professional positions who cannot be found in the competitive service, the proper vehicle would be to amend 5 U.S.C. 3104 to allow the Secretary limited authority in this regard. It certainly would not be appropriate or wise to provide him the vast unilateral hiring authority contained in section 607.

Other features of the bill relating to the Secretary's employment authority are contained in sections 611 and 612 of title VI. These sections empower the Secretary to recruit volunteers and to deploy military personnel to carry out the work of the Department. We are, again, concerned about the effect of these sections on career employees.

For example, the legislation proposes that detailed military personnel would be considered civilian employees for purposes of the Department, yet these individuals would not be counted against civilian manpower ceilings. If, for instance, a reduction-in-force order were circulated, it is conceivable that military personnel could be deployed in large numbers to fill vacancies which were denied to employees in the competitive service. Much the same situation could occur with the use of volunteers.

We believe that the bill should (1) specify the functions for which detailed military personnel may be deployed; (2) place a ceiling on the numbers that can be assigned at any one time and; (3) specify the maximum length of assignment. In addition, there should be an express prohibition in both sections 611 and 612 against the use of either volunteers or military personnel to displace career employees. Although the Civil Service Commission has assured this subcommittee that this was not the intent of the legislation, we believe that such a prohibiting clause should be clearly and succinctly stated in the bill itself.

In conclusion, we would like to direct our remarks to the section of H.R. 4263 concerning financial disclosure.

Section 602 of title VI directs that "Each officer or employee of the Department who has any known financial interests * * *" in any of the areas to be regulated or monitored by the Department, "shall, beginning on February 1, 1978, annually file with the Secretary a written statement disclosing all such interests held by such officer or employee during the preceding calendar year. Such statement shall be subject to examination, and available for copying upon request."

Although NTEU recognizes the importance of preventing conflict of interest situations, we have consistently maintained that public disclosure of financial interests is not a panacea to correct this problem. We firmly believe that no career civil servant, in any position, should be forced to make a public disclosure of his or her financial status. Such a requirement constitutes an unwarranted invasion of the Federal employees right to privacy. However, for the purposes of this section, we can support a limited financial disclosure provision, if such statements remain confidential.

We appreciate the opportunity to present our views on H.R. 4263. We will be glad to respond to any questions or comments the subcommittee may have.

NATIONAL FEDERATION OF FEDERAL EMPLOYEES,
Washington, D.C., April 18, 1977.

HON. PATRICIA SCHROEDER,
House of Representatives,
Washington, D.C.

DEAR MS. SCHROEDER: As president of the largest independent union of Federal career workers, I would like to comment on two aspects of major legislation now pending before a subcommittee of the House Government Operations Committee: "The Department of Energy Organization Act."

The National Federation of Federal Employees supports President Carter in his efforts to develop an energy program for this country. Our members, like patriotic Americans everywhere, are willing to make some sacrifices. NFFE believes that in this era of scarce fuels and skyrocketing prices, there is a genuine need for a cabinet-level department to implement policies in this vital area.

There are two features of the Administration's proposal which trouble us. The legislation authorizes the new Secretary to appoint up to 600 scientific, engineering, professional, and administrative personnel without regard to civil service laws.

This sets a dangerous precedent. The original civil service law, the Pendleton act, was enacted in 1883. Its purpose was to provide for fair, efficient, nonpartisan administration of Government. Since then many other civil service laws have passed, all with this same basic intent. All taxpayers deserve competent and compassionate service from the Government without regard to their ideologies. While NFFE frequently criticizes different aspects of the civil service system, we believe the interests of the Nation are best served by having the great majority of Federal employees covered by such regulations.

Every executive agency has a number of appointed policymakers, so-called schedule C employees. Although there are now more such workers than needed, we see the rationale for having such employees in the very highest ranks of Government, and for having them appointed rather than qualifying under the civil service. However, scientists and engineers would not necessarily be policymakers. On the contrary, it appears that they would be primarily providing objective expertise and technical skill rather than political counsel. Therefore, we see no need for such persons to be schedule C workers, let alone exempt from all civil service laws. These employees should enjoy civil service protection and be subjected to its restraints. Certainly no Secretary of Energy could object to professional staff qualifying under high civil service standards. In an area as controversial and important as energy policy, scientists must not labor under the fear of dismissal for proposing unpopular solutions to difficult problems. Their research must be unfettered by partisan considerations. Civil service laws must help accomplish this in the rough-and-tumble world of Presidential politics.

The energy department proposals would also authorize the Secretary of Energy to recruit and utilize volunteers to help with the mission of the agency. This also appears to be a dangerous precedent. Although there will be many citizens anxious to participate in the Nation's energy program, we are concerned about how much quality control the Government can exercise over the work of volunteers. How accountable will such unpaid personnel be? We believe the risk is too great. Dedicated, competent career Federal employees have proven their ability to get the job done under the toughest of working conditions. As one of the most productive segments of the Nation's workforce, they should staff the new department.

In summary, we suggest that Congress not disregard the fine record of Government civil service employees in creating this new department.

Sincerely,

JAMES M. PEIRCE, *President.*

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XXXIII. Impact of H.R. 6804 on H.R. 6831. Hearing before House Committee on Interstate and Foreign Commerce, Subcommittee on Energy and Power, 95th Congress, 1st Session.

IMPACT OF H.R. 6804 ON H.R. 6831

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

THE IMPACT THAT THE LEGISLATION CREATING THE DEPARTMENT OF ENERGY, H.R. 6804, MIGHT HAVE ON THE NATIONAL ENERGY ACT, H.R. 6831

MAY 24, 1977

Serial No. 95–64

Printed for the use of the
Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
21-605 O WASHINGTON : 1978

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IMPACT OF H.R. 6804 ON H.R. 6804

TUESDAY, MAY 24, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 7:10 p.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John D. Dingell, chairman, presiding.

Mr. DINGELL. The subcommittee will come to order.

Tonight the subcommittee has the opportunity to consider what, if any, impact the Energy Department legislation will have on the National Energy Act, H.R. 6831.

The Senate passed its version of that legislation, S. 826, on May 18, 1977.

The House version of this legislation, H.R. 6804, was reported by the House Committee on Government Operations on May 15. That committee, under the able leadership of Chairman Jack Brooks, has worked with our committee in an effort to minimize changes in existing law and the grant of new authorities. That committee has tried to limit H.R. 6804 to those provisions essential to reorganization. However, there are some changes that will have a profound effect on existing law and the policy legislation, H.R. 6831, which we are now considering.

When the White House released its Energy Department proposal on March 1, 1977, the administration sought to contrast informal rulemaking at the Federal Energy Administration with the so-called formal on-the-record rulemakings and adjudications at the Federal Power Commission on all matters under the Natural Gas and Federal Power Acts, except wellhead pricing. The FPC now conducts informal rulemaking proceedings for wellhead pricing. The administration's Fact Sheet said oil pricing and allocation and the wellhead pricing of natural gas would be conducted by the Secretary through informal rulemaking. All other matters would be conducted by a three-member board.

The administration's bill, however, immediately vested all functions of the FPC in the Secretary as well as those of the FEA. Only those FPC functions required to be on the record, after a hearing, were vested in the Board. Thus the bill appeared broader than the White House Fact Sheet would indicate.

On March 25, I asked Dr. Schlesinger to identify the specific FPC functions that were intended to be exercised by the new Secretary. He did so and all of them are listed in H.R. 6804 at the urging of the administration.

One can see that they are more comprehensive than wellhead pricing. They include regulation of exports and imports of natural gas, establishment of curtailment priorities and broad rulemaking powers of general applicability. In essence, H.R. 6804 gives the new Secretary the meat of the Federal Power Commission functions and leaves the scraps to the new Federal Energy Regulatory Commission. The criteria for exercising these new powers are, as yet, unchanged. They are the vague criteria of the Federal Power and Natural Gas Acts. But, except for wellhead pricing, the procedures to be followed by the Secretary are drastically changed in that bill.

In my judgment, H.R. 6804 impacts heavily on the policy bill, H.R. 6831. It prejudges who shall exercise these functions. In one giant step, it decides what procedures and form of judicial review shall be utilized in rulemaking. In short, it appears far more extreme than the measures proposed by the President on March 1, 1977. It is more than a reorganization bill. It is a not-so-subtle shift of vast power from a collegial body to a single person, not for a year or two, but permanently. It contains no safeguards to protect the consumer, or even industry, from potential excesses in the use of that power or to guide the Secretary, except some very vague pie-in-the-sky statements of policy in section 101 of the bill.

We think we know who the first Energy Secretary will be but who will be his successor and who will be the subordinate officials of the Energy Department? Such blank check authority for the new Secretary is not good public policy, as experiences in this decade have revealed.

I testified before the House Committee on Government Operations that "a merger of oil and gas functions is needed," but I added that I was "not very happy with the approach" proposed by the administration to achieve this merger. I certainly did not suggest that wellhead pricing authority should be vested in the Secretary prior to consideration of H.R. 6831 by the Congress. This very basic authority will affect millions of people. I do not believe that one person should exercise it so freely.

I note that the Senate also was unwilling to vest this responsibility in the Secretary, at least until Congress had time to act on the policy bill. I understand that the administration expressed support for the Senate bill prior to its passage in that body. I wonder if that is still the administration's posture. If so, possibly we should consider adopting it or a similar approach for the House bill also.

These and other matters in the House and Senate DOE bills, including the provisions affecting oil and gas pricing procedures under the Emergency Petroleum Allocation Act of 1973 and the breadth of the so-called revolving-door provisions, will be discussed tonight.

At this point, without objection, we will insert into the record a communication to the Chair, being a response by Mr. Schlesinger to questions.

[The following letter and attachment was received for the record:]

THE WHITE HOUSE

WASHINGTON

May 24, 1977

Dear Mr. Chairman:

Attached, pursuant to your letter of May 19, are responses to questions dealing with the relationship of HR 6804, the Department of Energy Organization Act, to HR 6831, the National Energy Act.

I am sorry I will not be able to attend the hearing on this subject, and hope that the responses to your questions will be of assistance.

Sincerely,

James R. Schlesinger
Assistant to the President

Enclosure

The Honorable John D. Dingell
Chairman
Subcommittee on Energy and Power
Committee on Interstate and
Foreign Commerce
House of Representatives
Washington, D. C. 20515

1. (a) The Secretary could issue rules, regulations or policy statements of general applicability to the extent that the Federal Power Commission can at present issue such rules, regulations and statements of policy. Thus, this rule-making authority could be used to deal with generic issues cutting across individual case adjudications, to the extent such rules could be issued while still allowing settlement of disputed issues of material fact through these case adjudications. No new authority is intended under the rule-making authority.

With regard to wholesale electric rates, such general rules might deal with issues such as maintenance of a uniform system of accounts or, possibly, guidelines for the treatment of fuel adjustment clauses or rules requiring consideration of Conway type issues at the time a rate increase is filed. I should stress, however, that these are simply illustrations of the types of issues which might be susceptible to treatment by generic rules; actual promulgation of such rules would, of course, depend on circumstances existing after formation of the Department and careful scrutiny of potential issues to ensure that promulgation of such rules would not adversely impact on individual rights.

(b) Once general rules are issued, the Commission would have the power to enforce such rules.

2.(a) The question with regard to responsiveness to energy needs and current practice of the Federal Power Commission relates as much to the type of issue involved in a particular case as to the nature of the proceeding. Elimination of rights of cross-examination, when that is necessary, for example, in conduct of individual cases under the Natural Gas Act or the Federal Power Act, is neither warranted nor desirable. What the Secretary of Energy would attempt to do, as indicated in the response to question 1, would be to reduce the number of issues which must be litigated in individual cases through issuance of generic rules, where appropriate and where individual rights would not be harmed. Thus the examples cited in response to question 1 above with regard to wholesale electric rates would be illustrative of the types of rules which might be susceptible to this approach. If they were, individual adjudications could proceed with greater dispatch, while at the same time affording continuation of full due process rights for litigants before the Commission.

(b) In the development of such rules, there may be issues of fact which must be resolved by proceedings requiring

more formality than those outlined in section 501 of the bill, though I would note that these procedures themselves are more formal than those required by the Administrative Procedure Act. With regard to any such issues, the Secretary would, of course, attempt to ensure that the procedural formality used to resolve a particular issue is sufficient to withstand any potential court challenge to such rule or regulation and to assure protection of affected persons.

(c) I do not believe that the procedures of H.R. 6804 regarding to the functions specified in section 301(b) of that Act are inconsistent with the natural gas and electric power provisions of H.R. 6831.

Senate bill:

1. The authority vested in the Secretary of Energy by section 203(8) of S. 826 is at present carried out by the Energy Research and Development Administration, with the sole exception of a small number of privately operated low-level commercial waste disposal facilities not under ERDA's control which arguably would be brought under the Department of Energy's control by paragraph (B). However, section 203(8) as passed by the Senate contains a proviso stating that the section does not give the Department any additional powers other than those already conferred by law.

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We believe that these nuclear waste management responsibilities should be vested in the Department, since these functions are now performed by ERDA, and since the close link between these functions and other ERDA/DOE responsibilities such as nuclear power R and D make it both proper and essential that these functions continued to be so performed.

2. Section 207 of S. 826 is a general statement of responsibilities of the Secretary which was added by the Committee on Governmental Affairs. As such, it outlines duties and responsibilities in a manner similar to such descriptions of duties and responsibilities contained both in the Federal Energy Administration Act of 1974 and the Energy Reorganization Act of 1974. Our understanding is that no new authority is intended to be conferred; rather, this section outlines in a general manner the functional areas in which the Secretary of Energy would exercise his responsibilities.

3. Section 305, dealing with the Motor Vehicle Information and Cost Savings Act, was amended in the Senate Governmental Affairs Committee. The provision contained in the original Administration version of S. 826 would have simply provided a consultation role for the Secretary of Energy. The Administration has taken no position on the amended section 305.

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4. The Administration supports the House committee reported version of the transfer of authority of ICC oil pipeline functions. The Senate-passed bill would condition such transfer on the promulgation of procedural rules and regulations by the Secretary of Energy and submission of those rules pursuant to an Energy Action. I do not believe that such a conditional transfer is warranted and rather believe that such transfer should be achieved by the legislation in a manner similar to the other transfers contained in Title III of the legislation.

5-8. With regard to the views of the Administration on Title IV of S. 826, we have stated that in the interest of facilitating Senate action on S. 826, we would agree to accept the provisions of Title IV in the Senate, though we believe that the original provisions of S. 826 or the pricing-related provisions of H. R. 6804 are more consonant with the views of the Administration on these issues.

5-8. The effect of Title IV would relate to the administration of authorities under existing law. This title would have no effect on implementation of H.R. 6831. Title IV would establish a relationship between the Secretary of Energy and the Energy Regulatory Board; this Board would have responsibilities with regard to certain types of actions

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currently vested in the Federal Power Commission under the Federal Power Act or the Natural Gas Act, and with regard to certain limited types of energy actions currently vested in the Federal Energy Administration. The provisions of H.R. 6831, with the exception of interconnection amendments to section 202(b) of the Federal Power Act, would not be affected by the division of responsibility outlined in Title IV of S. 826. With regard to interconnection responsibilities under Section 521 of Title I of H. R. 6831, the Federal Power Commission would acquire new responsibilities in the areas of interconnection and wheeling of power. These responsibilities, under S. 826, would be vested in the Board.

9. The effect of Title V of S. 826 would be to require that any authority vested in the Secretary of Energy or the Board relating to functions which can be exercised through rule-making would be required at a minimum to be exercised pursuant to section 501 of S. 826.

10. The provisions of Title VII of S. 826 do not specify substantive requirements of the National Energy Policy Plan required by that Title. As such, the provisions of this Title--which establish a procedure for a biennial plan submission to the Congress by the President beginning in 1979--are not inconsistent with the provisions of H.R. 6831.

[The text of H.R. 6831, and H.R. 6804 as reported with amendments, follows:]

95TH CONGRESS
1ST SESSION

H. R. 6831

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1977

Mr. WRIGHT introduced the following bill; which was divided and initially referred for a period ending not later than July 13, 1977, as follows: sections 101 through 109 and sections 201 through 603 to the Committee on Interstate and Foreign Commerce; sections 110 through 131, and, concurrently with the Committee on Interstate and Foreign Commerce, those portions of subpart 1 of part A of title I relating to financial assistance to residential customers defined in section 101, to the Committee on Banking, Finance and Urban Affairs; section 701 to the Committee on Government Operations; sections 721 through 746 to the Committee on Public Works and Transportation; title II to the Committee on Ways and Means; and sections 2 through 4 concurrently to all of the above committees

A BILL

To establish a comprehensive national energy policy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Energy Act".

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Sec. 2. Findings.
Sec. 3. National energy goals.
Sec. 4. References to Federal Power Commission and Federal Energy Administration.

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Sec. 107. Contract provisions.
Sec. 108. Rules.
Sec. 109. Authorization of appropriations.

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Sec. 110. Amendment to National Housing Act.
Sec. 111. Amendment to National Housing Act.
Sec. 112. Amendment to National Housing Act.
Sec. 113. Amendment to Federal Home Loan Mortgage Corporation Act.
Sec. 114. Amendment to Federal National Mortgage Association Charter Act.
Sec. 115. Amendment to Energy Conservation and Production Act.

Subpart 3—New Buildings Performance Standards Grants

Sec. 131. Amendment to section 307(b) of Energy Conservation and Production Act.

PART B—ENERGY EFFICIENCY OF CONSUMER PRODUCTS

Subpart 1—Energy Efficiency Standards for Consumer Products Other Than Automobiles

Sec. 201. Amendment to the Energy Policy and Conservation Act.

Subpart 2—Disclosure of Automobile Fuel Inefficiency Tax and Disclosure of Automobile Fuel Efficiency Rebate

Sec. 221. Disclosure in labeling.
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PART C—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

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PART D—NATURAL GAS

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Sec. 502. Definitions.
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Subpart 4—Natural Gas Rate Design Policies

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Sec. 1604. Minimum tax treatment of intangible drilling expenses relating to geothermal wells.

FINDINGS

SEC. 2. The Congress finds that—

(1) the United States faces an energy shortage arising from increasing demand for energy, and for oil and natural gas in particular, and insufficient domestic supply of oil and natural gas to satisfy that demand;

(2) unless effective measures are taken to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world

oil market and increasingly vulnerable to interruptions of foreign oil supply;

(3) the United States can significantly reduce its demand for oil and its demand for natural gas for non-essential uses by carrying out an effective conservation and fuel efficiency program in all sectors of energy use, through reform of utility rate structures, and conversion by industrial firms and utilities from oil and natural gas to coal and other fuels; and

(4) the United States needs to develop renewable and essentially inexhaustible energy sources to ensure sustained long-term economic growth.

NATIONAL ENERGY GOALS

SEC. 3. The Congress hereby establishes the following national energy goals for 1985:

(1) Reduction of annual growth of United States energy demand to less than 2 per centum.

(2) Reduction of the level of oil imports to less than six million barrels per day.

(3) Achievement of a 10 per centum reduction in gasoline consumption from the 1977 level.

(4) Insulation of 90 per centum of all American homes and all new buildings.

(5) An increase in annual coal production to at least four hundred million tons over 1976 production.

(6) Use of solar energy in more than two and one-half million homes.

REFERENCES TO FEDERAL POWER COMMISSION AND FEDERAL ENERGY ADMINISTRATION

SEC. 4. If the Federal Power Commission or the Federal Energy Administration is terminated, then any reference in this Act (or any amendment made thereby) to the Federal Power Commission or the Federal Energy Administration shall be deemed by a reference to the officer, department, or agency in which the principal functions of such Commission or Administration (as the case may be) are vested after such termination.

TITLE I—PRICING, REGULATORY AND OTHER NONTAX PROVISIONS

PART A—ENERGY CONSERVATION PROGRAMS FOR EXISTING RESIDENTIAL BUILDINGS

Subpart 1—Utility Program

DEFINITIONS

SEC. 101. As used in this subpart:

(1) The term "Administrator" means the Administrator of the Federal Energy Administration.

(2) The term "Commission" means the Federal Power Commission.

(3) The term "natural gas" means natural gas as that term is defined in the Natural Gas Act.

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(4) The term "nonregulated utility" means a public utility which is not a regulated utility.

(5) The term "public utility" means any person or State agency which is engaged in the business of selling natural gas or electric energy for purposes other than resale; except that such term shall be deemed not to include any such person or agency in any calendar year unless during the second preceding calendar year either (A) sales of natural gas by such person or agency exceeded ten billion cubic feet, or (B) sales of electric energy by such person or agency exceeded seven hundred and fifty million kilowatt-hours.

(6) The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale of electric energy or natural gas.

(7) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(8) The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority exercises ratemaking authority.

(9) The term "residential building" means any building developed for residential occupancy, the construction of

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which commenced prior to one year after the date of enactment of this subpart, which has a mechanical or electrical system for heating or cooling, or both, and which contains no more than two dwelling units.

(10) The term "residential customer" means any person to whom a public utility sells natural gas or electric energy for consumption in a residential building.

(11) The term "residential energy conservation measure" means—

(A) caulking and weatherstripping of all exterior doors and windows;

(B) furnace efficiency modifications limited to—

(i) replacement burners designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(ii) devices for modifying flue openings which will increase the efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, and floor insulation;

(E) hot water heater insulation; and

(F) storm windows.

(12) The term "residential energy conservation plan" means a plan approved by the Administrator pursuant to section 102(c) which is developed by a State regulatory authority or by a nonregulated utility.

(13) The term "State" means a State, the District of Columbia, Puerto Rico, and, at the discretion of the Administrator, any territory or possession of the United States.

(14) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy or natural gas by any public utility (other than by such State agency).

(15) The term "suggested measures" means, with respect to a particular residential building, the residential energy conservation measures which the Administrator, in the rules prescribed pursuant to section 102(a), determines to be appropriate for the location and the category of residential buildings which includes such building.

(16) The term "utility program" means a program meeting the requirements of section 103 carried out by—

(A) a regulated utility pursuant to a residential energy conservation plan developed by a State regulatory authority;

(B) a nonregulated utility pursuant to a residential energy conservation plan developed by such utility; or

(C) a regulated or nonregulated utility pursuant to

an order of the Administrator issued pursuant to section 105.

RESIDENTIAL ENERGY CONSERVATION PLANS

SEC. 102. (a) The Administrator shall, not later than one hundred and twenty days after enactment of this subpart and after consultation with the Secretary of Housing and Urban Development and the heads of such other agencies as he deems appropriate, promulgate rules for the content and implementation of residential energy conservation plans.

(b) The rules prescribed pursuant to subsection (a)—

(1) shall identify the suggested measures for residential buildings, by climatic region and by categories determined by the Administrator on the basis of type of construction or any other factors which the Administrator may deem appropriate; and

(2) may include—

(A) standards for general safety and effectiveness of any suggested measure;

(B) standards for installation of any residential energy conservation measure; and

(C) such other requirements as the Administrator may determine to be necessary to carry out this subpart.

(c) Not later than one hundred and eighty days after promulgation of the rules described in subsection (a), each

State regulatory authority may submit, and each nonregulated utility shall submit a proposed residential energy conservation plan to the Administrator. The Administrator may, upon request of a State regulatory authority or nonregulated utility, extend the time period for submission of a plan by such authority or utility. Each such plan shall be reviewed and approved or disapproved by the Administrator not later than ninety days after submission. If the Administrator disapproves a plan, the State regulatory authority or nonregulated utility may submit a new or amended plan not later than sixty days after the date of such disapproval, or such longer period as the Administrator may, for good cause, allow. The Administrator shall review and approve or disapprove any such new or amended plan not later than ninety days after submission. After approval of a plan, a State regulatory authority or nonregulated utility may submit an amended plan with the consent of the Administrator.

(d) No residential energy conservation plan submitted by a State regulatory authority shall be approved by the Administrator unless such plan—

(1) requires each regulated utility over which such State regulatory authority exercises ratemaking authority to implement a utility program described in section 103;

(2) contains an adequate program for preventing

unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of utility programs within such State;

(3) contains adequate procedures to assure that each regulated utility will carry out a utility program;

(4) contains adequate procedures to assure that each regulated utility will charge fair and reasonable prices and rates of interest to its residential customers in connection with the installation of residential energy conservation measures; and

(5) meets such other requirements as may be prescribed in the rules promulgated pursuant to subsection (a).

(d) No residential energy conservation plan proposed by a nonregulated utility shall be approved by the Administrator unless such plan—

(1) provides for the implementation by such utility of a utility program described in section 103;

(2) contains procedures pursuant to which such utility will submit a written report to the Administrator, not later than one year after approval of such plan and biennially thereafter, regarding the implementation of such utility program and containing such information as may be prescribed by the Administrator in the rules promulgated pursuant to subsection (a); and

(3) meets such other requirements as may be prescribed in the rules promulgated pursuant to subsection (a).

UTILITY PROGRAMS

SEC. 103. (a) Except as provided in subsections (b) and (c), each utility program shall include—

(1) procedures designed to inform, no later than January 1, 1980, each of its residential customers who owns or occupies a residential building in which the suggested measures have not been installed, of—

(A) the suggested measures for the category of buildings which includes such residential building;

(B) the savings in costs of home heating and cooling that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of the arrangements described in paragraph (2) of this subsection;

(2) procedures whereby the public utility, no later than January 1, 1980, will offer each such residential customer the opportunity to enter into arrangements with the public utility under which the public utility, directly or through one or more contractors will—

(A) inspect the residential building to determine and apprise the residential customer of the estimated cost of purchasing and installing each suggested measure;

(B) offer to have the suggested measures installed;

(C) make, or arrange for another lender to make, a loan to such residential customer to finance the purchase and installation costs of suggested measures purchased from and installed by any of the following persons:

(i) the public utility, or

(ii) the public utility and one or more contractors, or

(iii) one or more contractors,

subject to such reasonable requirements as to creditworthiness as may be permitted by the applicable residential energy conservation plan and to the right of the public utility to inspect the residential building to confirm the installation of suggested measures;

(D) permit the residential customer to repay the principal of and interest on any loan made pursuant to subparagraph (C), over a period of not less than three years, as a part of his periodic bill except that a lump-sum payment of outstanding

principal and interest may be required upon default in payment by the residential customer;

(3) procedures whereby the public utility prepares and sends to each of its residential customers a list of suppliers and contractors in its service area who sell and install residential energy conservation measures which list is designed to encourage participation by such contractors and suppliers in a nondiscriminatory manner; and

(4) procedures whereby the public utility prepares and sends to each of its residential customers a list of banks, savings and loan associations, credit unions, and other public and private lending institutions in its service area which offer loans for the purchase and installation of residential energy conservation measures.

(b) The Administrator may, upon petition of a public utility, supported in the case of a regulated utility by the appropriate State regulatory authority, waive in whole or in part the requirements of paragraphs (1) (c) and (2) of subsection (a) with respect to the utility program of such utility if such utility demonstrates to the satisfaction of the Administrator that, despite good faith efforts on its part, it is unable to meet the requirements of paragraph (2) of subsection (a) because it both lacks the financial capability to extend loans in accordance with such paragraph

and is unable to arrange with any other suitable financial institution for the making of such loans, except that no public utility may be granted a waiver under this section unless such utility demonstrates to the satisfaction of the Administrator that it has dedicated all capital reasonably available to it toward meeting the requirements of paragraph 2 of subsection (a).

ALTERNATIVE PROGRAMS

SEC. 104. (a) A State regulatory authority or a public utility (supported in the case of a regulated utility by the appropriate State regulatory authority) may apply for an exemption from the requirements of section 103 at any time prior to one year after enactment of this Act. The Administrator shall grant such an exemption if such authority or utility demonstrates to the satisfaction of the Administrator that it has implemented or will implement an alternative program providing for the installation of residential conservation measures in the homes of its residential customers which program meets the requirements of this subsection. No exemption shall be granted by the Administrator unless the alternative program of such authority or utility includes the following:

(1) procedures whereby the utility informs each of its residential customers who owns or occupies a residen-

tial building in which the suggested measures have not been installed, of—

(A) the suggested measures for the category of residential buildings which includes such building;

(B) the savings in costs of home heating and cooling that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of arrangements for purchase and installation of such measures;

(2) procedures whereby arrangements are offered for the installation of the suggested measures to such residential customers; and

(3) such other requirements as the Administrator determines.

(b) Any application for exemption pursuant to subsection (A) shall contain such information as the Administrator may by rule require.

(c) No application pursuant to subsection (a) shall be approved by the Administrator unless he determines that the alternative program is likely to result in the installation of suggested measures in as large a number of residential buildings as would have been installed had such utility submitted a program which meets the requirements of section 103.

(d) Any State regulatory authority or public utility may apply for a temporary exemption prior to the promulgation of guidelines pursuant to section 102. A temporary exemption may be granted from the requirements of section 103 for a period not to exceed two years after the date of enactment of this Act, if such authority or utility demonstrates to the satisfaction of the Administrator that it has implemented or proposes to implement an energy conservation program for residential customers which is likely to result in the installation of suggested measures in a substantial proportion of residential buildings.

FEDERAL STANDBY AUTHORITY

SEC. 105. (a) If a State regulatory authority has not had a plan approved under section 102 (c) within two hundred and seventy days after promulgation of rules under section 102 (a), or within such additional period as the Administrator may allow pursuant to section 102 (c) (1), or if the Administrator determines that such State regulatory authority has not adequately implemented an approved plan, the Administrator shall, by order, require each public utility in the State to offer to its residential customers a utility program prescribed in such order which meets the requirements specified in subsection (a) of section 103.

(b) If a nonregulated utility has not had a plan approved under section 102 (c) within two hundred and sev-

enty days after promulgation of rules under section 102 (a) or within such additional period as the Administrator may allow pursuant to section 102 (c), or if the Administrator determines that such nonregulated utility has not adequately implemented an approved plan, the Administrator shall, by order, require such nonregulated utility to offer its customers a utility program prescribed in such order which meets the requirements specified in subsection (a) of section 103.

(c) If the Administrator determines that any public utility to which an order has been issued pursuant to subsection (a) or (b) has failed to comply with such order, he may either order that such public utility may not increase any at which it sells natural gas or electric energy until such time as he determines that such utility has implemented a utility program meeting the requirements of the order issued pursuant to subsection (a) or (b), or petition the district courts of the United States to enjoin such utility from violating an order issued pursuant to this subsection.

(d) Any public utility which violates an order under subsection (b) shall be subject to a civil penalty of not more than $25,000 for each violation. Each day that such violation continues shall be considered a separate violation.

RELATIONSHIP TO OTHER LAWS

SEC. 106. The Administrator may by order upon petition by a public utility and for good cause, supersede any

law or regulation of any State or political subdivision thereof, to the extent that such law or regulation prohibits a public utility from taking any action required to be taken under section 103 of this Act.

CONTRACT PROVISIONS

SEC. 107. No public utility shall be subject to any liability under any provision in any contract which restricts any public utility from lending, borrowing, or entering a new line of business, if such lending, borrowing, or entering a new line of business is required under section 103 of this Act.

RULES

SEC. 108. The Administrator is authorized to promulgate such rules as may be necessary to carry out this subpart.

AUTHORIZATION OF APPROPRIATIONS

SEC. 109. There are hereby authorized to be appropriated to the Administrator such sums as may be necessary to carry out his responsibilities under this subpart.

Subpart 2—Financing Program

AMENDMENTS TO NATIONAL HOUSING ACT

SEC. 110. Section 2 (a) of the National Housing Act is amended by adding at the end of the first paragraph thereof the following sentence: "For the purpose of this section, the terms 'financial institution' and 'lending institution' shall be deemed to include any public utility which is engaged in making loans or advancing credit for energy conserving

improvements as defined in subparagraph (2) of the fourth paragraph of this section only for the purposes of such loans or advances of credit. The term 'public utility' means any person or State agency which is engaged in the business of selling natural gas or electric energy for purposes other than resale.".

SEC. 111. Subparagraphs (2) and (3) of the fourth paragraph of section 2(a) of the National Housing Act are amended to read as follows:

"(2) The term 'energy conserving improvements' means (i) energy conservation measures as defined in section 101 of the National Energy Act, or (ii) any addition, alteration, or improvement to an existing or new structure which is designed to reduce the total energy requirements of that structure, and which is in conformity with such criteria and standards as shall be prescribed by the Secretary in consultation with the Administrator of the Federal Energy Administration; and

"(3) the term 'solar energy system' means any addition, alteration, or improvement to an existing or new structure which is designed to utilize solar energy to reduce the energy requirements of that structure from other energy sources, and which is in conformity with such criteria and standards as shall be prescribed by the

Secretary in consultation with the Administrator of the Federal Energy Administration.".

SEC. 112. Section 2(f) of the National Housing Act is amended by adding the following at the end thereof: "The Secretary shall conduct a study within two years after the enactment of the National Energy Act in order to determine an actuarially sound premium rate for loans for energy conserving improvements authorized under section 2(a) of this subchapter, and shall, based on this study, no earlier than two years after date of enactment of the National Energy Act, set an actuarially sound premium rate for such loans, which rate may exceed the otherwise applicable 1 per centum limitation of this subsection.".

SEC. 113. Section 302(h) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451(h)) is amended by adding at the end thereof a new sentence, to read as follows: "The term 'residential mortgage' is deemed to include a loan or advance of credit insured under title I of the National Housing Act whose original proceeds are applied for in order to finance energy conserving improvements to residential real estate. The term 'residential mortgage' is also deemed to include a loan or advance of credit for such purposes not having the benefit of such insurance and to include loans made where the lender relies for pur-

poses of repayment primarily on the borrower's general credit standing and forecast of income, with or without other security.".

AMENDMENT TO FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT

SEC. 14. Section 302 (b) of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new paragraph:

"(3) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in loans made for the energy conservation purposes described in section 2 (a) of the National Housing Act, whether or not insured under such section. To be eligible for purchase, any such loan not so insured may be secured as required by the corporation.".

AMENDMENT TO ENERGY CONSERVATION AND PRODUCTION ACT

SEC. 115. Section 422 of the Energy Conservation and Production Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 422. There are authorized to be appropriated for purposes of carrying out the weatherization program under this part, not to exceed $55,000,000 for the fiscal year ending September 30, 1977, not to exceed $130,000,000 for the fiscal year ending September 30, 1978, not to exceed

$200,000,000 for the fiscal year ending September 30, 1979, and not to exceed $200,000,000 for the fiscal year ending September 30, 1980, such sums to remain available until expended.".

Subpart 3—New Building Performance Standards Grants

AUTHORIZATION FOR SECTION 307 (b) OF ENERGY CONSERVATION AND PRODUCTION ACT

SEC. 131. Section 307 (b) of the Energy Conservation and Production Act is amended to read as follows:

"(b) There is authorized to be appropriated for the purpose of carrying out this section, the following amounts—

"(1) for the fiscal year ending September 30, 1977, not to exceed $5,000,000;

"(2) in the fiscal year ending September 30, 1978, not to exceed $10,000,000; and

"(3) in the fiscal year ending September 30, 1979, not to exceed $10,000,000.

Any amount appropriated pursuant to this subsection shall remain available until expended.".

PART B—ENERGY EFFICIENCY STANDARDS FOR CONSUMER PRODUCTS

Subpart 1—Consumer Products Other Than Automobiles

AMENDMENT TO ENERGY POLICY AND CONSERVATION ACT

SEC. 201. (a) Section 325 (a) of the Energy Policy and Conservation Act is amended to read as follows:

"(a) (1) (A) Except as otherwise provided in paragraph (3), the Administrator shall, by rule, prescribe an energy efficiency standard for each type or class of covered product specified in paragraphs (1), (2), (5), (6), (9), (12), and (13) of section 322(a).

"(B) The Administrator may, by rule, prescribe an energy efficiency standard for any type or class of covered products of each of the types specified in paragraphs (3), (4), (7), (8), (10), (11), and (14) of section 322(a), except that the Administrator may not prescribe an energy efficiency standard for a type or class of covered product described in paragraph (14) of section 322(a) unless he determines that—

"(i) average per household energy use by products of such type exceeds 150 kilowatt-hours (or its Btu equivalent) per year;

"(ii) aggregate household energy use by products of such type exceeds 4,200,000,000 kilowatt-hours per year; and

"(iii) substantial improvement in the energy efficiency of products of such type is possible.

"(2) No standard for a type (or class) of covered product shall be prescribed pursuant to paragraph (1) unless a test procedure has been prescribed pursuant to section 323 with respect to that type (or class) of product.

"(3) The Administrator shall not prescribe an energy

efficiency standard for a type or class of covered product if he determines that the establishment of such standard is not technologically feasible or not economically justified.

"(4) Energy efficiency standards established pursuant to this section shall be designed to achieve the maximum improvement in energy efficiency which the Administrator determines is technologically feasible and economically justified, and may be phased in over a period of years through the establishment of intermediate standards.

"(5) In determining whether a standard is economically justified pursuant to paragraph (3) or (4), the Administrator shall consider—

"(A) the economic impact of the standard,

"(B) the total projected amount of energy savings likely to result from the imposition of the standard,

"(C) the savings in operating costs throughout the estimated average life of covered products in the type or class, compared to any increase in the price of or in initial charges for, or maintenance expenses of, the covered product which is likely to result from the imposition of the standard,

"(D) any lessening of the utility or the performance of the covered product likely to result from the imposition of the standard,

"(E) any negative effects on competition likely to result from the imposition of the standard,

"(F) the need of the Nation to conserve energy, and

"(G) any other factors he considers relevant.

"(6) A rule prescribing an energy efficiency standard for a type or class of covered product may, for not more than two years, exempt, in whole or in part, from its requirements manufacturers of covered products whose gross revenues from all operations (including but not limited to the manufacture and sale of covered products) do not exceed $8,000,000 per annum, as determined by the Administrator, and with respect to whom the Administrator determines imposition of the standard may result in a substantial lessening of competition.

"(7) A rule prescribing an energy efficiency standard for a type or class of covered product may specify different minimum levels of energy efficiency for covered products within such type or class based upon the kind of energy consumed by such covered products.

"(8) The Administrator shall, not later than five years after promulgation of an energy efficiency standard, conduct a reevaluation in order to determine whether such standard should be modified. In conducting such reevaluation the Administrator shall take into account such information as he deems relevant, including technological developments with respect to the manufacture of the type or class of covered product involved and the economic impact of the standard.".

(b) Section 325(b) of the Energy Policy and Conservation Act is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4) respectively, and inserting a new paragraph (2) to read as follows:

"(2) With respect to covered products of each of the types specified in section 325(a)(1)(A), an advance notice of proposed rulemaking with respect to such type or class of covered product shall be promulgated by the Administrator not later than thirty days after a test procedure with respect to that type or class of covered product has been prescribed, or thirty days after enactment of the National Energy Act, whichever is later.".

(c) Part B of title III of the Energy Policy and Conservation Act is further amended as follows:

(1) Section 324(c)(5) is amended by inserting ", including instructions for the maintenance, use, or repair of the covered product," after "energy consumption" in the matter following subparagraph (C).

(2) Section 325(d) is deleted.

(3) Section 326 is amended by adding a new subsection (d), to read as follows:

"(d) The Administrator may require each manufacturer of covered products to submit such information or reports with respect to energy efficiency of such covered products as the Administrator determines may be necessary to establish standards under section 325.".

(4) Section 336(a)(1) is amended by (A) striking out "(1)" and (B) by striking out "325(a)(1), (2), or (3)" in the first sentence thereof and inserting in lieu thereof the following: "325(a)".

(5) Section 336(a)(1)(B) is amended by striking out "paragraph (1), (2), or (3) of" in the first sentence thereof.

(6) Section 336(a)(2) is deleted.

(7) Sections 336(b)(1) and (2) are amended by striking out "section 323 or 324" and inserting in lieu thereof "section 323, 324, or 325".

(8) Section 336(b)(5) is deleted.

(9) Section 339(a) is amended to read as follows:

"(a) There are authorized to be appropriated to the Administrator to carry out his responsibilities under this part not to exceed $1,700,000 for fiscal year 1976, not to exceed $3,056,000 for fiscal year 1977, and for each fiscal year thereafter such sums as may be necessary.".

Subpart 2—Disclosure of Automobile Fuel Inefficiency Tax and Disclosure of Automobile Fuel Efficiency Rebate

DISCLOSURE IN LABELING

SEC. 221. Section 506(a)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.) is amended by redesignating subparagraph (C) as subparagraph (E) and by adding new subparagraphs (C) and (D) to read as follows:

"(C) containing, in the case of any automobile the sale of which is subject to the fuel inefficiency tax imposed pursuant to section 4064 of the Internal Revenue Code of 1954, a statement indicating that a tax was paid with respect to such sale and indicating the amount of such tax, and

"(D) containing, in the case of any automobile with respect to the sale of which an amount is paid or credited pursuant to section 6429 of the Internal Revenue Code of 1954, a statement indicating that a payment or credit was made with respect to such sale and the amount of such payment or credit.".

DISCLOSURE IN ADVERTISING

SEC. 222. (a) The Federal Trade Commission is authorized to prescribe rules requiring disclosure of any tax imposed under section 4064 of the Internal Revenue Code of 1954 or rebate payable under section 6429 of such Code with respect to any automobile advertised in any television broadcast or advertisement in writing which states the price or fuel economy of an automobile or which advertises an identifiable model type of automobile.

(b) A violation of a rule under subsection (a) shall be deemed an unfair or deceptive act or practice affecting commerce, for purposes of the Federal Trade Commission Act.

(c) Nothing in this section shall be construed as restricting any authority of the Commission under any other law.

PART C—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

AMENDMENT TO ENERGY POLICY AND CONSERVATION ACT

SEC. 301. Title III of the Energy Policy and Conservation Act is amended by adding at the end thereof the following new part:

"PART F—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

"DEFINITIONS

"SEC. 391. For purposes of this part:

"(1) The term 'building' means any structure that includes a heating or cooling system, or both, the construction of which structure was completed on or before April 20, 1977.

"(2) The term 'energy conservation measure' means—

"(A) insulation of walls, ceilings, attics, floors, ducts, and pipes;

"(B) double glazing energy control systems;

"(C) automatic energy control systems;

"(D) solar heating and/or cooling systems;

"(E) solar water heating systems;

"(F) furnace modifications limited to (i) replacement burners designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency, and (ii) devices for modifying flue openings which will increase the efficiency of the heating system;

"(G) caulking and weatherstripping of exterior doors and windows;

"(H) reflective glass coatings;

"(I) lighting fixture retrofit, to the extent that such retrofit does not result in any foot candle per square foot increase in the general illumination level of the facility and conserves energy; and

"(J) electrical or mechanical furnace ignition systems which replace standing gas pilot lights, but only as part of a project which includes one or more of the energy conservation measures specified in paragraphs (A) through (I).

"(3) The term 'Governor' means the chief executive officer of a State.

"(4) The term 'hospital' means a public or nonprofit institution which is—

"(A) a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

"(B) duly authorized to provide hospital services under the laws of the State in which it is situated.

"(5) The term 'hospital facilities' means buildings housing a hospital and related facilities, including laboratories, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

"(6) The term 'public or nonprofit institution' means an institution owned and operated by—

"(A) a State, a political subdivision of a State or an agency or instrumentality of either; or

"(B) an organization exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

"(7) The term 'project' means an undertaking to acquire and/or install one or more energy conservation measures in school facilities or in hospital facilities.

"(8) The term 'project costs' shall be limited to costs incurred in the design, acquisition, construction, and installation of energy conservation measures.

"(9) The term 'school' means a public or nonprofit institution which—

"(A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis; or

"(B)(i) provides, and is legally authorized to provide, a program of education beyond secondary education, on a day or residential basis;

"(ii) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

"(iii) is accredited by a nationally recognized accrediting agency or association; and

"(iv) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of subparagraph

(i), (ii), and (iii) and which provides such a program.

Such term also includes any public or nonprofit institution which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of subparagraphs (i), (ii), and (iii) of paragraph (B).

"(10) The term 'school facilities' means buildings, housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school, but does not include any facility used or to be used for sectarian instruction or as a place for religious worship, or any athletic facility used primarily for athletic exhibitions, contests, games, or other events for which admission is charged to the general public.

"(11) The term 'State' means a State, the District of Columbia, and at the discretion of the Administrator, Puerto Rico, or any territory or possession of the United States.

"GRANT AUTHORIZATION

"SEC. 303. (a) The Administrator is authorized to make grants to the States to assist schools and hospitals in the payment of project costs incurred in connection with projects undertaken pursuant to this part.

"(b) The Federal share of the project costs incurred

in connection with any project shall not exceed 40 per centum thereof. The remainder of the project costs shall be provided from sources other than Federal funds.

"STATE PLANS

"SEC. 304. (a) The Administrator shall, by rule, not later than one hundred and twenty days after the date of enactment of this part, prescribe guidelines for the development of State plans for installation of energy conservation measures in school facilities and hospital facilities, including guidelines indicating the types of measures appropriate for each region of the Nation. The Administrator shall invite the Governor of each State to submit, within ninety days after the effective date of such guidelines, or such longer period as the Administrator may, for a good cause, allow, a proposed State plan for such State. Such plan shall include:

"(1) A general description of the State's proposed program for installation of energy conservation measures in school and hospital facilities in such State over the period for which funds are authorized to be appropriated pursuant to section 308, including—

"(A) the types of energy conservation measures considered for installation in school and hospital facilities under projects undertaken pursuant to this part;

"(B) categories of school and hospital facilities for which installation of energy conservation measures are proposed (as may be required by the guidelines); and

"(C) an estimate of the energy savings anticipated for each type of proposed project.

"(2) The policies and procedures by which the State proposes to allocate funds among eligible projects within the State, including a description of how priorities will be established among competing proposals, based on relative financial needs and capabilities.

"(b) Each State plan shall be reviewed and approved or disapproved by the Administrator not later than ninety days after submission. A Governor may submit a new or amended plan at any time after submission of the original plan if the State obtains the consent of the Administrator.

"(c) Governors submitting plans pursuant to this section shall take reasonable steps to assure that such plans are appropriately coordinated with State health plans required pursuant to section 1523 of the Public Health Service Act.

"FINANCIAL ASSISTANCE

"SEC. 305. (a) The Administrator shall provide financial assistance from sums appropriated for any fiscal year under this part only upon annual application. The Administrator shall allocate the sums appropriated for that fiscal year among the several States in the following manner:

"(1) Ninety per centum among all States in accordance with a formula to be determined by the Administrator, by rule, taking into account population, climate, and such other factors as the Administrator may deem appropriate.

"(2) Ten per centum among all States as the Administrator shall determine, after taking into account the availability and cost of fuel or any other energy used in schools and hospitals in the several States and such other factors as he deems relevant.

"(b) Any amount allocated to a State for a fiscal year under subsection (a) but not requested by a State or not disbursed pursuant to an approved State plan shall be available for reallocation to the States as the Administrator shall determine in accordance with subsection (a)(2).

"(c) The Administrator shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

"APPLICATIONS

"SEC. 306. (a) Applications of States for financial assistance under this part shall be made annually to the Administrator, shall be consistent with State plans approved pursuant to section 304, and shall contain or be accompanied

by such information as the Administrator may reasonably require. Such information shall include the number of projects and categories of facilities proposed to be funded within such State, and such information concerning expected expenditures as may be required by rule.

"(b) The Administrator shall not provide financial assistance under this part unless the applicant has provided reasonable assurances that it has—

"(1) established procedures to assure that funds made available under this part will be expended for project costs in compliance with the requirements of this part and rules promulgated under this part;

"(2) established procedures for allocating funds among eligible projects on the basis of relative need, taking into account appropriate financial, climatic, and energy conservation factors;

"(3) established procedures for implementation of energy conserving operational and maintenance procedures in those facilities for which projects are proposed;

"(4) established policies and procedures designed to assure that financial assistance provided under this part will be used to supplement, and not to supplant, State, local or other funds, and, to the extent practicable,

to increase the amounts of such funds that would be made available in the absence of Federal funds for carrying out this part;

"(5) established procedures to provide reports to the Administrator in such form and containing such information (including information for evaluation purposes) as the Administrator may reasonably require and to keep such records and furnish access thereto as the Administrator may find necessary to assure the correctness and verification of such reports; and

"(6) established procedures to insure that equitable consideration is given to all eligible public or nonprofit institutions regardless of type of ownership.

"ADMINISTRATION

"SEC. 307. The Administrator is authorized to prescribe such rules as may be necessary in order to carry out the provisions of this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 308. (a) For purposes of making grants pursuant to this part, there is authorized to be appropriated not to exceed $300,000,000 for each fiscal year in the three consecutive fiscal year period ending September 30, 1980.

"(b) For expenses of the Administrator in administering the provisions of this part, there are authorized to be

appropriated such sums as may be necessary to carry out the provisions of this part for each fiscal year in the three consecutive fiscal year period ending September 30, 1980.

"NONDISCRIMINATION

"SEC. 309. No person in the United States shall on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this part.".

PART D—NATURAL GAS

FINDINGS AND PURPOSES

SEC. 401. (a) The Congress finds that—

(1) in the early history of this Nation's petroleum industry natural gas was a byproduct of the production of crude oil, was not easily marketable, and was often flared off and treated as waste or sold at very low prices;

(2) the natural gas market changed dramatically through the course of the last forty years as a national distribution system was built to deliver natural gas to commercial and industrial consumers throughout the Nation;

(3) the Congress enacted the Natural Gas Act in 1938 to provide protection for consumers and to provide

a regulatory structure through which interstate pipelines could be assured a fair rate of return;

(4) in 1954, the Supreme Court held that the Natural Gas Act applied to the wellhead sale of natural gas in interstate commerce, subjecting producers selling interstate gas, but not intrastate gas, to a reasonable rate of return regulatory standard based on a determination of historic production costs;

(5) the differential between the price of natural gas and oil has widened with the continuation of cost-based regulation of natural gas, the fourfold rise in world oil prices in 1973 and 1974, and the increasing pressure to burn natural gas because of its environmentally superior qualities;

(6) as a result, the incentives to find new natural gas have declined along with the proven reserves of natural gas, while demand for this premium and relatively inexpensive fuel has increased;

(7) at the same time, increasing amounts of higher priced gas and wasteful industrial and boiler fuel uses have moved to the intrastate market, resulting in growing critical shortages in the interstate market of the fuel which provides 30 per centum of the Nation's energy;

(8) a new system of natural gas pricing is needed

that recognizes the costs and risks associated with finding future supplies of natural gas as well as the commodity value of substitutable fuels.

(b) The purposes of this part are—

(1) to bring the natural gas market back into better balance by reducing the demand for natural gas and increasing the supply through the establishment of an incentive based pricing approach for new natural gas, wherever it is used, that moderates producer revenues and protects consumers by moving toward a commodity value price ceiling;

(2) to deal with short-term supply shortages of natural gas through extension of the allocation provisions of the Emergency Natural Gas Act of 1977; and

(3) to provide for the conservation of natural gas by pricing natural gas to certain industrial and other users at a level which will provide incentives for conversion to other more plentiful fuels and for conservation.

DEFINITIONS

SEC. 402. (a) As used in this part—

(1) The term "Commission" means the Federal Power Commission.

(2) The term "natural gas" has the same meaning as such term has under section 2(5) of the Natural Gas Act.

(3) The term "producer" means any person who produces natural gas.

(4) The term "person" includes (without limitation) the United States and any State, and any political subdivision, agency, or instrumentality of either.

(5) The term "new natural gas" means natural gas—

(A) which is produced from a new lease on the Outer Continental Shelf; or

(B) which is produced other than on the Outer Continental Shelf from a new well—

(i) the completion location of which is 2.5 statute miles or more (surface measurement) from the completion location of any old well, or

(ii) the completion location of which is at a depth of 1,000 feet or more in excess of the depth of the completion location of any old well with a completion location that is within 2.5 statute miles (surface measurement) provided that the completion location of any such new well is not in the same producing zone as the completion location of any such old well.

(6) The term "Outer Continental Shelf" has the

same meaning as such term has in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(7) The term "new lease" means a lease, entered into on or after April 20, 1977, of an area which—

(A) was not leased before April 20, 1977; or

(B) which was leased before such date, under a lease which terminated or was abandoned before such date and was not in effect on such date.

(8) The term "new well" means a well the drilling of which was not begun on or before April 20, 1977, or with respect to which a drilling permit had not been issued on or before April 20, 1977, in the case of a well for which such permit is necessary.

(9) The term "old well" means a well that produced or was capable of producing crude oil or natural gas on or before April 20, 1977.

(10) The term "completion location" means the location at which crude oil or natural gas is withdrawn from a producing zone.

(1) The term "depth" means the depth determined by reference to the vertical distance between mean sea level and the lowermost point of the completion location of any old well or by reference to the vertical distance between mean sea level and the uppermost point of the completion location of any new well.

(12) The term "surface measurement" means the distance at mean sea level between the points at which vertical lines, drawn through the nearest points of any two completion locations, would intersect the surface of the earth at mean sea level.

(13) The term "producing zone" means a geological formation having common characteristics that contains crude oil or natural gas, whether or not there is communication between the portions thereof.

(14) The term "old natural gas" means natural gas other than new natural gas.

(15) The term "new contract" means a contract entered into after April 20, 1977, or a renewal after April 20, 1977, of a contract entered into on or before April 20, 1977, if such renewal occurs by agreement of both parties to the contract on or after the expiration of a fixed term specified by the contract.

(16) The term "existing contract" means any contract other than a new contract.

(17) The term "current Btu related price" means the most recently published Btu related price.

(18) The term "Btu related price" means the average per barrel crude oil acquisition cost (excluding any amounts attributable to the tax imposed by section 4996 of the Internal Revenue Code of 1954) for re-

fineries in the United States (with respect to all crude oil produced within the United States) for the most recent calendar quarter for which data are available to the President, divided by a factor of 5.8.

(19) The term "United States" includes the Outer Continental Shelf.

(20) The term "inflation adjustment" means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product. Such adjustment shall be computed and published for each calendar quarter by the Department of Commerce.

(b) The President shall have the authority to define, by rule, the terms used in this part in a manner consistent with the purposes of this part.

CALCULATION OF THE CURRENT BTU RELATED PRICE

SEC. 403. As soon as practicable after the date of enactment of this Act, and on a timely basis thereafter as new data become available, the President shall calculate and publish in the Federal Register the current Btu related price.

SALES OF NEW NATURAL GAS

SEC. 404. The President shall, by rule, establish a maximum lawful price applicable to any first sale by a producer of new natural gas delivered in any calendar quarter which

begins on or after the date upon which such rule is promulgated and made effective. Such maximum lawful price shall be a price equal to the current Btu related price (determined as of the date of such delivery).

SALES OF OLD NATURAL GAS UNDER EXISTING CONTRACTS

SEC. 405. The President shall, by rule, establish a maximum lawful price applicable to any first sale by a producer of old natural gas under an existing contract. Such maximum lawful price shall be a price equal to the lesser of—

(1) the contract price; or

(2) the price for sales under such contract which was determined to be just and reasonable by the Commission and was in effect on April 20, 1977 (without regard to any appeal of such determination pending on April 20, 1977), plus the inflation adjustment as defined in section 408 (c).

SALES OF OLD NATURAL GAS UNDER NEW CONTRACTS

SEC. 406. (a) The President shall, by rule, establish the maximum lawful price applicable to any first sale by a producer of old natural gas under a new contract.

(b) In the case of old natural gas referred to in subsection (a) (1) which is committed or dedicated to interstate commerce on April 20, 1977 (other than by reason of a limited term certificate of five years or less or a

temporary emergency contract under section 7(c) of the Natural Gas Act), or (2) which is produced from a new well or a new lease, the maximum lawful price under this section shall not exceed $1.45 per Mcf; plus the inflation adjustment as defined in section 402(a)(20). In establishing any maximum lawful price under this subsection, the President shall take into consideration the maximum lawful price of such gas under the prior contract and the price necessary to maintain production of such gas.

(c) In the case of old natural gas referred to in subsection (a) which is not described in subsection (b), the maximum lawful price under this section shall be equal to the current Btu equivalent price (determined as of the date of delivery of such gas).

EFFECTIVE DATES OF RULES WITH RESPECT TO MAXIMUM LAWFUL PRICES

SEC. 407. The President shall promulgate and make effective rules under sections 404 through 406 within thirty days after the date of enactment of this Act. Such rules shall apply to deliveries which take place after the date of enactment of this Act.

SPECIAL PRICING PROVISIONS

SEC. 408. (a) Notwithstanding any maximum lawful price under sections 404 through 406, the President may, by rule, specify a special price under this section in excess

of any such maximum lawful price, which shall be applied for purposes of such sections if the President determines that such special price is necessary to provide incentives for the production of natural gas or the manufacture of synthetic gas in categories which involve high costs, such as production—

(1) in depths of more than 500 feet of water,

(2) more than 15,000 feet below the surface of the Earth, or

(3) from geopressurized brine.

The President may specify such special prices for categories of production or on a national, geographic area, or case-by-case basis in accordance with section 553 of title 5, United States Code.

(b) In the case of a first sale by a producer of any natural gas with respect to which such producer bears all or part of the cost of transportation or liquefaction of such gas, the President, by rule, may adjust the maximum lawful price determined under sections 404 through 406 or the special price under subsection (a) to reflect such cost.

(c) The Commission may not increase any price for any first sale by a producer of natural gas determined prior to April 20, 1977, by the Commission to be just and reasonable, except that the Commission shall, to the extent permitted by the terms of any contract, cause an inflation adjustment in such prices as defined in section 402(a)(20).

(d) In addition to his authority respecting first sales by a producer of natural gas, the President may, by rule, establish maximum lawful prices applicable to any sales of natural gas by any other person if he determines that such rules are necessary to prevent circumvention of the pricing policies specified in sections 404 through 408. This subsection shall not apply to sales for resale by such other persons if such sales are subject to the Natural Gas Act.

RELATIONSHIP TO THE NATURAL GAS ACT

SEC. 409. (a) For purposes of sections 4 and 5 of the Natural Gas Act, any price for any natural gas which is not in excess of the maximum lawful price (or special price specified under section 408) applicable to such natural gas under the provisions of this part shall be deemed just and reasonable and the Commission may not disallow any rate which is not in excess of such maximum lawful price.

(b) The Commission may not deny a certificate of public convenience and necessity under section 7 of the Natural Gas Act solely on the basis of the price for the first sale of natural gas sought to be transported pursuant to such certificate, if such price is not in excess of the maximum lawful price (or special price) applicable to such natural gas pursuant to this part.

ENFORCEMENT AND DELEGATION

SEC. 410. (a) Any rule promulgated by the President under this part shall be enforceable to the same extent and

in the same manner as a regulation, or rule, promulgated under the Emergency Petroleum Allocation Act of 1973.

(b) The President may delegate all or any part of the authority granted to him under this part to such officers, departments, or agencies of the United States (including the Commission or any member thereof) as he determines appropriate.

(c) In order to obtain information to carry out his authority under this part, the President may—

(1) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(2) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

(3) secure, upon request, any information from any Federal department or executive agency.

(d) The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpoena, or order of the President issued under subsection (c) issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(e) The President may not exercise authority under subsection (c) (3) with respect to information in possession of a Federal agency the disclosure of which to another Federal agency is expressly prohibited by law.

EMERGENCY SALES

SEC. 411. Nothing in this part shall apply to any price for the sale of natural gas which is allowed under section 4 of the Emergency Natural Gas Act of 1977.

SPECIAL RULES

SEC. 412. (a) The Commission may grant abandonment under section 7 (b) of the Natural Gas Act at any time prior to the committing or dedication of natural gas for interstate commerce.

(b) Any contractual provision—

(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or

(2) terminating, or granting any party the option to terminate, any obligation under any such contract as a result of such sale or commingling,

is hereby declared against public policy and unenforceable with respect to the sale of any natural gas.

(c) The price of any natural gas determined under this part shall not be taken into account for purposes of any contractual provision which determines the price of any

natural gas (or terminates, or permits renegotiation of, a contract) on the basis of sales of other natural gas.

COVERAGE

SEC. 413. Sections 402 through 412 shall apply only to the sale of any natural gas produced within the United States.

INCREMENTAL PRICING OF NATURAL GAS

SEC. 414. (a) Not later than ninety days after the date of enactment of this Act, the President shall, by rule, provide that, to the maximum extent practicable, any portion of the average cost of natural gas delivered after the date of enactment of this Act to any pipeline company which exceeds the average cost of natural gas to such company during the most recent twelve-calendar-month period ending before the date of enactment of this Act (plus an inflation adjustment as defined in section 402 (a) (20)), shall be fully allocated in the rates and charges of such company to low priority uses; except that such rules may not require that such portion be fully allocated for such uses if such allocation would result in rates or charges for such uses equal to an amount no greater than the reasonable price (as determined by the President) of substitute fuels.

(b) For purposes of this section:

(1) The term "low priority use" means a use other than a high priority use.

(2) The term "high priority use" means:

(A) use of natural gas in a residence; or

(B) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day.

(3) The term "pipeline company" means any person (including a governmental agency) who is engaged in the business of transporting natural gas by pipeline and who sells natural gas for ultimate consumption.

(c) If any pipeline company sells natural gas in violation of rules promulgated by the President under subsection (a), such pipepline company shall be fined not more than $10,000 for each sale made in violation of such rules.

SYNTHETIC GAS

SEC. 415. The Natural Gas Act is amended by redesignating section 24 as section 25, and by inserting after section 23 the following new section:

"COMMISSION JURISDICTION OVER SYNTHETIC

"SEC. 24. (a) (1) Subject to the provisions of paragraph (2), the provisions of this Act shall apply to—

"(A) any facility constructed or operated by a natural-gas company or an affiliate thereof for the manufacture of pipeline-quality gas for the purposes of transportation in interstate commerce or sale in interstate commerce for resale for ultimate public consumption,

"(B) to such transportation or sale by a natural-gas company or affiliate thereof, and

"(C) to natural-gas companies or their affiliates engaged in such manufacture, transportation, or sale.

"(2) The provisions of this Act shall not apply to the mining, production, transportation, sale, delivery, or any other activity related to the furnishing of hydrocarbon-containing material (other than natural gas) to a natural-gas company or its affiliate for the production of such pipeline-quality gas.

"(b) If, prior to the date of enactment of this section, any natural-gas company was engaged in the manufacture of pipeline-quality gas from hydrocarbon-containing material or transportation or sale for resale of such pipeline-quality gas, subject to the jurisdiction of the Commission, or if a certificate of public convenience and necessity has been issued by the Commission authorizing the transportation or sale for resale of such pipeline-quality gas by a natural-gas company, the Commission shall issue a certificate for such manufacture, transportation, or sale for resale of such pipeline-quality gas without requiring further proof that the public convenience and necessity will be served by such operation, and without further proceedings pursuant to the Natural Gas Act or any other provision of law, if application for a certificate is made to the Commission within 90 days after such date of enact-

ment. Pending the determination of any such application, the continuance of such operation shall be lawful.

"(c) For purposes of this section, the term 'pipeline-quality gas' shall mean gas the principal ingredient of which is methane and which is interchangeable and compatible with natural gas as determined by rule by the Commission.".

AMENDMENTS TO THE EMERGENCY NATURAL GAS ACT OF 1977

SEC. 416. The Emergency Natural Gas Act of 1977 is amended—

(1) in section 2, by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) The term 'pipeline' means any person engaged in the transportation of natural gas.";

(2) in section 2, by redesignating paragraphs (5), (6), and (7) as (3), (4), and (5), respectively;

(3) in section 4(a)(1), by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) any pipeline to make emergency deliveries of, or to transport, natural gas to any other pipeline or to any local distribution company for purposes of meeting such requirements; or";

(4) in section 4(a)(1), by redesignating subparagraph (C) thereof as subparagraph (B);

(5) in section 4(a)(1), by striking out "April 30, 1977" and inserting in lieu thereof "April 30, 1979";

(6) in section 4(a)(2), strike out "interstate" wherever it appears;

(7) in section 4(d), strike out "interstate pipeline, intrastate";

(8) in section 4(f)(2)(A), strike out "by August 1, 1977, to the maximum extent practicable" and insert in lieu thereof "as expeditiously as practicable,";

(9) in section 7, strike out "interstate" wherever it appears; and

(10) in section 2(b), after "October 1, 1977,", insert "October 1, 1978, and June 1, 1979,".

PART E—PUBLIC UTILITY REGULATORY POLICIES

Subpart 1—General Provisions

FINDING AND PURPOSES

SEC. 501. (a) The Congress hereby finds that the generation, transmission, and sale of electric energy and the transportation and sale of natural gas affect interstate commerce, and that adequate and reliable supplies of electric

energy and natural gas are necessary for the general welfare and national security.

(b) The purposes of this part are—

(1) to establish national policies with respect to electric utility ratemaking which—

(A) encourage economic efficiency,

(B) insure that electric utility rates are designed to minimize consumption of oil, gas, and other energy resources and to reduce the need for new generating capacity,

(C) provide for fair and reasonable rates to electric consumers, and

(D) assure that States which implement rate reforms are not placed at a relative economic disadvantage in attracting and retaining industry by reason of the failure of other States to implement such reforms;

(2) to provide a mechanism to establish similar policies for gas utilities; and

(3) to increase the efficiency of energy resource use in the generation and transmission of electric power, and the reliability of electric service, through greater use of interconnection, wheeling, economic dispatch, and cogeneration.

DEFINITIONS

SEC. 502. (a) As used in this part:

(1) The term "Administrator" means the Administrator of the Federal Energy Administration.

(2) The term "Commission" means the Federal Power Commission.

(3) The term "electric consumer" means any person, State agency, or Federal agency, to which electric energy is sold other than for purposes of resale.

(4) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(5) (A) The term "State regulated electric utility" means any electric utility other than a nonregulated utility.

(B) The term "nonregulated utility" means—

(i) an electric utility which is a State agency or Federal agency unless a State regulatory authority has the same ratemaking authority respecting the rates of such utility as such authority has with respect to other electric utilities subject to its jurisdiction, or

(ii) a private cooperatively organized electric utility unless a State regulatory authority has the same ratemaking authority respecting the rates of such utility as such authority has with respect to other electric utilities subject to its jurisdiction.

Such term does not include an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority.

(6) The term "Federal agency" means an executive agency (as defined in section 105 of title 5, United States Code).

(7) The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale of electric energy, any rule, regulation, or practice respecting any such price, rate, charge, or classification, and any contract pertaining to the sale of electric energy.

(8) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(9) The term "rate schedule" means a schedule of rates which an electric utility charges electric consumers.

(10) The term "sale" includes an exchange of, or a charge for transmission of, electric energy.

(11) The term "State" means a State, the District of Columbia, or Puerto Rico.

(12) The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(13) The term "State regulatory authority" means any State agency which has ratemaking authority with respect

to the sale of electric energy by any electric utility (other than by such State agency); except that with respect to an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(14) The term "evidentiary hearing" means (A) in the case of a State agency, a proceeding (i) which includes notice to, and an opportunity for, participants to present direct and rebuttal evidence and to cross-examine witnesses and which results in a written decision based upon evidence appearing in a written record of the proceeding, and (ii) which is subject to judicial review; and (B) in the case of a Federal agency, a proceeding conducted in accordance with section 556 of title 5 of the United States Code.

(b) Section 3 of the Federal Power Act is amended by inserting "(a)" after "SEC. 3" and by adding the following at the end thereof:

"(b) For purposes of this Act, the terms 'electric utility', 'evidentiary hearing', and 'Federal agency' have the same meaning as when used in part E of title I of the National Energy Act".

ANTITRUST LAWS

SEC. 503. Nothing in this part shall affect the applicability of the antitrust laws (as defined in section 3(9) of the

Energy Policy and Conservation Act) to electric utilities or gas utilities.

Subpart 2—National Electric Rate Design Policies

COVERAGE

SEC. 511. The requirements of this subpart (other than section 516(d)) apply only to sales of electric energy by an electric utility for purposes other than resale, except that such requirements shall not apply to an electric utility in any calendar year unless such sales of electric energy by such utility during the second preceding calendar year (or any prior year after 1975) exceeded seven hundred and fifty million kilowatt-hours.

METHODS FOR DETERMINING COST OF PROVIDING ELECTRIC SERVICE

SEC. 512. (a) Each State regulatory authority shall prescribe one or more methods for determining costs associated with providing electric service to electric consumers (and classes thereof) by each electric utility over which it has ratemaking authority. If such authority fails to prescribe such methods within two years after the date of enactment of this Act, the Administrator shall prescribe such methods for each such utility with respect to which such methods have not been so prescribed, which methods shall remain applicable until such time as the Administrator determines that such authority has prescribed such methods.

(b) Such methods shall, to the maximum extent practicable and consistent with section 513(c), reflect differences in cost-incurrence, for each electric consumer (or class thereof), attributable to daily and seasonal time of use of service. In prescribing such methods, there shall be taken into account the extent to which total costs to an electric utility are likely to change if such consumer (or class) causes—

(1) additional capacity to be added to meet an electric consumer's kilowatt demand during system peak periods,

(2) additional kilowatt-hours of electric energy to be delivered to electric consumers, and

(3) additional electric consumers to be connected to the electric utility.

NATIONAL ELECTRIC RATE DESIGN AND REGULATORY POLICIES

SEC. 513. (a) Each State regulatory authority which has enforcement responsibility under section 516(a)(1) shall take such action as may be necessary to assure that each State regulated electric utility will in making sales of electric energy subject to this part, comply with the following national policies:

(1)(A) Except as otherwise provided in subsections (b) and (c), rates for providing electric service

to each electric consumer (or class thereof) shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such consumer (or class).

(B) A rate shall not be considered as meeting the requirements of subparagraph (A) if the rate per kilowatt-hour, for electric energy during any period to any electric consumer (or class thereof) decreases as kilowatt-hour consumption by such consumer increases.

(2) (A) Each electric utility shall offer each electric consumer—

(i) a time-of-day rate which reflects costs of providing service to such consumer, if such consumer is willing to pay the reasonable costs of metering necessary to utilize such rate, or

(ii) opportunity to install a load management system appropriate to such consumer and to receive a rate which reflects any decrease in cost of service which is associated with the use of such system.

For purposes of this subparagraph, the term "load management system" means any system to reduce maximum kilowatt demand on the electric utility. Such systems may include ripple, radio, or other control mechanisms, or interruptible electrical services, and customer-owned energy storage or load-limiting devices.

(B) Each electric utility shall offer each electric consumer a seasonal rate which shall reflect seasonal differences in the cost of providing service to such consumer.

(C) Each electric utility shall offer each industrial or large commercial electric consumer (as defined in rules under subparagraph (D)) an interruptible rate which reflects the cost of providing interruptible service to such customers.

(D) The Administrator may prescribe rules (i) respecting the terms and conditions of any rate offered under subparagraphs (A) (i), (B), and (C) of this paragraph, and the types of load management systems and terms and conditions of rates offered under subparagraph (A) (ii); and (ii) permitting any State regulatory authority to exempt any electric utility from any requirement of this paragraph if such authority determines in an evidentiary hearing that no significant number of electric consumers will use the rate required to be offered.

(3) For purposes of this section, costs of providing service shall be determined in accordance with methods prescribed in section 512.

(4) Except as otherwise provided by rules of the Administrator, no electric utilit may provide electric

service to a building which is metered by a bulk or master meter if the construction of such building commenced more than one year after the date of enactment of this Act. The Administrator may define bulk or master meter.

(b) (1) No provisions of this subpart shall prevent an electric utility, a State regulatory authority, or other State agency from fixing, approving, or allowing to go into effect a rate for electric energy applicable to all residential electric consumers (as defined by the State regulatory authority) which is lower than otherwise required by subsection (a) (1) (A). Nothing in this subsection shall authorize a rate which does not comply with subsection (a) (1) (B).

(2) A State regulatory authority which has enforcement responsibility may, upon application of any electric consumer, prescribe a temporary exception pursuant to which an electric utility rate schedule which does not comply with the requirements of this subpart will be fixed, approved, or allowed to go into effect, with respect to such consumer. Any such exception shall comply with the following requirements:

(A) such exception may apply only to the type of use and amount of use of electric energy as does not exceed the amount the electric consumer used prior to the date of enactment of this Act;

(B) the electric consumer who applies for such exception demonstrates to such State regulatory authority in an evidentiary hearing that such exception is necessary to avoid extreme economic hardship to such consumer; and

(C) such exception does not remain in effect more than five years after the date of enactment of this Act.

(c) Nothing in this subpart shall be construed as authorizing or requiring the recovery by an electric utility of revenues, or of a rate of return, in excess of the amount of revenues or a rate of return determined to be lawful under otherwise applicable State or Federal law.

INFORMATION AND REPORTS

SEC. 514. (a) Each electric utility shall gather information under such rules promulgated by the Administrator as the Administrator determines necessary to allow State regulatory authorities (and other persons) to determine the costs associated with providing electric service, including information with respect to—

(1) the factors which cause changes in the daily and seasonal peak loads of such utility and of the electric consumer classes serviced by such utility; and

(2) the costs of serving each electric consumer class and of serving different consumption patterns

within such class, based on voltage level, time of use, and other factors.

(b) The Administrator, by rule, within 180 days after the date of enactment of this Act, shall prescribe the methods, procedure, and format to be employed by each electric utility in gathering the information described in subsection (a). The Administrator may, by rule, exempt an electric utility from gathering all or part of such information, if the Administrator finds (and so states in such rule) that gathering such information is not likely to further the purposes of this part.

(c) Not later than two years after the date of enactment of this Act, and every two years thereafter, each electric utility shall file with the Administrator and any State regulatory authority which has ratemaking authority for such utility the information gathered pursuant to this section (if such information is not otherwise required to be filed with such authority), and publish or otherwise make such information available to the public, in such form and manner as the Administrator shall prescribe.

NONREGULATED UTILITIES

SEC. 515. (a) (1) Each nonregulated utility shall prescribe methods for determining costs associated with providing electric service to its electric consumers (and classes thereof). If such utility fails to prescribe such methods within

two years after the date of enactment of this Act, the Administrator shall prescribe such methods for each such utility.

(2) Such methods shall be prescribed in accordance with section 512 (b).

(b) Each nonregulated utility shall comply with the national policies specified in section 513 in making sales of electric energy subject to this subpart.

IMPLEMENTATION OF NATIONAL RATE DESIGN AND REGULATORY POLICIES

SEC. 516. (a) (1) For purposes of this subpart, a State regulatory authority shall (except as otherwise provided in paragraph (2) (A)) be considered to have enforcement responsibility for a period for which it has notified the Administrator (in such manner as the Administrator shall prescribe by rule) that it will assume responsibility for implementing this subpart with respect to electric utilities with respect to which it has ratemaking authority.

(2) (A) Not later than two years after the date of enactment of this Act (and every two years thereafter), each State regulatory authority which has enforcement responsibility shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such authority has implemented the national policies specified in section 513. If the Administrator determines (after notice

and opportunity for presentation of views) that such authority has not implemented such policies and if he has not granted an extension under paragraph (3), then effective six months after such determination, such authority shall be considered as not having enforcement responsibility until such time as he determines (after notice and opportunity for presentation of views) that such authority has implemented such policies.

(B) Not later than two years after the date of enactment of this Act (and every two years thereafter), each utility (other than a utility with respect to which a State regulatory authority which has enforcement responsibility has ratemaking authority) shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such utility has implemented the national policies specified in section 513. If the Administrator determines (after notice and opportunity for presentation of views) that such utility has not implemented such policies and if he has not granted an extension under paragraph (3), then effective six months after such determination, he shall exercise his authority under subsection (b) with respect to such electric utility until such time as he determines (after notice and opportunity for presentation of views) that such utility has implemented such policies.

(3) Upon application in the first report submitted under paragraph (2) by a State regulatory authority or an electric utility, the Administrator may allow such authority or utility not more than three years after the date of enactment of this Act to implement the policies specified in section 513, if he finds that—

(A) it is not practicable to implement such policies within two years, and

(B) such authority or utility will make such reports and comply with such terms and conditions as he may prescribe.

The Administrator may grant one or more additional one-year extensions under this paragraph if he makes the findings under subparagraphs (A) and (B) and if he finds that such authority or utility is unable to implement such policies, despite good faith efforts, solely by reason of a judicial stay of such authority's order implementing such policies.

(b) (1) During any period during which the Administrator is required by subsection (a) (2) (B) to exercise authority under this subsection with respect to any electric utility, such utility may not increase any rate at which it sells electric energy unless the Administrator determines, after such rate is proposed and before it takes effect, in an evidentiary hearing, that such rates meet the national policies specified in section 513. Such proceeding shall be initiated

by the Administrator not later than thirty days after application by such utility for a determination under this paragraph. Such application may be made at any time after such utility gives notice of such proposed increase.

(2) The Administrator may prescribe rules which provide that paragraph (1) shall not apply—

(A) to a rate increase pursuant to a fuel adjustment clause,

(B) in the case of a State regulated utility, to an interim rate increase during any period that such increase is in effect subject to a requirement that it be refunded in whole or part, with interest, if the State regulatory authority subsequently determines it is unlawful, or

(C) another class of rate increase identified in such rules,

if the Administrator, under paragraph (1), has determined not earlier than two years prior to the effective date of such rate increase that such utility's rate meets the requirements of section 513.

(c) Upon request of the Administrator, the Attorney General shall seek to enjoin, in the appropriate district court of the United States, any electric utility from violating subsection (b), and in any such action, the court may enjoin such electric utility from such violation, and may issue a mandatory injunction requiring compliance with the policies under section 513.

(d) No contract between a Federal agency and an electric utility for sale of electric energy by such Federal agency for purposes of resale may contain any provisions inconsistent with the provisions of section 513.

AUTHORIZATION OF APPROPRIATIONS

SEC. 517. (a) There are authorized to be appropriated to the Administrator to carry out this part such sums as may be necessary for the fiscal year ending September 30, 1978, and each of the two succeeding fiscal years.

(b) Section 207 of the Energy Conservation and Production Act is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 207. There are authorized to be appropriated to carry out this title such sums as may be necessary for the fiscal year ending September 30, 1977, and each of the two succeeding fiscal years.".

Subpart 3—Bulk Power Supply

INTERCONNECTION AND WHEELING

SEC. 521. (a) Section 202 (b) of the Federal Power Act is amended to read as follows:

"(b) (1) Whenever the Commission, on its own motion, or upon application of any State commission or of any

electric utility or any qualifying cogenerator (as defined in section 522(b)(2) of the Public Utility Act of 1977), and after notice to each State commission and electric utility affected and after evidentiary hearing, finds such action necessary or appropriate in the public interest, it shall by order direct an electric utility (other than a Federal agency)—

"(A) to establish physical connection of its transmission facilities with the facilities of any other electric utility or qualifying cogenerator, or

"(B)(i) to sell or deliver energy to, (ii) exchange energy with, (iii) transmit energy for, (iv) provide pooling, wheeling, or other transmission services for, or (v) otherwise coordinate with, such utility or cogenerator.

"(3) The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any order under this subsection, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

"(4) The Commission shall have no authority under this subsection to compel the enlargement of generating facilities for purposes of this subsection, nor to compel an electric utility to sell or exchange energy if to do so would

unreasonably impair its ability to render adequate service to its customers.".

(b)(1) Section 202(a) of the Federal Power Act is amended by striking the word "voluntary" from the first sentence.

(2) The first sentence of section 201(b) is amended by inserting "(other than 202(b))" after "Part" and by adding the following at the end thereof: "The provisions of section 202(b) shall apply to the electric utilities and other persons specified therein.".

(3) Section 201(e) is amended by inserting "(other than facilities subject to such jurisdiction solely by reason of section 202(b))" before the period at the end thereof.

COGENERATION

SEC. 522. (a) Not later than one year after the date of enactment of this Act, the Administrator shall, after consultation with representatives of State regulatory authorities, prescribe rules requiring electric utilities to offer to sell electric energy to any qualifying cogenerator and to offer to purchase electric energy from such cogenerators. Such rules shall insure that rates for such sales and purchases do not discriminate against such cogenerators, and may, in order to carry out the purposes of this Act, include provisions exempting qualifying cogenerators in whole or part from the

Federal Power Act, the Public Utility Holding Company Act, and from State laws and regulations respecting electric utility regulation, if the Administrator determines such exemption is necessary to carry out the purposes of this part.

(b) For purposes of this section:

(1) The term "cogeneration facility" means a facility owned by a person not primarily engaged in the generation or sale of electric power, which facility produces (A) electric energy and (B) other forms of useful energy (such as steam or heat) which is, or will be used for industrial, commercial, or space heating purposes.

(2) The term "qualifying cogeneration facility" means a cogeneration facility which the Administrator determines—

(A) meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Administrator, by rule, prescribes; and

(B) the owner or operator of which offered (at such time and in such manner as the Administrator may prescribe by rule) each electric utility to which such facility is, or will be, directly connected an opportunity to operate such facility on terms which are agreed upon by the parties.

(3) The term "qualifying cogenerator" means any person who is, or will be, the owner or operator of a qualifying cogeneration facility.

(c) For purposes of enforcement of this section, a rule under this section shall be treated as a rule under the Federal Power Act; except that, for such purposes, any reference in sections 309, 314, 315, and 316 of the Federal Power Act to the Commission shall be deemed to be a reference to the Administrator.

(d) The Administrator may delegate (on such terms and conditions as he determines appropriate) any part of his authority under this section respecting any electric utility (other than a Federal agency) to any State regulatory authority which he determines has the capability of effectively exercising such authority with respect to such utility.

Subpart 4—Natural Gas Rate Design Policies

DEFINITIONS

SEC. 541. (a) As used in this subpart:

(1) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term "gas utility" means any person, Federal agency, or State agency which sells natural gas.

(3) The term "natural gas" shall have the same

meaning as such term has under section 2 of the Natural Gas Act.

(4) The terms "State regulated gas utility", "nonregulated utility", "nonregulated public system", "nonregulated cooperative", "rate", "rate schedule", "sale", and "State regulatory authority" shall have the same meaning as such terms have under section 502; except that the term "gas" shall be substituted for "electric" and "electric energy" wherever those terms appear in section 502.

COVERAGE

SEC. 542. The requirements of this subpart apply only to sales of natural gas by a gas utility for purposes other than resale; except that such requirements shall not apply to a gas utility in any calendar year unless such sales by such utility during the second preceding calendar year (or any prior year after 1975) exceeded ten billion cubic feet of gas.

NATURAL GAS RATE DESIGN AND REGULATORY POLICIES

SEC. 543. (a) Each State regulatory authority which has enforcement responsibility shall take such action as may be necessary to assure that—

(1) no State regulated gas utility will make sales of natural gas subject to this subpart under a rate schedule under which the rate per thousand cubic feet

for natural gas during any period to any gas consumer (or class thereof) decreases as natural gas consumption by such consumer increases, and

(2) each State regulated gas utility will in making sales of natural gas subject to this subpart comply with rules promulgated by the Administrator under section 545.

GAS UTILITY RATE DESIGN PROPOSALS

SEC. 544. (a) The Administrator shall develop proposals to improve gas utility rate design. Such proposals shall be designed to encourage energy conservation, and shall include (but not be limited to) proposals with respect to:

(1) Summer-winter rate differentials.

(2) Rates for interruptible service.

(3) Master metering.

(b) The proposals prepared under subsection (a) shall be published not later than twelve months after the date of enactment of this Act. Such proposals shall be accompanied by an analysis of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources, and

(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of the proposals published under this subsection.

PROMULGATION OF GAS RATE DESIGN AND REGULATORY RULES

SEC. 545. (a) (1) The Administrator shall, within eighteen months after the date of enactment of this Act, propose rate design and regulatory rules for gas utilities. Such rules shall (subject to subsection (b)) be promulgated not later than six months thereafter, and may include only those rate design and regulatory proposals published in a report issued pursuant to section 544. Such rules shall take effect, for purposes of section 548, not earlier than two years after their promulgation.

(b) Any rule promulgated pursuant to this section shall set out those rate design and regulatory rules which the Administrator determines are necessary for each gas utility to implement in order to conserve natural gas supplies and may include such requirements, terms, and conditions as the Administrator determines appropriate.

INFORMATION

SEC. 546. (a) Each gas utility shall gather information under such rules promulgated by the Administrator as the Administrator determines necessary to allow State regulatory authorities (and other persons) to determine the costs associated with providing gas.

(b) The Administrator, by rule, within one hundred and eighty days after the date of enactment of this Act, shall

prescribe the methods, procedure, and format to be employed by each gas utility in gathering the information described in subsection (a). The Administrator may, by rule, exempt a utility from gathering all or part of such information, if the Administrator finds (and so states in such rule) that gathering such information is not likely to further the purposes of this subpart.

(c) Each gas utility shall, every two years, file with the Administrator and any State regulatory authority which has ratemaking authority for such utility the information gathered pursuant to this section (if such information is not otherwise required to be filed with such authority), and publish or otherwise make such information available to the public in such form and manner as the Administrator shall prescribe.

NONREGULATED UTILITIES

SEC. 547. (a) Each nonregulated utility shall comply with the national policies specified in section 573 in making sales of gas subject to this subpart.

IMPLEMENTATION

SEC. 548. (a) (1) For purposes of this subpart, a State regulatory authority shall (except as otherwise provided in paragraph (2) (A)) be considered to have enforcement responsibility for a period for which it has notified the Administrator (in such manner as the Administrator shall

prescribe by rule) that it will assume responsibility for implementing this subpart with respect to gas utilities with respect to which it has ratemaking authority.

(2) (A) Not later than two years after the date of enactment of this Act (and every two years thereafter), each State regulatory authority which has enforcement responsibility shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such authority has implemented the national policies specified in section 543 and the requirements of the rules promulgated pursuant to section 545. If the Administrator determines (after notice and opportunity for presentation of views) that such authority has not implemented such policies and requirements and if he has not granted an extension under paragraph (3), then effective six months after such determination, such authority shall be considered as not having enforcement responsibility until such time as he determines (after notice and opportunity for presentation of views) that such authority has implemented such policies and requirements.

(B) Not later than two years after the date of enactment of this Act (and every two years thereafter), each gas utility (other than a utility with respect to which a State regulatory authority which has enforcement responsibility

has ratemaking authority) shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such utility has implemented the national policies specified in section 543 and the requirements of the rules promulgated pursuant to section 545. If the Administrator determines (after notice and opportunity for presentation of views) that such utility has not implemented such policies and requirements and if he has not granted an extension under paragraph (3), then effective six months after such determination, he shall exercise his authority under subsection (b) with respect to such gas utility until such time as he determines (after notice and opportunity for presentation of views) that such utility has implemented such policies and requirements.

(3) Upon application in the first report submitted under paragraph (1) by a State regulatory authority or a gas utility, the Administrator may allow such authority or utility not more than three years after the date of enactment of this Act to implement the policies specified in section 543 and the rules promulgated pursuant to section 545, if he finds that—

(A) it is not practicable to implement such policies and requirements within two years, and

(B) such authority or utility will make such

reports and comply with such terms and conditions as he may prescribe.

The Administrator may grant one or more additional one-year extensions under this paragraph if he makes the findings under subparagraphs (A) and (B) and if he finds that such authority or utility is unable to implement such policies and requirements, despite good faith efforts, solely by reason of a judicial stay of such authority's order implementing such policies or requirements.

(b) (1) During any period during which the Administrator is required by subsection (a) (2) (B) to exercise authority under this subsection with respect to any gas utility, such utility may not increase any rate at which it sells natural gas unless the Administrator determines, after such rate is proposed and before it takes effect, in an evidentiary hearing, that such rates meet the national policies specified in section 543 and the requirements of the rules promulgated pursuant to section 545. Such proceeding shall be initiated by the Administrator not later than thirty days after application by such utility for a determination under this paragraph. Such application may be made at any time after such utility gives notice of such proposed increase.

(2) The Administrator may prescribe rules which provide that paragraph (1) shall not apply—

(A) to a rate increase pursuant to a fuel adjustment clause,

(B) in the case of a State regulated utility, to an interim rate increase during any period that such increase is in effect subject to a requirement that it be refunded in whole or part, with interest, if the State regulatory authority subsequently determines it is unlawful, or

(C) another class of rate increase identified in such rules,

if the Administrator, under paragraph (1), has determined not earlier than two years prior to the effective date of such rate increase that such utility's rate meet the policies under section 543 and the requirements promulgated pursuant to section 545.

(c) Upon request of the Administrator, the Attorney General shall seek to enjoin, in the appropriate district court of the United States, any gas utility from violating subsection (b), and in any such action, the court may enjoin such gas utility from such violation, and may issue a mandatory injunction requiring compliance with the policies and rules under sections 543 and 545.

(d) No contract between a Federal agency and a gas utility for sale of natural gas by such Federal agency for purposes of resale may contain any provisions inconsistent

with the policies found in section 543 and the rules promulgated pursuant to section 545.

PART F—AMENDMENTS TO THE ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

REVISION OF COAL CONVERSION PROGRAM

SEC. 601. The Energy Supply and Environmental Coordination Act of 1974 is amended by striking out the table of contents and all that follows down through and including section 2, and inserting in lieu thereof the following:

"TABLE OF CONTENTS

"TITLE I—CONVERSION TO COAL AND OTHER FUELS

"Sec. 101. Findings and purposes.
"Sec. 102. Definitions.
"Sec. 103. Territorial application.
"Sec. 104. New electric powerplants.
"Sec. 105. Existing electric powerplants.
"Sec. 106. New major fuel-burning installations.
"Sec. 107. Existing major fuel-burning installations.
"Sec. 108. Public interest temporary exception or exemption.
"Sec. 109. Temporary exception or exemption of qualifying cogeneration facilities.
"Sec. 110. Disruption of natural gas contracts.
"Sec. 111. Coal allocation.
"Sec. 112. Enforcement and penalties.
"Sec. 113. Emergency powers.
"Sec. 114. Rules and regulations.

"TITLE II—OTHER PROVISIONS

"Sec. 201. Suspension authority.
"Sec. 202. Implementation plan revisions.
"Sec. 203. Motor vehicle emissions.
"Sec. 204. Conforming amendments.
"Sec. 205. Protection of public health and environment.
"Sec. 206. Energy conservation study.
"Sec. 207. Report.
"Sec. 208. Fuel economy study.
"Sec. 209. Reporting of energy information.
"Sec. 210. Enforcement.
"Sec. 211. Extension of Clean Air Act authorization.
"Sec. 212. Definitions.

FUELS

"FINDINGS AND PURPOSES

"SEC. 101. (a) FINDINGS.—The Congress finds that the protection of public welfare and the preservation of national security require—

"(1) the reduction of national reliance on insecure sources of energy consistent with applicable environmental requirements;

"(2) the capability to use indigenous energy resources of the United States in lieu of imported energy supplies by the use of coal and other fuels in lieu of natural gas and petroleum as an energy source for new electrric powerplants and new fuel-burning installations and for certain existing powerplants and existing fuel-burning installations; and

"(3) the conservation of natural gas and petroleum for uses other than boiler fuel or the generation of electricity, and for which there are no feasible alternative fuels or raw material substitutes.

"(b) PURPOSES.—The purposes of this title are—

"(1) to provide for a means to assist in meeting the essential needs of the United States for energy, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect the environment;

"(2) to foster the greater use of coal and other fuels in lieu of natural gas and petroleum as energy sources for electric powerplants and fuel-burning installations;

"(3) to require that any new electric powerplant and any new major fuel-burning installation which proposes to use fossil energy resources as an energy source use coal or other fuel other than natural gas or petroleum except in those circumstances provided for herein;

"(4) to reduce the United States vulnerability to energy supply interruptions; and

"(5) to regulate interstate commerce and for other purposes.

"DEFINITIONS

"SEC. 102. For the purposes of this title:

"(1) The term 'Administrator' means the Administrator of the Federal Energy Administration.

"(2) The term 'person' includes (A) any individual; (B) any corporation, company, partnership, association, firm, society, trust, joint venture, or joint stock company; (C) any State or political subdivision thereof (including the District of Columbia), or any agency or instrumentality of either.

"(3) The term 'natural gas' means natural gas as defined in the Natural Gas Act, including synthetic

natural gas derived from petroleum and liquid petroleum gas, but excluding natural gas produced from a well at the site of use by the user, in commercially unmarketable quantities, as determined by the Administrator, and excluding synthetic natural gas which is derived from coal and (A) which has a British thermal unit content below five hundred British thermal units per thousand cubic feet, or (B) (i) which is owned by the user when it enters a pipeline for transportation to the user, and (ii) which has been approved by the Administrtator for use by an electric powerplant or major fuel-burning installation.

"(4) The term 'petroleum' includes crude oil, residual fuel oil, and refined petroleum products other than liquid petroleum gas and synthetic natural gas derived from petroleum; but does not include process waste gases and waste gas and liquid and solid byproducts of refinery operations within the United States, which are commercially unmarketable, as determined by the Administrator.

"(5) The term 'coal or other fuel' means coal and any fuel other than natural gas or petroleum.

"(6) The term 'electric powerplant' or 'powerplant' means a fossil-fuel-fired electric generating unit,

including a gas turbine unit or a combined cycle unit, that produces electric power for the purpose of sale or exchange which—

"(A) is by design capable of consuming fuel at a fuel heat input rate of one hundred million British thermal units per hour or greater, or

"(B) is a combination of more than one fossil-fuel-fired electric generating unit (excluding any such unit not capable by design of consuming fuel at a fuel heat input rate in excess of a level determined by rule by the Administrator for that type of unit) at the same site which in the aggregate is by design capable of consuming fuel at a fuel heat input rate of two hundred and fifty million British thermal units per hour or greater.

"(7) The term 'major fuel-burning installation' or 'installation' means an installation other than an electric powerplant, consisting of a fossil-fuel-fired boiler or other combustor, a gas turbine unit, combined cycle unit, or internal combusion engine which—

"(A) is by design capable of consuming fuel at a fuel heat input rate of one hundred million British thermal units per hour or greater, or

"(B) is a combination of more than one such installation (excluding installations not capable by

design of consuming fuel at a fuel heat input rate in excess of a level determined by rule by the Administrator for that type of installation) at the same site which in the aggregate is by design capable of consuming fuel at a fuel heat input rate of two hundred and fifty million British thermal units per hour or greater, or

"(C) is designated by the Administrator by rule as included in such term, if he determines that such inclusion is necessary to carry out the purposes of this title.

"(8) The terms 'new electric powerplant' and 'new major fuel-burning installation' mean an electric powerplant or a major fuel-burning installation—

"(A) with respect to which an order was issued pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974, as in effect prior to the effective date of this title, or

"(B) which is not beyond the planning process on the effective date of this title.

"(9) The term 'planning process' means that period ending when the electric powerplant or major fuel-burning installation can no longer reasonably be designed and constructed so as to be capable of using coal as its energy source without incurring significant financial or

operational detriment, as determined by rule by the Administrator.

"(10) The terms 'existing electric powerplant' and 'existing major fuel-burning installation' mean an electric powerplant or a major fuel-burning installation which is not a new electric powerplant or new major fuel-burning installation as defined in paragraph (8) of this section.

"(11) The term 'energy source' means the fuel or fuels used by an electric powerplant or a major fuel-burning installation except for amounts of fuel required for start-up, testing, flame stabilization, and control uses.

"(12) The term 'applicable environmental requirement' includes any Federal, State, or local government standard, limitation, or other requirement applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the combustion of coal or other fuels or operation of air pollution control equipment, and includes any standard, limitation, or other requirement established pursuant to the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act.

"(13) The term 'peakload powerplant' means a powerplant which operates less than one thousand five hundred full-load hours per consecutive twelve-month period.

"(14) The term 'cost' means total costs (both operating and capital) incurred over the estimated useful life of a new electric powerplant or new major fuel-burning installation, discounted to present value as determined by the Administrator. Useful life shall not necessarily be determined by depreciable life or other tax-related time periods. In the case of an electric powerplant, cost shall take into account any change in the use of existing electric powerplants in the relevant dispatching system and other economic factors that are included in planning for the production, transmission, and distribution of electric power within such system.

"(15) The term 'qualifying cogeneration facility' means qualifying cogeneration facility as defined in section 522(b)(2) of the National Energy Act.

"TERRITORIAL APPLICATION

"SEC. 103. The provisions of this Act shall apply in the contiguous forty-eight States, Alaska, and the District of Columbia.

"NEW ELECTRIC POWERPLANTS

"SEC. 104. (a) PROHIBITION.—Except as provided in subsection (b) of this section, no new electric powerplant may use natural gas or petroleum as an energy source.

"(b) TEMPORARY EXCEPTION AND EXEMPTION.—

"(1) TEMPORARY EXCEPTION.—The Administrator,

upon application by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petroleum as an energy source, may grant a temporary exception with respect to petroleum from the prohibitions of subsection (a) of this section for a period of up to five years, or as determined by the Administrator, if such person demonstrates to the satisfaction of the Administrator that during the proposed period of the temporary exception—

"(A) (i) despite diligent good faith efforts, an adequate and reliable supply of coal or other fuel is not expected to be available; or (ii) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibitions of subsection (a) of this section because of site specific limitations, such as access to coal or coal transportation facilities; and

"(B) there is no alternative supply of power which can be obtained from another source without impairing reliability of service.

"(2) GENERAL EXEMPTION.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petroleum as an energy source,

may grant an exemption with respect to petroleum from the prohibitions of subsection (a) of this section if such person demonstrates to the satisfaction of the Administrator that there is no site at which—

"(A) despite diligent good faith efforts, an adequate and reliable supply of coal or other fuel is expected to be available for use during a majority of the useful life of the powerplant and can be used at a cost that does not substantially exceed the cost of using imported petroleum; or

"(B) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant do not preclude compliance with the prohibitions of subsection (a) of this section because of site specific limitations, such as access to coal or coal transportation facilities; or

"(C) the use of coal or other fuel is financially feasible, and

"(D) there is an alternative supply of power which can be obtained from another source without impairing reliability of service.

"(3) EXEMPTION FOR PEAKLOAD ELECTRIC POWERPLANTS.—The Administrator, upon notice by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petro-

leum as an energy source, shall grant an exemption for such powerplant from the prohibition of subsection (a) of this section with respect to petroleum if such person certifies that such powerplant is to be constructed or operated solely as a peakload powerplant.

"(4) TEMPORARY EXCEPTION OR EXEMPTION FOR RELIABILITY.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petroluem as an energy source, may grant a temporary exception or an exemption with respect to petroleum from the prohibitions of subsection (a) of this section if such person demonstrates to the satisfaction of the Administrator that the temporary exception or exemption is necessary to prevent impairment of reliability of service.

"(c) DENIAL OF APPLICATION FOR TEMPORARY EXCEPTION OR EXEMPTION.—A denial of an application for temporary exception or exemption from the prohibitions of subsection (a) of this section shall not be deemed to be a major Federal action for purposes of section 102 of the National Environmental Policy Act of 1969 except when such denial relates to a new electric powerplant for which no entity other than the Federal Energy Administration is responsible for carrying out the provisions of such section.

"EXISTING ELECTRIC POWERPLANTS

"SEC. 105. (a) PROHIBITIONS.—

"(1) NATURAL GAS PROHIBITION.—(A) Except as provided in subections (d) and (e) of this section, effective January 1, 1990, no existing electric powerplant may use natural gas as an energy source.

"(B) Except as provided in subsection (d) (2) of this section, no existing electric powerplant using petroleum as its energy source as of April 20, 1977, may thereafter use natural gas as an energy source.

"(C) Except as provided in subsection (d) (2) of this section, no existing electric powerplant may use natural gas as an energy source in greater proportions than the average yearly proportion of natural gas that it used as an energy source in calendar years 1974 through 1976, or in the case of a powerplant beginning operation after January 1, 1974, than the average yearly proportion of natural gas that it used as an energy source during the first two calendar years of its operation.

"(2) NATURAL GAS AND PETROLEUM PROHIBITIONS.—

"(A) CATEGORIES.—The Administrator may by rule identify categories of existing powerplants, including a category consisting of electric powerplants with

the capability to use coal or other fuel which were issued orders pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974, as in effect prior to the effective date of this title, which, except as provided in subsections (d) and (e) of this section, shall be prohibited from using natural gas prior to January 1, 1990, or petroleum, or both, as an energy source. In identifying other categories of existing electric powerplants pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such powerplants that will be subject to the prohibition.

"(B) INDIVIDUAL POWERPLANTS.—Subject to the provisions of subparagraph (C) of this paragraph, and of subsections (b), (d), and (e) of this section, the Administrator may, by order, prohibit an existing electric powerplant with the capability to use coal or other fuel as an energy source from using natural gas effective prior to January 1, 1990, or petroleum, or both, as an energy source.

"(C) CRITERIA.—The Administrator may issue an order pursuant to subparagraph (B) if he determines that—

"(i) the existing electric powerplant on June 22, 1974, had or thereafter acquired or is designed with

the capability to use coal or other fuel as an energy source;

"(ii) that the use of coal or other fuel by the powerplant in lieu of natural gas or petroleum is financially feasible; and

"(iii) that the prohibition under subsection (a)(2)(B) will not impair the reliability of service in the dispatching system of the powerplant;

unless the person owning or operating the electric powerplant can demonstrate that an adequate and reliable supply of coal or other fuel will not be available at the site of the powerplant.

"(3) NATURAL GAS AND PETROLEUM PROHIBITION: MIXTURES AND COMBINATIONS OF FUELS.—Subject to the provisions of subsections (d) and (e) of this section, the Administrator may, by order, prohibit an existing electric powerplant in which it is feasible to use a mixture of coal and petroleum as an energy source, or to use a combination of coal and natural gas or petroleum as an energy source from using natural gas or petroleum in greater amounts than is feasible unless the reliability of service in the dispatching system will thereby be impaired.

"(b) OTHER PROVISIONS.—(1) The Administrator may rescind or modify any order issued pursuant to subsection (a)(2)(B) if he determines that any requirement

described in subsection (a) (2) (C) is no longer met, and that such order, as modified, complies with such requirements.

"(2) Before issuing, modifying, or rescinding an order issued under subsection (a) (2) (B) the Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

"(3) An order (or modification thereof) issued under subsection (a) (2) (B) shall not be effective (A) until the Administrator of the Environmental Protection Agency notifies the Administrator under section 119 (d) (1) (B) of the Clean Air Act, or (B) if such notification is not given until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119 (d) (1) (B) of such Act is the earliest date that the powerplant will be able to comply with all applicable requirements of section 119. The order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 119 (d) (3) (B) of such Act. Notice or certification pursuant to this paragraph shall be provided within two hundred and seventy days of the date the Administrator of the Environmental Protection Agency receives notice of the issuance of an order under subsection (a) (2) (B).

"(c) PERMIT TO USE PETROLEUM.—(1) The Administrator shall by rule require that no existing electric powerplant which, on or after April 20, 1977, uses coal, may increase its use of petroleum as an energy source unless it first obtains a permit to authorize such increased use of petroleum. Such a permit shall be issued only if the appropriate State certifies to the Administrator that the increased use of petroleum by the powerplant is necessary to permit the powerplant to comply with the applicable implementation plan, as defined in section 110 (d) of the Clean Air Act, and if such person demonstrates why it cannot comply with the applicable implementation plan without the issuance of a permit and establishes the duration of its need for increased petroleum to comply with such plan.

"(2) The Administrator shall by rule provide that an existing electric powerplant which, on April 20, 1977, used natural gas as an energy source, or pursuant to subsection (d) or (e) of this section, may not use petroleum unless it first obtains a permit to authorize such use of petroleum. Such a permit shall be issued only if the person owning or operating the electric powerplant demonstrates why it cannot use coal or other fuel instead of petroleum, and in the case of a powerplant the rates of which are regulated by a State agency, documents that its proposed use of petroleum is approved by such State agency.

"(d) TEMPORARY EXCEPTIONS.—

"(1) SYNTHETIC FUELS EXCEPTION.—(A) The Administrator, upon application by a person owning or operating an existing electric powerplant subject to the prohibitions of subsection (a) of this section, proposing to use natural gas as an energy source, may grant a temporary exception from such prohibition if he determines that the person has demonstrated that—

"(i) the powerplant will comply with the prohibition within five years of its effective date by the use of synthetic fuels derived from coal or by innovative techniques for using coal or other fuel; and

"(ii) that the intention so to comply with the prohibition and the anticipated compliance date are evidenced by the existence of binding contracts for fuels or facilities that would enable the applicant to comply with the prohibition.

"(B) A temporary exception under this subsection may be granted for a period of up to five years beyond the effective date of the prohibition, but not beyond the anticipated compliance date.

"(2) The Administrator, upon application by a person owning or operating an existing electric powerplant subject to the prohibition of subsection (a) (1) (B) or (C) of this section proposing to use natural gas or to increase its

use of natural gas as an energy source, grant a temporary exception from such prohibition if the appropriate State certifies to the Administrator that such use of natural gas is necessary to permit the powerplant to comply with the applicable implementation plan, as defined in section 110(d) of the Clean Air Act, and if such person demonstrates why the powerplant cannot comply with the applicable implementation plan without the temporary exception and establishes the duration of its need for such natural gas to comply with such plan.

"(3) The Administrator, upon application by a person owning or operating an existing electric powerplant proposing to use petroleum as an energy source, may grant a temporary exception of up to five years from the effective date of the prohibition or as determined by the Administrator, from the prohibitions of subsection (a) (2) with respect to petroleum if such person demonstrates to the satisfaction of the Administrator that—

"(A) despite diligent good faith efforts an adequate and reliable supply of coal or other fuel is not expected to be available; or

"(B) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance

with the prohibitions of subsection (a) (2) because of site specific limitations, such as access to coal or coal transportation facilities.

"(e) EXEMPTIONS.—

"(1) GENERAL EXEMPTION.—The Administrator, upon application by a person owning or operating an existing electric powerplant subject to a prohibition of subsection (a) proposing to use natural gas or petroleum as an energy source, may grant an exemption from such prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(A) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with a prohibition of subsection (a) because of site specific limitations such as access to coal or coal transportation facilities; or

"(B) the cost of using coal or other fuel substantially exceeds the cost of using imported petroleum; and

"(C) there is no alternative supply of power which can be obtained without impairing reliability of service.

"(2) EXEMPTION FOR RESALE PURCHASERS.—The Administrator, upon application by a person owning or operating an existing electric powerplant subject to the prohibition of subsection (a) (1), proposing to use natural

gas as an energy source, may grant an exemption for such powerplant from the prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(A) the powerplant is operated solely as a peak-load powerplant; and

"(B) the electricity generated by the powerplant is a substantial portion of the total generating capacity of the applicant; and

"(C) (i) a denial of the application for exemption is likely to result in an impairment of reliability or adequacy of service; or

"(ii) modification of the powerplant to permit compliance with the prohibition is technically infeasible; or

"(iii) such modification would result in an unreasonable cost to the applicant's customers.

"NEW MAJOR FUEL-BURNING INSTALLATIONS

"SEC. 106. (a) PROHIBITIONS.—

"(1) BOILERS.—Except as provided in subsection (b), no new major fuel-burning installation boiler may use natural gas or petroleum as an energy source.

"(2) NONBOILERS—CATEGORIES.—The Administrator may by rule identify categories of new major fuel-burning installations other than boilers which, except as provided in subsection (b), shall be prohibited from using natural

gas or petroleum, or both, as an energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such installations that will be subject to the prohibition.

"(3) NONBOILERS—INDIVIDUAL INSTALLATIONS.—Subject to the provisions of subsection (b) of this section, the Administrator may, by order, prohibit a new major fuel-burning installation other than a boiler and not subject to paragraph (2) of this subsection, from using natural gas or petroleum, or both, as an energy source.

"(b) TEMPORARY EXCEPTION AND EXEMPTION.—

"(1) TEMPORARY EXCEPTION.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new major fuel-burning installation proposing to use petroleum as an energy source, may grant a temporary exception with respect to petroleum from the prohibitions of subsection (a) of this section for a period of up to five years, or as determined by the Administrator, if such person demonstrates to the satisfaction of the Administrator that during the proposed period of the temporary exemption—

"(A) despite diligent good faith efforts, an adequate

and reliable supply of coal or other fuel is not expected to be available, or

"(B) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibitions of subsection (a) of this section because of site specific limitations such as access to coal or coal transportation facilities.

"(2) EXEMPTION.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new major fuel-burning installation subject to the prohibition of subsection (a) (1) or in a category identified by rule to be subject to the prohibition of subsection (a) (2), proposing to use natural gas or petroleum as an energy source, may grant an exemption from the prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(1) (A) despite diligent good faith efforts an adequate and reliable supply of coal or other fuel is not expected to be available for use during a majority of the useful life of the installation and cannot be used except at a cost that substantially exceeds the cost of using imported petroleum; or

"(B) physical and environmental factors which

cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibition because of site specific limitations, such as access to coal or coal transportation facilities; or

"(2) (A) the use of an energy source other than natural gas or petroleum is technically infeasible in direct firing use due to contamination of product or inability to maintain satisfactory combustion control; and

"(B) substitution of steam for direct heat is not possible due to process requirements.

"(c) DENIAL OF APPLICATION FOR TEMPORARY EXCEPTION OR EXEMPTION.—A denial of an application for temporary exception or exemption from the prohibitions of subsection (a) (1) or (2) shall not be deemed to be a major Federal action for purposes of section 102 of the National Environmental Policy Act of 1969 except when such denial relates to a new major fuel-burning installation for which no entity other than the Federal Energy Administration is responsible for carrying out the provisions of such section.

"EXISTING MAJOR FUEL-BURNING INSTALLATIONS

"SEC. 107. (a) PROHIBITIONS.—

"(1) NATURAL GAS AND PETROLEUM PROHIBITIONS—CATEGORIES.—The Administrator may by rule identify categories of existing major fuel-burning installations with the capability to use coal or other fuel as an energy source including a category consisting of existing major fuel-burning installation which were issued pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 as in effect prior to the effective date of this title, which shall be prohibited from using natural gas or petroleum, or both, as their energy source. In identifying categories of existing major fuel-burning installations pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such installations that will be subject to the prohibition.

"(2) NATURAL GAS AND PETROLEUM PROHIBITION—INDIVIDUAL INSTALLATIONS.—(A) Subject to the provisions of subparagraph (B) of this paragraph and of subsection (b) of this section, the Administrator may, by order, prohibit an existing major fuel-burning installation not subject to paragraph (1) of this subsection with the capability to use coal or other fuel as an energy source from using natural gas or petroleum, or both, as an energy source.

"(B) The Administrator may issue an order pursuant to this paragraph if he determines that—

"(i) the existing installation on June 22, 1974, had or thereafter acquired or is designed with the capa-

bility to use coal or other fuel as an energy source; and

"(ii) that the use of coal or other fuel by the installation in lieu of natural gas or petroleum products is financially feasible;

unless the person owning or operating the installation demonstrates that an adequate and reliable supply of coal will not be available.

"(3) NATURAL GAS AND PETROLEUM PROHIBITION—MIXTURES AND COMBINATION OF FUELS.—Subject to the provisions of subsection (b) of this section, the Administrator may, by order, prohibit an existing major fuel-burning installation in which it is feasible to use a mixture of coal and petroleum as an energy source or to use a combination of coal and petroleum or natural gas as an energy source from using natural gas or petroleum in greater amounts than is feasible unless the reliability of service in the dispatching system will thereby be impaired.

"(4) NATURAL GAS PROHIBITION—CATEGORIES.—The Administrator may by rule identify categories of existing major fuel-burning installations with no capability to use coal which shall be prohibited from using natural gas as an energy source. In identifying categories of existing major fuel-burning installations pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such installations that will be subject to the prohibition.

"(5) NATURAL GAS PROHIBITION—INDIVIDUAL INSTALLATIONS.—(A) Subject to the provisions of subparagraph (B) of this paragraph and of subsection (b) of this section, the Administrator may, by order, prohibit an existing major fuel-burning installation not subject to paragraph (4) of this subsection with no capability to use coal from using natural gas as an energy source.

"(B) The Administrator may issue an order pursuant to this paragraph if he determines that the use of petroleum in lieu of natural gas is financially feasible.

"(b) OTHER PROVISIONS.—(1) The Administrator may rescind or modify any order issued pursuant to subsection (a) (2) or (5) if he determines that any requirement described in subsections (a) (2) (B) or (a) (5) (B), respectively, is no longer met, and that the order as modified complies with such requirement.

"(2) Before issuing, modifying, or rescinding an order under subsection (a) (2) or (5) the Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

"(3) An order (or modification or rescission thereof)

under subsection (a) (2) or (5) shall not be effective (A) until the Administrator of the Environmental Protection Agency notifies the Administrator under section 119 (d) (1) (B) of the Clean Air Act, or (B) if such notification is not given until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119 (d) (1) (B) of such Act is the earliest date that the installation will be able to comply with all applicable requirements of section 119. The order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 119 (d) (3) (B) of such Act. Notice or certification pursuant to this paragraph shall be provided within two hundred and seventy days of the date the Administrator of the Environmental Protection Agency receives notice of the issuance of an order subsection (a) (2) (B).

"(c) TEMPORARY EXEMPTION.—The Administrator, upon application by a person owning or operating an existing major fuel-burning installation in a category identified by rule to be subject to the prohibition of subsection (a) (1), proposing to use natural gas or petroleum as an energy source, or to the prohibition of subsection (a) (4), proposing to use natural gas as an energy source, may grant a temporary exemption from such prohibitions for a period of up to five years from the effective date of the prohibition, or as

determined by the Administrator, if such person demonstrates to the satisfaction of the Administrator that—

"(1) despite diligent good faith efforts an adequate and reliable supply of coal or other fuel is not expected to be available, or

"(2) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibitions of subsection (a) (1) or (a) (4) because of site specific limitations, such as access to coal or coal transportation facilities.

"(d) EXEMPTION.—The Administrator, upon application by a person owning or operating an existing major fuel-burning installation in a category identified by rule to be subject to the prohibition of subsection (a) (1), proposing to use natural gas or petroleum as an energy source, or to the prohibition of subsection (a) (4) proposing to use natural gas as an energy source, may grant an exemption from the prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(1) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibition because of site specific limitations, such as access to coal or coal transportation facilities; or

"(2) with respect to the prohibition under subsection (a) (1), the cost of using coal or other fuel substantially exceeds the cost of using imported petroleum; or

"(3) (A) the use of an energy source other than natural gas or petroleum is technically infeasible in direct firing use due to contamination of product or inability to maintain satisfactory combustion control; and

"(B) substitution of steam for direct heat is not possible due to process requirements.

"(e) The Administrator may, with respect to existing major fuel-burning installations subject to a prohibition of subsection (a) of this section, prescribe rules limiting or prohibiting the use by such installations of electrical resistance heating in order to compy with such prohibition.

"GENERAL TEMPORARY EXCEPTION OR EXEMPTION AUTHORITY

"SEC. 108. The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate an electric powerplant or a major fuel-burning installation requesting a temporary exception or exemption from any prohibition of this Act, may grant a temporary exception or exemption from the prohibition if he finds that the applicant has demonstrated that compliance with the prohibition is not consistent with the purposes of this Act.

"TEMPORARY EXCEPTION OR EXEMPTION OF QUALIFYING COGENERATION FACILITIES

"SEC. 109. The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a qualifying cogeneration facility requesting an exemption or temporary exception from any prohibition of this title, may grant an exemption or temporary exception from the prohibition if he finds that the applicant has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas may be used in such facility.

"DISRUPTION OF NATURAL GAS CONTRACTS

"SEC. 110. (a) Whenever the provisions of section 105 or 107 of this title, or an order issued pursuant thereto, prohibit the use by an existing electric powerplant or existing major fuel-burning installation of natural gas to which, but for the operation of such section or order, the powerplant or installation would he entitled by contract in effect on April 20, 1977, such powerplant or installation may sell, exchange, or otherwise transfer its rights under such contract, notwithstanding the provisions of the Public Utility Holding Company Act or any law of any State, or a force majeure clause or other clause of such contract. The price charged in such sale, exchange, or other transfer shall not exceed the maximum lawful price for such natural gas pur-

suant to the Natural Gas Act of 1977, plus an amount to be paid under subsection (b) of this section.

"(b) A powerplant or installation which sells, exchanges, or otherwise transfers its rights to natural gas under a contract referred to in subsection (a), which contract provides that a pipeline or distribution company, but for the provisions of section 105 or 107 of this title, or an order issued pursuant thereto, would have transported such natural gas, such powerplant or installation shall be liable to such pipeline or distribution company in accordance with any term in such contract providing a measure of damages to such pipeline or distribution company in the event of termination of the contract prior to performance, or in the absence of such provision, for reasonable losses incurred as a result of the termination.

"COAL ALLOCATION

"SEC. 111. (a) In the event the President declares a severe energy supply interruption, as defined in section 3 (8) of the Energy Policy and Conservation Act, or determines that a situation similar to such supply interruption exists on a regional basis, the Administrator may, by rule or order, allocate coal to any person to the extent necessary.

"(b) Whenever a person owning, operating, constructing, or proposing to construct or operate an electric powerplant or major fuel-burning installation demonstrates in connection with an application for an exemption from any prohibition of this title that despite diligent good faith efforts an adequate and reliable supply of coal is not expected to be available, the Administrator may, by rule or order, allocate coal to such person in lieu of granting the requested exemption.

"ENFORCEMENT AND PENALTIES

"SEC. 112. (a) (1) Any person who violates any provision of this title, or rule or order issued thereunder, shall be subject to a civil penalty of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

"(2) Any person who willfully violates any provision of this title, or rule or order issued thereunder, shall be subject to a fine of not more than $50,000 or by imprisonment for not more than one year, or both, for each violation. Each day of violation constitutes a separate violation.

"(3) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation described in paragraphs (1) and (2) of this subsection, shall be subject to penalties under this subsection without regard to any penalties to which the corporation may be subject under paragraphs (1) and (2) except that no such individual director, officer, or

agent shall be subject to imprisonment under paragraphs (1) and (2), unless he also knows, or reasonably should have known, of noncompliance by the corporation.

"(4) Whenever it appears to the Administrator that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of the provisions of this Act or any rule or order issued thereunder, the Administrator may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision of this Act or any rule or order issued thereunder.

"(b) Any person owning or operating an electric powerplant granted an exemption under section 104(b)(4) or 105(e) as a peakload electric powerplant which, for any consecutive twelve-month period operates in excess of one thousand five hundred hours, shall be liable for a civil penalty of up to $10 per barrel of oil or $3 per thousand cubic feet of natural gas used in excess of one thousand five hundred hours, except where such person can demonstrate that operation in excess of one thousand five hundred hours was necessary to meet peak load demand and that other peakload

electric powerplants within the system were unavailable for service due to unit or system outages.

"EMERGENCY POWERS

"SEC. 113. (a)(1) In the event the President declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, the Administrator may, by order, prohibit an electric powerplant or major fuel-burning installation using natural gas or petroleum as an energy source from so using natural gas or petroleum for the duration of such interruption, notwithstanding applicable implementation plans as defined in section 110(b) of the Clean Air Act or other State or local government standard, limitation, or other requirement, so long as such prohibitions are not likely to result in a violation of primary air quality standards.

"(2) In the event the President determines that such supply interruption is likely to be of sufficiently grave scope and duration that, in his judgment, it is necessary to issue orders under paragraph (1) of this subsection which are likely to result in a violation of primary air quality standards, the President may issue such orders but may not delegate the authority to do so.

"(b) The Administrator may stay or otherwise exempt

for such period as the Administrator deems appropriate, the application of any provisions of this title—

"(1) in the event of national, regional, or system-wide shortages of coal or other fuel supplies or of coal transportation facilities or other necessary facilities which may affect reliability of service of electric power plants subject to such provisions; or

"(2) otherwise as necessary to alleviate or prevent any emergencies directly affecting the public health, safety, or welfare, which would result from electrical power outages.

"(c) The Administrator may stay the application of any provisions of this title for such periods as necessary to implement enforceable air pollution requirements.

"RULES AND REGULATIONS

"SEC. 114. The Administrator shall promulgate such rules, regulations, and procedures as may be necessary to carry out the functions and powers vested in the Administrator by this title.".

CONFORMING AMENDMENTS

SEC. 602. (a) The Energy Supply and Environmental Coordination Act of 1974 is amended—

(1) by redesignating sections 3 through 14 (and all references thereto) as sections 201 through 212, respectively, and

(2) by inserting before section 201 (as so redesignated) the following:

"TITLE II—OTHER PROVISIONS".

(b) The Energy Supply and Environmental Coordination Act of 1974 is amended—

(1) by deleting paragraph (2) of subsection (g) of section 210 (as redesignated), and

(2) redesignating paragraph (1) of subsection (g) as subsection (g).

(c) The Energy Supply and Environmental Coordination Act of 1974 is amended in section 212 (as redesignated) by striking wherever it appears the word "Act" following the phrase "for purposes of this" and inserting in lieu thereof the word "title".

EFFECTIVE DATES

SEC. 603. The amendments to the Energy Supply and Environmental Coordination Act of 1974 made by this part shall take effect one hundred and eighty days after enactment, except that the Administrator is authorized to issue rules pursuant to title I of the Energy Supply and Environmental Coordination Act of 1974 at any time after enactment of this part, which rules may take effect no earlier than one hundred and eighty days after enactment of this part.

PART G—FEDERAL ENERGY INITIATIVES

Subpart 1—Federal Van Pooling Program

SEC. 701. Section 381 of the Energy Policy and Conservation Act is hereby amended by—

(1) inserting "and subsection (c)" before the colon in subsection (b) (2);

(2) redesignating subsection (c) as subsection (d); and

(3) inserting after subsection (b) the following new subsection:

"(c) (1) The Administrator may, by rule, after consultation with the Administrator of the General Services Administration, provide for the establishment of a program or programs pursuant to which van pooling arrangements are offered and provided to officers and employees of the Federal Government. Any such program may be phased over a period of years, and may be limited by the Administrator to one or more reasonable categories of officers and employees determined by the Administrator, including, without limitation, categories determined by such factors as location of residence, location of place of business or regular hours of work. The number of vans in use in van pooling arrangements authorized under this subsection shall at no time exceed six thousand.

"(2) In order to establish, maintain, and operate any

program authorized to be established by the Administrator under paragraph (1) of this subsection, the Administrator of the General Services Administration, in consultation with the Administrator, shall be authorized to—

"(A) acquire vans by purchase, lease, or other arrangement;

"(B) establish and operate training programs for operators of vans;

"(C) establish and maintain, or require departments and agencies to establish and maintain, lists of officers and employees participating, or desiring to participate, in van pooling arrangements;

"(D) permit any person authorized to operate a van pursuant to a van pooling arrangement to—

"(i) operate the van for personal use (other than for use on vacation trips and trips over extended distance, as defined by the Administrator of the General Services Administration), with or without a charge for such personal use as determined by the Administrator of the General Services Administration, and subject to the provisions of paragraph (3) (C) (iv) of this subsection; and

"(ii) retain a portion of the rider charges paid by officers and employees participating in such van pooling arrangements if the Administrator of

the General Services Administration determines that such retention will promote full use of van capacity; and

"(E) exercise such other powers now or hereafter vested in him as he determines to be necessary or appropriate.

"(3) Any program established pursuant to paragraph (1) of this subsection shall include—

"(A) a requirement that officers and employees participating in van pooling arrangements authorized under such program pay a rider charge, including an actuarially determined sum for Government self-insurance against liability which may be imposed on the Federal Government due to van pooling use, in such amount and at such intervals as the Administrator of the General Services Administration may determine, except that the Administrator of the General Services Administration may provide that a person authorized to operate a van pursuant to a van pooling arrangement may not be required to pay a rider charge;

"(B) a requirement designed to assure that van pooling arrangements authorized under such program will insure that, not later than eight years from commencement of the program, all costs and expenses, including estimated administrative expenses, incurred by

the Federal Government in connection with the establishment, maintenance, and operation of such a program, will be repaid from rider charges paid by participating officers and employees; and

"(C) requirements to insure that each person operating a van pursuant to a van pooling arrangement authorized thereunder—

"(i) shall be a regular, full-time Government officer or employee;

"(ii) shall maintain the van in good and safe working order;

"(iii) shall be by law entitled to operate the van in his place of residence, except that nothing in this subparagraph shall be deemed to require that such person be licensed to operate the van for hire; and

"(iv) shall, in the event that such person is authorized to operate and operates the van for personal use, secure and maintain at such person's expense insurance against such risks as the Administrator of the General Services Administration deems necessary to assure payment of any claim that may arise other than in van pooling use.

"(4) For the purposes of section 5 of the Act of July 16, 1914 (chapter 141, 38 Stat. 508, as amended; 31

U.S.C. 638a), and section 601 of Public Law 94-91 (89 Stat. 458; 31 U.S.C. 638c), a van obtained for the purpose of, and operated pursuant to, a van pooling arrangement established pursuant to this subsection shall not be deemed to be a passenger motor vehicle.

"(5) Neither the offering of a van pooling arrangement pursuant to this subsection nor the operation of a van pursuant to such an arrangement shall subject any person to regulation as a motor carrier under part II of the Interstate Commerce Act (49 U.S.C. 303 et seq.), or to any similar regulation under the laws of the District of Columbia or any State or political subdivision thereof.

"(6) Sections 1346(b) and 2679 of title 28, United States Code, shall apply to suits arising from van pooling use.

"(7) The operation of a van pursuant to a van pooling arrangement established pursuant to this subsection shall not be deemed to be operation of a motor vehicle for hire for purposes of any law of the District of Columbia or any State or political subdivision thereof relating to the licensing of operators of motor vehicles for hire.

"(8) Time spent traveling in van pooling arrangements shall not be considered Federal employment for the purpose of any law administered by the Civil Service Commission or by the Department of Labor pursuant to chapter 81 of title

5, United States Code, and rider charges paid the operator of a van pool shall be deemed fees paid to and received by individuals in their private capacity.

"(9) The Administrator of the General Services Administration, with the approval of the Administrator, is hereby authorized to delegate to the heads of Federal departments and agencies whose officers and employees are authorized to participate in van pooling arrangements established pursuant to this subsection such of his functions, powers, and duties as he deems necessary or appropriate to establish, maintain, or operate van pooling programs authorized by this subsection.

"(10) For purposes of this subsection, the term 'van pooling use' means operation or maintenance of a van by an officer or employee of the United States in the course of or incidental to a van pooling arrangement authorized under this subsection, excluding any personal use permitted under paragraph (2)(D)(i).

"(11) All rider charges and other receipts from the operation of vanpooling arrangements established pursuant to this subsection received by the Administrator of the General Services Administration or by the head of any Department or agency exercising authority delegated pursuant to paragraph (9) of this subsection shall be deposited in the general fund of the Treasury of the United States.

"(12) There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out all provisions of this subsection. The Administrator shall be authorized, with the approval of the Director of the Office of Management and Budget, to transfer to the Administrator of the General Services Administration such amounts from the sums so appropriated as may be necessary to carry out the functions, duties and responsibilities assigned to the Administrator of the General Services Administration by this subsection.".

Subpart 2—Amendment to Section 381 of EPCA

SEC. 721. Section 381 of the Energy Policy and Conservation Act is amended by adding at the end thereof the following new subsections:

"(e) The plan developed by the President pursuant to subsection (a) (2) shall be applicable to Executive agencies as defined in section 105 of title 5, United States Code, and to the United States Postal Service.

"(f) In addition to funds authorized in any other law, there are authorized to be appropriated to each executive agency, as defined in section 105 of title 5, United States Code, and to the United States Postal Service, for each fiscal year of the eight fiscal year period ending September 30, 1985, such sums as may be necessary to carry out the purposes of subsection (a) (2).".

Subpart 3—Demonstration of Solar Heating and Cooling in Federal Buildings

DEFINITIONS

SEC. 741. As used in this subpart—

(1) The term "agency" means—

(A) an Executive agency as defined in section 105 of title 5, United States Code; and

(B) each entity enumerated in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5, United States Code.

(2) The term "building" means any structure (other than a residential dwelling) owned by the United States or any agency, including any such structure occupied by an agency under a lease-acquisition agreement under which the United States or an agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term "solar heating" means with respect to any building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water (where its remaining heating needs are met by other methods).

(4) The term "solar heating and cooling" means with respect to any building, the use of solar energy to provide all or part of the heating needs of such building (including

hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water (where its remaining heating needs are met by other methods) and all or part of the cooling needs of such building.

(5) The term "solar energy equipment" means equipment for solar heating and solar heating and cooling.

(6) The term "Administrator" means the Administrator of the Federal Energy Administration.

FEDERAL SOLAR PROGRAM

SEC. 742. The Administrator shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

DUTIES OF ADMINISTRATOR

SEC. 743. (a) In exercising the authority provided by section 742, the Administrator shall—

(1) solicit and consider proposals by any agency to apply solar heating and solar heating and cooling technology to any existing or proposed building;

(2) promulgate, by rule, criteria by which such proposals will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value of the costs and benefits of the proposal to the agency, and for the demonstration, to the

maximum extent practicable of innovative and diverse applications to a variety of type of buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(3) evaluate each such proposal pursuant to the criteria promulgated pursuant to subsection (a) (2);

(4) provide assistance by interagency agreement for the cost of implementing a proposal (which costs shall be limited to design, acquisition, construction, and installation of solar energy equipment); and

(5) provide, by rule, that agencies report to the Administrator periodically such information as they acquire respecting maintenance and operation of solar equipment.

(b) In carrying out the responsibilities, pursuant to paragraphs (2) and (3) of subsection (a), the Administrator shall provide an opportunity for consultation to the Administrator of the General Services Administration and the Administrator of the Energy Research and Development Administration.

TRANSFER OF APPROPRIATIONS

SEC. 744. In carrying out a proposal for which the Administrator has provided assistance, any agency may use

funds transferred to it by the Administrator to enter into such contracts as may be necessary to complete the project described in that proposal.

SUBMISSION OF PROPOSALS

SEC. 745. (a) Each agency responsible for the construction of new buildings or operation of existing buildings shall, within one hundred and eighty days after publication of criteria under section 743 (a) (2), submit initial proposals to the Administrator for installation of solar energy systems on selected buildings under its control.

(b) Such initial proposal shall include a list of the specific buildings proposed to be provided with solar energy systems, the funds required for the system, the proposed implementation schedule, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Administrator.

(c) Thereafter, each agency may submit proposals to the Administrator for additional solar energy systems for buildings under their control on a schedule established by the Administrator but not greater than two-year intervals.

AUTHORIZATION

SEC. 746. There are authorized to be appropriated to the Administrator through fiscal year 1980 to carry out the purposes of this subpart not to exceed $100,000,000.

TITLE II—TAX PROVISIONS

SEC. 1001. AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 1002. NONAPPLICATION TO GOVERNMENTS OF AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS.—The provisions of this title shall not apply to American Samoa, Guam, and the Virgin Islands.

PART A—RESIDENTIAL ENERGY TAX CREDIT

SEC. 1101. RESIDENTIAL ENERGY CREDIT.

(a) GENERAL RULE.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowable) is amended by inserting immediately before section 45 the following new section:

"SEC. 44B. RESIDENTIAL ENERGY CREDIT.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) in the case of qualified energy conservation expenditures paid or incurred by the taxpayer during

the taxable year with respect to the taxpayer's principal residence, the lesser of $410, or—

"(A) 25 percent of so much of such expenditures as does not exceed $800; plus

"(B) 15 percent of the amount of such expenditures as exceeds $800; and

"(2) in the case of qualified solar expenditures made by the taxpayer with respect to the taxpayer's principal residence—

"(A) during the taxable years ending in 1977, 1978, or 1979, the lesser of $2,000 or—

"(i) 40 percent of so much of such expenditures as does not exceed $1,000, plus,

"(ii) 25 percent of so much of such expenditures as exceeds $1,000;

"(B) during the taxable years ending in 1980 or 1981, the lesser of $1,580 or—

"(i) 30 percent of so much of such expenditures as does not exceed $1,000, plus

"(ii) 20 percent of so much of such expenditures as exceeds $1,000; and

"(C) during the taxable years ending in 1982, 1983, and 1984, the lesser of $1,210 or—

"(i) 25 percent of so much of such expenditures as does not exceed $1,000, plus

"(ii) 15 percent of so much of such expenditures as exceed $1,000.

"(b) LIMITATIONS.—

"(1) APPLICATIONS WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under—

"(A) section 42 (relating to general tax credit),

"(B) section 44A (relating to household and dependent care services),

"(C) section 37 (relating to retirement income),

"(D) section 44 (relating to purchase of new principal residence),

"(E) section 33 (relating to foreign tax credit),

"(F) section 38 (relating to investment in certain depreciable property),

"(G) section 40 (relating to expenses of work incentive programs), and

"(H) section 41 (relating to contributions to candidates for public office).

"(2) PRIOR EXPENDITURES TAKEN INTO ACCOUNT.—

"(A) If the taxpayer made qualified energy conservation expenditures in any prior taxable year with respect to the same principal residence which were taken into account in determining the amount of a credit under this section for such prior taxable year, then subsection (a) (1) (A) shall be applied for the taxable year by reducing the dollar amounts of expenditures specified in such subsection by the amount of expenditures for which credit was allowed in such prior taxable years. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (1) with respect to the same principal residence during the taxable years ending in 1977 through 1984 exceed $410.

"(B) If the taxpayer made qualified solar energy expenditures in a prior taxable year with respect to the same principal residence which were taken into account in determining the amount of a credit under this section for such prior taxable year, then—

"(1) for taxable years ending in 1977, 1978, and 1979 subsection (a) (2) (A) (i), and

"(2) for taxable years ending in 1980 and 1981 subsection (a) (2) (B) (i), and

"(3) for taxable years ending in 1982, 1983, and 1984 subsection (a) (2) (C) (i),

shall be applied in those taxable years by reducing the dollar amounts of expenditures specified in such subsections by the total amount of expenditures for which credit was allowed in prior taxable years. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (2) with respect to the same principal residence during the taxable years 1977 through 1979 exceed $2,000. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (2) with respect to the same principal residence during the taxable years 1977 through 1981 exceed $1,580, unless such credits were allowed only in the taxable years 1977 through 1979, in which case the total amount allowed shall be $2,000. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (2) with respect to the same principal residence during the taxable years 1977 through 1984 exceed $1,210, unless

such credits were allowed only in the taxable years 1977 through 1981, in which case the rule in the preceding sentence applies.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED ENERGY CONSERVATION EXPENDITURES.—The term 'qualified energy conservation expenditures' means any amount paid or incurred by an individual for insulation and other energy-conserving components (including amounts for the original installation of such insulation) installed after April 20, 1977, and before January 1, 1985, in a dwelling unit located in the United States which is—

"(A) used by the taxpayer as his principal residence (within the meaning of section 1034), and

"(B) in existence on April 20, 1977.

"(2) QUALIFIED SOLAR ENERGY EXPENDITURES.—The term 'qualified solar energy expenditures' means any amount expended by an individual for the purchase and installation of solar energy property which occurs after April 20, 1977, and before January 1, 1985, in any dwelling unit located in the United States which is—

"(A) used by the individual at the time of such installation as his principal residence (within the meaning of section 1034), or

"(B) part of the purchase price of a newly constructed dwelling unit purchased by an individual for use as his principal residence, but only to the extent that such expenditures are specifically for (i) materials and equipment and (ii) the labor costs associated with onsite assembly or construction of the energy storage medium (excluding swimming pools used as a storage medium), onsite glazing of solar collector units, and onsite assembly of solar collectors, if not shipped preassembled for the solar energy property, as determined in accordance with rules prescribed by the Secretary.

"(3) INSULATION.—The term 'insulation' means any insulation identified by the Secretary by rule—

"(A) which is specifically and primarily designed to reduce, when installed in or on a building (including installations on floors, walls, ceilings, and water heaters), the heat loss or gain of such building,

"(B) the original use of which commences with the taxpayer, and

"(C) which has a useful life of at least 3 years.

"(4) OTHER ENERGY-CONSERVING COMPONENT.—The term 'other energy-conserving component' means—

"(A) a replacement burner for a furnace, which burner is designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(B) a device for modifying flue openings which will increase the efficiency of operation of the heating system,

"(C) an electrical or mechanical furnace ignition system which replaces a standing gas pilot light,

"(D) a storm or thermal window,

"(E) a clock thermostat, and

"(F) caulking and weatherstripping of exterior doors and windows, but only if installed in conjunction with insulation or at least one other energy-conserving component,

which has a useful life of at least 3 years, and the original use of which commences with the taxpayer.

"(5) SOLAR ENERGY PROPERTY.—The term 'solar energy property' means equipment or mechanical or electrical systems which—

"(A) are of a type identified in regulations

prescribed by the Secretary after consultation with the Federal Energy Administrator;

"(B) when installed in or on, or when connected to, a building, use solar energy to heat or cool such building or to heat water for use within such buildings;

"(C) the original use of which commences with the taxpayer; and

"(D) which have a useful life of at least 5 years.

"(6) The Secretary may amend by rule the terms 'insulation', 'other energy conserving component', and 'solar energy property', upon request of the Administrator of the Federal Energy Administration, to add devices or measures which the Secretary determines, when installed in or on a dwelling unit—

"(A) are likely to improve the energy efficiency of the heating, cooling, or water heating systems of the dwelling unit, or reduce the heat loss or gain of such dwelling unit; and

"(B) have a useful life of at least 3 years; and

"(C) are generally safe and effective.

"(7) The Secretary may amend by rule the terms

'insulation', 'other energy conserving component', and 'solar energy property', in consultation with the Administrator of the Federal Energy Administration and such other agencies as he deems appropriate, to exclude specific measures or devices if the Secretary determines that such measures are not generally safe and effective.

"(8) TENANT STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who holds stock as a tenant stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual—

"(A) shall be treated as owning the dwelling unit which he is entitled to occupy as such stockholder; and

"(B) shall be treated as having expended his tenant stockholder's proportionate share (as defined in section 216(b)(3)) of any qualified energy conservation expenditures, or qualified solar energy expenditures, paid or incurred by such corporation.

"(C) The basis of any property shall be reduced, for purposes of this subtitle, by an amount equal to the amount of any credit allowed by this section for qualified energy conservation expenditures or qualified solar energy expenditures with respect to such property.".

(b) The amendments made by this section shall apply to amounts expended after April 20, 1977, in taxable years ending after such date and before January 1, 1985.

(c)(1) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following new item:

"Sec. 44B. Residential energy property credit.".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out the period at the end of paragraph (23) and inserting in lieu thereof a semicolon and by inserting after paragraph (23) the following new paragraph:

"(24) to the extent provided in section 44A(c), in the case of property with respect to which a credit has been allowed under section 44B.".

(3) Section 6096(b) (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44A" and inserting in lieu thereof "44A, and 44B".

PART B—TRANSPORTATION

Subpart 1—Fuel Efficiency Incentive Tax

SEC. 1201. FUEL INEFFICIENCY TAX.

(a) GENERAL RULE.—Part I of subchapter A of chapter 32 (relating to motor vehicle excise taxes) is amended by adding at the end thereof the following new section:

"SEC. 4064. FUEL INEFFICIENCY TAX.

"(a) IMPOSITION OF TAX.—Except as provided in subsection (b), a tax is hereby imposed on the sale by the manufacturer of each automobile, determined in accordance with the following tables:

"(1) In the case of a 1978 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 18	0
At least 17 but less than 18	$52
At least 16 but less than 17	112
At least 15 but less than 16	179
At least 14 but less than 15	256
At least 13 but less than 14	345
Less than 13	449

"(2) In the case of a 1979 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 19	0
At least 18 but less than 19	$52
At least 17 but less than 18	111
At least 16 but less than 17	178
At least 15 but less than 16	258
At least 14 but less than 15	339
At least 13 but less than 14	438
Less than 13	553

"(3) In the case of a 1980 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 20	0
At least 19 but less than 20	$52
At least 18 but less than 19	111
At least 17 but less than 18	176
At least 16 but less than 17	249
At least 15 but less than 16	333
At least 14 but less than 15	428
At least 13 but less than 14	538
Less than 13	666

"(4) In the case of a 1981 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 21.5	0
At least 20.5 but less than 21.5	$52
At least 19.5 but less than 20.5	110
At least 18.5 but less than 19.5	174
At least 17.5 but less than 18.5	245
At least 16.5 but less than 17.5	325
At least 15.5 but less than 16.5	416
At least 14.5 but less than 15.5	519
At least 13.5 but less than 14.5	637
At least 12.5 but less than 13.5	774
Less than 12.5	935

"(5) In the case of a 1982 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 23	0
At least 22 but less than 23	$57
At least 21 but less than 22	120
At least 20 but less than 21	189
At least 19 but less than 20	266
At least 18 but less than 19	351
At least 17 but less than 18	446
At least 16 but less than 17	553
At least 15 but less than 16	674
At least 14 but less than 15	812
At least 13 but less than 14	972
Less than 13	1,159

"(6) In the case of a 1983 model automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 24.5	0
At least 23.5 but less than 24.5	$57
At least 22.5 but less than 23.5	119
At least 21.5 but less than 22.5	188
At least 20.5 but less than 21.5	262
At least 19.5 but less than 20.5	345
At least 18.5 but less than 19.5	437
At least 17.5 but less than 18.5	539
At least 16.5 but less than 17.5	653
At least 15.5 but less than 16.7	782
At least 14.5 but less than 15.5	929
At least 13.5 but less than 14.5	1,098
At least 12.5 but less than 13.5	1,294
Less than 12.5	1,524

"(7) In the case of a 1984 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 26	0
At least 25 but less than 26	$62
At least 24 but less than 25	129
At least 23 but less than 24	203
At least 22 but less than 23	283
At least 21 but less than 22	371
At least 20 but less than 21	467
At least 19 but less than 20	574
At least 18 but less than 19	693
At least 17 but less than 18	825
At least 16 but less than 17	974
At least 15 but less than 16	1,143
At least 14 but less than 15	1,336
At least 13 but less than 14	1,559
Less than 13	1,819

"(8) In the case of a 1985 or later model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 27.5	0
At least 26.5 but less than 27.5	$67
At least 25.5 but less than 26.5	140
At least 24.5 but less than 25.5	219
At least 23.5 but less than 24.5	304
At least 22.5 but less than 23.5	397
At least 21.5 but less than 22.5	499
At least 20.5 but less than 21.5	610
At least 19.5 but less than 20.5	733
At least 18.5 but less than 19.5	869
At least 17.5 but less than 18.5	1,021
At least 16.5 but less than 17.5	1,192
At least 15.5 but less than 16.5	1,384
At least 14.5 but less than 15.5	1,603
At least 13.5 but less than 14.5	1,854
At least 12.5 but less than 13.5	2,146
Less than 12.5	2,488

"(b) ALTERNATIVE TAX.—If the average fuel economy standard prescribed under section 502 o fthe Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of automobiles differs from the lowest

fuel economy level for which no tax is imposed under subsection (a) for the model year, then the tax imposed with respect to such class by subsection (a) for the model year shall be determined in accordance with a table prescribed for such year by the Secretary. Such table shall take the same general form as that in subsection (a) except that no tax shall be imposed at or above the level of fuel economy which is equal to the average fuel economy standard prescribed for that class of automobile for the model year. The tax for each whole mile per gallon below the level at which no tax is imposed shall be determined by multiplying the tax correction factor for the year by the difference between a fraction created by dividing 100,000 by the fuel economy for which the tax is to be imposed, and a fraction created by dividing 100,000 by the average fuel economy standard. The maximum tax prescribed by the Secretary for any class of automobiles for any model year may not exceed the maximum tax prescribed in subsection (a) for that model year. The Secretary shall prescribe such table prior to the beginning of the model year.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AUTOMOBILE, ETC.—The terms 'automobile', 'passenger automobile', 'fuel economy', 'average fuel economy standard', 'model type', and 'model year' have

the same meaning as such terms have under section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001).

"(2) MANUFACTURER.—The term 'manufacturer' includes a producer or importer.

"(3) TAX CORRECTION FACTOR.—For purposes of the alternative tax on subsection (b) of this section, the tax correction factor for each model year is as follows:

"1978	16.16 cents
1979	18.04 cents
1980	20.00 cents
1981	23.10 cents
1982	29.08 cents
1983	33.00 cents
1984	40.55 cents
1985 and thereafter	49.14 cents.".

(b) DENIAL OF CERTAIN EXEMPTIONS AND REFUNDS.—

(1) TAX-FREE SALES.—Subsection (a) of section 4221 (relating to certain tax-free sales) is amended by adding a new sentence at the end thereof to read as follows: "Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064.".

(2) DENIAL OF REFUNDS FOR CERTAIN USES.—Paragraph (2) of section 6416(b) (relating to tax payments considered overpayments in the case of specified uses and resales) is amended by adding a new sentence at the end thereof to read as follows: "Sub-

paragraphs (C) and (D) shall not apply in the case of any tax paid under section 4064.".

(c) PAYMENT OF TAX IN CASE OF LEASED AUTOMOBILES.—Section 4217 (relating to leases) is amended by adding at the end thereof the following new subsection:

"(e) LEASES OF CERTAIN AUTOMOBILES.—

"(1) IN GENERAL.—In the case of an initial lease of an automobile by a manufacturer taxable under section 4064, there shall be paid by the manufacturer upon each lease payment that portion of the total fuel inefficiency tax which bears the same ratio to such total fuel inefficiency tax as such payment bears to the total amount to be paid under such initial lease. In any case where an automobile which has been leased is sold or otherwise disposed of before the total fuel inefficiency tax has been paid, there shall be paid by the manufacturer upon such sale or disposition the difference between the tax paid on the lease payments and the total fuel inefficiency tax.

"(2) LEASE OTHER THAN INITIAL LEASE NOT CONSIDERED AS SALE.—Any lease of an automobile by the manufacturer, producer, or importer, other than the initial lease of such automobile, shall not be considered under subsection (a) as a sale of such automobile.

"(3) SALE AFTER TOTAL FUEL INEFFICIENCY TAX PAID.—If an automobile taxable under section 4064 is sold after the total fuel inefficiency tax is paid, no tax shall be imposed under this chapter on such sale.

"(4) TOTAL FUEL INEFFICIENCY TAX DEFINED.—For purposes of this subsection, the term 'total fuel inefficiency tax' means the tax imposed by section 4064 computed at the rate in effect on the date of the initial lease.".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4064. Fuel Inefficiency Tax.".

SEC. 1202. FUEL EFFICIENCY REBATE.

(a) GENERAL RULE.—Subchapter B of chapter 65 (relating to rules of special application in the case of abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6429. FUEL EFFICIENCY REBATE.

"(a) IN GENERAL.—An amount shall be paid or credited to the manufacturer with respect to the sale of—

"(1) each 1977 passenger automobile and each 1978 or later model year automobile which is domestically manufactured and which is sold by the manufacturer after May 1, 1977;

"(2) each 1977 model year passenger automobile which is not manufactured domestically, and which is sold by the manufacturer after May 1, 1977, but only to the extent provided in an executive agreement applicable to such automobile which is entered into after April 30, 1977, and before May 1, 1978, and which, pursuant to such agreement, is to be effective for the time during which such passenger automobile is sold; and

"(3) each 1978 and later model year automobile which is not manufactured domestically, and which is sold by the manufacturer after May 1, 1977, but only to the extent provided in an executive agreement applicable to such automobile which takes effect after May 1, 1977.

Such amount shall be equal to the lesser of $500 or the amount determined by multiplying the base rebate determined under subsection (b) or (c) by the rebate coefficient determined in accordance with subsection (e). Any executive agreement entered into with any country to provide for a payment or credit under this section shall be designed to assure that manufacturers of domestically manufactured automobiles are not disadvantaged by the system of taxes and rebates under section 4064 and this section.

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"(b) BASE REBATE.—(1) Except as provided in paragraphs (2) and (3), the base rebate is an amount determined as follows:

"(1) In the case of a 1977 or 1978 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 18 but less than 19	0
At least 19 but less than 20	$47
At least 20 but less than 21	89
At least 21 but less than 22	128
At least 22 but less than 23	163
At least 23 but less than 24	195
At least 24 but less than 25	224
At least 25 but less than 26	251
At least 26 but less than 27	276
At least 27 but less than 28	299
At least 28 but less than 29	321
At least 29 but less than 30	341
At least 30 but less than 31	359
At least 31 but less than 32	377
At least 32 but less than 33	393
At least 33 but less than 34	408
At least 34 but less than 35	423
At least 35 but less than 36	436
At least 36 but less than 37	449
At least 37 but less than 38	461
At least 38 but less than 39	473
More than 39	473

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"(2) In the case of a 1979 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 19 but less than 20	0
At least 20 but less than 21	$47
At least 21 but less than 22	90
At least 22 but less than 23	129
At least 23 but less than 24	165
At least 24 but less than 25	197
At least 25 but less than 26	227
At least 26 but less than 27	255
At least 27 but less than 28	281
At least 28 but less than 29	305
At least 29 but less than 30	327
At least 30 but less than 31	348
At least 31 but less than 32	367
At least 32 but less than 33	385
At least 33 but less than 34	402
At least 34 but less than 35	416
At least 35 but less than 36	433
At least 36 but less than 37	448
At least 37 but less than 38	461
At least 38 but less than 39	474
More than 39	474

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"(3) In the case of a 1980 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 20 but less than 21	0
At least 21 but less than 22	$47
At least 22 but less than 23	90
At least 23 but less than 24	130
At least 24 but less than 25	166
At least 25 but less than 26	199
At least 26 but less than 27	230
At least 27 but less than 28	259
At least 28 but less than 29	285
At least 29 but less than 30	310
At least 30 but less than 31	333
At least 31 but less than 32	354
At least 32 but less than 33	374
At least 33 but less than 34	393
At least 34 but less than 35	411
At least 35 but less than 36	428
At least 36 but less than 37	444
At least 37 but less than 38	459
At least 38 but less than 39	473
More than 39	473

"(4) In the case of a 1981 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 21.5 but less than 22.5	0
At least 22.5 but less than 23.5	$47
At least 23.5 but less than 24.5	91
At least 24.5 but less than 25.5	131
At least 25.5 but less than 26.5	168
At least 26.5 but less than 27.5	202
At least 27.5 but less than 28.5	234
At least 28.5 but less than 29.5	264
At least 29.5 but less than 30.5	291
At least 30.5 but less than 31.5	317
At least 31.5 but less than 32.5	340
At least 32.5 but less than 33.5	363
At least 33.5 but less than 34.5	385
At least 34.5 but less than 35.5	405
At least 35.5 but less than 36.5	423
At least 36.5 but less than 37.5	441
At least 37.5 but less than 38.5	458
At least 38.5 but less than 39.5	474
More than 39.5	474

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"(5) In the case of a 1982 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 23 but less than 24	0
At least 24 but less than 25	$52
At least 25 but less than 26	101
At least 26 but less than 27	145
At least 27 but less than 28	187
At least 28 but less than 29	225
At least 29 but less than 30	261
At least 30 but less than 31	295
At least 31 but less than 32	326
At least 32 but less than 33	355
At least 33 but less than 34	383
At least 34 but less than 35	409
At least 35 but less than 36	433
At least 36 but less than 37	456
At least 37 but less than 38	478
At least 38 but less than 39	499
More than 39	499

"(6) In the case of a 1983 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 24.5 but less than 25.5	0
At least 25.5 but less than 26.5	$52
At least 26.5 but less than 27.5	101
At least 27.5 but less than 28.5	147
At least 28.5 but less than 29.5	189
At least 29.5 but less than 30.5	228
At least 30.5 but less than 31.5	265
At least 31.5 but less than 32.5	299
At least 32.5 but less than 33.5	331
At least 33.5 but less than 34.5	361
At least 34.5 but less than 35.5	390
At least 35.5 but less than 36.5	417
At least 36.5 but less than 37.5	442
At least 37.5 but less than 38.5	467
More than 38.5	490

"(7) In the case of a 1984 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 26 but less than 27	0
At least 27 but less than 28	$57
At least 28 but less than 29	111
At least 29 but less than 30	161
At least 30 but less than 31	207
At least 31 but less than 32	251
At least 32 but less than 33	292
At least 33 but less than 34	330
At least 34 but less than 35	366
At least 35 but less than 36	400
At least 36 but less than 37	433
At least 37 but less than 38	463
At least 38 but less than 39	492
More than 39	492

"(8) In the case of a 1985 or later model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 27.5 but less than 28.5	0
At least 28.5 but less than 29.5	$62
At least 29.5 but less than 30.5	121
At least 30.5 but less than 31.5	176
At least 31.5 but less than 32.5	227
At least 32.5 but less than 33.5	275
At least 33.5 but less than 34.5	320
At least 34.5 but less than 35.5	362
At least 35.5 but less than 36.5	403
At least 36.5 but less than 37.5	440
At least 37.5 but less than 38.5	476
At least 38.5 but less than 39.5	493
More than 39.5	500

"(c) In the case of an electric automobile, the payment or credit is equal to the highest payment or credit available for passenger automobiles of that model year.

"(d) SOURCE OF PAYMENT.—The payment of credit

described in subsection (a) shall be made from the General Fund of the Treasury from funds not otherwise appropriated.

"(e) REBATE COEFFICIENT. (A) A rebate coefficient shall be determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, for the automobiles manufactured in model years 1977 and 1978, and for each subsequent model year thereafter. The Secretary shall publish the rebate coefficient in the Federal Register no later than 30 days after date of enactment in the case of the 1977 and 1978 model years and, in the case of each subsequent model year, no later than the end of the preceding model year. Rebate coefficients for automobiles with respect to which payments are required to be paid under subsection (a) shall be determined so that the aggregate amount for the model years 1977 and 1978, or for any subsequent model year, paid or credited under this section with respect to such automobiles approximates, as closely as possible, an estimate made by the Secretary, prior to the beginning of the model year, of the amount of tax to be collected under section 4064 with respect to sales of model year automobiles, less the expenses of administration of the requirements of this subpart.

"(B) For purposes of this section, section 503(b)(2)(E) of the Motor Vehicle Information and Cost Savings Act

(15 U.S.C. 2003) shall apply in determining if an automobile is manufactured domestically.

"(f) If the average fuel economy standard prescribed under section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of passenger automobiles for a model year differs from the highest fuel economy for which no base rebate is prescribed under subsection (b) for the model year, then the base rebate with respect to such class for the model year shall be determined in accordance with a table prescribed for such year by the Secretary. Such a table shall take the same general form as that in subsection (b) except that no base rebate shall be prescribed at or below the level of the average fuel economy standard prescribed for passenger automobiles for the model year. The base rebate for each whole mile per gallon above the level at which no base rebate is prescribed shall be determined by multiplying the base rebate correction factor for the year by the difference between a fraction created by dividing 100,000 by the fuel economy for which the base rebate is to be prescribed, and a fraction created by dividing 100,000 by the average fuel economy standard. No base rebate shall be prescribed which exceeds the maximum base rebate specified in the table for the model year under subsection (b). The Secretary shall prescribe the table each year prior to the beginning of the model year.

"(g) If the average fuel economy standard prescribed under section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of nonpassenger automobiles for a model year is higher than the average fuel economy standard for passenger automobiles for that model year, then the base rebate with respect to such class for the model year shall be determined in accordance with a table prescribed for such year by the Secretary. Such a table shall take the same general form as that in subsection (b) except that no base rebate shall be prescribed at or below the level of the average fuel economy standard prescribed for such class of nonpassenger automobiles for the model year. The base rebate for each whole mile per gallon above the level at which no base rebate is prescribed shall be determined by multiplying the base rebate correction factor for the model year by the difference between a fraction created by dividing 100,000 by the fuel economy for which the base rebate is to be prescribed, and a fraction created by dividing 100,000 by the average fuel economy standard. No base rebate shall be prescribed which exceeds the base rebate specified in the table for the model year under subsection (b). The Secretary shall prescribe the table each year prior to the beginning of the model year.

"(h) If the average fuel economy standard prescribed under section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of automobiles is below the average fuel economy standard for passenger automobiles for the model year, then the base rebate with respect to such class for the model year shall be determined in the same manner as that for passenger automobiles for the model year.

"(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AUTOMOBILE, ETC.—The terms 'automobile', 'passenger automobile', 'fuel economy', 'model type', 'average fuel economy standard' and 'model year' have the meaning prescribed by section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001).

"(2) ELECTRIC AUTOMOBILE.—The term 'electric automobile' means an automobile which is powered primarily by an electric motor drawing current from rechargeable storage batteries or other portable sources of electric current.

"(3) MANUFACTURER.—The term 'manufacturer' has the meaning prescribed by section 4064(c)(2)

"(4) BASE REBATE CORRECTION FACTOR.—The

term 'base rebate correction factor' for each model year has the same meaning as the term 'tax correction factor' used in section 1201 4064(c)(3).

"(j) LEASE CONSIDERED SALE.—For purposes of this section, the initial lease of an automobile by the manufacturer shall be considered a sale. Any lease other than an initial lease shall not be considered a sale.

"(k) CREDIT ON RETURNS.—Any manufacturer entitled to a payment under this section may, instead of filing a claim for refund, take credit therefor against taxes imposed by chapter 31 or 32 due on any subsequent return.

"(l) DISALLOWANCE OF PAYMENT OR CREDIT.—Notwithstanding any other provisions of this section:

"(1) No amount shall be paid or credited under this section with respect to the sale of any automobile by the manufacturer for export (by any person).

"(2) No amount shall be paid or credited under this section with respect to the sale by the manufacturer of any automobile after May 1, 1977, unless such manufacturer has paid such amount to the ultimate purchaser of such automobile and has in his possession evidence of such payment as may be required by regulations prescribed by the Secretary under this subsection.".

(b) CLERICAL AMENDMENT. The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6429. Fuel Efficiency Rebate.".

SEC. 1203. FUEL INEFFICIENCY TAX RECEIPTS AND REBATE PAYMENTS.

(a) The Treasury of the United States shall record as receipts to the General Fund amounts collected under section 4064 of the Internal Revenue Code of 1954 (relating to fuel inefficiency tax), reduced by the amounts credited or refunded as overpayments of amounts so collected.

(b) The Treasury of the United States shall record as outlays the amounts required to be paid by section 6429 of the Internal Revenue Code of 1954 (relating to fuel efficiency rebates).

(c) APPROPRIATION AUTHORIZATION.—There are authorized to be appropriated such amounts as may be necessary for payment of the fuel efficiency rebates.

SEC. 1204. EFFECTIVE DATES.

The amendments made by sections 1201 and 1202 shall apply in the case of sales by the manufacturer after the date of enactment of this Act, except as otherwise specified therein.

Subpart 2—Gasoline Conservation Program

SEC. 1221. STANDBY GASOLINE TAX.

(a) GENERAL RULE. Part III of subchapter A of chapter 32 (relating to petroleum products) is amended by redesignating subparts B and C as subparts C and D, respectively, and by inserting after subpart A the following new subpart:

"Subpart B—Standby Gasoline Tax

"Sec. 4086. Imposition of tax.
"Sec. 4087. Cross reference.

"SEC. 4086. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—In addition to any tax imposed by section 4081, there is hereby imposed on gasoline sold during any gasoline tax year by the producer or importer thereof, or by any producer of gasoline, a tax of 5 cents a gallon for each full percentage point that domestic consumption of gasoline in the preceding determination year exceeded the annual national gasoline consumption target for such preceding determination year, except that—

"(1) the tax imposed under this subsection for any gasoline tax year cannot increase or decrease more than 5 cents a gallon from the tax imposed in the preceding gasoline tax year, and

"(2) the total under this subsection shall not exceed a tax of more than 50 cents per gallon.

"(b) DETERMINATION OF DOMESTIC CONSUMPTION.—Not later than November 15 of each calendar year, the Administrator of the Federal Energy Administration shall make and publish in the Federal Register a determination of whether the domestic consumption of gasoline for the 12-month period ending on September 30 of such calendar year (referred to in this section as the 'determination year') exceeded the annual national gasoline consumption target level specified in section (c) for such determination year. If the domestic consumption of gasoline for such determination year exceeded by a full percentage point or more the annual national gasoline consumption target for that year, then on January 1 following such determination year, the rate of tax as determined in subsection (a) will be effective.

"(c) ANNUAL NATIONAL GASOLINE CONSUMPTION TARGET LEVELS.—The annual national gasoline consumption target levels are—

"12-month period ending September 30 of determination year:	Million barrels average daily consumption:
1978	7.350
1979	7.400
1980	7.450
1981	7.400
1982	7.200
1983	7.000
1984	6.800
1985	6.600
1986	6.550
1987, and thereafter	6.500

"(d) DOMESTIC CONSUMPTION DEFINED.—For purposes of this section, the term 'domestic consumption of gasoline' for any determination year means the average daily usage of gasoline for such determination year within the United States as determined by the Administrator.

"SEC. 4087. CROSS REFERENCE.

"For provisions relating to credit for standby gasoline tax, see section 6430.".

(b) FLOOR STOCKS TAXES.—Subchapter G of chapter 32 is amended by inserting after section 4225 the following new section:

"SEC. 4226. FLOOR STOCK TAXES.

"(a) IN GENERAL.—

(1) STANDBY GASOLINE TAX.—

"(A) IMPOSITION OF TAX.—On gasoline (as defined in section 4082(b)) which, on a gasoline tax increase date, is held by a dealer for sale, there is hereby imposed a floor stocks tax at a rate equal to the difference between (i) the tax (if any) imposed by section 4086 on the sale of such gasoline by the producer or importer, and (ii) the tax which would have been imposed by such section on such sale if that sale had occurred on such gasoline tax increase date. The tax imposed by this subpara-

graph shall not apply to gasoline in retail stock held at the place where intended to be sold at retail.

"(b) DUE DATES OF TAXES.—Any tax imposed by subsection (a) (1) shall be paid at such time as may be prescribed by the Secretary but not sooner than 90 days after the gasoline tax increase date in respect of which such tax was imposed.".

(c) DENIAL OF CERTAIN EXEMPTIONS AND REFUNDS.—

(1) TAX-FREE SALES.—Subsection (a) of section 4221 (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: "Paragraphs (4) and (5) shall not apply to the tax imposed by section 4086.".

(2) USE IN FURTHER MANUFACTURE.—Paragraph (6) (C) of section 4221 (d) (relating to use in further manufacture) and paragraph (3) (f) of section 6416 (b) (relating to tax-paid articles used for further manufacture, etc.) are each amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086.".

(3) DENIAL OF REFUNDS FOR CERTAIN USES.—Paragraph (2) of section 6416 (b) (relating to tax payments considered overpayments in the case of specified uses and resales) is amended by adding a new sentence

at the end thereof to read as follows: "Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4086.".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The table of subparts for part III of subchapter A of chapter 32 is amended by striking out the last two items and inserting in lieu thereof the following:

"Subpart B. Standby Gasoline Tax.
"Subpart C. Lubricating oil.
"Subpart D. Special provisions applicable to petroleum products."

(2) The subpart heading for subpart C of such part III (as redesignated by subsection (a)) is amended to read as follows:

"Subpart C—Lubricating Oil"

(3) The subpart heading for subpart D of such part III (as redesignated by subsection (a)) is amended to read as follows:

"Subpart D—Special Provisions Applicable to Petroleum Products"

(4) Subsections (a) and (b) of section 4082 are each amended by striking out "in this subpart" and inserting in lieu thereof "in this subpart and subpart B.".

(5) Section 4083 is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086".

(6) Section 4101 is amended by striking out "section 4081 or section 4091" and inserting in lieu thereof "section 4081, 4086, or 4091".

(7) Section 6412 (relating to floor stock refunds) is amended by redesignating paragraph (2) of subsection (a) as paragraph (3) and adding a new paragraph (2) to read as follows:

"(2) STANDBY GASOLINE TAX.—Whenever gasoline subject to the tax imposed by section 4086 has been sold by the producer or importer thereof before a gasoline tax decrease date and on such date is held by a dealer and is intended for sale, there shall be credited or refunded (without interest) to the producer or importer an amount equal to the difference between the tax under section 4086 paid by such producer or importer on his sale of the gasoline and the amount of the tax under section 4086 made applicable to such gasoline on or after the tax decrease date, if (A) a claim for such credit or refund is filed with the Secretary on or before the end of the 10-month period beginning with the month following the tax decrease date, such claim shall be based on a request submitted to the producer or importer before the end of the 7-month period beginning with the month following the tax decrease date, by the dealer who held the gasoline in respect of which the credit or refund is

claimed, and (B) on or before the end of said 10-month period beginning with the tax decrease date, reimbursement has been made to such dealer by the producer or importer for the tax reduction on such gasoline or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline. For purposes of this paragraph, the term 'gasoline tax decrease date' means any day on which the rate imposed by section 4086 is less than the rate of such tax in effect on the preceding day.".

(8) Paragraph (a) (2) of section 6420 is amended by striking out "section 4081" and inserting in lieu thereof "sections 4081 and 4086".

(9) Section 6420(d) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086".

(10) Paragraph (e) (1) of section 6420 is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1977.

SEC. 1222. PER CAPITA PAYMENT OF STANDBY GASOLINE TAX RECEIPTS.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6430. PER CAPITA PAYMENT OF STANDBY GASOLINE TAX RECEIPTS.

"(a) GENERAL RULE.—Each individual shall be treated as having made a payment against the tax imposed by chapter 1 for the taxable year in which there is a tax imposed under section 4086 equal to the gasoline tax rebate, multiplied by each exemption provided by subsections (b) and (e) of section 151 for which the taxpayer is allowed a deduction for such taxable year.

"(b) TAX REBATE.—The Secretary, in consultation with the Administrator of the Federal Energy Administration, shall publish in the Federal Register the amount of the per capita payment for the succeeding gasoline tax year not later than November 15 of each year. The Secretary shall determine the per capita payment based on estimated revenues to be derived from the tax imposed under section 4086 during the taxable year reduced by the anticipated revenue loss from business deductions for the tax imposed by section 4086 allowable under the Internal Revenue Code of 1954.

The per capita payment shall reflect the administrative costs incurred in connection with the per capita payment.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount treated as paid by reason of this section shall not exceed the amount of the taxpayer's liability for tax imposed by chapter 1 (unreduced by any credits) for the taxable year.

"(2) REFUND MADE TO CERTAIN TAXPAYERS.—Paragraph (1) shall not apply to any individual who—

"(A) is entitled to a credit under section 43 (relating to credit for earned income), or

"(B) (i) has a dependent child who lived with such individual,

"(ii) has earned income, and

"(iii) if married, filed a joint return.

For purposes of subparagraph (B) (ii), the term 'earned income' has the meaning given to such term by section 43 (c) (2), except that 'self-employment income (as defined in section 1402 (b))' shall be substituted for 'net earnings from self-employment' in clause (ii) of section 43 (c) (2) (A).

"(d) DATE PAYMENT DEEMED MADE.—The payment provided by this section shall be deemed made on whichever of the following dates is the later:

"(1) the date prescribed by law (determined

without extensions) for filing the return of tax under chapter 1 for the taxable year, or

"(2) the date on which the taxpayer files his return of tax under chapter 1 for the taxable year.

"(e) CERTAIN PERSONS NOT ELIGIBLE.—This section shall not apply to any estate or trust, nor shall it apply to any nonresident alien individual."

(b) TECHNICAL AMENDMENT.—Subpart A of Part IV of chapter 1 (relating to credits allowable) is amended by inserting after section 33 the following new section:

"SEC. 34. FOR CREDIT AGAINST THE TAX IMPOSED BY THIS CHAPTER ALLOWED FOR STANDBY GASOLINE TAX, SEE SECTION 6430.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6430. Per capita payment of standby gasoline tax receipts.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1977.

SEC. 1223. ENERGY PAYMENTS.

Payments in an amount equal to the per capita payment of standby gasoline tax receipts determined under section 6430 shall be made to recipients of benefits under certain retirement and survivor benefit programs in accordance with

section 1404 of the National Energy Act, recipients of aid to families with dependent children under approved State plans in accordance with section 1405 of such Act, and certain individuals in accordance with section 1406 of such Act.

Subpart 3—Motorboat Gasoline and Fuels for General Aviation

AMENDMENT OF MOTORBOAT AND GENERAL AVIATION FUEL PROVISIONS

SEC. 1231. (a) (1) Section 4041 (b) (relating to special motor fuels) is amended by inserting "a motorboat or in" before "a highway vehicle" the first time that the words appear in the second and third sentence of such subsection.

(2) Section 4041 (c) (relating to noncommercial aviation) is amended by deleting "7" in paragraph (1) and inserting "11" in lieu thereof, by substituting "7" and "9½" respectively for "3" and "5½", respectively in paragraph 3 and by deleting paragraph 5.

(b) Section 6421 (a) is amended by inserting "a motorboat or in" before "a highway vehicle" the first time that it appears.

AIRPORT AND AIRWAY TRUST FUND AMENDMENTS

SEC. 1232. Section 208 of the Airport and Airway Revenue Act of 1970 (49 U.S.C. 1742) is amended—

(1) by adding at the end of subsection (b) the

following new sentence: "After September 30, 1977, the amounts appropriated by paragraph (1) with respect to the taxes under subsections (c) and (d) of section 4041 shall be based on a tax rate of 7 cents a gallon and paragraph (2) shall not apply.", and

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

"(4) The amounts referred to in paragraphs (2) and (3) shall be reduced in appropriate amount to reflect the reduction in amounts transferred to the Trust Fund after September 30, 1977, as provided for by section 208 (b).".

LAND AND WATER CONSERVATION FUND AMENDMENTS

SEC. 1233. Section 201 (b) of the Land and Water Conservation Fund Act of 1965 is amended by deleting all that follows "equivalent to" and inserting "the amounts paid before July 1, 1978, under section 6421 of Title 26 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motorboats, on the basis of claims filed for the period ending before October 1, 1979.".

HIGHWAY TRUST FUND AMENDMENTS

SEC. 1234. Section 209 of the Highway Revenue Act of 1956 (as amended) (23 U.S.C. 120 note) is amended by

adding at the end of subsection (c) (5) the following new sentence: After September 30, 1977, the amounts described in paragraph (1) (A) and 3 (A) (before the application of this subsection) shall be further reduced by appropriate amounts to reflect the amount of taxes under subsections (c) and (d) of section 4041 (taxes on aviation fuel) and under section 4081, with respect to gasoline used in aircraft, which are not required to be transferred to the Airport and Airway Trust Fund.".

EFFECTIVE DATE

SEC. 1235. The amendments made by this part shall take effect on October 1, 1977.

Subpart 4—Removal of Excise Tax on Buses

SEC. 1241. REMOVAL OF EXCISE TAX ON BUSES.

(a) GENERAL RULE.—Section 4063 (relating to exemptions from tax on trucks, etc.) is amended by revising paragraph 6 of subsection (a) to read as follows:

"(6) BUSES.—The tax imposed under section 4061 (a) shall not apply in the case of automobile bus chassis or automobile bus bodies.".

(b) FLOOR STOCK REFUNDS.—

(1) IN GENERAL.—Where, before the day after the date of the enactment of this Act, any tax-repealed article (as defined in subsection (e)) has been sold by the manufacturer, producer, or importer and on such

day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article, if—

(A) claim for such credit or refund is filed with the Secretary before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act based upon a request submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the dealer who held the article in respect of which the credit or refund is claimed; and

(B) on or before the first day of such 10th calendar month reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1)

unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary under this subsection.

(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061(a) shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

(c) REFUNDS WITH RESPECT TO CERTAIN CONSUMER PURCHASES.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (2), where after April 20, 1977, with respect to any article which was subject to the tax imposed by section 4061(a)(1) (as in effect on the before the date of the enactment of this Act), and on or before such date of enactment, a tax-repealed article (as defined in subsection (e)) has been sold to an ultimate purchaser, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer of such article an amount equal to the tax paid

by such manufacturer, producer, or importer on his sale of the article.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to a credit or refund under paragraph (1) with respect to an article unless—

(A) he has in his possession such evidence of the sale of the article to an ultimate purchaser, and of the reimbursement of the tax to such purchaser, as may be required by regulation prescribed by the Secretary under this subsection;

(B) claim for such credit or refund is filed with the Secretary before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act based upon information submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the person who sold the article (in respect of which the credit or refund is claimed) to the ultimate purchaser; and

(C) on or before the first day of such 10th calendar month reimbursement has been made to the ultimate purchaser in an amount equal to the tax paid on the article.

(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061(a) shall, insofar as applicable and not inconsistent with paragraph (1) or (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

(d) CERTAIN USES BY MANUFACTURER, ETC.—Any tax paid by reason of section 4218(a) (relating to use by manufacturer or importer considered sale) shall be deemed an overpayment of such tax with respect to any article which was subject to the tax imposed by section 4061(a)(1) as in effect on the day before the date of the enactment of this Act if the tax was imposed on such article by reason of such section 4218(a) after April 20, 1977.

(e) DEFINITIONS.—For purposes of this section—

(1) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(2) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) The term "tax-repealed article" means an article on which a tax was imposed by section 4061(a) as in effect on the day before the date of the enactment of this Act and is exempted from such tax by section 4063(a)(6) as in effect on the effective date of this Act.

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 4221(e) (relating to special rules for tax free sales) is amended by deleting paragraph 5.

(2) Section 6416(b)(2)(I) is deleted.

(g) EFFECTIVE DATE.—

"(1) The amendments made by this section shall apply with respect to articles sold after April 20, 1977.

(2) For purposes of paragraph (1), an article shall not be considered sold on or before April 20, 1977, unless possession or right to possession passes to the purchaser before such day.

(3) In the case of—

(A) a lease,

(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(C) a conditional sale, or

(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into on or before April 20, 1977, payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold on or before April 20, 1977.

PART C—BUSINESS ENERGY TAX CREDIT

SEC. 1301. BUSINESS ENERGY CREDIT.

(a) ALLOWANCE OF CREDIT.—Section 46(a)(2) (relating to amount of investment credit for the current taxable year) is amended as follows:

(1) Subparagraph (A) is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B), (E), and (F)".

(2) Subparagraph (B) is amended by striking out "the amount of the credit" and inserting in lieu thereof "except as otherwise provided in subparagraphs (E) and (F) the amount of the credit".

(3) Subparagraph (C) is amended by striking out "In the case of property" and inserting in lieu thereof "Except as otherwise provided in subparagraphs (E) and (F), in the case of property".

(4) New subparagraphs (E), (F), and (G) are added to read as follows:

"(E) BUSINESS ENERGY PROPERTY.—In the case of a property that is business energy property (as defined in section 48(l)(1)), other than special business energy property, the amount of credit determined under this paragraph for the taxable year shall be the amount equal to—

"(i) except as provided in clause (ii), in the case of such property described in subparagraph (D), 20 percent of the qualified investment (as determined under subsections (c) and (d));

"(ii) in the case of property described in subparagraph (D) and a corporation to which subparagraph (B) applies, the amount which would be determined under subparagraph (B)

with respect to qualified investment in such property (except that the figure "21 percent" shall be substituted for "11 percent" in applying subparagraph (B)(i)); and

"(iii) in the case of property not described in subparagraph (D), an amount equal to 17 percent of the qualified investment (as determined under subsections (c) and (d)).

In the case of cogeneration property (as defined in section 48(l)(4) or alternative energy property (as defined in section 48(l)(5)) to which this subparagraph applies, the figure "20 percent" shall be substituted for "17 percent" in applying clause (iii).

"(F) SPECIAL BUSINESS ENERGY PROPERTY.—Except as otherwise provided in this subparagraph, in the case of property that is a special business energy property (as defined in section 48(l)(3)), the amount of the credit determined under this paragraph for the taxable year shall be an amount equal to 10 percent of the qualified investment (as determined under subsections (c) and (d)). In the case of a property described in the preceding sentence that is either cogeneration property (as defined in subsection 48(l)(4)) or alternative energy property (as defined in section 48(l)

(5)) the figure "20 percent" shall be substituted for "10 percent". In the case of property to which subparagraph (D) applies and a corporation to which subparagraph (B) applies, the amount of the credit determined under this paragraph for the taxable year shall be an amount equal to the amount which would be determined under subparagraph (B) with respect to qualified investment in such property, except that if the property is cogeneration property or alternative energy property, the figure "21 percent" shall be substituted for "11 percent" in applying subparagraph (B) (i).

"(G) LIMITATION WITH RESPECT TO BUSINESS ENERGY PROPERTY.—The provisions of subparagraphs (E) and (F) shall apply only to—

"(i) property to which subsection (d) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer after April 20, 1977, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after April 20, 1977, and before January 1, 1983,

"(ii) property to which subsection (d) does not apply, acquired by the taxpayer after April 20, 1977, and before January 1, 1983,

and placed in service by the taxpayer before January 1, 1983, and

"(iii) property to which subsection (d) applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d)) with respect to qualified progress expenditures made after April 20, 1977, and before January 1, 1983.

In the case of property to which subsection (d) does not apply, subparagraphs (E) and (F) shall apply only with respect to new section 38 property. In the case of property to which subsection (d) applies, subparagraphs (E) and (F) shall apply only to property which, at the later of the dates specified in subsection (d) (2) (A), it is reasonable to believe will be, in the case of subparagraph (E), business energy property other than special business energy property, or in the case of subparagraph (F), special business energy property, when placed in service.".

(b) DEFINITIONS.—Section 48 (relating to definitions and special rules) is amended as follows:

(1) Paragraph (1) of subsection (a) is amended by striking out the period at the end of subparagraph

(C) and inserting ", or" in lieu threeof, and by adding a new subparagraph (D), to read as follows:

"(D) Special business energy property, as defined in subsection (l) (3) but only if the credit allowed by section 38 with respect to such property is determined under section 46 (a) (2) (F).".

(2) Paragraph (3) of subsection (a) is amended by striking out "and" at the end of subparagraph (B), by inserting a comma in lieu of the period at the end of subparagraph (C), and adding a new subparagraph (D), to read as follows:

"(D) Business energy property, as defined in subsection (l) (1), but only if the credit allowable by section 38 with respect to such property is determined under section 46 (a) (2) (E) or (F).".

(3) Subsection (l) is redesignated as subsection (m) and a new subsection (l) is added to read as follows:

"(l) (1) BUSINESS ENERGY PROPERTY.—Except as otherwise provided in paragraph (2), the term "business energy property" means property which is an integral part of, or used in connection with, a building or other structure located in the United States that has been substantially completed on or before April 20, 1977, and which is either—

"(A) cogeneration property (as defined in paragraph (4)),

"(B) alternative energy property (as defined in paragraph (5)),

"(C) solar equipment (as defined in paragraph (6)), or

"(D) of a class identified by regulations of the Secretary as having as its principal purpose reducing the amount of energy consumed—

"(i) to heat or cool the building or other structure, or

"(ii) to carry on any manufacturing or production process in the building or structure.

In prescribing the regulations under this paragraph, the Secretary shall consult with the Federal Energy Administrator. The Secretary shall not identify any class of property under subparagraph (D) (ii) unless the property is a new identifiable property which does not significantly alter the manufacturing or production process.

"(2) EXCEPTION FOR CERTAIN PROPERTY.—Property shall not be business energy property where—

"(A) any portion of the cost of such property to any person is treated, by reason of section 6431 (a), as being

a payment against any tax imposed by chapter 45 (relating to oil and gas conservation taxes), or

"(B) the property is used to carry on any manufacturing or production process which is first carried on in the building or other structure described in paragraph (1) after April 20, 1977.

"(3) SPECIAL BUSINESS ENERGY PROPERTY.—The term 'special business energy property' means business energy property which is property other than property described in subparagraph (A), (B), or (C) of subsection (a) (1).

"(4) COGENERATION PROPERTY.—The term 'cogeneration property' means property which produces steam, heat, or other forms of useful energy other than electric energy which is, or will be, used for industrial, commercial, or space heating purposes which together with such production, generates electric energy, and which property meets such requirements respecting minimum fuel efficiency as the Secretary by regulations prescribes, after consultation with the Federal Energy Administrator.

"(5) ALTERNATIVE ENERGY PROPERTY.—The term 'alternative energy property' means property which is—

"(A) a coal fired boiler,

"(B) a coal fired combustor other than a boiler,

"(C) a facility for the conversion of coal into synthetic gas which has a heat content of 500 British thermal units or less per standard cubic foot,

"(D) a facility where coal is used as a feedstock for manufacture of chemicals or other products (other than coke),

"(E) equipment used for the unloading, transfer, storage, reclaiming from storage, or preparation (including washing, crushing, drying, and weighing at the point of use) of coal for use in, or with respect to, a boiler, combustor, or facility described in subparagraph (A), (B), (C), or (D),

"(F) a boiler (including a boiler fueled by waste materials or waste heat), the primary fuel for which is not petroleum, natural gas, or products derived from petroleum or natural gas,

"(G) equipment for the burning of coal in combustors other than boilers, but only a burner and such equipment that is used to supply coal to a burner, or

"(H) pollution control equipment required by Federal, State, or local regulations to be installed on, or with respect to, any property described in subparagraph (A), (B), (C), (D), (E), (F), or (G).

For purposes of this paragraph the terms 'facility' and 'equipment' do not include a building or other structure.

"(6) SOLAR ENERGY EQUIPMENT.—The term 'solar energy equipment' means equipment which is a type identified in regulations prescribed by the Secretary after consultation with the Federal Energy Administrator which, when installed in or on, or when connected to a building uses solar energy to heat or cool a building or any part thereof, or to heat water or to provide process heat.

"(7) ITEMS TO BE INCLUDED.—In prescribing the regulations under paragraph (1), the Secretary, in consultation with the Federal Energy Administrator, shall include the following items:

"(A) recuperators,

"(B) heat wheels,

"(C) regenerators,

"(D) heat exchangers,

"(E) waste heat boilers,

"(F) heat pipes,

"(G) insulation,

"(H) double glazing,

"(I) heat pumps,

"(J) reflective glass coatings,

"(K) automatic energy control systems,

"(L) turbulators,

"(M) preheaters,

"(N) combustible gas recovery systems, and

"(O) economizers.

However, in the event that the Secretary, after consultation with the Federal Energy Administrator, determines that any class of property described in subparagraphs (A) through (O) does not meet the criteria set forth in paragraph (1)(D), the Secretary is not required to identify such class of property in the regulations prescribed under paragraph (1)."

(c) RECAPTURE.—Subsection (a) of section 47 (relating to certain dispositions etc., of section 38 property) is amended by striking out "paragraph (2)" in paragraph (4) and inserting in lieu thereof "paragraph (2) or (8)" and by adding a new paragraph (8) at the end thereof to read as follows:

"(8) CHANGE IN BUSINESS ENERGY PROPERTY.—If during the taxable year any property taken into account as business energy property in computing the credit under section 38—

"(A) Becomes property that is not business energy property before the close of the useful life which was taken into account in computing the credit under section 38, or before expiration of 7 years from the date the property was placed in service, whichever is less, or

"(B) With respect to property which was taken into account under section 46(d), ceases (by reason of sale or other disposition, cancellation, or abandonment of contract, or otherwise) to be property, which when placed in service, will be business energy property,

then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted solely from treating the property, for purposes of computing the credit under section 38, as property other than business energy property, after giving due regard to the period before the change in use. If this paragraph applies to a change in use to which paragraph (2) applies, or if the application of this paragraph to any property is followed by the application of paragraph (1), (2), or (3) to such property, proper adjustment shall be made in applying paragraph (1), (2), or (3). Similar rules shall apply if business energy property which was taken into account as cogeneration property, or as alternative energy property, becomes business energy property that is not cogeneration property or alternative energy property, or ceases to be property, which, when placed in service, will be business energy property that is cogeneration property or alternative energy property. This paragraph shall not apply to a cessation to which paragraph (1) or (3) applies.".

(d) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 46(c)(5) (relating to applicable percentage of qualified investment in the case of certain pollution control facilities) is amended to read as follows:

"(5) APPLICABLE PERCENTAGE IN THE CASE OF CERTAIN POLLUTION CONTROL FACILITIES.—

"(A) GENERAL RULE.—Notwithstanding subsection (c)(2), in the case of property—

"(i) with respect to which an election under section 169 applies, and

"(ii) the useful life of which (determined without regard to section 169) is not less than 5 years,

50 percent shall be the applicable percentage for purposes of applying paragraph (1) with respect to so much of the adjusted basis of the property as (after the application of section 169(f)) constitutes the amortizable basis for purposes of section 169.

"(B) SPECIAL RULE FOR CERTAIN BUSINESS ENERGY PROPERTY.—In the case of any property described in subparagraph (A) which is—

"(i) business energy property (as defined in section 48(l)), and

"(ii) any part of the cost of which is financed by the proceeds of an obligation issued by a State, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia, the interest on which is excluded from gross income under section 103, the figure '25 percent' shall be substituted for '50 percent' in applying subparagraph (A).".

(e) EFFECTIVE DATE.—(1) The amendments made by subsections (a), (b), and (c) shall apply to taxable years ending after April 20, 1977, and to credit carrybacks from such years.

(2) Section 46(c)(5)(A) of the Internal Revenue Code of 1954, as added by subsection (d), shall apply to property acquired by the taxpayer after December 31, 1976, and to property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1976 (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date. Section 46(c)(5)(B) of the Internal Revenue Code of 1954, as added by subsection (d), shall apply to property acquired by the taxpayer after April 20, 1977, and before April 1, 1983, and placed in service by the taxpayer before January 1, 1983, and to property the construction, reconstruction, or erection of which is completed by the taxpayer after April 20, 1977, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after April 20, 1977, and before January 1, 1983.

PART D—CRUDE OIL TAX

SEC. 1401. CRUDE OIL EQUALIZATION TAX.

(a) Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 46—CRUDE OIL EQUALIZATION TAX

"SEC. 4996. CRUDE OIL EQUALIZATION TAX.

"(a) IMPOSITION OF 1978 INTERIM TAX.—A tax is hereby imposed on the delivery to the refinery or other place of first use after December 31, 1977, and before January 1, 1979, of crude oil classified as first tier (refinery) crude oil in an amount per barrel equal to $3.50.

"(b) IMPOSITION OF 1979 INTERIM TAX.—A tax is hereby imposed on the delivery to the refinery or other place of first use in each calendar month beginning after December 31, 1978, and before January 1, 1980, of crude

oil classified as first tier (refinery) crude oil in an amount per barrel equal to the difference for such month (if any) between the national weighted average cost of all such crude oil and the national weighted average cost of all crude oil classified as second tier (refinery) crude oil.

"(c) IMPOSITION OF PERMANENT TAX.—A tax is hereby imposed on the delivery to the refinery or other place of first use in each calendar month beginning after December 31, 1979, of controlled crude oil of each classification (other than crude oil classified as uncontrolled (refinery) crude oil) in an amount per barrel equal to the difference for such month (if any) between the national weighted average cost of all crude oil of the same classification and the national weighted average cost to domestic refineries of crude oil exclusive of any tariffs or import fees.

"(d) PRESIDENTIAL AUTHORITY TO SUSPEND INCREASE OF TAX.—The President, by Executive order, may suspend for such period as he prescribes any increase in the crude oil equalization tax if he finds such suspension is necessary to protect the domestic economy from increases in the average cost to domestic refineries of imported crude oil which significantly exceed the inflation adjustment (as defined in section 402 (a) (20) of the National Energy Act).

"(e) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by the refiner.

"(f) DEFINITIONS.—For purposes of this section:

"(1) FIRST TIER.—The term 'first tier (refinery) crude oil' means crude oil (other than uncontrolled (refinery) crude oil) delivered to a refinery which oil is certified as having been sold pursuant to the lower tier ceiling price rule of section 212.73 of title 10, Code of Federal Regulations (as in effect on April 20, 1977 or thereafter).

"(2) SECOND TIER.—The term 'second tier (refinery) crude oil' means crude oil (other than uncontrolled (refinery) crude oil) delivered to a refinery, which oil is certified as having been sold pursuant to the upper tier ceiling price rule of section 212.74 of title 10, Code of Federal Regulations (as in effect on April 20, 1977 or thereafter).

"(3) UNCONTROLLED.—The term 'uncontrolled (refinery) crude oil' means crude oil delivered to a refinery, which oil is either not subject to any first sale ceiling price rule or, if subject to such first sale ceiling price rule, such rule does not have the effect of reducing the cost of such crude oil to a refiner to less than the cost of an equivalent grade and quality of imported crude oil.

"(4) REFINER.—The term 'refiner' means a refiner of crude oil or any other first user of crude oil.

"(5) REFINERY.—The term 'refinery' means a location where refining of crude oil or other first use of crude oil takes place.

"(g) SPECIAL RULES.—The officer or agency to which the President delegates his authorities under the Emergency Petroleum Allocation Act of 1973 shall have authority under this section to—

"(1) prescribe by regulation such different or additional classifications of crude oil with respect to refiner acquisition costs as are deemed necessary or appropriate for purposes of subsection (c) of this section.

"(2) prescribe regulations specifying the application of the crude oil classification regulations to crude oil that is exchanged prior to its delivery to a refinery,

"(3) prescribe regulations whereby the national weighted average cost of each classification of crude oil shall be determined or prescribed, and

"(4) to further define the terms used in this section with respect to crude oil and the classifications and costs thereof, consistent with the purposes of this section.

"(h) TRANSPORTATION OUTSIDE THE UNITED STATES.—The transportation of crude oil outside the United States for refining or ultimate use outside the United States shall be treated as delivery to the refiner, and the person

owning the crude oil at the time of such transportation shall be deemed the refiner of such crude oil.".

(b) EFFECTIVE DATE.—The amendments made by this section apply to deliveries of crude oil to the refinery after December 31, 1977.

SEC. 1402. REFUNDS OF CRUDE OIL EQUALIZATION TAX.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following:

"SEC. 6431. FUEL USED FOR HEATING RESIDENCES.

"(a) (1) PAYMENTS.—Except as provided in subsection (f), if domestically refined distillate fuel oil has been sold and delivered into the tank of a residential structure for use in such structure, the Secretary shall pay (without interest) to the ultimate vendor of such distillate fuel oil an amount per gallon determined as presented in subsection (c).

"(2) PROOF REQUIRED TO QUALIFY FOR PAYMENT.—Payment under paragraph (1) shall be conditional upon the ultimate vendor furnishing evidence, as required under regulations of the Secretary, that he has reduced the price of the distillate fuel oil for which payment is claimed to fully reflect the amount of payment claimed.

"(b) TIME FOR FILING CLAIMS; PERIOD COVERED.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), not more than one claim may be filed under subsection (a) by any person with respect to distillate fuel oil sold during his taxable year. No claim shall be allowed under this paragraph unless filed by such person not later than the time prescribed by law for filing a claim for credit or refunds of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

"(2) EXCEPTION.—If $1,000 or more is payable under this section to any person with respect to distillate fuel oil sold during any of the first three quarters of this taxable year, a claim may be filed under this section by such person with respect to distillate fuel oil sold during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

"(c) DETERMINATION OF AMOUNT TO BE CLAIMED.—

"(1) IN GENERAL.—The amount per gallon of distillate fuel oil for which claim may be filed shall be determined by the Federal Energy Administrator. Such Administrator shall determine the average per barrel tax

liability of refiners under section 4996 for each calendar quarter and publish such determination by the end of the second month of the following quarter. The refiner of distillate fuel oil shall include on all invoices of such oil for the quarter following the publication of the average quarterly tax liability by such Administrator a statement of such average amount (converted to a per gallon basis if pertinent). Each subsequent seller of such oil shall include a similar statement of tax on his invoice, except that the ultimate vendor need not include such statement if the oil is not to be delivered into the tank of a residential structure. Vendors subsequent to the refiner of the crude oil shall determine the tax to be included on their invoice by using the first-in first-out inventory method.

"(2) INTERIM DETERMINATION.—For the first two calendar quarters beginning with the quarter of imposition of the tax under section 4996, the amount of tax to be stated on invoices of distillate fuel oil sold by refiners shall be an amount as estimated and published by the Federal Energy Administrator. Such Administrator shall publish the estimate by November 30, 1977, or within 10 days after enactment of this section, whichever comes later.

"(d) APPLICABLE LAWS.—

"(1) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the tax imposed by section 4996 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

"(2) EXAMINATION OF BOOKS AND WITNESSES.—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

"(e) REGULATIONS.—The Secretary may in the regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

"(f) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

"(1) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under subsection (a) only to—

"(A) the United States or an agency or instrumentality thereof, a State, a political subdivision

of a State, or an agency or instrumentality of one or more States or political subdivisions, or

"(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

"(2) EXCEPTION.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (b)(2).

"(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—For allowance of credit against the tax imposed by subtitle A for distillate fuel oil sold for residential use, see section 39.

"(g) CROSS REFERENCES.—

"(1) For civil penalty for excessive claims under this section, see section 6675.

"(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).".

(b) TECHNICAL AMENDMENT.—Section 39 is amended by:

(1) Changing the heading to read: "**Certain uses of gasoline, special fuels, lubricating oil, and distillate fuel oil.**"

(2) By adding a new paragraph to subsection (a) to read as follows:

"(5) under section 6431 with respect to distillate fuel oil used for heating residences."

(3) By inserting "6431," after "6427," each place that it appears in subsection (b), and

(4) By deleting "and" after paragraph (3) of subsection (a), deleting the period after paragraph 4 and inserting ", and".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1977.

SEC. 1403. PER CAPITA PAYMENT OF CRUDE OIL EQUALIZATION TAX RECEIPTS.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6432. PER CAPITA PAYMENT OF CRUDE OIL EQUALIZATION TAX RECEIPTS.

"(a) GENERAL RULE.—Each individual shall be treated as having made a payment against the tax imposed by chapter 1 for the taxable year in which there is a tax imposed under section 4996 equal to the crude oil per capita payment, multiplied by each exemption provided by subsections (b) and (e) of section 151 for which the taxpayer is allowed a deduction for such taxable year.

"(b) TAX REBATE.—The Secretary, in consultation with the Federal Energy Administrator, shall publish in the Federal Register the amount of the crude oil per capita pay-

ment for each year. The Secretary shall determine the per capita payment based on estimated revenues to be derived from the tax imposed under section 4996 during the taxable year reduced by (1) the anticipated revenue loss from business deductions for the tax imposed by section 4996 allowable under this title, and (2) anticipated payments under section 6431. The per capita payment shall reflect the administrative costs incurred in connection with the per capita payment.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount treated as paid by reason of this section shall not exceed the amount of the taxpayer's liability for tax imposed by chapter 1 (unreduced by any credits) for the taxable year.

"(2) REFUND MADE TO CERTAIN TAXPAYERS.—Paragraph (1) shall not apply to any individual who—

"(A) is entitled to a credit under section 43 (relating to credit for earned income), or

"(B) (i) has a dependent child who lived with such individual,

"(ii) has earned income, and

"(iii) if married, filed a joint return.

For purposes of subparagraph (B) (ii), the term 'earned income' has the meaning given to such term by section 43(c)(2), except that 'self-employment income (as defined

in section 1402(b))' shall be substituted for 'net earnings from self-employment' in clause (ii) of section 43(c)(2)(A).

"(d) DATE PAYMENT DEEMED MADE.—The payment provided by this section shall be deemed made on whichever of the following dates is the later:

"(1) the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the taxable year, or

"(2) the date on which the taxpayer files his return of tax under chapter 1 for the taxable year.

"(e) CERTAIN PERSONS NOT ELIGIBLE.—This section shall not apply to any estate or trust, nor shall it apply to any nonresident alien individual."

(b) TECHNICAL AMENDMENT.—Subpart A of part IV of chapter 1 (relating to credits allowable) is amended by inserting after section 33 the following new section:

"SEC. 34. For credit against the tax imposed by this chapter allowed for crude oil equalization tax, see section 6432."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6432. Per Capita Payment of Crude Oil Equalization Tax Receipts."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1978.

SEC. 1404. ENERGY PAYMENT TO RECIPIENTS OF BENEFITS UNDER CERTAIN RETIREMENT AND SURVIVOR BENEFIT PROGRAMS.

(a) PAYMENT.—In the month of September 1979, and in each successive September, the Secretary of the Treasury shall make an energy payment in an amount equal to the per capita payment of crude oil equalization tax receipts determined under section 6432 (relating to per capita payment of crude oil equalization tax receipts) and under section 6430 (relating to per capita payment of standby gasoline tax receipts) if applicable. The per capita payment is to be made to each individual who—

(1) is a resident of the United States, and for the immediately preceding June, was entitled (without regard to sections 202(j)(1) and 223(b) of the Social Security Act, and section 5(a)(ii) of the Railroad Retirement Act of 1974) to a benefit (other than a lump sum death payment) payable by the United States under title II or title XVI of the Social Security Act, the Railroad Retirement Acts of 1935, 1937, or 1974;

(2) to whom a check was issued as payment of such benefit prior to September 1, 1979, with respect to calendar year 1979, and prior to each succeeding

September 1 with respect to each calendar year succeeding calendar year 1979; and

(3) who, by reason of insufficient taxable income, is unable to claim any portion of the energy payment credit (as provided by section 1222 of the National Energy Act) for his most recent taxable year ending prior to January 1 preceding such month of entitlement.

(b) For the purpose of facilitating the energy payment provided by subsection (a), the Secretary of Health, Education, and Welfare shall, prior to July 30, 1979, with respect to calendar year 1979, and prior to each succeeding July 30 with respect to each calendar year succeeding calendar year 1979, provide to the Secretary of the Treasury the name, address, and social security number of each individual who was entitled to receive, with respect to the immediately preceding month, a benefit payable by the United States described in subsection (a). The Secretary of the Treasury shall reimburse the Secretary of Health, Education, and Welfare for his administrative costs under this subsection.

SEC. 1405. ENERGY PAYMENT TO RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN UNDER APPROVED STATE PLANS.

(a) PAYMENT.—Every State (as defined in section 1101(a) of the Social Security Act) which has in effect a for aid and services to needy families with children

approved under section 402(a) of such Act, shall, at the earliest practicable date, beginning in 1979 and each year thereafter make an energy payment in amount equal to the per capita payment of crude oil equalization tax receipts determined under section 6432 (relating to per capita payment of crude oil equalization tax receipts) and under section 6430 (relating to per capita payment of standby gasoline tax receipts) if applicable, to each individual who is a resident of the United States and who received aid to families with dependent children as a child or relative under such plan prior to September 1, 1979, with respect to calendar year 1979, and prior to each succeeding September 1 with respect to each calendar year succeeding calendar year 1979.

(b) FULL FEDERAL REIMBURSEMENT OF STATE COSTS.—The Secretary of the Treasury shall pay to each State by way of reimbursement the full amount of all payments made by such State under subsection (a), plus an additional sum, as compensation for the administrative costs incurred in connection with such payment, equal to the product of 75 cents multiplied by the number of people receiving payments.

SEC. 1406. SPECIAL ENERGY PAYMENTS.

(a) PAYMENTS.—Every State (or the District of Columbia) at the earliest practicable date beginning in 1979 and each year thereafter make an energy payment in an

amount equal to the per capita payment of crude oil equalization tax receipts determined under section 6432 (relating to per capita payment of crude oil equalization tax receipts) and under section 6430(b) (relating to per capita payment of standby gasoline tax receipts) if applicable, to each individual who is a resident of the United States and his dependents if such individual filed with the appropriate agency after September 30 of such year a form stating that such individual—

(A) did not receive a payment during the year pursuant to section 1405 of the National Energy Act,

(B) did not have taxable income in such year, and

(C) was not claimed as a dependent by another taxpayer (in the case of a student, the social security number of the parents is to be provided).

Such individual shall also indicate on such form the names of the dependents (and their social security numbers) claimed by him. The Governor of each State, and the Mayor in the case of the District of Columbia, shall designate the agency responsible for making such payments.

(b) FULL FEDERAL REIMBURSEMENT OF STATE COSTS.—The Secretary of the Treasury shall pay to each State by way of reimbursement the full amount of all payments made by such State under subsection (a), plus an

additional sum, as compensation for the administrative costs incurred in connection with such payment, equal to the product of 75 cents multiplied by the number of people receiving payments.

SEC. 1407. PER CAPITA REBATE DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

Any payment considered to have been made by any individual by reason of section 6430 (relating to per capita payment of standby gasoline tax receipts) and section 6432 (relating to per capita payment of crude oil equalization tax receipts), and payments made by reason of sections 1404, 1405, and 1406 of the National Energy Act shall not be regarded as income of such individual (or of the family of which he is a member) for purposes of any Federal, State, or local program which undertakes to furnish aid or assistance to individuals or families, where eligibility to receive such aid or assistance (or the amount of such aid or assistance) under such program is based on the need therefor of the individual or family involved. The requirement imposed by the preceding sentence shall be treated as a condition for Federal financial participation in any such State or local program of aid or assistance.

SEC. 1408. PER CAPITA REBATE NOT TO BE CONSIDERED INCOME OR A REDUCTION IN FEDERAL INCOME TAXES UNDER STATE LAW.

Payments considered to have been made by reason of section 6430 (relating to per capita payment of standby gasoline tax receipts) and section 6432 (relating to per capita payment of crude oil equalization tax receipts) and payments made by reason of sections 1404, 1405, and 1406 of the National Energy Act shall not be considered as gross income for purposes of such Code, and shall not be considered as income or a reduction in tax imposed by subtitle A of such Code for purposes of any law of any State (or the District of Columbia) relating to the taxation of income.

SEC. 1409. WITHHOLDING TAX.

Subsection (a) of section 3401 (relating to income tax collected at source) is amended to read as follows:

"(a) REQUIREMENT OF WITHHOLDING.—Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976, except that such tables will be

modified to the extent necessary to reflect the amendment made by section 1403 of the National Energy Act (relating to per capita payment of crude oil equalization tax receipts) and further modified if a payment under section 1222 of such Act (relating to per capita payment of standby gasoline tax receipts) is required. For purposes of applying such tables, the term 'amount of wages' means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table prescribed under subsection (b) (1).".

PART E—OIL AND GAS CONSUMPTION TAXES

SEC. 1501. OIL AND GAS CONSUMPTION TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 45—OIL AND GAS CONSUMPTION TAXES

"Sec. 4991. Oil consumption tax.
"Sec. 4992. Natural gas consumption tax.
"Sec. 4993. Exemptions.

"SEC. 4991. OIL CONSUMPTION TAX.

"(a) IMPOSITION OF TAX ON UTILITY USE.—A tax is hereby imposed on any taxable electric utility use of petroleum during each calendar year after calendar year 1982 of 25 cents per million British thermal units (hereafter in

this section referred to as 'Btu') used, plus the inflation adjustment pursuant to subsection (c) (5) as applied by the Secretary for the last calendar quarter preceding the year in which the tax liability is incurred.

"(b) IMPOSITION OF TAX ON OTHER USES.—A tax is hereby imposed on any taxable use of petroleum (other than a taxable electric utility use) during each calendar year after 1978 in an amount per million Btu's used, determined in accordance with the following table and increased by the inflation adjustment pursuant to subsection (c) (5):

"If the taxable use occurs—	Tax in dollars per million Btu's is:
In 1979	$0.15
In 1980	.30
In 1981	.30
In 1982	.35
In 1983	.40
In 1984	.45
In 1985	.50
After 1985	.50

"(c) DEFINITIONS.—For purposes of this section—

"(1) TAXABLE USE.—(A) The term 'taxable use' means any use of petroleum or petroleum and natural gas by a person in any trade or business during

the calendar year determined in accordance with the following table:

"If total petroleum and natural gas use (in billions of Btu's) is—	Taxable use (in billions of Btu's) is—
Not more than 500	0.
At least 500 but not more than 600	0, plus 60% of use over 500.
At least 600 but not more than 700	60, plus 80% of use over 600.
At least 700 but not more than 800	140, plus 100% of use over 700.
At least 800 but not more than 900	240, plus 120% of use over 800.
At least 900 but not more than 1,000	360, plus 140% of use over 900.
At least 1,000 but not more than 1,100	500, plus 160% of use over 1,000.
At least 1,100 but not more than 1,200	660, plus 180% of use over 1,100.
At least 1,200 but not more than 1,300	840, plus 200% of use over 1,200.
At least 1,300 but not more than 1,400	1,040, plus 220% of use over 1,300.
At least 1,400 but not more than 1,500	1,260, plus 240% of use over 1,400.
At least 1,500 or more	All use.

"(B) For purposes of determining taxable use under this paragraph, a component member of a controlled group shall be treated as using the petroleum and natural gas used by all component members of such controlled group. The term 'controlled group' for purposes of this paragraph has the meaning by section 1563 except that in applying such section '50 percent' shall be used in lieu of '80 percent'.

"(C) In the case of a user of both natural gas and petroleum, only that portion of taxable use (as determined under subparagraph (A)) which bears the same ratio to taxable use as such user's total use of petroleum bears to his total petroleum and natural gas use shall be subject to the tax imposed by this section.

"(2) TAXABLE ELECTRIC UTILITY USE.—The term 'taxable electric utility use' means taxable use of petroleum by an electric utility for the purpose of generating electric energy.

"(3) PETROLEUM.—The term 'petroleum' means crude oil, residual fuel oil, refined petroleum products and natural gas liquids (other than lubricating oils, greases, waxes, petroleum coke, pitch, asphalt, and related products as described in regulations prescribed by the Secretary, and natural gas as defined in section 4992(c)(2)).

"(4) ELECTRIC UTILITY.—The term 'electric utility' means any person engaged in the business of sale or exchange of electric energy, or a qualifying cogenerator (as defined in section 522(b)(3) of the National Energy Act).

"(5) INFLATION ADJUSTMENT.—The term 'inflation adjustment' means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of

the most recent implicit price deflator for the gross national product. Such adjustment shall be computed and published for each calendar quarter by the Department of Commerce.

"(d) NO DEDUCTION.—No deduction shall be allowed under this title for any amount of tax imposed by this section which is treated as having been paid under section 6431(a).

"(e) BTU CONTENT.—The Secretary shall by regulation establish standard Btu content per barrel for the various types and grades of petroleum.

"SEC. 4992. NATURAL GAS CONSUMPTION TAX.

"(a) IMPOSITION OF TAX.—A tax is hereby imposed on any taxable use of natural gas during each calendar year after 1982 in the case of any taxable use by an electric utility, and after 1978 in the case of any other taxable use, in an amount per million British thermal units (hereinafter in this section referred to as 'Btu') used during such year equal to the excess, if any, of—

"(1) the natural gas target price for the calendar year, over

"(2) the user acquisition cost for the calendar year.

"(b) NATURAL GAS TARGET PRICE.—The natural gas target price for the calendar year is an amount equal to the Btu equivalency price for the calendar year adjusted by

subtracting the amount (if any) specified in the following tables less the inflation adjustment pursuant to subsection (e) (5) as applied by the Secretary for the last calendar quarter preceding the year in which the tax liability is incurred.

"Adjustments for Taxable Use by an Electric Utility (in dollars per million Btu's)

"If the taxable use occurs in calendar year—	The amount subtracted is—
1983	$0.50
1984	.50
1985	.50
1986	.25
1987	.25
1988	0
After calendar year 1988	0

"Adjustments for Any Other Taxable Use (in dollars per million Btu's)

"If the taxable use occurs—	The amount subtracted is—
In 1979	$1.05
In 1980	.40
In 1981	.35
In 1982	.25
In 1983	.20
In 1984	.15
In 1985	0
After calendar year 1985	0

"(c) USER ACQUISITION COST.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the user acquisition cost for the calendar year is the aggregate amount paid by a person for natural gas for a taxable use during the calendar year divided by the number of Btu's so used.

"(2) SPECIAL RULES FOR CERTAIN USES.—In the case of natural gas used by the producer thereof or by any person who is a member of the same affiliated group (within the meaning of section 1504) as such producer, the user acquisition cost shall be deemed to be an amount equal to the maximum lawful price (or special price) applicable to such natural gas under part D of title II of the National Energy Act (or which would be applicable if such natural gas were sold, in the case of natural gas which is not sold by the producer thereof) including reasonable transportation costs, if any.

"(d) LIABILITY FOR TAX.—The tax imposed by this section shall be paid on or before June 30 of the succeeding calendar year by the natural gas user.

"(e) DEFINITIONS.—For purposes of this section—

"(1) TAXABLE USE.—(A) The term 'taxable use' means any use of natural gas or natural gas and petroleum by a person in any trade or business during

the preceding calendar year determined in accordance with the following table:

"If total petroleum and natural gas use (in billions of Btu's) is—	Taxable use (in billions of Btu's) is—
Not more than 500	0.
At least 500 but not more than 600	0, plus 60% of use over 500.
At least 600 but not more than 700	60, plus 80% of use over 600.
At least 700 but not more than 800	140, plus 100% of use over 700.
At least 800 but not more than 900	240, plus 120% of use over 800.
At least 900 but not more than 1,000	360, plus 140% of use over 900.
At least 1,000 but not more than 1,100	500, plus 160% of use over 1,000.
At least 1,100 but not more than 1,200	660, plus 180% of use over 1,100.
At least 1,200 but not more than 1,300	840, plus 200% of use over 1,200.
At least 1,300 but not more than 1,400	1,040, plus 220% of use over 1,300.
At least 1,400 but not more than 1,500	1,260, plus 240% of use over 1,400.
At least 1,500 or more	All use.

"(B) For purposes of determining taxable use under this paragraph, a component member of a controlled group shall be treated as using the natural gas and petroleum used by all component members of such controlled group. The term 'controlled group' for purposes of this paragraph has the meaning provided by section 1563 except that in applying such section '50 percent' shall be used in lieu of '80 percent'.

"(C) In the case of a user of both natural gas and petroleum, only that portion of taxable use (as determined under subparagraph (A)) which bears the same ratio to taxable use as such user's total use of natural gas bears to his total petroleum and natural gas use shall be subject to the tax imposed by this section.

"(2) NATURAL GAS.—The term 'natural gas' means all petroleum or natural gas or products thereof, with API gravity of 110 or more and heat content of 500 Btu's or more per standard cubic foot.

"(3) BTU EQUIVALENCY PRICE.—The term 'Btu equivalency price' for the calendar year means, in the case of a taxable use of natural gas, the average regional price according to Petroleum Administration for Defense Districts of all numbered 2 grade distillate oil sold for all taxable use (as defined in section 4991(c)(1)) in the District in which such gas is used during the calendar year, as determined by March 31 of the succeeding calendar year by the Administrator of the Federal Energy Administration. Such price shall be determined without regard to tax paid under section 4991.

"(4) ELECTRIC UTILITY.—The term 'electric utility' means any person engaged in the business of sale or exchange of electric energy, or a qualifying cogenerator (as defined in section 522(b)(3) of the National Energy Act).

"(5) INFLATION ADJUSTMENT.—The term 'inflation adjustment' means the first version of the quarterly percent seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product. Such adjustment shall be computed and published for each calendar quarter by the Department of Commerce.

"(f) NO DEDUCTION.—No deduction shall be allowed under this title for any amount of tax imposed by this section which is treated as having been paid under section 6431(a).

"SEC. 4993. EXEMPTIONS.

"(a) EXEMPTED FUELS.—The taxes imposed by this chapter shall not apply—

"(1) to any petroleum taxable under chapter 31 or 32, or

"(2) to any petroleum which would be taxed under either such chapter but for section 4221(a)(3).

"(b) EXEMPTED USES.—The taxes imposed by this chapter shall not apply to—

"(1) use in any aircraft,

"(2) use for purposes of rail or water transportation,

"(3) use on a farm for farming purposes (within

the meaning of section 6420(c)), and any drying of grains and feed grasses or irrigation pumping,

"(4) use for production of anhydrous ammonia or ammonia liquor (except use of natural gas as fuel),

"(5) use of petroleum or natural gas (other than as a fuel) by a refinery or natural gas processing plant to produce refined petroleum products, or

"(6) natural gas reinjected for repressuring or cycling use, natural gas used at the point of consumption which is not practically marketable.".

(b) CONFORMING AMENDMENT.—Section 162 (relating to trade or business expenses) is amended by adding a new subparagraph (3) at the end of subsection (h), to read as follows:

"(3) For special rule relating to amounts treated as payment of a tax imposed by chapter 45, see sections 4991 and 4992.".

(c) CLERICAL AMENDMENT.—The table of sections for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER. 45. Oil and Natural Gas Consumption Taxes.
"Sec. 4991. Oil consumption tax.
"Sec. 4992. Natural gas consumption tax.
"Sec. 4993. Exemptions.".

(d) EFFECTIVE DATE.—The amendments made by this section apply to taxable uses after December 31, 1977.

SEC. 1502. INDUSTRIAL OIL AND GAS CONSERVATION REBATE.

(a) GENERAL RULE.—Subchapter B of chapter 65 (relating to rules and special application in the case of abatements, credits and refunds) is amended by adding at the end thereof the following section:

"SEC. 6431. INDUSTRIAL OIL AND GAS CONSERVATION REBATE.

"(a) IN GENERAL.—If this section applies, any person other than an electric utility shall be treated as having made a payment against the taxes imposed by chapter 45 for the calendar year in an amount equal to its investment made after December 31, 1977, during the calendar year in alternative energy property. For purposes of this subsection, an investment in alternative energy property by a component member of a controlled group shall be treated as an investment by all of the component members of such controlled group. The term 'controlled group' for purposes of this subsection has the meaning provided by section 1563 except that in applying such section, '50 percent' shall be used in lieu of '80 percent'.

"(b) ELECTION OF REBATE.—This section shall apply if an election is made at the time the person first credits against the tax expenditures for alternative energy property under regulations prescribed by the Secretary.

"(c) INVESTMENT CARRYOVER.—The excess, if any, of the amount of an investment during the calendar year made by a person other than an electric utility over the taxes imposed by chapter 45 on such person for the calendar year shall be carried over to the next succeeding calendar year. An amount so carried over shall be treated as an investment made by such person in alternative energy property during such succeeding calendar year.

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

"(1) ELECTRIC UTILITY.—The term 'electric utility' has the meaning prescribed by section 4991 (c) (4).

"(2) ALTERNATIVE ENERGY PROPERTY.—The term 'alternative energy property' means the following property—

"(A) coal-fired boilers;

"(B) boilers whose primary fuels will not be petroleum or natural gas;

"(C) facilities for the conversion of coal into synthetic natural gas having a heat content of 500 Btu's per standard cubic foot or less;

"(D) equipment for the burning of coal in combustors other than boilers including only equipment used to supply coal to a burner, and the burner;

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"(E) pollution control equipment required to be installed on equipment (described in subparagraph (D)) by local, State, or Federal regulations, except equipment required to be installed under regulations in effect on April 20, 1977, relating to combustors currently using coal; and

"(F) equipment used for the unloading, transfer, storage, reclaiming from storage, and preparation of coal, including washing, crushing, drying, and weighing at the point of use for use for installations described in this paragraph and at facilities where coal is used as a feedstock for manufacture of chemicals or other products except coke.

For purposes of this paragraph, costs of buildings which house such equipment, costs of preparing plans and designs for equipment and facilities except as described in subparagraphs (A) through (F), and costs of preparing sites for facilities, such as demolition and grading, shall not be allowable costs under this section.

"(3) INVESTMENT.—The term 'investment' means the costs paid or incurred by a person in installing alternative energy property including the costs of engineering and designing, purchasing or manufacturing for own use, transporting, assembling, and installing such equipment.

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"(e) DATE PAYMENT DEEMED MADE.—The payment provided by this section shall be deemed made on whichever of the following dates is the later:

"(1) the date prescribed by law (determined without extensions) for filing the return of taxes imposed by chapter 45 for the taxable year, or

"(2) the date on which such return of tax is actually filed for the taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 46(d)(3) (relating to the definition of qualified progress expenditures) is amended by striking out "In the case" in subparagraphs (A) and (B) and inserting in lieu thereof "Except as provided in subparagraph (C), in the case" and by adding a new subparagraph (C) to read as follows:

"(C) If an amount described in subparagraph (A) or (B) is treated, by reason of section 6431(a), as being a payment of any tax imposed by chapter 45, only 50 percent of such amount shall be a qualified progress expenditure.".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by inserting a semicolon in lieu of the period at the end of paragraph (23)

and by adding a new paragraph (24) to read as follows:

"(24) to the extent provided in section 6431(f) in the case of property to which an election under subsection (b) of section 6431 (relating to oil and gas conservation rebates) applies.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6431. Industrial oil and gas conservation rebate."

(d) EFFECTIVE DATE.—The amendments made by this section apply for calendar years ending after December 31, 1977.

SEC. 1503. UTILITY OIL AND GAS CONSERVATION REBATE.

(a) GENERAL RULE.—Subchapter B of chapter 65 (relating to rules and special application in the case of abatements, credits and refunds) is amended by adding at the end thereof the following section:

"SEC. 6432. UTILITY OIL AND GAS CONSERVATION REBATE.

"(a) IN GENERAL.—There shall be credited against the tax imposed pursuant to sections 4991(a) and 4992(a) expenditures by an electric utility for qualified replacement investments made after April 20, 1977.

"(b) ELECTION OF REBATE.—This section shall apply if an election is made at the time the electric utility first credits against the tax expenditures for qualified replacement investments under regulations prescribed by the Secretary.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELECTRIC UTILITY.—The term 'electric utility' has the meaning provided in section 4991(c)(4).

"(2) QUALIFIED REPLACEMENT INVESTMENTS.—The term 'qualified replacement investment' means the costs paid or incurred by an electric utility for engineering, designing, purchasing, transporting, assembling and installing electrical generating property with a capacity for using coal or other fuel to replace electrical generation property with a capacity for using petroleum or natural gas (other than for startup, testing and flame stabilization). In prescribing the regulations under this paragraph, the Secretary shall consult with the Administrator of the Federal Energy Administration.

"(3) COAL OR OTHER FUEL.—The term 'coal or other fuel' has the meaning provided by section 102(5) of the Energy Supply and Environmental Coordination Act of 1974 as amended by the National Energy Act.".

PART F—ENERGY DEVELOPMENT TAX INCENTIVES

SEC. 1601. GEOTHERMAL TAX INCENTIVE.

(a) Section 263 (c) (relating to deduction for intangible drilling and development costs in the case of oil and gas wells) is amended—

(1) by adding at the end thereof the following new sentence: "Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for geothermal steam and geothermal resources, as defined in section 2 (c) of the Geothermal Steam Act of 1970 (30 U.S.C. 1001), to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.", and

(2) by amending the caption of such section to read as follows:

"(c) INTANGIBLE DRILLING AND DEVELOPMENT COSTS IN THE CASE OF OIL AND GAS WELLS AND GEOTHERMAL WELLS.—".

(b) The amendments made by subsection (a) shall apply with respect to wells commenced after April 20, 1977.

SEC. 1602. GAIN FROM DISPOSITION OF INTEREST IN GEOTHERMAL WELLS.

(a) GENERAL RULE.—Section 1254 (relating to gain from disposition of interest in oil or gas property) is amended—

(1) by striking out the caption and inserting in lieu thereof

"SEC. 1254. GAIN FROM DISPOSITION OF INTEREST IN OIL, GAS, OR GEOTHERMAL PROPERTY.";

(2) by striking out the caption "GENERAL RULE.—" in subsection (a) and inserting in lieu thereof "GENERAL RULE FOR OIL OR GAS PROPERTY.—";

(3) by redesignating subsection (b) as subsection (c); and

(4) by adding the following new subsection at the end of subsection (a):

"(b) GENERAL RULE FOR GEOTHERMAL WELLS.—

"(1) ORDINARY INCOME.—If a geothermal well is disposed of after April 20, 1977, the lower of—

"(A) the aggregate amount of expenditures after December 31, 1976, which are allocable to such well and which have been deducted as intan-

gible drilling and development costs under section 263(c) by the taxpayer or any other person and which (but for being so deducted) would be reflected in the adjusted basis of such property, adjusted as provided in paragraph (4), or

"(B) the excess of—

"(i) the amount realized (in the case of a sale, exchange of involuntary conversion), or the fair market value of the interest (in the case of any other disposition), over

"(ii) the adjusted basis of such interest, shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(2) DISPOSITION OF PORTION OF WELL.—For purposes of paragraph (1)—

"(A) In the case of the disposition of a portion of a geothermal well (other than an undivided interest), the entire amount of the aggregate expenditures described in paragraph (1)(A) with respect to such well shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

"(B) In the case of the disposition of an undivided interest in a geothermal well (or a portion thereof), a proportionate part of the expenditures described in paragraph (1)(A) with respect to such well shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

"(3) GEOTHERMAL WELL.—The term 'geothermal well' means any well (within the meaning of section 263(c)) with respect to which any expenditures described in paragraph (1)(A) are properly chargeable.

"(4) SPECIAL RULE FOR PARAGRAPH (1)(A).—In applying paragraph (1)(A), the amount deducted for intangible drilling and development costs and allocable to the interest disposed of shall be reduced by the amount (if any) by which the deduction, had such costs paid or incurred (after April 20, 1977) been capitalized and ratably amortized over the 120-month period beginning with the month in which production from such well begins, would have been increased had such costs been charged to capital account rather than deducted under section 263(c).".

(b) TECHNICAL AMENDMENTS.—

(1) Section 751 (c) (relating to definition of unrealized receivables) is amended by striking out "and an oil or gas property (described in section 1254)" and inserting in lieu thereof "and an oil, gas, or geothermal property (described in section 1254)", and by striking out "or 1254 (a)" and inserting in lieu thereof "or 1254 (a) or (b)".

(2) Section (c) (3) of section 205 of the Tax Reform Act of 1976 is amended by striking out "section 163 (d) (3) (A) (iii)" and inserting in lieu thereof "section 163 (d) (3) (B) (iii)".

(c) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter P of chapter 1 is amended by striking out the item relating to section 1254 and inserting in lieu thereof the following new item:

"Sec. 1254. Gain from disposition of interest in oil, gas, or geothermal property.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply with respect to taxable years ending after April 20, 1977. The amendment made by subsection (b) shall apply with respect to taxable years ending after December 31, 1975.

SEC. 1603. MINIMUM TAX TREATMENT OF INTANGIBLE DRILLING EXPENSES RELATING TO OIL AND GAS WELLS.

(a) Section 57 (a) (11) (relating to items of tax preference) is amended to read as follows:

"(11) INTANGIBLE DRILLING COSTS RELATING TO OIL AND GAS WELLS.—With respect to all interest of the taxpayer in oil and gas wells, the excess of—

"(A) the excess of the intangible drilling and development costs described in section 263 (c) paid or incurred in connection with oil and gas wells (other than costs incurred in drilling a nonproductive well) allowable under this chapter for the taxable year over the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (d)) had been used with respect to such costs, over

"(B) the aggregate amount of net income received or accrued by the taxpayer during such taxable year attributable to such interests. For purposes of this subparagraph, the term 'net income' means

the excess of the aggregate amount of gross income from oil and gas properties over the sum of—

"(i) the amount of any deductions (other than the amount of any excess intangible drilling and development costs, as determined under subparagraph (A), allowable for such taxable year) allocable to such properties, and

"(ii) the amount of taxes imposed under this section (determined without regard to this part) allocable to such properties.".

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1976.

SEC. 1604. MINIMUM TAX TREATMENT OF INTANGIBLE DRILLING EXPENSES RELATING TO GEOTHERMAL WELLS.

(a) Section 57 (a) (relating to items of tax preference) is amended by striking out the matter after paragraph (11) and inserting thereof the following:

"(12) INTANGIBLE DRILLING COSTS RELATING TO GEOTHERMAL WELLS.—With respect to all interest of the taxpayer in geothermal wells, the excess of—

"(A) the excess of the intangible drilling and development costs described in section 263 (c) paid or incurred in connection with geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under this chapter for the taxable year which exceeds the amount which would have been allowable for the taxable year if such costs had been capitalized and ratably amortized over the 120-month period beginning with the month in which production from such well begins, over

"(B) the aggregate amount of net income received or accrued by the taxpayer during such taxable year attributable to such interests. For purposes of this subparagraph, the term "net income" means the excess of the aggregate amount of income from geothermal properties over the sum of—

"(i) the amount of any deductions (other than the amount of any excess intangible drilling and development costs, as determined under subparagraph (A), allowable for such taxable year) allocable to such properties, and

"(ii) the amount of taxes imposed under this section (determined without regard to this part) allocable to such properties.

Paragraphs (1), (3), (11), and (12) shall not apply to a corporation.".

(b) The amendment made by subsection (a) shall apply to expenses paid or incurred after April 20, 1977.

Union Calendar No. 193

95TH CONGRESS
1ST SESSION

H. R. 6804

[Report No. 95-346, Part I, Part II]

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1977

Mr. BROOKS (for himself, Mr. FASCELL, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. FUQUA, Mr. HARRINGTON, Mr. HORTON, Mr. ERLENBORN, and Mr. PRITCHARD) introduced the following bill; which was referred to the Committee on Government Operations

MAY 16, 1977

Reported with an amendment, referred to the Committee on Post Office and Civil Service for a period ending not later than May 26, 1977, for consideration of such portions of the bill as fall within that committee's jurisdiction under clause 1(o)(5), rule X, and ordered to be printed

MAY 24, 1977

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in boldface roman]

A BILL

To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Department of Energy Organization Act".~~

~~TITLE I—DECLARATION OF FINDINGS, POLICY, AND PURPOSES~~

~~SEC. 101. (a) The Congress of the United States finds that—~~

~~(1) the United States and the world face an increasing shortage of nonrenewable energy resources;~~

~~(2) this energy shortage presents a serious threat to the national security of the United States and to the health, safety, and welfare of its citizens;~~

~~(3) a strong national energy program is needed to increase the efficiency of energy use and availability of energy resources, particularly renewable energy resources;~~

~~(4) responsibility for energy policy execution, regulation, and research, development, and demonstration is presently vested in many agencies and departments, and this fragmentation hinders development of an effective Federal response to the energy shortage; and~~

~~(5) formulation and implementation of a national energy program require the integration of certain Federal energy functions into a single department in the executive branch.~~

~~(b) It is the policy of the United States that—~~

~~(1) energy conservation shall enjoy the highest priority in any national energy program, and shall be~~

carefully considered as an adjunct to programs to increase energy supply and as an option to programs that may present health, safety, or other environmental hazards;

(2) emphasis shall also be given to the development and commercial use of technologies utilizing renewable energy resources;

(3) the environmental and social consequences of any national energy program shall be analyzed and considered in evaluation of the program's potential; and

(4) public participation in the development and enforcement of any national energy program shall be provided for, encouraged, and assisted.

SEC. 102. The purposes of this Act are (1) to establish a permanent Department of Energy in the executive branch, (2) to vest in the Secretary of Energy such functions as are vested in or transferred to him by this Act, (3) to achieve, through the Department, effective management of energy functions of the Federal Government, (4) to provide the mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long-term energy problems of the Nation, (5) to safeguard and conserve our natural resources and environment, and (6) to promote the interest of consumers.

TITLE II—ESTABLISHMENT OF DEPARTMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy (hereinafter in this Act referred to as the "Department"). There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary") who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.

SEC. 202. There shall be in the Department a Deputy Secretary, nine Assistant Secretaries, and a General Counsel, each of whom shall be appointed by the President by and with the advice and consent of the Senate, and who shall perform such functions as the Secretary shall prescribe from time to time. The Assistant Secretaries shall be designated as follows:

(1) Assistant Secretary for Public, Congressional, and Intergovernmental Relations;

(2) Assistant Secretary for Conservation;

(3) Assistant Secretary for Defense Programs;

(4) Assistant Secretary for Environment;

(5) Assistant Secretary for Fossil and Nuclear Energy Technologies;

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~~(6) Assistant Secretary for International Programs;~~

~~(7) Assistant Secretary for Competition and Consumer Affairs;~~

~~(8) Assistant Secretary for Resource Applications; and~~

~~(9) Assistant Secretary for Solar and Geothermal Energy Technologies.~~

~~SEC. 203. The Deputy Secretary shall act for, and exercise the functions of, the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Assistant Secretaries, General Counsel, and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.~~

~~SEC. 204. (a) There shall be within the Department an Energy Information Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Administrator shall be a person who, by reason of professional background and experience, is especially qualified to manage an energy information system. There shall be trans-~~

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~~ferred to and vested in the Administrator (on a nonexclusive basis as the Secretary may determine) all functions and authorities transferred to and vested in the Secretary under this Act relating to collection, analysis, and dissemination of energy information and data. The Administrator shall be subject to all duties and responsibilities established under part B of the Federal Energy Administration Act of 1974.~~

~~(b) In the performance of his professional functions in connection with collecting, analyzing, and disseminating energy information, the Administrator shall not be responsible to, or subject to, the direction of any officer, employee, or agent of the Department.~~

~~(c) The Administrator shall, upon request, promptly provide any information or analysis in his possession to any other administration, commission, or office within the Department relating to the functions of such administration, commission, or office.~~

~~SEC. 205. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President by and with the advice and consent of the Senate. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to or vested in the Administration.~~

~~(b) The Secretary shall utilize the Economic Regulatory Administration to administer—~~

~~(1) any function which may be delegated to the Secretary under the Emergency Petroleum Allocation Act of 1973;~~

~~(2) any function transferred to the Secretary by section 301(b) of this Act which relates to establishment of rates and charges under the Federal Power Act and the Natural Gas Act (subject to the provisions of section 401); and~~

~~(3) such other functions as the Secretary may consider appropriate.~~

~~(c) The Administrator shall insure an adequate opportunity for public participation, including an opportunity for hearings, in issuing any rules, regulations, or orders under this section.~~

~~SEC. 206. (a) (1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but~~

~~shall not be under the control of, or subject to supervision by, any other officer of the Department.~~

~~(2) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.~~

~~(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.~~

~~(4) The Inspector General and the Deputy shall each be subject to the provisions of subchapter III of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.~~

~~(5) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.~~

~~(b) It shall be the duty and responsibility of the Inspector General—~~

~~(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;~~

~~(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;~~

~~(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse; and~~

~~(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.~~

~~(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—~~

~~(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;~~

~~(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);~~

~~(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and~~

~~(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.~~

~~Reports concerning the Federal Energy Regulatory Commission shall be submitted to the Chairman thereof.~~

~~(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.~~

~~(e) The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.~~

~~(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide~~

~~copies of the reports required under subsection (c) to the Secretary sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.~~

~~(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—~~

~~(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;~~

~~(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and~~

~~(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this section.~~

~~(h) For purposes of this section, the term "Department"~~

~~includes any component thereof, including the Federal Energy Regulatory Commission.~~

~~TITLE III—TRANSFERS OF FUNCTIONS~~

~~SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.~~

~~(b) Except as provided in section 401, there are hereby transferred to, and vested in, the Secretary the functions of the Federal Power Commission, or of the members, officers, or components thereof—~~

~~(1) in prescribing, issuing, making, amending, and rescinding rules, regulations, and statements of policy, pursuant to section 309 of the Federal Power Act and section 16 of the Natural Gas Act, which are of general applicability;~~

~~(2) relating to energy information, subject to subsection (c) of this section, under sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act;~~

~~(3) under section 202(a) of the Federal Power Act (relating to establishment of regional districts);~~

~~(4) under section 202 (c) and (d) of the Federal Power Act (relating to emergency interconnections);~~

~~(5) under section 202(e) of the Federal Power Act (relating to regulation of exports of electric energy);~~

~~(6) under (A) section 3 of the Natural Gas Act, and (B) section 7 of such Act (to the extent such section is applicable to the regulation of exports and imports of natural gas);~~

~~(7) under sections 4, 5, and 7 of the Natural Gas Act (to the extent that such sections relate to the establishment and review of priorities for curtailments of natural gas); and~~

~~(8) relating to regulations of general applicability with respect to the sale of natural gas to a natural gas company for resale in interstate commerce under the Natural Gas Act.~~

~~(c) The Secretary and the Federal Energy Regulatory Commission shall, to the extent necessary to carry out their respective functions, utilize the data-gathering authorities of sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act. The Secretary and the~~

~~Commission shall coordinate their data-gathering activities to avoid duplication and undue burden on any person.~~

~~SEC. 302. There are hereby transferred to, and vested in, the Secretary:~~

~~(a) All functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department, to the extent such functions relate to or are utilized by the Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration. The authority for the functions so transferred includes, but is not limited to, section 5 of the Flood Control Act of 1944, the Bonneville Project Act of 1937, and the Federal Columbia River Transmission System Act.~~

~~(b) Such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department as relate to, or are utilized by, the Alaska Power Administration for the transmission and disposition (including acquisition by purchase or exchange) of electric power and energy and by the Bureau of Reclamation for the disposition (including acquisition by purchase or exchange) of electric power and energy, except that the authority for, and function of, operating the dams constructed pursuant to the Eklutna Project Act and section 204 of the Flood Control Act of 1962 shall remain in the~~

~~Secretary of the Interior. The authority for the functions so transferred includes, but is not limited to, the Eklutna Project Act, section 201 of the Flood Control Act of 1962, the Reclamation Act of 1902, and Acts amendatory thereof and supplementary thereto, including but not limited to the authority for the sale of electric power or lease of power privileges under section 9 (c) of the Reclamation Project Act of 1939, and the authority under section 303 of the Colorado River Basin Project Act.~~

~~(c) All the authority of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department for the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects constructed on the Rio Grande pursuant to the Act of June 19, 1954, as amended by the Act of December 23, 1963.~~

~~(d) (1) The authority of the Secretary of the Interior to prescribe regulations under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act, which relate to the (A) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures), (B) implementation of alternative bidding systems~~

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authorized for the award of Federal leases, (C) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements), (D) setting rates of production for Federal leases, and (E) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, except that such regulations shall be promulgated by the Secretary only after consultation with the Secretary of the Interior.

(2) The Secretary in accordance with this subsection is hereby authorized to promulgate regulations under the following statutory provisions, to the fullest extent to which the Secretary of the Interior could have promulgated such regulations immediately prior to the enactment of this Act:

(A) Section 5(a)(1) of the Outer Continental Shelf Lands Act, insofar as it authorizes the promulgation of regulations:

(i)(I) specifying procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind under the last sentence of such section 5(a)(1) and under sections 6(a)(8), 8(a), and 8(b) of such Act;

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(II) implementing competitive bidding and alternative bidding systems under sections 8(a) and 8(c) of such Act;

(III) establishing diligence requirements and setting rates of production under section 5(a)(1) (insofar as it provides for the suspension of operations and production), section 6(a)(10) (insofar as it requires production or operations or drilling), and section 8(b) (insofar as it requires production in paying quantities, drilling, or well reworking) of such Act; and

(IV) promoting development and production by the reduction of rentals and royalties under the last sentence of such section 5(a)(1);

and, in addition, as section 5(a)(1) of such Act relates to economic terms and conditions of leases reflected in—

(ii)(I) fostering competition for Federal leases including, but not limited to, (a) prohibition on bidding for development rights by certain joint ventures; (b) setting rates on royalty and other types of receipts from leases; (c) procedures to enhance competition at lease sales;

(II) implementing alternative bidding systems authorized for award of Federal leases including, but not limited to, experiments on bidding systems;

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(III) establishing diligence requirements for operations conducted on Federal leases (including unitized leases) including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspensions of operations or production or the cancellation of leases as they relate to such diligence requirements;

(IV) setting rates of production for Federal leases (including unitized leases) including, but not limited to, establishing procedures for requiring a lessee to produce at a specified rate, and establishing rates of minimum production; and

(V) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind.

(B) Sections 17, 21, and 32 of the Mineral Lands Leasing Act, insofar as they authorize the promulgation of regulations—

(i) (I) implementing competitive bidding systems, including the creation of alternative bidding systems, under section 2(a)(1) (insofar as it authorizes the awarding of leases by competitive bidding), section 7(a) (insofar as it provides for setting royalty rates), and section 17(b) (insofar

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as it authorizes leasing by competitive bidding and the setting of royalty rates) of such Act;

(II) limiting the number of leases and the amount of acreage under lease under sections 21, 27(a)(1), and 27(d), (e), and (f) of such Act;

(III) setting rates of production under section 2(d)(2), section 7(b) (insofar as it relates to the condition of continued operation), sections 17(e) and (f) (insofar as they relate to the condition of production in paying quantities) of such Act;

(IV) limiting leasing by common carriers under section 2(c) of such Act;

(V) consulting with and considering the advice of the Attorney General concerning the issuance of regulations and the issuance, renewal, or readjustment of leases under section 27(1) of such Act;

(VI) establishing diligence requirements under section 2(a)(2)(A), section 2(d)(2), section 7(a) (insofar as it requires production in commercial quantities), section 7(b) (insofar as it requires diligent development), section 17(e) (insofar as it requires drilling operations), section 17(f) (insofar as it provides for reworking or drilling operations),

and section 21 (insofar as it relates to productive development) of such Act;

(VII) for the purpose of encouraging the greatest ultimate recovery, waiving, suspending, or reducing the rentals or minimum royalties, or reducing the royalties, in order to promote development or the successful operation of leases under section 39 of such Act;

(VIII) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind under sections 17 (b) and (c), and section 32 of such Act;

and, in addition, as section 17, 21, and 32 relate to economic terms and conditions of leases reflected in:

(ii) the regulatory authorities enumerated in subparagraph (A) (ii).

(C) Section 10 of the Mineral Leasing Act for Acquired Lands insofar as it authorizes the promulgation of regulations described in subparagraph (B).

(D) Sections 4 and 24 of the Geothermal Steam Act of 1970 insofar as they authorize the promulgation of regulations—

(i) (I) implementing competitive bidding and

alternative bidding systems under section 4 of such Act;

(II) limiting the amount of acreage under lease under the second and third sentences of section 7 of such Act;

(III) establishing diligence requirements under the first sentence of section 6 (c) (insofar as it requires actual drilling operations), sections 11 and 24 (c) (insofar as they provide for suspension of operations and production upon application by the lessee), and section 24 (h) (insofar as it provides for maintenance by the lessee of an active development program) of such Act;

(IV) setting rates of production under section 6 (insofar as it requires production or utilization in commercial quantities) of such Act;

(V) to encourage the greatest ultimate recovery, waiving, suspending, or reducing rentals or royalties, to promote development or successful operation of leases under sections 13 and 24 (c) of such Act;

and in addition, as sections 4 and 24 relate to economic terms and conditions of leases reflected in:

(ii) the regulatory authorities enumerated in subparagraph (A) (ii).

~~(E) Sections 105 and 106 of the Energy Policy and Conservation Act.~~

~~(3) The Secretary of the Interior shall retain any authorities not transferred by paragraph (1) of this subsection and shall be solely responsible for the issuance and supervision of leases and the enforcement of all regulations applicable to the leasing of mineral resources, including, but not limited to, lease terms and conditions and production rates. No regulation issued by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under this paragraph with respect to the issuance or supervision of leases. Nothing in this subsection shall be construed to affect Indian lands and resources or to transfer any responsibilities of the Secretary of the Interior concerning such lands and resources.~~

~~(e) Those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 16, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—~~

~~(1) fuel supply and demand analysis and data gathering,~~

~~(2) research and development relating to increased efficiency of production technology of solid fuel minerals: *Provided*, That research relating to mine health and~~

~~safety and research relating to the environmental and leasing consequences of solid fuel mining shall remain in the Department of the Interior, and~~

~~(3) coal and analysis.~~

~~(f) The functions of the Secretary of the Interior to establish production rates for all Federal leases.~~

~~SEC. 303. The Secretary of the Interior shall afford the Secretary a reasonable opportunity, prior to the execution of a Federal lease, to disapprove any term or condition of such Federal lease which relates to the matters with respect to which the Secretary has authority to prescribe regulations under section 302(d). No such term or condition may be included in such a lease if it is disapproved by the Secretary.~~

~~SEC. 304. As used in sections 302 and 303 of this Act, "Federal lease" means an agreement which, for any consideration, including, but not limited to, bonuses, rents, or royalties conferred and convenants to be observed, authorizes any person to explore for, develop, or produce (or to do any or all of these), oil and gas, coal, oil shale, tar sands, or geothermal resources in public, acquired, or submerged lands or interests therein under Federal jurisdiction.~~

~~SEC. 305. All functions vested by law in the Director of the Office of Energy Information and Analysis or in the Administrator of the Federal Energy Administration by part B of the Federal Energy Administration Act of 1974 are~~

~~hereby transferred to the Administrator of the Energy Information Administration.~~

~~SEC. 306. There are hereby transferred to and vested in the Secretary all of the functions vested in the Secretary of Housing and Urban Development by the Energy Conservation Standards for New Buildings Act of 1976 (title III of the Energy Conservation and Production Act).~~

~~SEC. 307. There are hereby transferred to and vested in the Secretary such functions as are set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.~~

~~SEC. 308. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of, and there is hereby transferred to and vested in the Secretary jurisdiction over—~~

~~(1) Naval Petroleum Reserve Numbered 1 (Elk Hills) located in Kern County, California, established by Executive order of the President, dated September 2, 1912;~~

~~(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;~~

~~(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome) located in Wyoming, established by Executive order of the President, dated April 30, 1915;~~

~~(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order of the President dated June 12, 1919;~~

~~(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and~~

~~(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1974.~~

~~The surface management of such reserves shall be carried out by the Secretary of the Interior under applicable laws, including the Federal Land Policy and Management Act of 1976, administered by such Secretary.~~

~~SEC. 309. There are hereby transferred to and vested in the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.~~

~~TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION~~

~~SEC. 401. (a) (1) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission (hereinafter referred to in this title as the "Commission").~~

~~(2) There are hereby transferred to, and vested in, the Commission (A) all functions and authority of the Federal Power Commission under the Federal Power Act and the Natural Gas Act which are not specifically transferred to, and vested in, the Secretary pursuant to section 301 (b) of this Act and (B) all other functions transferred by title III of this Act which involve an agency determination required by law to be made on the record after opportunity for an agency hearing.~~

~~(3) Notwithstanding section 301 (b) (1), the Commission shall have the authority to prescribe, issue, make, amend, and rescind rules, regulations, and statements of policy under section 309 of the Federal Power Act and section 16 of the National Gas Act, and in exercising such authority shall coordinate its actions with the Secretary.~~

~~(4) The Secretary may assign to the Commission, by rule, any other functions vested in or delegated to him.~~

~~(b) The Commission shall be comprised of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.~~

~~(c) (1) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment of such hearing examiners as he deems necessary to assist in the performance~~

of the Commission's functions and to fix their compensation in accordance with the provisions of title 5, United States Code, except that assignment, removal and compensation of such hearing examiners shall be in accordance with sections 3105, 3314, 5302, and 7521 of title 5, United States Code, (2) the selection, appointment, and supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (3) the distribution of business among personnel and among administrative units of the Commission, and (4) the use and expenditure of funds appropriated for Commission functions. The Secretary shall provide to the Commission such support and facilities as the Commission may need to carry out its functions.

(2) The hearing examiners appointed pursuant to this section shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code.

(d) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary pre-

sentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits any legislative recommendation or testimony, or comments on legislation, to the Secretary, the President, or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(e) In the performance of their functions, the members of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Department.

(f) A decision of the Commission shall be a final agency action within the meaning of section 704 of title 5, United States Code, with respect to matters within the Commission's jurisdiction and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(g) The Chairman of the Commission may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be deter-

~~mined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.~~

~~(h) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, the rules of the Federal Power Commission shall continue in effect.~~

~~(i) In carrying out all its functions, the Commission shall have the powers authorized by the Federal Power Act and the Natural Gas Act to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions.~~

~~SEC. 402. No person in the employ of, or holding any official relation to, any person, firm, association, or corporation engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum, petroleum products, natural gas, coal, nuclear material, synthetic fuels, or energy from renewable resources, wastes, or geothermal steam, or in energy research or development, or owning stock or bonds thereof, or who has a pecuniary interest therein, shall enter upon the duties of, or hold the office of~~

~~Commission member. Members shall not engage in any other business, vocation, or employment while members of the Commission.~~

~~SEC. 403. The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held; but the Commission may sit anywhere in the United States.~~

~~SEC. 404. The Secretary, each officer of the Department, and each Federal agency, subject to applicable provisions of law, shall cooperate with the Commission in providing, upon request, such information as it may require.~~

~~SEC. 405. Nothing in this title shall be construed in any way to limit the functions of the Secretary relating to activities within the jurisdiction of the Secretary, including any shared with the Commission.~~

~~SEC. 406. The Secretary may as of right intervene or otherwise participate in any adjudicatory proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the~~

~~obligation of the Commission to assure procedural fairness to all participants.~~

~~SEC. 407. For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency.~~

~~TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW~~

~~SEC. 501. (a) Subject to the other requirements of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule, regulation, or order issued pursuant to authority vested by law in or delegated to the Secretary or any officer, employee, or component of the Department, including any such rule, regulation, or order of a State or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary.~~

~~(b) In addition to the requirements of subsection (a), notice of any proposed rule, regulation, or order shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this subsection as to time of notice and opportunity to comment may be waived where strict compliance is found to cause~~

~~serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency shall be achieved by publication of such rules or regulations in at least two newspapers of statewide circulation, except that if such publication is not practicable, notice of any rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will assure wide public notice.~~

~~(c) In addition to the requirements of subsection (b), if any rule, regulation, or order described in subsection (a) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.~~

~~(d) The Secretary or any officer authorized to issue rules, regulations, or orders under the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environ-~~

~~mental Coordination Act of 1974, or the Energy Policy and Conservation Act shall provide for the making of such adjustments, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rule, regulation or order.~~

~~(c) (1) With respect to any rule, regulation, or order of the Secretary the effects of which, except for indirect effects of an inconsequential nature, are confined to—~~

~~(A) a single unit of local government or the residents thereof;~~

~~(B) a single geographic area within a State or the residents thereof; or~~

~~(C) a single State or the residents thereof;~~

~~the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in subparagraphs (A) through (C), as the case may be.~~

~~(2) For purposes of this subsection—~~

~~(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and~~

~~(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.~~

~~(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section.~~

~~(f) (1) Judicial review of agency action taken under any law, the functions of which are transferred by this Act, shall, notwithstanding such transfer, be made in the manner specified in such law.~~

~~(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this Act, or under rules, regulations, or orders issued exclusively thereunder, except any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on~~

the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the amount in controversy, the district courts of the United States.

(3) The Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of section 501, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) a reasonable time before taking the action.

(4) Notwithstanding any other law, the litigation of

the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28, United States Code. This paragraph shall not apply to the Federal Energy Regulatory Commission.

TITLE VI—ADMINISTRATIVE PROVISIONS

SEC. 601. (a) For the purposes of this section, the following officers or employees of the Department are supervisory employees—

(1) an individual compensated at the rate provided for grade of GS–16 or above under section 5332 of title 5, United States Code; or

(2) any other individual who, in the judgment of the Secretary, exercises sufficient decisionmaking authority so that the provisions of this section should apply to such individual;

(3) the Director, or Deputy Director of any State, regional, district, local, or other field office;

(4) an individual serving within the Energy Information Administration or the Economic Regulatory Administration or an employee of the Federal Energy Regulatory Commission classified as GS–16 or above under section 5322 of title 5 of the United States Code; or

(5) an employee or officer who has responsibility with respect to the award, review, modification, or

~~termination of any grant, contract, reward, or fund transfer within the authority of the Secretary.~~

~~(b) (1) No supervisory employee shall receive compensation from, or hold any official relation to, any person, firm, association, or corporation significantly engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum or petroleum products, synthetic fuels, natural gas, coal, or energy from renewable resources, wastes, or geothermal steam, or in nuclear technology, equipment or material, minerals, or other energy related source or resource, or own stocks or bonds thereof, or have any pecuniary interest therein.~~

~~(2) Personnel transferred to the Department pursuant to section 801 of this Act shall have six months to comply with the provisions of paragraph (1) of this subsection with respect to prohibited property holdings. Any person transferred pursuant to section 801 shall notify the Secretary of all circumstances which would be violative of the restrictions described in subsection (b) (1) not later than fifteen days after the date of such transfer as determined by the United States Civil Service Commission.~~

~~(3) Where exceptional hardship would result, or where the interest is vested, the Secretary is authorized to waive the requirements of this subsection with respect to any person covered. Such waiver shall:~~

~~(A) be published in the Federal Register;~~

~~(B) contain a finding by the Secretary that exceptional hardship would result; and~~

~~(C) indicate the steps taken by the Secretary to minimize conflict of interest and the appearance of conflict of interest.~~

~~Such waiver shall in no instance constitute a waiver of the requirements of section 208 of title 18, United States Code.~~

~~SEC. 602. (a) Each officer or employee of the Department, including the Federal Energy Regulatory Commission, who has any known financial interest—~~

~~(1) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any Act, the administration of which is transferred pursuant to this Act;~~

~~(2) in property from which coal, natural gas, crude oil, or nuclear material is commercially produced;~~

~~(3) in any person engaged in the production, generation, transmission, distribution or sale of electric power; or~~

(1) in any person engaged in production, sale, or distribution of nuclear materials;

shall, beginning on February 1, 1978, annually file with the Secretary a written statement disclosing all such interests held by such officer or employee during the preceding calendar year. Such statement shall be subject to examination, and available for copying, by the public upon request.

(b) The Secretary shall—

(1) act, within ninety days after the effective date of this Act, by rule—

(A) to define the term "known financial interest" for purposes of subsection (a); and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) include, as part of the report made pursuant to section 621, a report with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b), the Secretary may identify specific positions, or classes thereof, within the Department and the Commission which are of a

nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, subsection (a) shall be fined not more than $2,500 or imprisoned not more than one year, or both.

SEC. 603. The Secretary is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in him.

SEC. 604. Except as otherwise expressly prohibited by law, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

SEC. 605. The Secretary is authorized to establish, alter, consolidate, or discontinue and to maintain such State, regional, district, local, or other field offices as he may deem to be necessary to carry out functions now or hereafter vested in him.

SEC. 606. The Secretary may, from time to time, establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem

to be necessary or appropriate, except that such authority shall not extend to the abolition of organizational units or components established by this Act.

SEC. 607. In the performance of functions transferred and vested in the Secretary or any officer or component of the Department, other than the Commission, the Secretary is authorized to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code, except that to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint, without regard to such laws, not more than the number of scientific, engineering, and professional personnel authorized, pursuant to appropriations Acts for fiscal year 1977, to be so appointed to the Energy Research and Development Administration, under other provisions of law, and may fix the compensation of such personnel not in excess of the rate for grade 18 of the General Schedule specified in section 5332 of title 5, United States Code.

SEC. 608. (a) There shall be within the Department not more than fourteen additional officers in positions authorized by sections 5315 and 5316 of title 5, United States Code, who shall be appointed by the Secretary and who

shall perform such functions as the Secretary shall prescribe from time to time.

(b) In addition to the authority provided in section 607, there shall be within the Department a number of permanent nonexempt positions in grades 16, 17, and 18 of the General Schedule not to exceed the number of such positions authorized, pursuant to appropriations Acts for fiscal year 1977, to be appointed in such grades for functions which are transferred to the Department under this Act.

SEC. 609. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code, for persons in Government service employed intermittently.

SEC. 610. Section 17 of the Federal Energy Administration Act of 1974 shall be applicable to advisory committees chartered by the Department.

SEC. 611. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions performed on the date of enactment of this Act in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as said term is

~~defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.~~

~~(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, prerequisite, right, privilege, or benefit incident to or arising out of such status, office, rank, or grade, nor shall any member so detailed be charged against any statutory or other limitation on strengths applicable to the Armed Forces or the Department. A member so detailed shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.~~

~~SEC. 612. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, services, equipment, personnel, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government in carrying out any function now or hereafter vested in him.~~

~~(b) The Secretary may, with or without reimbursement, provide research, service, equipment, personnel, and~~

~~facilities to any agency or instrumentality of the United States or any State, territory, the Commonwealth of Puerto Rico, the District of Columbia, or political subdivision thereof, or to any foreign government whenever he deems such action to be necessary and appropriate to the performance of functions now or hereafter vested in him.~~

~~(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the services, equipment, personnel, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use for providing the services, equipment, personnel, or facilities involved.~~

~~SEC. 613. The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reim-~~

~~bursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.~~

~~SEC. 614. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, such other real and personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.~~

~~SEC. 615. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:~~

~~(1) emergency medical services and supplies;~~

~~(2) food and other subsistence supplies;~~

~~(3) messing facilities;~~

~~(4) audiovisual equipment, accessories, and supplies for recreation and training;~~

~~(5) reimbursement for food, clothing, medicine, and~~

~~other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;~~

~~(6) living and working quarters and facilities; and~~

~~(7) transportation of school age dependents of employees to the nearest appropriate educational facilities.~~

~~(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.~~

~~(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary: *Provided*, That such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.~~

~~SEC. 616. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:~~

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

SEC. 617. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

SEC. 618. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

SEC. 619. The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund in such amounts as may be necessary to provide additional working capital are authorized. The working capital fund shall recover from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

SEC. 620. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

SEC. 621. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Con-

~~gress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:~~

~~(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation;~~

~~(2) an estimate of the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives;~~

~~(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources~~

~~and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;~~

~~(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, and to encourage conservation practices, and shall include recommendations for developing technologies capable of improving the quality of the environment and increasing efficiency;~~

~~(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of this Act.~~

~~SEC. 622. The Secretary, when authorized in an appropriation act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section more than 5 per centum of the appropriation for such fiscal year.~~

~~SEC. 623. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.~~

~~TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS~~

~~SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are hereby transferred to the Secretary for appropriate allocation.~~

~~(b) Positions expressly specified by statute or reorganization plan, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at level I, II, III, IV, or V of the Executive Schedule (5 U.S.C. 5312-5316) on the effective date of this Act shall be subject to the provisions of section 705 of this Act.~~

~~SEC. 702. Except as otherwise provided in this Act, the transfer of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act.~~

~~SEC. 703. Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department or the Commission to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.~~

~~SEC. 704. Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974, or any other provision of law or regulation may exercise such rights only within one hundred and twenty days from the effective date of this Act.~~

~~SEC. 705. Except as otherwise provided in this Act, whenever all of the functions vested by law in an agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized~~

~~by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316) shall terminate.~~

~~SEC. 706. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.~~

~~SEC. 707. All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—~~

~~(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act or by~~

~~Executive order to the Department or the Commission after the date of enactment of this Act, and~~

~~(2) which are in effect at the time this Act takes effect,~~

~~shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Secretary, the Federal Energy Regulation Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.~~

~~SEC. 708. (a) (1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof functions of which are transferred by this Act; but such proceedings and applications to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions~~

and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(b) Except as provided in subsection (d)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as this Act had not been enacted.

(c) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(d) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall

be continued with the Secretary or other official, as the case may be, substituted.

SEC. 709. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

SEC. 710. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary or other official or component of the Department in which this Act vests such functions.

SEC. 711. Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

SEC. 712. (a) The Federal Energy Administration Act of 1974, is hereby amended as follows:

(1) By repealing sections 4 (except subsections (i) and (j)), 7 (except subsections (e), (i) (2) (A), and (k)), 9, 28, and 30;

~~(2) Section 52(a) is amended by deleting the word "and" in paragraph (2), by deleting the period at the end of paragraph (3), and by adding at the end of the subsection: "; and (4) the States to the extent required by the Natural Gas Act and the Federal Power Act,"; and~~

~~(3) Section 55(b) is amended by striking out "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission.".~~

~~(b) The Energy Reorganization Act of 1974 is hereby amended by repealing section 108.~~

~~(c) The Atomic Energy Act of 1954 is hereby amended as follows:~~

~~(1) By repealing section 26; and~~

~~(2) By repealing section 161(d) as it relates to functions transferred by this Act.~~

~~(d) Section 502 of the Motor Vehicle Information and Cost Savings Act is amended by adding at the end thereof the following:~~

~~"(g) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section.".~~

~~(e) The Energy Conservation Standards for New Buildings Act of 1976 is hereby amended as follows:~~

~~(1) In section 304 by adding "the Secretary of~~

~~Housing and Urban Development" to the list of those with whom consultation is required; and~~

~~(2) In section 310 by adding "the Secretary of Housing and Urban Development" to the list of those with whom the Secretary shall act in cooperation.~~

~~(f) The Rural Electrification Act of 1936 is hereby amended by adding a new section 16 to title I thereof to read as follows:~~

~~"SEC. 16. In order to insure coordination of electric generation and transmission financing under this Act with the national energy policy, the Administrator in making or guaranteeing loans for the construction, operation or enlargement of generating plants or electric transmission lines or systems, shall consider such general criteria consistent with the provisions of this Act as may be published by the Secretary of Energy.".~~

~~SEC. 713. Section 19(d) of title 3, United States Code, is amended by inserting immediately before the period at the end thereof the following: "Secretary of Energy".~~

~~SEC. 714. (a) Section 101 of title 5, United States Code is amended by adding at the end thereof the following: "The Department of Energy.".~~

~~(b) Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:~~

~~"(14) Secretary of Energy.".~~

(c) Paragraph (22) of section 5313 of title 5, United States Code, is amended to read as follows:

"(22) Deputy Secretary of Energy."

(d) Section 5314 of title 5, United States Code, is amended by deleting "(21) Chairman, Federal Power Commission," and by inserting in lieu thereof "(21) Chairman, Federal Energy Regulatory Commission.", by deleting "(60) Deputy Administrator, Energy Research and Development Administration," and inserting in lieu thereof "(60) Administrator of the Economic Regulatory Administration, Department of Energy.".

(e) Section 5315 of title 5, United States Code, is amended by deleting "(60) Members, Federal Power Commission" and inserting in lieu thereof "(60) Members, Federal Energy Regulatory Commission 4.", by deleting "(102) Assistant Administrators, Energy Research and Development Administration (6).", and by adding at the end of the section the following:

"(114) Assistant Secretaries of Energy (9).

"(115) General Counsel of the Department of Energy.

"(116) Administrator of Energy Information Administration, Department of Energy.

"(117) Inspector General, Department of Energy.

"(118) Additional Officers, Department of Energy (4).".

(f) Section 5316 of title 5, United States Code, is amended by deleting "(8) Administrator, Bonneville Power Administration, Department of the Interior.", by deleting "(135) General Counsel, Energy Research and Development Administration.", by deleting "(136) Additional Officers, Energy Research and Development Administration (8).", and inserting in lieu thereof the following:

"(135) Deputy Inspector General, Department of Energy.

"(136) Additional Officers, Department of Energy (10).".

SEC. 715. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

SEC. 716. The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

SEC. 717. As used in this Act—(1) references to "function" or "functions" shall be deemed to include reference to duty, obligation, power, authority, responsibility,

~~right, privilege, and activity, or the plural thereof, as the case may be; and (2) references to "perform" when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.~~

~~TITLE VIII—EFFECTIVE DATE AND INTERIM APPOINTMENTS~~

~~SEC. 801. (a) The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary may promulgate regulations pursuant to section 708(a)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.~~

~~(b) In the event that one or more officers required by this Act to be appointed by and with the advice and~~

~~consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.~~

That this Act may be cited as the "Department of Energy Organization Act".

TITLE I—DECLARATION OF FINDINGS, POLICY, AND PURPOSES

SEC. 101. (a) The Congress of the United States finds that—

(1) the United States and the world face an increasing shortage of nonrenewable energy resources;

(2) this energy shortage presents a serious threat to the national security of the United States and to the health, safety, and welfare of its citizens;

(3) a strong national energy program is needed to increase the efficiency of energy use and availability of energy resources, particularly renewable energy resources;

(4) responsibility for energy policy execution, regulation, and research, development, and demonstration is presently vested in many agencies and departments, and this fragmentation hinders development of an effective Federal response to the energy shortage; and

(5) formulation and implementation of a national energy program require the integration of certain Federal energy functions into a single department in the executive branch.

(b) It is the policy of the United States that—

(1) energy conservation shall enjoy the highest priority in any national energy program, and shall be carefully considered as an adjunct to programs to increase energy supply and as an option to programs that may present health, safety, or other environmental hazards;

(2) major emphasis shall also be given to the development and commercial use of solar, thermal, recycling, and other technologies utilizing renewable energy resources;

(3) the environmental and social consequences of any national energy program shall be analyzed and considered in evaluation of the program's potential; and

(4) public participation in the development and enforcement of any national energy program shall be provided for, encouraged, and assisted.

SEC. 102. The purposes of this Act are (1) to establish a permanent Department of Energy in the executive branch, (2) to vest in the Secretary of Energy such functions as are vested in, or transferred to, him by this Act, (3) to achieve, through the Department, effective management of energy functions of the Federal Government, (4) to provide the mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long-term energy problems of the Nation, (5) to safeguard and conserve our natural resources and environment, and (6) to promote the interest of consumers.

TITLE II—ESTABLISHMENT OF DEPARTMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy (hereinafter in this Act referred to as the "Department"). There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary") who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.

SEC. 202. There shall be in the Department a Deputy Secretary, nine Assistant Secretaries, and a General Counsel, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions as the Secretary shall prescribe from time to time. The Assistant Secretaries shall be designated as follows:

(1) Assistant Secretary for Public, Congressional, and Intergovernmental Relations;

(2) Assistant Secretary for Conservation;

(3) Assistant Secretary for Defense Programs;

(4) Assistant Secretary for Environment;

(5) Assistant Secretary for Fossil and Nuclear Energy Technologies;

(6) Assistant Secretary for Policy, Evaluation, and International Programs;

(7) Assistant Secretary for Competition;

(8) Assistant Secretary for Resource Applications; and

(9) Assistant Secretary for Solar, Geothermal, Recycling, and Other Energy Technologies.

SEC. 203. The Deputy Secretary shall act for, and exercise the functions of, the Secretary during the absence or disability of the Secretary or in the event the office of

Secretary becomes vacant. The Secretary shall designate the order in which the Assistant Secretaries, General Counsel, and other officials shall act for, and perform the functions of, the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

SEC. 204. (a) There shall be within the Department an Energy Information Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Administrator shall be a person who, by reason of professional background and experience, is especially qualified to manage an energy information system. There shall be transferred to and vested in the Administrator (on a nonexclusive basis as the Secretary may determine) all functions and authorities transferred to, and vested in, the Secretary under this Act relating to collection, analysis, and dissemination of energy information and data. The Administrator shall be subject to all duties and responsibilities established under part B of the Federal Energy Administration Act of 1974.

(b) In the performance of his professional functions in connection with collecting, analyzing, and disseminating energy information, the Administrator shall not be responsible to, or subject to, the direction of any officer, employee, or agent of the Department.

(c) The Administrator shall, upon request, promptly provide any information or analysis in his possession to any other administration, commission, or office within the Department relating to the functions of such administration, commission, or office.

SEC. 205. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to or vested in the Administration.

(b) The Secretary shall utilize the Economic Regulatory Administration to administer—

(1) any function which may be delegated to the Secretary under the Emergency Petroleum Allocation Act of 1973;

(2) any function transferred to the Secretary by section 301(b) of this Act which relates to establishment of rates and charges under the Federal Power Act and the Natural Gas Act (subject to the provisions of section 401); and

(3) such other functions as the Secretary may consider appropriate.

(c) The Administrator shall insure an adequate opportunity for public participation, including an opportunity for hearings, in issuing any rules or regulations under this section.

SEC. 206. (a)(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

(2) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

(3) The Inspector General or the Deputy may be removed from office by the President. The President shall

communicate the reasons for any such removal to both Houses of Congress.

~~*(4) The Inspector General and the Deputy shall each be subject to the provisions of subchapter II of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.*~~

~~*(5)*~~ (4) *The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.*

(b) It shall be the duty and responsibility of the Inspector General—

(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local

governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse; and

(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary, to the Federal Energy Regulatory Commission, and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

(1) an identification and description of significant problems, abuses, and deficiencies relating to the admin-

istration of programs and operations of the Department disclosed by such activities;

(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiences.

(e) The Inspector General (1) may make such additional investigations and reports relating to the administra-

tion of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to

programs and operations with respect to which the Inspector General has responsibilities under this section;

(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this section.

(h) For purposes of this section, the term "Department" includes any component thereof, including the Federal Energy Regulatory Commission.

TITLE III—TRANSFERS OF FUNCTIONS

SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested

by law in the officers and components of either such Administration.

(b) Except as provided in section 401, there are hereby transferred to, and vested in, the Secretary the functions of the Federal Power Commission, or of the members, officers, or components thereof—

(1) in prescribing, issuing, making, amending, and rescinding rules, regulations, and statements of policy, pursuant to the Federal Power Act and the Natural Gas Act, which are of general applicability;

(2) relating to energy information, subject to subsection (c) of this section, under sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act;

(3) under section 202(a) of the Federal Power Act (relating to establishment of regional districts);

(4) under section 202 (c) and (d) of the Federal Power Act (relating to emergency interconnections);

(5) under section 202(e) of the Federal Power Act (relating to regulation of exports of electric energy);

(6) under (A) section 3 of the Natural Gas Act, and (B) section 7 of such Act (to the extent such section is applicable to the regulation of exports and imports of natural gas);

(7) under sections 4, 5, and 7 of the Natural Gas

Act (to the extent that such sections relate to the establishment and review of priorities for curtailments of natural gas deliveries); and

(8) relating to regulations of general applicability with respect to the rates and charges at which natural gas is first sold to any natural gas company for resale in interstate commerce under the Natural Gas Act.

(c) The Secretary and the Federal Energy Regulatory Commission shall, to the extent necessary to carry out their respective functions, utilize the data-gathering authorities of sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act. The Secretary and the Commission shall coordinate their data-gathering activities to avoid duplication and undue burden on any person.

SEC. 302. There are hereby transferred to, and vested in, the Secretary:

(a) All functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department, to the extent such functions relate to or are utilized by the Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration. The authority for the functions so transferred includes, but is not limited to, section 5 of the Flood Control Act of 1944, the Bonneville Project Act of 1937, and the Federal Columbia River Transmission System

Act. Notwithstanding sections 606 and 705 of this Act, each of the three such Power Administrations shall be maintained as a distinct entity within the Department.

(b) Such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department as relate to, or are utilized by, the Alaska Power Administration for the transmission and disposition (including acquisition by purchase or exchange) of electric power and energy and by the Bureau of Reclamation for the disposition (including acquisition by purchase or exchange) of electric power and energy, except that the authority for, and function of, operating the dams constructed pursuant to the Eklutna Project Act and section 204 of the Flood Control Act of 1962 shall remain in the Secretary of the Interior. The authority for the functions so transferred includes, but is not limited to, the Eklutna Project Act, section 204 of the Flood Control Act of 1962, the Reclamation Act of 1902, and Acts amendatory thereof and supplementary thereto, including, but not limited to, the authority for the sale of electric power or lease of power privileges under section 9(c) of the Reclamation Project Act of 1939, and the authority under section 303 of the Colorado River Basin Project Act.

(c) All the authority of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department for the transmission and disposition of

the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects constructed on the Rio Grande pursuant to the Act of June 19, 1954, as amended by the Act of December 23, 1963.

(d)(1) The authority of the Secretary of the Interior to prescribe regulations under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act, which relate to the—

(A) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures);

(B) implementation of alternative bidding systems authorized for the award of Federal leases;

(C) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements;

(D) setting rates of production for Federal leases; and

(E) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind,

except that such regulations shall be promulgated by the Secretary only after consultation with the Secretary of the Interior.

(2) The Secretary of the Interior shall retain any authorities not transferred by paragraph (1) of this subsection and shall be solely responsible for the issuance and supervision of leases and the enforcement of all regulations applicable to the leasing of mineral resources, including, but not limited to, lease terms and conditions and production rates. No regulation issued by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under this paragraph with respect to the issuance or supervision of leases. Nothing in this subsection shall be construed to affect Indian lands and resources or to transfer any responsibilities of the Secretary of the Interior concerning such lands and resources.

(e) Those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 16, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals,

other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining, which shall remain in the Department of the Interior; and

(3) coal preparation and analysis.

(f) The functions of the Secretary of the Interior to establish production rates for all Federal leases.

SEC. 303. The Secretary of the Interior shall afford the Secretary a reasonable opportunity, prior to the execution of a Federal lease, to disapprove any term or condition of such Federal lease which relates to the matters with respect to which the Secretary has authority to prescribe regulations under section 302(d). No such term or condition may be included in such a lease if it is disapproved by the Secretary.

SEC. 304. As used in sections 302 and 303 of this Act, "Federal lease" means an agreement which, for any consideration, including, but not limited to, bonuses, rents, or royalties conferred and convenants to be observed, authorizes any person to explore for, develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, or geothermal resources in public, acquired, or submerged lands or interests therein under Federal jurisdiction.

SEC. 305. All functions vested by law in the Director of the Office of Energy Information and Analysis by part B of the Federal Energy Administration Act of 1974 are

hereby transferred to the Administrator of the Energy Information Administration.

SEC. 306. There are hereby transferred to and vested in the Secretary all of the functions vested in the Secretary of Housing and Urban Development by the Energy Conservation Standards for New Buildings Act of 1976 (title III of the Energy Conservation and Production Act).

SEC. 307. There are hereby transferred to and vested in the Secretary such functions as are set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

SEC. 308. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of, and there is hereby transferred to, and vested in, the Secretary jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills) located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome) located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order of the President, dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1974.

The surface management of such reserves shall be carried out by the Secretary of the Interior under applicable laws, including the Federal Land Policy and Management Act of 1976, administered by such Secretary.

SEC. 309. There are hereby transferred to and vested in the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

SEC. 310. (a) The Division of Naval Reactors, established pursuant to section 25 of the Atomic Energy Act of

1954, as amended (42 U.S.C. 2035), and responsible for research, design, development, health and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs, is transferred to the Department under the Assistant Secretary for Fossil and Nuclear Energy Technologies and shall be deemed to be an organizational unit established by this Act.

(b) The Division of Military Application, established by section 25 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2035), and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 27 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2037), are transferred to the Department under the Assistant Secretary for Defense Programs and such organizational units shall be deemed to be an organizational unit established by this Act.

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

SEC. 401. (a)(1) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission (hereinafter referred to in this title as the "Commission").

(2) There are hereby transferred to, and vested in, the Commission (A) all functions and authority of the Federal Power Commission under the Federal Power Act and the

Natural Gas Act which are not specifically transferred to, and vested in, the Secretary pursuant to section 301(b) of this Act, and (B) all other functions transferred by title III of this Act which involve an agency determination required by law to be made on the record after opportunity for an agency hearing.

(3) Except as provided in section 301(b)(1), the Commission shall have the authority to prescribe, issue, make, amend, and rescind rules, regulations, and statements of policy under the Federal Power Act and the Natural Gas Act, and, in exercising such authority, shall coordinate its actions with the Secretary.

(4) The Secretary may assign to the Commission, by rule, any other functions vested in or delegated to him.

(b) The Commission shall be comprised of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the

same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c)~~(1)~~ The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) ~~the appointment of such hearing examiners as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of title 5, United States Code, except that assignment, removal and compensation of such hearing examiners shall be in accordance with sections 3105, 3314, 5302, and 7521 of title 5, United States Code,~~ **the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code,** *(2) the selection, appointment, and supervision of personnel employed by or assigned to the Commission, except that (2) the selection, appointment, and supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise*

personnel for his personal staff, (3) the distribution of business among personnel and among administrative units of the Commission, and (4) the use and expenditure of funds appropriated for Commission functions. The Secretary shall provide to the Commission such support and facilities as the Commission may need to carry out its functions.

~~*(2) The hearing examiners appointed pursuant to this section shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code.*~~

(d) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits any legislative recommendation or testimony, or comments on legislation, to the Secretary, the President, or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(e) In the performance of their functions, the members of the Commission shall not be responsible to, or subject to

the supervision or direction of, any officer, employee, or agent of the Department.

(f) A decision of the Commission shall be a final agency action within the meaning of section 704 of title 5, United States Code, with respect to matters within the Commission's jurisdiction and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(g) The Chairman of the Commission may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(h) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, such rules of the Federal Power Commission shall continue in effect.

(i) In carrying out all its functions, the Commission

shall have the powers authorized by the Federal Power Act and the Natural Gas Act to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions.

SEC. 402. No person in the employ of, or holding any official relation to, any person engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum, petroleum products, natural gas, coal, nuclear material, synthetic fuels, or energy from renewable resources, wastes, or geothermal steam, or in energy research or development, or owning stock or bonds thereof, or having a pecuniary interest therein, shall enter upon the duties of, or hold the office of Commission member. Members shall not engage in any other business, vocation, or employment while members of the Commission.

SEC. 403. The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held; but the Commission may sit anywhere in the United States.

SEC. 404. The Secretary, each officer of the Department, and each Federal agency, subject to applicable provisions of law, shall cooperate with the Commission in providing, upon request, such information as it may require.

SEC. 405. Nothing in this title shall be construed in any way to limit the functions of the Secretary relating to activities within the jurisdiction of the Secretary, including any function shared with the Commission.

SEC. 406. The Secretary may as of right intervene or otherwise participate in any adjudicatory proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedural fairness to all participants.

SEC. 407. For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency.

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SEC. 501. (a) Subject to the other requirements of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with

its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551 (4) of title 5, United States Code), issued pursuant to authority vested by law in or delegated to the Secretary or any officer, employee, or component of the Department, including any such rule, regulation, or order of a State or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary.

(b) In addition to the requirements of subsection (a), notice of any proposed rule, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this subsection as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency shall be achieved by publication of such rules, regulations, or orders in at least two newspapers of statewide circulation, except that, if such publication is not practicable, notice of any rule, regulation, or order shall be given by such

other means as the officer promulgating such rule, regulation, or order determines will assure wide public notice.

(c) In addition to the requirements of subsection (b), if any rule, regulation, or order described in subsection (a) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(d) The Secretary or any officer authorized to issue rules, regulations, or orders under the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act shall provide for the making of such adjustments, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rule, regulation or order.

(e)(1) With respect to any rule or regulation of the

Secretary the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in subparagraphs (A) through (C), as the case may be.

(2) For purposes of this subsection—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section.

(f)(1) Judicial review of agency action taken under

any law, the functions of which are transferred by this Act, shall, notwithstanding such transfer, be made in the manner specified in such law.

(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the

amount in controversy, the district courts of the United States.

(3) The Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of section 501, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) a reasonable time before taking the action.

(4) Notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28 United States Code. This paragraph shall not apply to the Federal Energy Regulatory Commission.

TITLE VI—ADMINISTRATIVE PROVISIONS

SEC. 601. (a) For purposes of this section—

(1) the term "Department" includes any agency, administration, commission, or other component thereof;

(2) the term "Department proceeding" includes any Department hearing, application, rulemaking or other determination, contract, grant, reward, fund transfer, claim, controversy, charge, accusation, or arrest;

(3) the term "employee" means any person holding a position in the Department;

(4) the term "employment" means employment with an energy concern and includes employment as a consultant, agent, attorney, or otherwise and includes voluntary employment;

(5) the term "energy concern" means any person significantly engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum or petroleum products, synthetic fuels, energy from renewable resources, wastes, or geothermal steam, nuclear energy, natural gas, coal, solar energy, or other energy-related source or resource, or in any research or development significantly related to such production, generation, transmission, distribution, or sale;

(6) the term "participate" includes participation by way of decision, approval, disapproval, recommendation, the rendering of advice, or investigation; and

(7) the term "supervisory employee" means any of the following officers or employees of the Department—

(A) an individual compensated at the rate provided for grade of GS-16 or above under section 5332 of title 5, United States Code;

(B) any other individual who, in the judgment of the Secretary, exercises sufficient decisionmaking

authority so that the provisions of this section should apply to such individual;

(C) the Director or Deputy Director of any State, regional, district, local, or other field office; or

(D) an employee or officer who has responsibility with respect to the award, review, modification, or termination of any grant, contract, reward, or fund transfer within the authority of the Secretary.

(b)(1) No supervisory employee shall knowingly receive compensation from, or hold any official relation to, any energy concern, or own stocks or bonds thereof, or have any pecuniary interest therein.

(2) Personnel transferred to the Department pursuant to section 701 of this Act shall have six months to comply with the provisions of paragraph (1) of this subsection with respect to prohibited property holdings. Any person transferred pursuant to section 701 shall notify the Secretary of all circumstances which would be violative of the restrictions described in subsection (b)(1) not later than fifteen days after the date of such transfer as determined by the United States Civil Service Commission.

(3) Where exceptional hardship would result, or where the interest is vested, the Secretary is authorized to waive

the requirements of this subsection with respect to any person covered. Such waiver shall:

(A) be published in the Federal Register;

(B) contain a finding by the Secretary that exceptional hardship would result; and

(C) indicate the steps taken by the Secretary to minimize conflict of interest and the appearance of conflict of interest.

Such waiver shall in no instance constitute a waiver of the requirements of section 208 of title 18, United States Code.

(c)(1) Each supervisory employee shall file with the Secretary, in such form and manner as the Secretary shall prescribe, a report describing all previous employment with any energy concern.

(2) Each former supervisory employee of the Department shall file with the Secretary, in such form and manner as the Secretary shall prescribe, not later than the November 15 of—

(A) the fiscal year following the fiscal year in which such person ceased to be an employee of the Department, and

(B) each of the succeeding two fiscal years,

a report describing any employment with any energy concern during the fiscal year to which such report relates.

(3) Each report filed pursuant to paragraphs (1) and (2) shall contain the name and address of the person filing the report, the name and address of the energy concern with which he held employment, a brief description of his duties and work for the energy concern, the dates of his employment, and such other pertinent information as the Secretary may require.

(4) The Secretary shall maintain a file containing the reports filed with him pursuant to paragraphs (1) and (2). All such reports shall be available for public inspection and copying at all times during regular working hours.

(d)(1)(A) For a period of two years after terminating any employment with any energy concern, no supervisory employee shall knowingly participate in any Department proceeding in which his former employer is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns.

(B) While an employee of the Department, no supervisory employee shall knowingly participate in any Department proceeding for which he had direct responsibility, or in which he participated substantially or personally, while in the employment of any energy concern.

(C) No supervisory employee who solicits, negotiates, or arranges for employment with any energy concern shall

participate in any Department proceeding in which such energy concern is substantially, directly, or materially involved.

(2)(A) For a period of two years after ceasing to be an employee of the Department, no supervisory employee shall, in any professional capacity for anyone other than the United States, appear or attend before, or make any oral or written communication or submission to, or filing with, the Department or any officer or employee of the Department in connection with any Department proceeding which was directly or indirectly under his official responsibility while a supervisory employee.

(B) For a period of five years after ceasing to be an employee of the Department, no supervisory employee shall, in any professional capacity for anyone other than the United States, appear or attend before, or make any oral or written communication to, or filing with, the Department or any officer or employee of the Department in connection with any Department proceeding in which he participated substantially or personally while a supervisory employee.

(3) Notwithstanding any penalty imposed under subsection (e), any violation of this subsection shall be taken into consideration in deciding the outcome of any Department

proceeding in connection with which the prohibited appearance, attendance, communication, or submission was made.

(4) Whenever the Secretary makes a written finding as to a particular supervisory employee that the application of a particular restriction or requirement imposed by paragraph (1) or (2) of this subsection in a particular circumstance would work an exceptional hardship upon such supervisory employee or would be contrary to the national interest, the Secretary may waive in writing such restriction or requirement as to such supervisory employee. The Secretary shall maintain a file containing all findings and waivers made by him pursuant to this paragraph, and all such findings and waivers shall be available for public inspection and copying at all times during regular working hours. Any waiver made by the Secretary of a restriction imposed under paragraph (2) of this subsection shall also be filed with any record of the Department proceeding as to which the waiver for purposes of participation is granted. No such waiver shall in any instance constitute a waiver of the requirements of section 207 of title 18, United States Code.

(e) Any person who violates subsections (b), (c), or (d), taking into account any waiver under subsection (b)(3) or (d)(4), shall be subject to a civil penalty, assessed by the Secretary, not to exceed $10,000 for each violation.

(f) Nothing in this section shall be deemed to limit the operation of section 207 or section 208 of title 18, United States Code.

SEC. 602. (a) Each officer or employee of the Department, including the Federal Energy Regulatory Commission, who has any known financial interest—

(1) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any Act, the administration of which is transferred pursuant to this Act;

(2) in property from which coal, natural gas, crude oil, or nuclear material is commercially produced;

(3) in any person engaged in the production, generation, transmission, distribution, or sale of electric power; or

(4) in any person engaged in production, sale, or distribution of nuclear materials;

shall, beginning on February 1, 1978, annually file with the Secretary a written statement disclosing all such interests held by such officer or employee during the preceding calen-

dar year. Such statement shall be subject to examination, and available for copying, by the public upon request.

(b) The Secretary shall—

(1) act, within ninety days after the effective date of this Act, by rule—

(A) to define the term "known financial interest" for purposes of subsection (a); and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) include, as part of the report made pursuant to section 621, a report with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b), the Secretary may identify specific positions, or classes thereof, within the Department and the Commission which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, subsection (a) shall be fined not more

than $2,500 or imprisoned not more than one year, or both.

SEC. 603. The Secretary is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in him.

SEC. 604. Except as otherwise expressly prohibited by law, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

SEC. 605. The Secretary is authorized to establish, alter, consolidate, or discontinue and to maintain such State, regional, district, local, or other field offices as he may deem to be necessary to carry out functions now or hereafter vested in him.

SEC. 606. The Secretary may, from time to time, establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate, except that such authority shall not extend to the abolition of organizational units or components established by this Act.

SEC. 607. In the performance of functions transferred to, and vested in, the Secretary or any officer or component of

the Department, other than the Commission, the Secretary is authorized to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code, except that to the extent the Secretary deems such action necessary to the discharge of his functions, ~~he may appoint, without regard to such laws, not more than the number of scientific, engineering, and professional personnel who are—~~

~~*(1) authorized, in accordance with appropriations Acts for fiscal year 1977, to receive compensation at a rate not less than the minimum provided for grade 16 nor more than the maximum provided for grade 18 of the General Schedule; and*~~

~~*(2) authorized, under other provisions of law, to be appointed, without regard to the civil service laws, to the Energy Research and Development Administration,*~~

~~and may fix the compensation of such personnel not in excess of the rate for grade 18 of the General Schedule specified in section 5332 of title 5, United States Code.~~ **he may establish scientific or professional positions within the Department as provided in section 3104 of title 5, United States Code.**

SEC. 608. (a) There shall be within the Department

not more than fourteen additional officers in positions authorized by sections 5315 and 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

~~(b) In addition to the number of positions which may be placed in grades 16, 17, and 18 of the General Schedule under section 5108 of title 5, United States Code, or under section 607 of this Act, not to exceed one hundred and five positions may be placed in such grades to carry out functions under this Act, except that positions established under this subsection shall be subject to standards and procedures under chapter 51 of such title 5.~~

(b) (1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secreary may place at GS–16, GS–17, and GS–18, not to exceed three hundred and fifty positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) Any position placed at GS–16, GS–17, or GS–18 under the authority of paragraph (1) may be filled only by a person who is transferred in connection with a transfer of function under this Act and who, immediately before the effective date of this Act, held a position having duties

comparable to those of such position. Appointments under this paragraph may be made without regard to the provisions of section 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments to GS–16, GS–17, and GS–18.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person appointed to fill such position under paragraph (2) leaves such position.

SEC. 609. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code, for persons in Government service employed intermittently.

SEC. 610. Section 17 of the Federal Energy Administration Act of 1974 shall be applicable to advisory committees chartered by the Department.

SEC. 611. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions performed, on the date of enactment of this Act, in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as said term is

defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade, nor shall any member so detailed be charged against any statutory or other limitation on strengths applicable to the Armed Forces or the Department. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

SEC. 612. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, ~~services,~~ equipment, ~~personnel,~~ and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) The Secretary may, with or without reimburse-

ment, provide research, ~~service,~~ equipment, ~~personnel,~~ and facilities to any agency or instrumentality of the United States or any State, territory, the Commonwealth of Puerto Rico, the District of Columbia, or any political subdivision thereof, or to any foreign government, whenever he deems such action to be necessary and appropriate to the performance of functions now or hereafter vested in him.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the ~~services,~~ equipment, ~~personnel,~~ or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use for providing the ~~services,~~ equipment, ~~personnel,~~ or facilities involved.

SEC. 613. The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in

lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

SEC. 614. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, such personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

SEC. 615. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) messing facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and

other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation of school age dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary: Provided, That such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

SEC. 616. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

SEC. 617. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

SEC. 618. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

SEC. 619. The Secretary is authorized to establish a working capital fund, to be available without fiscal-year limitation, for expenses necessary for the maintenance and opera-

tion of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund in such amounts as may be necessary to provide additional working capital are authorized. The working capital fund shall recover from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

SEC. 620. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

SEC. 621. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Con-

gress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium,

hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, and to encourage conservation practices, and shall include recommendations for developing technologies capable of improving the quality of the environment and increasing efficiency;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of this Act.

SEC. 622. The Secretary, when authorized in an appropriation act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section more than 5 per centum of the appropriation for such fiscal year.

SEC. 623. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the ~~personnel~~ ~~positions~~, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are hereby transferred to the Secretary for appropriate allocation.

(b) Positions expressly specified by statute or reorganization plan, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at level I, II, III, IV, or V of the Executive Schedule (5 U.S.C. 5312–5316) on the effective date of this Act shall be subject to the provisions of section 705 of this Act.

SEC. 702. Except as otherwise provided in this Act, the transfer of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such em-

ployee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act.

SEC. 703. Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department or the Commission to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

SEC. 704. Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred and twenty days from the effective date of this Act.

SEC. 705. Except as otherwise provided in this Act, whenever all of the functions vested by law in an agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component

thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

SEC. 706. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.

SEC. 707. All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of

functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

SEC. 708. (a)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of

any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(b) Except as provided in subsection (d)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(c) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(d) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall

be continued with the Secretary or other official, as the case may be, substituted.

SEC. 709. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

SEC. 710. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions.

SEC. 711. Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

SEC. 712. (a) The Federal Energy Administration Act of 1974 is hereby amended as follows:

(1) in section 4—

(A) by striking out the heading of such section and inserting in lieu thereof "Conflicts of Interest";

(B) by striking out subsections (a) through (h) of such section and redesignating subsections (i) and (j) as subsections (a) and (b), respectively; and

(C) by striking out, in the subsection redesignated as subsection (b), "holding any of the positions described in subsections (a), (c), (d), and (e) of this section" and inserting in lieu thereof "who is compensated at level II, III, or IV of the Executive Schedule and who is assigned principal responsibility for any program under this Act";

(2) in section 7—

(A) by striking out subsections (a) and (b) and redesignating subsection (c) as subsection (a);

(B) by striking out subsections (d), (e), (f), (g), and (h);

(C) by striking out "(i)(1)" and by striking out subparagraphs (A), (B), (C), (E), and (F) of subsection (i)(1) and redesignating subparagraph (D) of such subsection as subsection (b);

(D) by striking out, in the matter redesignated as subsection (b), "the rules, regulations, or orders described in paragraph (A)" and inserting in

lieu thereof "any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, pursuant to this Act";

(E) by striking out, in such subsection, "paragraph (2) of this subsection" and inserting in lieu thereof "subsection (c)";

(F) by redesignating paragraph (2)(A) of subsection (i) as subsection (c) and by striking out subparagraph (B) of subsection (i)(2); and

(G) by striking out paragraph (3) of subsection (i) and by striking out subsections (j) and (k);

(3) by repealing sections 9, 28, and 30;

(4) in section 52(a)—

(A) by striking out "and" at the end of paragraph (2);

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(C) by adding after such paragraph (3) the following new paragraph:

"(4) the States to the extent required by the Natural Gas Act and the Federal Power Act."; and

(5) in section 55(b)—

(A) by striking out "seven" and inserting in lieu thereof "six";

(B) by inserting "and" after "Federal Trade Commission;"; and

(C) by striking out "one shall be designated by the Chairman of the Federal Power Commission; and".

(b) The Energy Reorganization Act of 1974 is hereby amended by repealing section 108.

(c)(1) The Atomic Energy Act of 1954 is hereby amended by repealing section 26.

(2) Section 161(d) of the Atomic Energy Act of 1954 shall not apply to functions transferred by this Act.

(d) Section 502 of the Motor Vehicle Information and Cost Savings Act is amended by adding at the end thereof the following:

"(h) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section.".

(e) The Energy Conservation Standards for New Buildings Act of 1976 is hereby amended as follows:

(1) in section 303(11), strike out "Secretary of Housing and Urban Development" and insert in lieu thereof "Secretary of Energy";

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(2) in section 304(c), by inserting "the Secretary of Housing and Urban Development," after "the Administrator,"; and

(3) in section 310, by inserting "Secretary of Housing and Urban Development," after "the Administrator,"

(f) The Rural Electrification Act of 1936 is hereby amended by adding a new section 16 to title I thereof to read as follows:

"SEC. 16. In order to insure coordination of electric generation and transmission financing under this Act with the national energy policy, the Administrator in making or guaranteeing loans for the construction, operation, or enlargement of generating plants or electric transmission lines or systems, shall consider such general criteria consistent with the provisions of this Act as may be published by the Secretary of Energy.".

SEC. 713. Section 19(d)(1) of title 3, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", Secretary of Energy".

SEC. 714. (a) Section 101 of title 5, United States Code is amended by adding at the end thereof the following:

"The Department of Energy.".

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(b) Subsection (a) of section 3104 of title 5, United States Code, is amended by inserting after paragraph (4) the following new paragraph:

"(5) Department of Energy—not more than 200."

(c) Subsection (a) of section 5108 of title 5, United States Code, is amended by strining out "an aggregate of 2,754" and inserting in lieu thereof "an aggregate of 3,104".

(b) **(d)** *Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:*

"(14) Secretary of Energy.".

~~*(c)*~~ **(e)** *Paragraph (22) of section 5313 of title 5, United States Code, is amended to read as follows:*

"(22) Deputy Secretary of Energy.".

~~*(d)*~~ **(f)** *Section 5314 of title 5, United States Code, is amended by striking out, in paragraph (21), "Federal Power Commission" and by inserting in lieu thereof "Federal Energy Regulatory Commission", and by amending paragraph (60) to read as follows:*

"(60) Administrator, Economic Regulatory Administration, Department of Energy.".

~~*(e)*~~ **(g)** *Section 5315 of title 5, United States Code, is amended by striking out, in paragraph (60), "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission", by striking out paragraph 102, and by adding at the end of the section the following:*

"(114) Assistant Secretaries of Energy (9).

"(115) General Counsel of the Department of Energy.

"(116) Administrator, Energy Information Administration, Department of Energy.

"(117) Inspector General, Department of Energy.

"(118) Additional Officers, Department of Energy (4).".

~~(f)~~ **(h)** *Paragraphs (135) and (136) of section 5316 of title 5, United States Code, are amended to read as follows:*

"(135) Deputy Inspector General, Department of Energy.

"(136) Additional Officers, Department of Energy (10).".

SEC. 715. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

SEC. 716. The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare and transmit to the Congress

a report on the effects on employees of the reorganization under this Act, which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;

(2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

~~*SEC. 716.*~~ **SEC. 717.** *The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.*

~~*SEC.717.*~~ **SEC. 718.** *As used in this Act (1) references to*

"function" or "functions" shall be deemed to include reference to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) references to "perform" when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

TITLE VIII—EFFECTIVE DATE AND INTERIM APPOINTMENTS

SEC. 801. (a) The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary may promulgate regulations pursuant to section 708(a)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(b) In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

Mr. DINGELL. The Chair recognizes Mr. Brown for a brief statement.

Mr. BROWN. The minority has no formal statement prepared other than to concur in many of the points made by the chairman with reference to concerns he has expressed with the rather broad powers extended to the Secretary of the Department of Energy—anticipated Secretary of the Department of Energy, and the anticipated Department the way the legislation was originally drawn and the way it also is prepared to go to the House from the Government Operations Committee. I happen to serve both on the Government Operations Committee and on the Interstate and Foreign Commerce Committee and also, as the chairman did, testified about my concerns over these powers. I suppose it would be possible for us to suggest that if the policy is approved, that we might not be concerned about the power expressed by the person exercising that approved policy. However, the minority necessarily is always interested in trying to protect the interests of those with different opinions from the people in power and by the minorities and it seems to me in the shift of responsibility now in the legislation in the Federal Power Commission to the Secretary, not only are certain rights of persons to express their views and get certain proper procedures for the viewpoint which they hold brought to light limited, but also certain of those rights disappear entirely because of the loss of precedence established under the way the Federal Power Commission has operated over the last several years.

I think it is worthwhile for us to have this hearing and to make a determination as to just what the powers of the Secretary with reference to the Federal Power Commission, the Federal Energy Administration, existing agencies, will be and also perhaps to explore some of the powers which are granted the Secretary under the proposed National Energy Act.

For that reason I think it is worthwhile that this hearing be conducted and a full exploration of those powers be made. I think were it a different Secretary and a different administration, my position would not be vastly different. I also have great respect for Mr. Schlesinger. I am obliged to. His wife owns a farm in my district. So, therefore, in a mild way he is a constituent. But, never mind that respect and never mind that degree of personal affection. I would be concerned no matter what administration or what person would hold this office and have these powers.

Mr. DINGELL. The Chair thanks the gentleman. the Chair advises that our witnesses tonight are Hon. John F. O'Leary, Administrator of the Federal Energy Administration and Hon. Richard L. Dunham, Chairman of the Federal Power Commission.

Gentlemen, we welcome you and your associates.

STATEMENTS OF HON. JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION, ACCOMPANIED BY ERIC J. FYGI, ACTING GENERAL COUNSEL; AND HON. RICHARD L. DUNHAM, CHAIRMAN, FEDERAL POWER COMMISSION, ACCOMPANIED BY DREXEL D. JOURNEY, GENERAL COUNSEL

Mr. DINGELL. Before we recognize you, Mr. O'Leary, the Chair had requested that Mr. Schlesinger appear here to discuss these matters since he would be, as we all understand, the next Secretary. It being the case, however, that he is not able to be with us, you are appearing by his direction in his stead, am I correct?

Mr. O'LEARY. That is correct.

Mr. DINGELL. I understand you bear with you full powers to speak on behalf of the administration on matters before the committee?

Mr. O'LEARY. I will do my best to do that, Mr. Chairman.

Mr. DINGELL. We will, therefore, allow you small room for retreat in the event you feel you cannot.

Mr. O'LEARY. Thank you for that small room, Mr. Chairman.

Mr. DINGELL. I assure you it will be very small.

We will now recognize you for your statement, Mr. O'Leary.

Mr. O'LEARY. Mr. Chairman, I welcome to the opportunity to appear before you and the members of the subcommittee to discuss the relationship of the Department of Energy legislation to the President's National Energy Act.

The Department of Energy bill—H.R. 6804—recently reported by the Committee on Government Operations, transfers to the Department the functions of the Federal Energy Administration, the Federal Power Commission and the Energy Research and Development Administration. It also transfers certain energy-related functions of the Department of the Interior, Department of Housing and Urban Development, Department of Commerce, and the Interstate Commerce Commission. The Secretary will have consultation rights with certain other Federal agencies on energy-related programs.

This legislation will bring together the existing energy functions of the Federal Government and will provide the mechanism through which to carry out many of the programs contained in the National Energy Act. The bill itself, however, does not grant new substantive authority to the Secretary of Energy in any of the areas with which you have indicated particular concern, Mr. Chairman.

I would like to briefly discuss each of these issues which you have identified as areas of particular concern.

The committee-reported bill in the House, H.R. 6804, transfers rulemaking authority to both the Secretary and the Federal Energy Regulatory Commission. The Secretary's rulemaking authority would extend to the issuance of rules, regulations, and policy statements of general applicability, under the Natural Gas and Federal Power Acts. The Commission's rulemaking authority would encompass all other rules not inconsistent with the rules of the Secretary. These provisions contain no new substantive grant of authority. They authorize the Secretary and the Commission to exercise rulemaking power only to the extent that the Federal Power Commission could exercise such power on the date of enactment of H.R. 6804. As such, the rulemaking authority contained in H.R. 6804 would have no substantive effect on the provisions of the National Energy Act.

Similarly, the authority currently vested in the Federal Power Commission with regard to emergency interconnections under section 202(c) of the Federal Power Act would be vested in the Secretary pursuant to H.R. 6804. I should point out that authority under section 202(b), in the committee-reported bill, relating to interconnection authorities generally would remain vested in the Commission, subject to the general rulemaking authority of the Secretary. Thus the provisions of the National Energy Act dealing with the interconnection (section 521 of subpart 3 of part E of title I) would not be affected in allowing the Commission established within the Department pursuant to H.R. 6804 to continue to exercise its authorities regarding such interconnections. The Secretry—just as the Federal Power Commission presently could do—would be able to prescribe general rules relating to this interconnection function, but the Commission would retain full power with regard to individual cases handled under those general rules.

Similarly, with regard to establishment of priorities for curtailments of natural gas, the Secretary would be empowered to issue policy statements, as the FPC presently has in effect, or a rule of general applicability, if such a rule could be issued under applicable judicial precedent, outlining curtailment priorities. Once again, however, the Commission could retain authority to decide individual curtailment cases.

With regard to the authorities regarding emergency interconnections and curtailment priorities, the administration believes that it is proper to grant these essentially executive branch shortage management functions to the Secretary of Energy in order to facilitate interfuel tradeoffs in time of shortages. Further, we believe that the division of responsibility between the Secretary and the Commission in these areas will have no substantive effect on the National Energy Plan. The National Energy Plan, in section 416

of part D of title I does extend the basic authority granted the President by the Emergency Natural Gas Act of 1977 for 2 additional years. This authority, however, would not be impacted by H.R. 6804 as reported.

Finally, with regard to wellhead pricing of natural gas, H.R. 6804 would give to the Secretary of Energy the authority to set rates and charges for sale of natural gas for resale in interstate commerce. We believe that this authority should be vested in the Secretary, in order to assure that pricing decisions relating to major fuels such as natural gas can be better coordinated with overall energy policy objectives, as mandated by the Congress.

In that connection, part D of title I of the National Energy Act would alter the natural gas pricing system currently in effect. We believe that there is a consistent approach between H.R. 6804 as reported and the National Energy Act provisions in this regard. By establishing statutory criteria for wellhead pricing of natural gas, and vesting that authority in the President, the National Energy Act would seek to assure continuity in the pricing of oil and natural gas. Similarly, by vesting authority under current law in the Secretary to determine wellhead pricing of natural gas, the same objective of a more rational pricing policy is recognized. The approach of H.R. 6804, quite clearly, reflects the state of the law as it now is. The approach of H.R. 6831, the National Energy Act, reflects the state of the law which the administration believes would best serve the national interest with regard to pricing of natural gas.

Mr. Chairman, we believe that the administration and the House Government Operations Committee have been careful in avoiding the granting of new authority in the Department of Energy Organization Act. Surely, some of the provisions of that legislation may change the locus of responsibility for carrying out a variety of functions, among them functions now exercised by the Federal Power Commission. This change in locus of authority, however, should have no substantive effect on the provisions of the National Energy Act.

Thank you. That concludes my prepared statement.

Mr. DINGELL. Thank you, Mr. O'Leary.

The Chair recognizes now Mr. Dunham.

STATEMENT OF HON. RICHARD L. DUNHAM

Mr. DUNHAM. Mr. Chairman, I offer my prepared remarks for inclusion in the record.

Mr. DINGELL. Without objection, Mr. Dunham's prepared remarks will appear in the record in full.

Mr. DUNHAM. One comment. We were able to get a copy of the House bill just this afternoon so most of my comments listed in my prepared statement relate to my interpretation relating primarily to the Senate bill and the pages of H.R. 6804 enclosed with your May 17th letter.

Mr. DINGELL. We want your comments on the House bill and on the Senate bill. We will keep the record open so you can give us additional comments after you have had a chance to read the new House legislation. We will do likewise for you, Mr. O'Leary.

Mr. O'LEARY. I just received it this afternoon myself.

Mr. DINGELL. It is with regret that I find we again address our business with haste because of the pressures of the process. If you can get it to us before the end of the week, it would be much appreciated.

Mr. DUNHAM. I understand both the House and Senate bill refer to changes or divisions of responsibility essentially between the rule-making authorities and the adjudicatory bases. If I may, to use just a few figures here will give some indication of the dimensions of FPC workloads, I realize that statistics are not indicative necessarily of the future significance, but they do give some feeling.

In 1976 the rulemaking proceedings initiated before the Federal Power Commission during that year number about 34—initiated by the Commission, 27; by petition, 6. We disposed of 17 of those rulemaking proceedings.

In regard to the nonrulemaking dockets, again to give you some feel of the dimensions of the workload and the extent to which that reflects upon the proposed redivision or reassignment in the President's bill and both the House and the Senate bills at the beginning of the year we had 4,999 cases pending. We disposed in total during the year of 3,617 and had pending at the end of the year 4,446. This does not, of course, include a number of filings and applications, numbering some 15,000 which were disposed of summarily, without docketing. What we are dealing with in volume is a flow of about 8,000 cases, something in that neighborhood in terms of the total volume during the year. This case volume contrasts with the rulemaking proceedings of the Federal Power Commission last year of some 34. Thirty-four were initiated and 17 were disposed of.

I believe the rest of my testimony, which has been introduced into the record, answers your specific questions. I will conclude my statement at this time.

[Mr. Dunham's prepared statement follows:]

STATEMENT OF
RICHARD L. DUNHAM
CHAIRMAN, FEDERAL POWER COMMISSION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

MAY 24, 1977

Mr. Chairman and Members of the Subcommittee, I support the fundamental concepts underlying the creation of the Department of Energy.

In my April 11th report to Chairman Jack Brooks of the House Government Operations Committee, I emphasized two basic concerns supporting the need for an administrative mechanism such as the proposed Department, as follows:

> * * *the system of energy management and regulation we need to meet the Nation's needs for energy now and in the future requires greater accountability to Congress and to the President than is provided by the traditional independent regulatory Commission.
>
> * * *the responsibility for dealing with the Nation's energy resources, the development of those resources, and the delivery of those resources to consumers is now fragmented among many agencies in government. [1/]

The May 17th letter of the Subcommittee Chairman poses a number of questions directed to H.R. 6804, Titles III, IV and

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1/ On March 9, I testified before the Senate Government Operations Committee in support of the proposed Department.

and V.[2/] My statement addresses the questions in the order stated.[3/]

Q. 1. What effect will the provisions of sections 301(b) and (c) and 401(a)(3) have on the provisions of H.R. 6831, insofar as that bill amends the Federal Power and Natural Gas Acts?

Answer: H.R. 6804 is an organizational bill not a substantive bill. The effects which I foresee upon H.R. 6831 are limited to matters of work assignments between the Secretary and the Federal Energy Regulatory Commission (Energy Commission). I cannot predict the precise resolution of the duties assigned to each. That will depend upon final terms of a bill at the time of passage. S. 826 is an organizational bill, also.

Q. 2. Section 301(b)(1) authorizes the DOE Secretary to issue, etc., rules, regulations and Statements of Policy, pursuant to the above Acts "which are of general applicability."

(a) Please identify those functions of the FPC under each Act that could, under this provision, be administered by the Secretary of DOE and not the new regulatory Commission.

Answer: As I interpret H.R. 6804, any of the functions of the FPC which are not otherwise specifically delegated, e.g., to the Secretary, would be administered by the Energy Commission. The Secretary's rulemaking authority would be governed essentially by the provisions of the

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2/ In preparing this statement, it should be noted that I was not able to secure a copy of H.R. 6804 (print of May 16th, as reported by the Government Operations Committee). I had a copy of S. 826 as passed by the Senate May 18th. Accordingly, my comments are directed at pages of H.R. 6804 enclosed with Chairman Dingell's letter of May 17th.

3/ See also my letter to Chairman Dingell dated May 2, 1977 addressing earlier similar questions. It is requested that the Subcommittee accept this statement which utilizes single-spaced format, in part.

Administrative Procedure Act, 5 U.S.C. 551(4). That law defines, and states the nature of the general rulemaking authority of administrative bodies. It is the law which the Commission now utilizes in the areas of substantive regulation when the FPC is acting under the Federal Power Act and the Natural Gas Act. The APA definition states as follows:

> "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor, or of valuations, cost, or accounting, or practices bearing on any of the foregoing;

S. 826 makes particular assignments as between the Secretary and the Energy Regulatory Board (Board). In addition to general rulemaking authority as referred to above, that bill prescribes specific procedures for interactions among the President, the Congress, the Secretary and the Board in matters of natural gas wellhead pricing regulation and energy actions.

(b) When the FPC exercises any of the functions identified in (a), please state the procedures used, in detail, by the FPC and indicate how they will differ from those followed by the DOE Secretary under H.R. 6804.

Answer: Sec. 501(a) of H.R. 6804 refers to and specifies procedures of 5 U.S.C. 551(4) for use by the Secretary or any component of the proposed Department. The bill implements due process-type steps in rulemakings which the FPC has found appropriate in its use of APA authority heretofore.

S. 826 specifies procedures as referred to in Answer 2(a) supra.

Q. 2. [sic Q. 3.] Please indicate how the FPC currently administers sections 301(b)(3) thru (8) of H.R. 6804 and state the procedures used by the FPC in administering those functions.

Answer: The procedures and practices by which these functions are now administered by the FPC are set forth in 18 Code of Federal Regulations.

(3) - 18 CFR 2.11
(4) - 18 CFR Part 32
(5) - 18 CFR Part 32
(6) - 18 CFR Part 153
18 CFR Part 157
(7) - 18 CFR 2.78
18 CFR Part 154
(8) - 18 CFR 2.56
18 CFR Part 154

Q. 3(a) Under H.R. 6831, (sic) who would administer each of the functions set forth in 301(b)(2) thru (8)? * * *section 521 of H.R. 6831 would give the FPC authority over interconnection under Section 202(b)* * *while H.R. 6804 places emergency interconnection authority under Section 202(c) and (d) of that Act, in the Secretary. We would appreciate your views and comments on that division, including comments on what staffing will be required to carry out these two functions.

Answer: As I interpret H.R. 6804, functions specifically transferred to the Department and not specifically reserved to the Secretary or some other named entity within the Department, would be administered by or under the supervision of the Energy Commission. Functions listed in 301(b)(2) - (8) are specifically designated as transferred to Secretarial administration. H.R. 6831 provides for the possibility of termination of the FPC in advance of the passage of that bill. See Sec. 4 of H.R. 6831 for the transitional connection to the Secretary or Energy Commission from the FPC, as appropriate. Insofar as staffing is concerned, that would depend upon work load which may be generated. I have no way of foretelling what it might be.

S. 1469 is the Senate version of Title I of H.R. 6831. S. 1472 is the Senate version of Title II.

Q. 4(a) What curtailment functions of the new Commission will be affected by Section 301(b)(7) of H.R. 6804?

Answer: As I interpret the bill, the Secretary will establish the general practices and procedures governing curtailment, and provide for the overall administration of the natural gas curtailment program. The Energy Commission would handle individual case adjudications where its procedures may be needed, due to conflicts and controversies among specifically affected individuals or parties.

S. 826 contemplates that the Secretary will administer the curtailment program and may, if he chooses, assign specific curtailment functions to the Board.

(b) Under H.R. 6831, would the Secretary or the Commission establish and review priorities for curtailment of natural gas?

Answer: As I interpret H.R. 6804 and 6831, the Secretary would do so. S. 826 would yield a similar result. See Answers 3, 3(a) and 4(a) supra.

(c) What procedures does the FPC follow in establishing and reviewing priorities for curtailments? What procedures will the Secretary follow under H.R. 6804? How do they differ?

Answer: The FPC essentially uses the rulemaking procedures of the APA. Because of Sec. 501 of H.R. 6804, the Secretary presumably will use the same procedures. S. 826 would yield a similar result.

Q. 5(a) Is Section 301(b)(8) limited solely to wellhead pricing of natural gas? Please explain.

Answer: As I interpret the bill, it is directed to the economic regulatory function of price setting for wellhead sales.

(b) What effect will Section 301(b)(8) have on the Commission's functions concerning the sale and resale of natural gas under the Natural Gas Act?

Answer: I assume the Subcommittee's reference is to the Energy Commission. Where wellhead sale pricing might be involved in particular adjudication of pipeline rates falling within the responsibility of the Energy Commission, I interpret H.R. 6804 to mean that the Energy Commission would accept the Secretary's determination of wellhead sale prices.

S. 826 would yield a similar result in pipeline rates set by the Board, although under S. 826, wellhead sale prices would be set in the first instance by the Board, subject to Presidential veto. The respective roles of the President, Secretary and Board are detailed in that bill.

(c) What procedures does the FPC follow in the case of wellhead pricing? What procedure will the Secretary follow under H.R. 6804? How do they differ?

Answer: The FPC essentially uses the rulemaking procedures of the APA. Because of Sec. 501 of H.R. 6804, the Secretary presumably will use the same procedure.

S. 826 specifies rulemaking procedures and additional interactions among the President, the Secretary and the Board. See Answer, Q. 2(a) supra.

Thank you. If the Subcommittee has questions, I shall be pleased to respond.

Mr. DINGELL. That is entirely appropriate due to the hour and the Chair will commence recognizing members for questions. The Chair recognizes the gentleman from Pennsylvania, Mr. Walgren, first.

Mr. WALGREN. Mr. Chairman, I will yield back to you my time at this time in order that I might engage in it at a later point with more knowledge.

Mr. DINGELL. The Chair recognizes the gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Gentlemen, I want to ask you both, and Mr. Fygi in particular as counsel, and the counsel for the Federal Power Commission, if in fact the precedental experiences of the Federal Power Commission—if the experiences of the Federal Power Commission in regulating have not established precedental rates for people appearing before the Federal Power Commission which would disapp[illegible]f the

authorities in this bill, formerly lodged in the Federal Power Commision, were transferred to the Department of Energy.

Mr. JOURNEY. Congressman Brown, the answer to that question is no. The Power Commission operates basically under the APA. Section 501 of the bill pulls down upon the Department the panoply of the APA procedures, adjudicatory and rulemaking. They are applied to whatever the due-process and procedural requirements are. They relate to individual cases.

Insofar as our adjudicatory work is concerned, whomever does that, whether it be the Administrator or the board, a regulatory commission, I read the bill as saying they would observe the procedures that are in place. We have really not done much more than build on APA procedures.

Mr. DINGELL. Would the gentleman yield very briefly?

Mr. BROWN. I will be happy to yield.

Mr. DINGELL. I observe with some interest there are a whole series of services that are published rather widely. They are published cases and decisions adjudicated by the Federal Power Commission. Are you going to tell me that those citations are going to remain valid and will not cease to exist as valid, suitable authority?

Mr. JOURNEY. As I understand this legislation, the law, as it is now developed, the statutory and case law would continue. Insofar as H.R. 6804 is concerned, cases such as *Hope*, *Permian,* and Colton would continue to be a good law. All any other cases would be good law.

Mr. DINGELL. I am sure they will be available as being suitable but will the Secretary be bound by them in his rulemaking?

Mr. JOURNEY. As I see it H.R. 6804 is basically a box-shuffling bill versus a substantive revision bill, the answer is, I think, whoever administers these powers would be bound by those precedents the same way as the Power Commission is.

Mr. DINGELL. Do you concur with that, Mr. O'Leary, remembering you are now speaking for the administration?

Mr. O'LEARY. Yes, Mr. Chairman, speaking for the administration, we are in concurrence. This has been aptly described as a box-shuffling enterprise and not an exercise to change substantive law. The existing precedents will continue to apply.

Mr. DINGELL. I thank the gentleman from Ohio.

Mr. BROWN. My concern is that the court will interpret—the court, in its procedures and the Secretary, will determine whether or not the existing precedents will apply and nothing in the legislation requires that they do. I would certainly like to see that that is cleared up in the legislation.

Mr. O'Leary, under the Government Operations reported bill, existing judicial review provisions would remain in effect under the Emergency Petroleum Allocation Act judicial review of FEA Order 1 vested in the temporary emergency Court of Appeals.

I understand that they were designed to handle cases expedited on an emergency basis. Why are we continuing this emergency procedure in a permanent Department of Energy? Isn't it possible we ought to move out of that area?

Mr. FYGI. To have revised the judicial review procedures in this case would have been tantamount to amending the Emergency

Petroleum Allocation Act which would control a provision of substantive law which we felt was beyond the scope and exercise of the proposal to establish the Department.

Mr. BROWN. Are you proposing an amendment in that respect or would you accept an amendment in that respect to set up rather more normal judicial review procedures than those existing in the Emergency Act that was passed at the time of the embargo, now that we have a permanent DOE?

Mr. FYGI. I understand your comment, Mr. Brown.

I think that the issue of addressing the various modes of judicial review in the context of the various authorities to go into the Department might well be considered at some stage in their entirety.

We have, in the various statutes to be transferred, processes of judicial review stemming from statutes enacted at various points in the country's history. It may be fruitful at some future time to reconsider those.

Mr. BROWN. Let me go back to my question with reference to the legislation and the fact it does not automatically carry with it the continuation of precedents established under the Federal Power Commission decisions. Would you be willing to accept, each of you, an amendment to that effect, to clarify the language so as to accomplish what I think you just indicated you would like to see accomplished?

Mr. O'LEARY. Mr. Chairman, I think this is the situation we find ourselves with. These precedents run really to the statute involved. In the one case, the Federal Power Act; in the other case, the Natural Gas Act. Once again, nothing that we are doing here amends those statutes and I would imagine that normal judicial review would say that the statutes are attached, the precedents are attached and so it goes.

Mr. BROWN. But I am not totally confident. My question was, would you accept an amendment to assure that that is the case?

Mr. O'LEARY. We would be glad to review such an amendment, Mr. Brown.

Mr. BROWN. Mr. Dunham, how do you feel about it?

Mr. DUNHAM. I couldn't judge the latter part of the question. A partial answer to your question is yes. This type of a hearing, absent anything else, tends to provide the legislative history which would support the position that the precedents would continue in view of the statements both of general counsel of the FPC and——

Mr. BROWN. I don't think this hearing record will be a part of that bill. In effect, what somebody is going to be obliged to do in making an interpretation—future Secretaries or the court—is to look at the legislation and the debate on the floor of the House if a contest comes up, in a legal sense on that issue, and make a judgment based on that.

I would like to clarify all that by simply putting in a modest little amendment which says previous precedents would continue to apply.

Mr. DUNHAM. The only point I am making here—I think Mr. O'Leary must speak for the administration.

Mr. BROWN. I think I understand that.

At the present time, Mr. O'Leary, FEA must allow only 10 days for comment after proposing a rule. but yet the Administrative Procedure Act generally allows 30 days for other agencies. Why do you want to continue this curtailed timeframe for public comment on decisions that would be made pursuant to the FEA regulations under the new Department of Energy again, now that it is a permanent Department of Energy and we have frozen these positions into place?

Mr. O'LEARY. Mr. Chairman, Mr. Brown, now that is a minimum. Generally speaking, we do provide more extensive notice than the minimum. That is to meet an emergency condition and again the primary reason we are not amending that is that we do not want to go back and amend substantive law. We simply want to change the organizational structure, not the legal structure behind it.

Mr. BROWN. Could you explain to me why you don't want to do that now that you are setting up a permanent body that will have procedural impact on the decisions that are made in this whole energy area? It seems to me that the temporary legislation which we passed in emergency circumstances at the time of the embargo is one thing—and I supported that, as I am sure you are aware, and felt that we needed some kind of extra power in that ability. Now we are freezing into an apparent permanent law—and I can think of nothing more permanent than a new cabinet level department—we are setting up a new permanent law, a new permanent department and we are in the process of freezing that, I guess, into shape for all time, because I can't think of any cabinet position that has ever been abolished—we have consolidated some—and it seems to me that we ought to use the general framework which has been applicable to previous departments, rather than go back and say, "We had an emergency bill, and in this Department we are going to set up emergency procedures, which are not as broad in terms of defending the right of an individual person to appeal the decisions of the Secretary."

Mr. O'LEARY. May we answer that in two parts?

Mr. BROWN. Surely.

Mr. FYGI. The first part of the question that you pose suggests that the rulemaking provisions in the Department of Energy bill which frankly are patterned after the FEA Act provisions, somehow afford less procedural safegurds than is the case from section 4 of the Administrative Procedure Act which was enacted into positive law with the rest of title V, as 5 U.S.C, 553, and while that provision may speak in terms of 30 days, it is the fact that section 4 of the APA provides agencies considerably more latitude to short-circuit the process than is the case with respect to section 501 of the Department bill. That is in two major respects, first, in the vast preponderance of rulemaking that would be produced in the course of economic regulation, the rulemaking process must include an opportunity for a legislative-type oral hearing.

Secondly, the circumstances under which the notice-and-comment period may be waived are severely more curtailed in the case of 501 and the FEA Act than is the case with section 4 of the APA.

Mr. DINGELL. The time of the gentleman has expired.

I would like to comment briefly on section 501. Now is 501 the same section 107 of the Economic Stabilization Act?

Mr. FYGI. It is not, sir.

Mr. DINGELL. Doesn't that indicate, then, that you are changing substantive law?

Mr. FYGI. No, sir, because what 501 is similar to is section 7 of the FEA Act, and we have consistently construed the FEA Act provisions regarding rulemakings as having been intended directly to affect the way FEA would carry out the allocation act authority. And indeed in every instance——

Mr. DINGELL. You have said it is similar to. You have not said it is the same as.

Mr. FYGI. In one of the pieces of correspondence which were associated with the development and consideration by the House of the Department bill, I believe we identified those, and they include distinctions, for example, such as the section 7 of the FEA Act requirement that rules promulgated by State and local entities delegated authority under any of the statutes administered by the FEA or the Department must be preceded by written notice in virtually all the newspapers of statewide circulation. The kind of alterations we made were to say significant number of newspapers of statewide circulation to decrease somewhat the degree of rigidity now contained in section 7 of the FEA Act.

However, they were nearly identical. I believe a close reading of the two as well as the materials we previously provided would make that quite clear.

Mr. GORE. Would the gentleman yield briefly?

Mr. DINGELL. I would be glad to.

Mr. GORE. I think the point is well taken. It has been pursued now, but looking at section 501, lines 22 and 23, you say that this is issued pursuant to authority vested by law in or delegated to the Secretary or any officer, employee, et cetera, but in section 7(i)(1)(A), you say issued pursuant to this act. The words "or delegated to" are missing, and it has a domino effect and the procedural safeguards contained in one act are not carried over to the other act, and people who litigated their rights with procedural safeguards in the past no longer have the benefit of those procedural safeguards and have to litigate issues according to an entirely different set of rules, and the fine line between procedural rights and substantive rights has been crossed. It is not a question of shuffling boxes around, but a question of changing procedure.

Mr. FYGI. May I respond to that, sir?

Mr. GORE. Yes.

Mr. FYGI. It is necessary to look not only at section 7 of the FEA Act, but section 5 in which it is said that one of the purposes of that act is to provide the framework under which any authority delegated to the Administrator of the FEA regarding petroleum allocation, for example, would be carried out.

Now bear in mind, please, what we are talking about in the case of the comparison between section 207 of the Stabilization Act procedure regarding rulemaking and section 501 is that the latter affords greater procedural safeguards than the original section 207 of the Stabilization Act.

It has been our interpretation in FEA that the intent of the Congress was very clear when the FEA Act was originally passed by

the Congress to provide those additional safeguards over and above those assured by section 207 of the Stabilization Act.

Mr. BROWN. Would the gentleman yield?

Mr. DINGELL. I have the floor, and I would be glad to yield to the gentleman from Ohio because he was very gracious to me.

Mr. BROWN. I have tried to follow this in response to my questions, and the questions asked by the gentleman from Tennessee, Mr. Gore, and apparently it hinges on whether or not you want to change substantive law in the establishment of the Department of Energy. You are changing substantive law in the establishment of the Department of Energy at least in one regard with which I am familiar, and that is the sunshine legislation that applies to collegial bodies. The decisionmaking process of the Secretary when you terminate a collegial body and move that decision into the single Secretary terminates, under that sunshine legislation that we passed out of the Government Operations Committee, the responsibility of that collegial body. No longer can you get into the Secretary's decisionmaking process and have it exposed to public view.

Mr. DINGELL. If the gentleman would permit, I don't want to quarrel—as a matter of fact, I agree—but I note Mr. O'Leary is nodding yes.

Mr. O'LEARY. No, I am nodding that I understand what you are saying.

Mr. DINGELL. That is a novel approach of an affirmative nod, but I happen to agree with the gentleman from Ohio, and maybe you can help us by telling us then that you disagree by nodding yes, and why.

Mr. O'LEARY. Mr. Chairman, these procedural requirements, of course, are in the rulemaking context, and the Secretary's rulemaking process will be subject to the usual entry, openness rules that are applicable to rulemaking activity in other agencies, so I don't think there we have a substantive change.

Mr. BROWN. I think the argument is so tenuous as to be perhaps better described as sleazy, but I will let it go at that.

Mr. DINGELL. The Chair observes that his time has expired, and the Chair recognizes first the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

Mr. Fygi, you said just a second ago that greater procedural safeguards are included in the new bill. Does that hamper administration?

Mr. FYGI. It has been our experience in FEA that it has not hampered administration. It has exerted, in my own judgment, a healthy discipline on the system which I believe has produced more thoroughly examined rulemaking proposals.

Mr. GORE. Isn't that a change in substantive law?

Mr. FYGI. It is consistent with the status quo in FEA, and unless one were to avoid providing a uniform set of ground rules within the Department, there really would be no way one could do so without arguably there being some change in existing law.

Mr. DINGELL. Would the gentleman yield?

Mr. GORE. Yes; let me make one point, first.

I think that you have just made our case. We want to know what those changes are.

I yield.

Mr. DINGELL. Maybe you want to comment on the gentleman's remarks before he yielded to me.

Mr. FYGI. Very well. The Federal Power Commission is today not subject to anything which resembles the section 501 procedures in the way it promulgates rules. Neither, to my knowledge, is the Energy Research and Development Administration. There are other agencies who are subject to such requirements, and they typically involve circumstances where the so-called hybrid type of rulemaking process has become more prevalent in recent years. So when the bill was being designed, we had to consider how best to make a provision in the legislation that would afford some uniform structure with rulemaking procedures while remaining faithful to what we perceived the Congress' later statement on the subject in the context of the FEA Act, and that is why we adopted that approach, as well as our having been persuaded that on the merits these were sound provisions.

Mr. GORE. Mr. O'Leary, I would like to ask you to respond to a statement that I heard in the chairman's introductory remarks. "The administration endorsed the new Senate bill." Has your position changed or modified, or is it still the same?

Mr. O'LEARY. Mr. Chairman, I think this had to do with the administration's acceptance of the regulatory aspects in the new Senate bill. We would prefer the version sent originally to both houses. However, in looking at the overall impact of the Senate action, we are willing to accept that. We would prefer, however, that it come out closer to the original version.

Mr. MOFFETT. Would the gentleman yield on that point for a moment?

Mr. GORE. Yes.

Mr. MOFFETT. One thing that puzzles me is how the administration could at the same moment have one position in the Senate and a different position in the House. It is one thing for you now to state that you would prefer, as I understand it, the House version that came out of Government Operations, on which Mr. Maguire and I are fortunate enough to sit, you would prefer that, you say now, to the Senate bill, but Mr. Maguire and I, I think I can speak for him in this regard, were lobbied to death by the administration saying that it was very important that we not introduce any amendments to change that particular portion of the bill that was before Government Operations, and I found out at that very moment the administration was making a deal with the senior Senator from my State, Senator Ribicoff, on the other side.

That was really very puzzling to me how that could happen, very puzzling and very troubling. I would like to know what kind of games were being played, if games were being played in that instance.

Mr. O'LEARY. I don't think games were being played. I think the administration was involved in the usual give-and-take in an attempt to get acceptable legislation out, and they did that.

Mr. MOFFETT. Does the usual give-and-take mean the senior Senator from Connecticut is more important to much more junior members from——

Mr. O'LEARY. No, not at all. I would say, however, that the House version is, in my judgment, a more acceptable version, although we certainly wouldn't go against the Senate version.

Mr. GORE. That means you wouldn't go against the new House version if it were changed, either.

Let me say, as a general proposition, I think the administration is to be commended for not making more mistakes in the rush to get this thing put together as quickly as possible.

I wanted to ask one final question, Mr. O'Leary. If title V does make substantive changes, then I would like to see them outlined. You have said here it does not. If it does not, then why have it in at all? Each of the substantive laws contain the applicable procedure in them, so if it makes no changes, why have them?

Mr. FYGI. The question, if I understand it correctly, was why have any procedural provision regarding rulemaking at all.

Mr. GORE. No, why have title V, if it makes no substantive changes? Why have it applied to these rules?

Mr. FYGI. The real question is what would have been the alternatives had we not had title V?

Mr. GORE. Silence.

Mr. FYGI. But what would have been the results of silence?

Mr. DINGELL. If the gentleman would yield, each of the procedural provisions are statutes whose administration is being transferred to the agency.

Mr. FYGI. And had we chosen the course of action which retained the FEA Act rulemaking procedures with respect to functions under that statute, it would have been more and more difficult as time went by, and the source of various of the Department's activity in a statutory sense became obscured, to be able to identify within the Department from a management standpoint whether these types of FEA rulemaking procedures were required in a given case or whether only section 4 of the APA procedures were appropriate.

Mr. GORE. I think you can make a good case for having a very small, limited administrative section to take care of those functions in the new Department, but why you have a large thing that just throws everything together in the same container——

Mr. DINGELL. Would the gentleman yield?

Mr. GORE. Yes.

Mr. DINGELL. In the light of what you have just said, we are in the process in this committee at this moment of writing substantive legislation dealing with all manner of energy pricing questions, the Federal Power Act, Natural Gas Act, and the others. Why is it necessary for this to be done in what you tell us is an organizational bill when we are, at the same time, working on a substantive bill, when we are here changing procedures which, as Judge Learned Hand said, "The procedural justice is the essence of liberty."

Mr. FYGI. I would submit, Mr. Chairman, that we are carrying out within the Department the Congress' latest statement when it enacted and reenacted the FEA Act as to how rulemaking should be carried out.

Mr. DINGELL. The Federal Power Commission is not under the FEA Act.

Mr. FYGI. It is not today; that is correct.

Mr. DINGELL. That is right, and this bill would, to a fair degree, put it under the FEA Act, would it not?

Mr. FYGI. I am afraid I didn't hear that.

Mr. DINGELL. Wouldn't section 5 of the bill put the Department under the FEA Act insofar as procedures?

Mr. FYGI. Those rulemaking procedures would be employed throughout the Department with respect to functions——

Mr. DINGELL. That is a striking change insofar as the rights of the parties involved are concerned, is it not?

Mr. FYGI. It is a change in the sense that instead of the Power Commission in its discretion providing an opportunity for oral hearing in connection with the rulemaking, it would have some statutory guidance to the effect that that is the norm, just as the FEA was given that guidance.

Mr. BROWN. Excuse me, Mr. Chairman.

Mr. DINGELL. Mr. Gore has the floor.

Mr. GORE. I yield.

Mr. BROWN. I keep getting lost in the convolutions of this argument. Is the gentleman saying that the title V rights are broader than the rights of the Federal Power Commission?

Mr. FYGI. That is quite correct.

Mr. BROWN. It seems to me that is not accurate in some instances. Again, the 10-day versus 30-day notice and comment period.

Mr. FYGI. That statement, I believe, is a fair characterization based on the last occasion I responded to that question; that is to say, the opportunity for oral hearing provided a more stringent criteria for the waiver of the hearing and comment process.

Mr. BROWN. When you responded to the questions that I asked you previously, you also told me you didn't want to change substantive law, and now I think the argument is you are changing it because the Federal Power Commission law provided those particular procedures, and that is what has me confused.

Mr. FYGI. I think in order to unravel this, and I fully sympathize with your line of query, the procedures applicable to rulemaking stem not just from the Gas Act and the Power Act, but from the Administrative Procedure Act, which was enacted in 1946 and in that sense the Administrative Procedure Act applied to the substantive authorities then extant throughout the government. Really, to the extent there is substantive law being changed or affected, it is the state of administrative law generally and not the laws peculiarly applicable to the Federal Power Commission or Energy Research and Development Administration that are being addressed by section 501.

Mr. BROWN. So you are changing the substantive law with reference to administrative procedures; is that true or not?

Mr. FYGI. If this or similar provision is included in the Department bill, the Congress will be specifying in the context of this Department how rulemaking procedures should be observed.

Mr. BROWN. Up to this point, it is your baby; it is your bill.

Mr. GORE. If I could reclaim my time.

Mr. BROWN. Yes.

Mr. GORE. Please respond to the gentleman's question.

Mr. FYGI. I believe the last question was, was it not within the agency's discretion at this stage?

Mr. BROWN. No, the last question was this bill is your baby; therefore, whoever is changing it, it is your proposal that it be changed; isn't that correct?

Mr. FYGI. It is our proposal that the FEA rulemaking procedures, as the most recent statement by the Congress as to this subject, appeared to us to be the appropriate state of law to be reflected in the Department.

Mr. BROWN. The answer is yes. That means yes; right?

Mr. FYGI. I don't know whether it means yes or no.

Mr. GORE. I would like to end with one brief question.

Mr. DINGELL. The gentleman from Tennessee has the time.

Mr. GORE. One brief question, Mr. O'Leary. If you could tell me in a very succinct statement, I would appreciate it, why do we need title V while we are working out substantive legislation?

Mr. O'LEARY. This is our desire for uniformity, Mr. Gore, and nothing else, and it is to make our way through the maze that Mr. Fygi has discussed with us, of a 1935 Act, 1938 Act, 1946 Act, and finally a 1974 Act.

Mr. GORE. We are going to be going that route, anyway.

Mr. O'LEARY. Yes, in one procedural respect, yes.

Mr. DINGELL. Let me ask you this question. You are suggesting, then, that this is the procedural solution to the procedural problems that have grown up since 1935, 1938, and 1972 or 1973, and 1974 or 1975?

Mr. O'LEARY. No; we are suggesting that this is the last statement of the Congress on this particular aspect of the procedure.

Mr. DINGELL. We have abundant statutes which are different and being rolled into one set of procedures, which is going to be vested in the Secretary, and we are curious whether this is what you really want, or do you want something later, and maybe if you want something later a committee of substantive jurisdiction should write the legislation.

Do you differ with that, Mr. O'Leary?

Mr. O'LEARY. No.

Mr. DINGELL. The Chair has to recognize some colleagues. I have been overusing the time up here.

The Chair now recognizes the gentleman from Connecticut, Mr. Moffett.

Mr. BROWN. Would Mr. Moffett yield for a comment appropriate at this point, briefly?

Mr. MOFFETT. Very briefly, yes.

Mr. BROWN. That is, the Federal Energy Administration legislation was written as emergency legislation at the time of the embargo. It related to oil policy. It did not relate to gas policy or electric power or anything else taken up in this legislation which will be the jurisdiction of the Secretary under the law as it is written, as I understand.

I thank you very much for letting me make that observation.

Mr. MOFFETT. I would like to ask a question of Mr. O'Leary about the OTA report regarding several aspects of the leasing provisions which have become a cause for concern. I will quote the report briefly. I am sure you are familiar with the language. I would like your comments on it.

The split jurisdiction as envisioned is based on a distinction between economic and land management issues which does not exist in practice. The split could result in severe coordination problems and result in delay, inefficiency and adverse environmental, and socioeconomic impacts. The authority gained by the Secretary of Energy does not seem that essential to the Department of Energy while it could cause significant land management problems for the Secretary of the Interior.

Could you comment on that?

Mr. O'LEARY. Yes, this is the classical problem of serving two sets of potentially conflicting objectives, Mr. Chairman. We do have, on the one hand, the charge of the Secretary of Interior to exercise prudent stewardship of land on public domain, including the Outer Continental Shelf, and to be the environmental protector of the lands. These lands also are strategically important from the standpoint of future petroleum supply. We have to find some way to conciliate those two possibly potentially conflicting objectives, and the proposal that is incorporated in the legislation is a useful and effective way to do that without creating delay and safeguarding both sets of interests.

Mr. MOFFETT. If Interior can do a pretty good job of taking into consideration environmental impact, water, and grazing impacts, and so forth, how does that fit in now; how is that going to be done?

Mr. O'LEARY. They will do that under the same sort of procedures that they have used in the past in their general requirement to protect the public domain and to see to it that activities on the public domain are managed in such a way they are not antagonistic to the environment. I think they will do it as in the past.

Mr. MOFFETT. These are two separate decisions. Where does the consulting take place and they come together?

Mr. O'LEARY. There will be extensive discussions at the staff level between the two agencies, as indeed there have been in the past, when that function, the energy function, was incorporated principally within the Secretary of the Interior, where he had, on the one hand, an Assistant Secretary who was responsible for mineral resource development, and another Assistant Secretary who was responsible for public land management.

Mr. MOFFETT. I understand that. What about when they disagree? Where is the jurisdiction then?

Mr. O'LEARY. The jurisdiction on a point of disagreement is in the President. And, of course, it always has been.

Mr. MOFFETT. One more question relating to oil pricing. Are there hearings going on now?

Mr. O'LEARY. There are hearings in this general timeframe on several aspects of it.

Mr. MOFFETT. Aren't there hearings on pricing decisions that have already been made?

Mr. O'LEARY. No, the principal hearings going forward now have to do with the triggering in certain parts of the country of the prices on middle distillate during the winter.

Mr. MOFFETT. How about hearings on Alaskan oil?

Mr. O'LEARY. There are no hearings going on on that at the moment.

Mr. MOFFETT. No hearings, but there are hearings about to go on; right?

Mr. O'LEARY. Mr. Moffett, I am told there may be some scheduled for Alaska.

Mr. MOFFETT. But the President has already made a decision on that, hasn't he?

Mr. O'LEARY. He has made a proposal on that.

Mr. MOFFETT. I am just afraid that we are having hearings on decisions that have already been made; is that not true? I don't want to state that if it is not true. The President has already taken a position. I don't want to see us get into a situation where we are having hearings on positions that have already been taken by the President. What is the purpose of the public input?

Am I misinterpreting that? Correct me if I am.

Mr. O'LEARY. Mr. Moffett, I think probably if these hearings are held at all, and I think there is question as to whether they will be held, they will not be on those principal elements that have been subject to Presidential decision. Certainly that would make a mockery of the whole process if you were to have a decision and then a hearing, and we have no intention of doing that, Mr. Moffett.

Mr. MOFFETT. Okay. Thank you.

Mr. GORE [presiding]. Thank you. The Chair recognizes the gentleman from New Jersey, Mr. Maguire, for 5 minutes.

Mr. MAGUIRE. Thank you, Mr. Chairman. I just have one question of Mr. O'Leary.

On page 4, you refer to the need for a Secretary to have the management functions and decisionmaking authority related to emergency interconnections and curtailment priorities in order to be able to act quickly in an emergency.

Now, my question is, aren't curtailment priorities best established well in advance of an emergency? Presumably they would not be established at the moment.

Mr. O'LEARY. Mr. Maguire, they are indeed established well in advance of emergency. The point that you have to concern yourself with here are decisions within categories. For example, if you are down to the point of cutting two's, who goes first, the agriculture people, or the school, that sort of decision. These sorts of things you have to do more or less in the context of what is going on at the moment, I think, are properly the emergency functions in a Secretary.

You will recall that the Congress, in January, on enactment of the Emergency Natural Gas Act, conferred those authorities on the President, who, in turn, conferred them on Mr. Dunham, not as Chairman of the Federal Power Commission, but as Administrator of that Act. I think that was a signal you did not want that function conducted collegially but done by an Administrator so you could get benefits of a rapid turnaround.

Mr. MAGUIRE. Within the context of a preexisting general curtailment strategy.

Mr. O'LEARY. Of course.

Mr. MAGUIRE. The question could then be who should set that general curtailment strategy, and I don't think in terms of emergency actions of the sort you have described that that would necessarily mean that that had to be done by the Secretary. It could equally well be done by a collegial body.

Mr. O'LEARY. It could be.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. GORE. Thank you, Mr. Maguire.

The Chair recognizes Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. I yield my time to the gentleman from Ohio, Mr. Brown.

Mr. BROWN. As all of you know, I am not a lawyer. I am trying, however, to understand as best a nonlawyer can, what the distinctions are here in terms of what is covered.

As I read section 501, Mr. Fygi, gentlemen, the language does not require the hearing on the record.

Mr. FYGI. That is correct.

Mr. BROWN. All right. Under the Natural Gas Act a hearing is required.

Mr. FYGI. But not a hearing on the record.

Mr. BROWN. Not a hearing on the record, that is right, but a hearing is required. It is not a formal adjudicatory hearing with cross-examination in the Natural Gas Act; however, Mr. Dunham, isn't it true that since the beginning of the price decision with reference to natural gas those have been formal adjudicatory hearings with cross-examination on the record, for the most part, and the reason for that, as I understand, has been that the effort was made in that way to have such hearings so that the Federal Power Commission would be sustained when you got a judicial review and in order to make a better record for that kind of a judicial challenge. Am I wrong in that?

Mr. JOURNEY. Congressman Brown, under the Natural Gas Act and the Federal Power Act, ratemaking is "rulemaking." The Natural Gas Act and the Federal Power Act provide that in prescribing rates there should be an opportunity for hearing. To be sustained in the courts on judicial review, both acts have "substantial evidence" and "error of law" tests.

Now, how you get to the satisfaction of those latter two tests is a procedural choice. The APA allows ratemaking by rulemaking.

If you will look at Opinion 770(a), the national rate, you will find that we did not have cross-examination. We have been successful in three circuits in sustaining our ability to do ratemaking by rulemaking and informal hearing procedures of the APA.

We allow comment, cross-comment, and, where appropriate, oral argument. There is a full factual development of a record in that sense to sustain the substantial evidence and error of law tests.

When the wellhead pricing regulation started out, it was done in a format of a trial-type hearing. The Commission, after *Permian*, moved away from that in the area rate case 390 U.S. 747. There have been decisions by three circuits sustaining the FPC's rate procedure through rulemaking. That is an issue now before the Court of Appeals for the District of Columbia on opinion 770-A.

Mr. GORE. Will the gentleman yield?

Mr. BROWN. Let me finish my point.

My concern is that section 501 does, in fact, permit that, but nothing in this legislation requires it, that it has become precedence for the Federal Power Commission and the language in this legislation does not provide for carrying that precedence.

Now, are we in substantial disagreement about the facts of that?

Mr. JOURNEY. Congressman Brown, 501 (f)(1) of H.R. 6804 says the judicial review taken under any law of the functions which are transferred will continue.

Mr. BROWN. Where are you reading from?

Mr. JOURNEY. I am reading from H.R. 6804, section 501(f)(1), which says that "Judicial review of an action shall be taken in the manner specified in the law of transfer." What I am saying to you, Congressman Brown—it is on page 93 of the restated H.R. 6804—you are trying to make procedural language the forge by which you arrive at the sustainable end product.

I am suggesting to you that procedure is a means to an end, and the ultimate tests of reviewability are in 19(b) of the Gas Act and 313(b) of the Power Act. They have not been changed.

Mr. BROWN. But your comments are going to judicial review and not procedures, and that is where my concern is.

Mr. JOURNEY. But you have used procedures to meet the ultimate judicial review tests. The procedures are in the 1935 Power Act and the 1938 Natural Gas Act. They are in sections 309 of the Power Act and 16 of the Gas Act as embroidered and assisted by the 1946 Administrative Procedure Act.

Mr. BROWN. And precedents.

Mr. JOURNEY. And precedents. What we have done is develop a regimen of notice, comment, cross-comments and oral argument, where appropriate, to meet procedural due process requirements to get to this happy state of meeting "substantial evidence" and in "error of law."

Mr. GORE. If the gentleman will yield.

Mr. BROWN. That is what you have done, but that is not what this legislation does, in my opinion.

I will be happy to yield.

Mr. GORE. Thank you.

Aren't you addressing section 4 of the Gas Act?

Mr. JOURNEY. Sections 4 and 5 of the Gas Act, because he was talking about wellhead pricing.

Mr. GORE. What about section 7? Isn't a hearing required there?

Mr. JOURNEY. Under section 7 a hearing is required, but not under sections 4 and 5 of the Natural Gas Act. An opportunity for hearing is required, but then the thing left undetermined by the 1938 legislation is what type of hearing.

Mr. GORE. What about in section 7?

Mr. JOURNEY. Under section 7, you have a hearing before a law judge.

Mr. GORE. And it is required, but under section 501 it is not required?

Mr. JOURNEY. Under section 501, you can pull out of the Administrative Procedure Act the tools that are appropriate to the section of the Gas Act you are working with.

Mr. GORE. You can, but you don't have to.

Mr. JOURNEY. I think under section 501, as I read it, 501(a), "Subject to the other requirements of this section, the provisions of subchapter 2 of title V shall apply," I would regard it as sufficient.

Mr. GORE. Doesn't section 553 of the APA apply?

Mr. JOURNEY. Yes, as do all of the parts of subchapter 2, which is the APA. It is 551 through the end of the section.

Mr. BROWN. If I may retrieve my time, as I read section 501, it allows certain options, some of which have been used in the past, but those are not required.

Let me ask you, Mr. Dunham, if I may, a different kind of question.

On page 4, you respond to question 3, indicating that the functions of section 301(b)(3) through (8) are now administered in accordance with section 18 of the Code of Federal Regulations.

What guarantee do we have in this legislation as it is drawn that the Secretary, the new Secretary of the Department of Energy, to whom these functions are transferred, will adopt these same procedures, procedures which have in the past been adopted by the Federal Power Commission?

Mr. DUNHAM. I think as of the point the law becomes effective the existing rules and regulations would automatically be transferred over. At that point, and some point subsequent, of course, these rules and regulations could be changed. They can now be changed by the Federal Power Commission under its existing procedures.

Mr. BROWN. As I understand under the law the Secretary is given the authority to establish those laws. I am not sure where I see that they are automatically moved over and become the laws unless the Secretary wishes to adopt them.

Mr. JOURNEY. In the bill, Congressman Brown—I am working with a copy that I didn't get until 4 o'clock this afternoon——

Mr. BROWN. You are better off than we are. We didn't get it at all.

Mr. JOURNEY. H.R. 6804, section 707, say the in-place functioning regulations of the constituent agencies would keep going.

Mr. DUNHAM. All orders, rules, regulations, licenses, and so forth, shall continue in force until modified, terminated, et cetera, which was the point I was trying to make.

Mr. BROWN. So it is your interpretation that this covers that point; is that correct?

Mr. JOURNEY. That is the way I read it, yes, sir.

Mr. GORE. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Collins.

Mr. COLLINS. I don't have anything to add to what the gentleman from Ohio has said. I will pass.

Mr. GORE. The Chair will now recognize members for another round of questioning, limited to 3 minutes.

The Chair will recognize himself first.

I would like to ask briefly, is title V necessary to do anything that the FEA now presently does, or that the FPC now presently does?

Mr. FYGI. We believe it is necessary in a practical sense in order to provide some uniform guidance to the Department as to the minimum standards of due process to be used in rulemaking activities, which minimum standards conform to those which the FEA has been required recently to adopt by the Congress.

Mr. O'LEARY. I think it is important to note, Mr. Gore, that by going to this uniform standard, we are placing a floor under the

procedures that are guaranteed to the public. If anything, we are raising the overall level in some cases. And I think from the standpoint of protection to the public and observance of due process, this really is an improvement as well as moving in the direction of uniformity.

Mr. GORE. Are there any points where the minimum standards are less than those required by the previous legislation?

Would Mr. Dunham address himself to that?

Mr. DUNHAM. As was pointed out earlier, the procedures under the Federal Power Act and the Natural Gas Act, which were passed in 1935 and 1938, prior to the Administrative Procedure Act, are basically less than the requirements here.

Now, we have, by adoption, generally used the APA; in some cases more stringent rules, if you will, than are in this section. But the basic law is under this standard of criteria in both the Natural Gas Act and the Power Act. Subject to the APA, we could change and revert back to only those requirements under the Power Act and the Natural Gas Act, which are less.

Mr. O'LEARY. Let me repeat the conclusion, that the procedural safeguards that are envisaged in title V are a floor that is an improvement over the floors existing currently under the older authorities in the FPC.

Mr. GORE. The Chair now recognizes the gentleman from Ohio, Mr. Brown.

Mr. BROWN. Mr. Chairman, I would like to move from the technicalities of what the law really says and what it doesn't really say, to the question of the collegial body as opposed to the single decision by the Administrator, and ask if, in fact, that does not reduce the alternative kinds of views that are available to the decisionmaking process?

It seems to me where a collegial body has been established in the law in the past, particularly one that is supposed to be not uniform in its political viewpoints, that it does provide for the insertion of alternate views and, to some extent, a balancing of the process of decisionmaking over a single decision by a single Administrator or Secretary as would be the case under the new Department.

Again, I think the sunshine legislation that covers collegial bodies, not single administrative decisions, but collegial bodies, would open up that discussion process that occurs in the collegial body for full examination, also, of the records kept, whereas a single administrative decisionmaker probably does not have discussions with himself and probably does not keep the same kind of records of those discussions if he does have them that might be kept by a collegial body, and, therefore, afford the public an opportunity to know the arguments and the weight of those arguments would not be as well protected under the single administrative decision.

Now, would you care to comment, either one of you, Mr. O'Leary, or Mr. Dunham?

Mr. O'LEARY. Mr. Chairman, I think that you can probably make a case on either side. My own view is that there are substantial strengths to the single administrator, as witness our reliance on that form of administration generally for the very, very weighty decisions that are made by this government in many economic,

social and political fields. We are, generally speaking, not ruled by collegial bodies. Generally speaking, we rely upon a single executive in this country. Most of the major policy decisions that are made in the conduct of the government's activities are made by a single administrator form of government.

It seems to me that as long as we have the procedural safeguards that are guaranteed by notice, we do get all aspects on the table if it is done right, and I think with the oversight that can be provided by the Congress, as well as the good will of the executive, it can be done right. Consequently, I think what you get out of this is an improved form.

I have had, as you know, experience with both collegial bodies and with single forms of administration. I have noticed both strengths and weaknesses in each. I do not really think that either form guarantees good administration. It is essentially a matter of choosing good people to run the executive agency or to be on the collegial body, as the case may be.

I think probably if you look back on performance over time that you will find that the performance of the single administrator type agency has exceeded that historically over the performance of the agencies that were administered by a collegial body. Just from the standpoint of sheer administration, there is much greater facility in a single administrator decisionmaker than there is in collegial decisionmaking.

So I would opt for the form that is proposed in the administration's proposal.

Mr. DUNHAM. I can comment on that, Mr. Brown, from maybe just a slightly different perspective, having participated in both forms, single administrator and collegial bodies.

In the particular areas that the President's bill proposes to delegate to the single administrator, they run to these generic rules, overall policy rules. Now to me, the significance of those decisions as to the general economy—in the cases in which are involved energy supply—the most important element is accountability. I am not sure you get the same type of policy accountability under a collegial body, that you would have under a single administrator.

Those areas are largely policy. They embrace greater degrees of judgment than an adjudicatory process does, where you are interpreting the rule. It seems to me—and I have testified many times, long before the last year and a half—that the lack of accountability is a problem for independent regulatory commissioners. In any body, in view of the enormous significance and wide-reaching significance of such things as the national rate, the danger is the tendency in a collegial decision to get either a compromise or a modified kind of decision which does not give either the energy decision that somebody needs or the economic decision. In those types of broad far-reaching decisions, and there are many other examples, construction-work-in-progress, that really direct the economy in major ways.

Mr. BROWN. If I can make an observation, it is that under the Natural Gas Act, wellhead natural gas prices are required to be merely just and reasonable. That allows a certain amount of discretion which in turn is balanced by the collegial process.

Under the Federal Energy Administration Act, the criteria by which determinations are made are set in the law. As I recall, there are certain findings required to be made, findings of fact, before one makes a conclusion.

Now, what bothers me is that apparently both of these things move forward to the Secretary and I am trying to determine how the Secretary will be guided by the law, whether it is going to be the breadth of the collegial body now being made by the Secretary and therfore allowing him somewhat more arbitrariness as an individual, or the rather narrow determination of the Federal Energy Administration legislation which requires him to make certain findings and which set certain criteria.

Why did the administration choose to vest natural gas pricing, which has a great deal of discretion associated with it, in a single Secretary and what has happened to the Federal Energy Administration responsibility?

Mr. O'LEARY. Mr. Chairman, I would refer you to the administration's proposals under the energy plan as they deal both with oil and gas. You know a regime is fully spelled out that, if enacted, will provide the same close control or very close to the same control that has been provided for oil pricing by the Congress.

I think that that is a useful symmetry, if we can get to that point. So I would urge you to take a look not simply at this reorganization, the legislation before you at the moment, but at the larger piece of legislation that you are reviewing, that would set forth the way the administration would plan to handle the matter of natural gas pricing over time.

Mr. BROWN. You have taken the natural gas pricing, it seems to me, to one person. Why did you choose to go that way rather than perhaps take the oil pricing to a collegial body?

Mr. O'LEARY. For the reasons we outlined earlier; this is a judgment call, in the judgment of the administration you do get a more efficient result and due process is observed with all the proper protections. I also believe there is a greater degree of accountability by going to a single individual than going to a mixing majority on a collegial body.

Mr. BROWN. Mr. Chairman, I believe my time is up.

Mr. GORE. Thank you. I will now recognize counsel for the majority, Mr. Demarest.

Mr. DEMAREST. Thank you, Mr. Chairman.

Mr. Journey, I would like to return for the moment to the discussion of APA procedures to Natural Gas Act authority which would be referred to the new Department.

Section 501 of H.R. 6804 would apply APA procedures, sections 501 through 507, to any authority vested by law in or delegated to the Secretary.

Now we have already looked at the relationship of those provisions to some aspects of sections 4 and 5 of the Natural Gas Act, but I am particularly concerned about those provisions of section 5 and section 7 of the Gas Act which require a hearing.

Now I would read subchapter 2 of the APA as using section 553 as the basic rulemaking provision, and section 553 does not require an opportunity for presentation of oral views. It does require section

556 and 557 procedures to be used if, and here are the key words, "if the rules are required by statute to be made on the record after an opportunity for agency hearing."

The Gas Act does not use those triggering words. Instead, in the Gas Act, section 7 says, in the second paragraph of subsection (c), "in all other cases the Commission shall set the matter for hearing."

In subsection (f) of section 7 it says "The Commission after a hearing may determine".

In section 5(e) the same language, "The Commission, upon its own initiative, may enter upon a hearing concerning the lawfulness of such rate charge classification or service."

Is your position that a combination of these requirements for a hearing and the judicial review provisions make it tantamount to a statement that this is a requirement by statute for a hearing on the record, for a determination on the record after opportunity for agency hearing?

If not, then does not this slip through the cracks?

Mr. JOURNEY. Mr. Demarest, the Gas Act has a number of provisions in it that say that there should be a hearing. The Gas Act does not say what kind of a hearing. 553, subchapter (c), relating to rulemaking, says an opportunity to participate in the rulemaking through the submission of written data views or arguments, with or without opportunity for oral presentation, after consideration of the relevant matter presented the agency, shall incorporate in the rules, adopted a concise statement of their basis and purpose.

The case law, as it has been interpreted and as we have gone through the various sections of the Gas Act, has articulated various areas where the FPC can use a rulemaking procedure of the 553 type. The case law also shows where we have to have a hearing of the 556 APA type.

I interpret section 501 and the judicial review provisions of the Power and Gas Act, in combination with the APA, to say that "the FPC will use whatever due process constraints—in case law—are appropriate to the section of the act you are working under."

So, if it is an abandonment proceeding under section 7(b) of the Natural Gas Act, you would have a trial-type hearing. If it is a rate proceeding or something that would fall under the procedures of section 553, you can use that kind of a procedure.

Mr. DEMAREST. With all due respect to your interpretation, I believe that the requirement for a hearing that parties before the Commission now enjoy under the Natural Gas Act would no longer be enforceable in the courts. Rather, they could be entitled, at the discretion of the new Secretary or whatever group within the Department was implementing this authority, to a discretionary hearing or an opportunity for presentation of oral data and argument. But I do not believe that we have picked up the requirement in section 5, in section 7, that requires a hearing.

Mr. JOURNEY. Well, Mr. Demarest, that is where I lump it under my reference to judicial review and case law.

I think the new department takes in trail all of that case law and must apply it.

If somebody administering the Gas Act tried to deny someone a hearing to which they were entitled under case law, I think they would be reversed under 19(b) of the Natural Gas Act. All of the rights are folded in. Development of the law, judicially stated, goes into the new Department as well as the statutory law. That is the way I interpret it.

Mr. DEMAREST. Does this not get us back to the problem that in searching for uniformity and doing it through this vehicle, we are using an admittedly convoluted process to reach a result due to limitations on committee jurisdiction, when the same result could be done much more cleanly by direct reference, and we would not have to use this new title V just to cure a problem to obtain uniformity and create other problems and the need for court interpretation?

Mr. JOURNEY. As Mr. Fygi said, this was a drafting choice. It was done with certain concepts and goals in mind. They have been stated. I am not saying you could not draft it in a different way; but I do believe that, convoluted or not, to use your terminology, it gets to the result that I stated. I believe that is what title V says.

Mr. FYGI. May I add an additional point, Mr. Demarest?

It seems to me that the existing aspects of the Gas and Power Acts that Mr. Journey has adverted to—with regard to whether determinations in specific types of cases will still require an adjudication type of process—and to what extent the agency has to rely on case law and the experience of the Commission—that problem will not be cured or that phenomenon will not be affected, irrespective of whether section 501 is in the statute or not.

What section 501 does is provide a common method of general rulemaking, not only for matters involving the Gas and Power Act but for a plethora of other kinds of activity that the department will engage in under current law.

Mr. DINGELL. If counsel will yield, you are going to pick up a number of other authorities in this agency to which we have not yet addressed ourselves. You are going to pick up, for example, powers under the Public Utilities Holding Company Act.

Does title V deal with the rulemaking and other activities under the Public Utilities Holding Company Act?

Mr. FYGI. Well, if the Congress in its action to date on the administration proposal had continued that element of the proposal that would transfer that authority, I would say the result is yes, that rulemakings under that authority would be governed by it. But as a factual matter that provision has not survived.

Mr. DINGELL. That proposal to pick up the Public Utilities Holding Company Act is not here?

Mr. FYGI. That is correct, that has not survived this bill.

Mr. DINGELL. All right. What other powers do you pick up under the legislation before us?

Mr. FYGI. Well, those authorities exercised by the Federal Energy Administration currently.

Mr. DINGELL. All right. All powers of the Federal Energy Administration. Is that allocation too?

Mr. FYGI. It would envision the delegation of the President's allocation authority to the new Department.

Mr. DINGELL. Now what about dam licensing; has that survived in H.R. 6804 as the committee reported it?

Mr. FYGI. The hydrolicensing of the Federal Power Commission? Yes, it would.

Mr. DINGELL. And relicensing?

Mr. FYGI. To the extent licensing can be done by rule, and I am not at all certain about it myself, I do not know that licensing is a type of activity that lends itself to disposition by rule.

Mr. DINGELL. Maybe Mr. Journey would like to give us his help on that.

Mr. BROWN. Would you yield?

Mr. DINGELL. I do not have the floor. Counsel has the floor, but I guess he would not mind too much if I yield.

Mr. Journey.

Mr. JOURNEY. Chairman Dingell, since hydrolicensing is not specifically delegated as one of the authorities which would be under secretarial administration under H.R. 6804, and since section 401 of the bill says that powers not vested in the Secretary are in the board as transferred from the Commission, I would assume that the collegial process would take care of the contested hydrolicensing part and the relicensing part. Under the APA, rulemaking and initial licensing can be done under one set of procedures, whereas relicensing falls under a different set of procedures under certain circumstances.

The answer is that hydrolicensing comes in because it is part I of the Power Act. I regard that as not being one of the denominated functions for the Secretary. So I assume it is within the Federal Energy Regulatory Commission authority and would be administered under the rules as they are now in place for licensing and relicensing.

Mr. DINGELL. You want to remember the board could, even if it were to exercise these powers, do so in a fashion inconsistent with the rules laid down by the Secretary. Am I correct or incorrect on that?

Mr. JOURNEY. I do not know that the rules of the Secretary can change substantive law.

Mr. DINGELL. The rules he issues are substantive law, are they not?

Mr. JOURNEY. Yes, but I do not think that the Secretary, as I read the bill, could issue a regulation and say the comprehensive use of resources test of section 10(a) of the Federal Power Act no longer applies. I do not believe you can elevate procedure above substance to achieve that result.

Mr. BROWN. Would you yield?

Mr. DINGELL. Let me hear from Mr. Fygi first.

Mr. FYGI. I would agree with Mr. Journey's analysis with one further observation. Under the APA, a license is specifically put in the category of an order. So that is consistent with my earlier remarks suggesting that licensing functions by their basic characteristics require an adjudication which would be beyond the scope of section 501.

Mr. DINGELL. The Secretary could, however, lay out the procedural rules for all of these activities, could he not, under his rulemaking procedures?

Mr. FYGI. The Secretary could do so, but he would do so at his peril were his rules to have the effect of negating existing substantive law.

Mr. DINGELL. But he would lay out the substantive procedures under which everybody functions, which might be somewhat different from those under which they serve, under 501 or 500, title V?

Mr. FYGI. I think the only observation I could make is whatever rulemaking the Secretary engaged in would have to be within the authority provided by the Gas and Power Acts, and indeed all the other statutes that would be transferred to the Department.

Mr. DINGELL. And not under title V?

Mr. FYGI. Title V speaks merely to a process, not to the substantive criteria that agency decisionmaking has to consider.

Mr. DINGELL. You understand that I am of the view that the ancient kings went out with the French Revolution. I am reluctant to reinstall any hereabouts. It is for that reason that I am almost as careful of procedural matters as I am of substantive matters. If I wrote the rules in a poker game and were playing poker with you, I would have no doubt who would walk home with the pots.

Mr. FYGI. I do not think I would have any doubt either, sir.

Mr. DINGELL. I yield to Mr. Brown.

Mr. BROWN. Gentlemen, the National Energy Act as presented by the administration perhaps, almost surely I think, assuming passage of the Department of Energy organizations, provides several new authorities to the Federal Energy Administrator in the areas of rate design and natural gas rate design, but both of those specifically have been areas in which the Federal Power Commission has been involved in the past.

It seems to me the policy is to continue enhancing the Secretary's power and grant no further authorities to the new Federal Energy Regulatory Commission except those which are currently limited to the Federal Power Commission.

Is that an accurate judgment of mine or am I seeing things in the dark?

Mr. O'LEARY. I think that we have to go back to the beginnings on this, Mr. Brown. In fact, we are trying to find a way in which we can consolidate under one manager, one administrator, a number of authorities that are diffuse throughout the government. To the degree that that coincides with your characterization, that is quite correct.

We are trying to find ways in which we can find accountability, where we can find much stronger coordination than has been the case heretofore in the development and implementation of energy policy, and that does have the concomitant of investing a certain amount of authority in that person.

Mr. BROWN. Now that you have made that little pitch for centralization of the power and the authority—and I am not altogether opposed to that because I think there is some reason, as I said in my testimony originally on the bill that you presented to the Government Operations Committee, that there is certainly a need for

coordination in a single individual, in a single department. It is more responsive, more efficient, perhaps as you say more accountable. I certainly hope so.

Why is not that well-known collegial body, the Nuclear Regulatory Commission, subsumed into the powers of the Secretary or why is it not even brought into the Department of Energy?

Mr. O'LEARY. Mr. Brown, you and I have gone over this ground a little bit before. I would be glad to repeat the testimony I made on this point some weeks ago before you and other members of this committee.

Mr. BROWN. I might say in view of the fact that we are repeating, in spite of the recommendation of the GAO to this effect, that it should be brought into the Department of Energy.

Mr. O'LEARY. Yes.

Mr. GORE [presiding]. The counsel's time, which has been yielded by a circuitous route to the gentleman from Ohio, has expired.

The witness is recognized for a response to the question.

Mr. O'LEARY. I think we have to note here the dichotomy between economic regulation on the one hand, of course that is the regulation undertaken by FEA in its regulatory function, and FPC and safety regulation on the other.

You will recall a good bit of discussion as to the propriety or impropriety of retaining the licensing function of the Atomic Energy Commission in its promotional role, one that had been characterized throughout its history as a very strong promoter of nuclear energy. The consensus of the conclusion by the public, by the administration and ultimately by the Congress, is that there should be a separation of those functions.

The separation took the form of a new piece of legislation that eliminated AEC and created ERDA on the one hand and NRC on the other. I think the reasons for that remain valid.

If we were to bring ERDA into the new energy agency and bring NRC along with it, it seems to me we would be back at square one, precisely where we were prior to June of 1974, and I think the same set of objections that led to the creation of NRC as a separate entity from the promotional agency that was then AEC would continue to prevail. So I think you can make a very clear case for the continuation of NRC in its present mode and for the roll-in of the Federal Power Commission as an economic regulator into the overall Energy Department.

Mr. GORE. Beauty is always in the eye of the beholder.

The Chair recognizes the gentleman from New Jersey for 3 minutes.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. O'Leary, there has been some confusion in some quarters about the provisions of the energy package that relate to rollover natural gas contracts and I am informed, I assume reliably, by administration representatives that the intention was not that all rollover gas contracts should go to the $1.44 price, but rather that each contract should be evaluated on its merits with respect to cost and other considerations that have been traditionally the basis for decisions by the FPC.

Is that a correct understanding?

Mr. O'LEARY. Mr. Maguire, in this case I am nodding my head because I agree with you. Indeed it is a correct understanding. What the statute would say if enacted in the form that the administration presented it, is that the $1.42 with escalations is a ceiling on the price of rollover gas. This would be a case-by-case determination as to the appropriate price that might be in one instance rising from 52 cents to 60 cents, for example, but it would by no means connote that there is an automatic rise to the $1.42 in each rollover case.

Mr. MAGUIRE. Okay. So it would be considered on an individual case-by-case basis, individual case basis.

Mr. O'LEARY. Yes.

Mr. MAGUIRE. Does that mean then that you would have no objection if an amendment were to be offered to the national energy bill which would say that any pricing decisions with respect to rollover natural gas contracts could not be made under procedures relating to rules of general applicability but rather under procedures dealing with individual cases; would that be a correct inference from what you said that you would not oppose such a clarifying amendment?

Mr. O'LEARY. I think that is where we are now, Mr. Maguire.

Mr. MAGUIRE. So you would be sympathetic to such a specification in the law of that particular distinction and therefore we would be dealing with rollover natural gas contracts not under the general applicability provisions of the Energy Reorganization Act but under the individual case procedures which you have designated for the board; is that correct?

Mr. O'LEARY. Let me repeat where I think we are now with the statute as drafted. I think what I have said to you is this: The $1.42 is a ceiling; we will take a look in each case, or the Administrator will take a look in each case at the appropriate level of price. I think that is the net effect of the statute as drafted. We would be pleased to consider any alternative language, but I think we are already there.

Mr. MAGUIRE. We are already there in the sense that the board rather than the Secretary, according to the conceptualization of the Energy Reorganization Act that you have presented to us, the board rather than the Secretary would make those determinations on a case-by-case basis.

Mr. O'LEARY. The hesitation that I have in going for the affirmative to that is there may be classes of contracts that would be amenable to generic treatment. This is a very complicated business. It deals with a whole set of heterogeneous contracts developed over a long period of time with vastly differing clauses and we would want to look at any amendment to that language along the lines that you suggest, I think, very carefully. But you understand, with precision, what I am telling you, it does not automatically roll over to the $1.42, there will be a decision with regard to the applicable price in most instances, I assume, that would be something under the $1.42.

Mr. MAGUIRE. Okay. I think we had a little bit of slippage but I would want to talk with you further on that.

Mr. GORE. Before recognizing counsel for a second round of questioning, the Chair recognizes the chairman, Chairman Dingell for 3 minutes.

Mr. DINGELL. Thank you.

I have before me here a couple of sections of the bill. Let's go to H.R. 6804 and look at the language: "Except as provided in section 401 there are hereby transferred to, and vested in, the Secretary the functions of the Federal Power Commission, or of the members, officers, or components thereof."

Then he has the authority to write rules of general applicability and then he can do this "relating to regulations of general applicability with respect to the rates and charges at which natural gas is first sold to any natural gas company for resale in interstate commerce under the Natural Gas Act."

Now that relates to the administration's bill on establishment of a comprehensive natural energy policy.

Now I come over here and I look at pricing provisions in section 408. Now I assume that the powers involved here are substantively transferred.

Let me read: "Section 408(a). Notwithstanding any maximum lawful price under sections 404 through 406, the President may, by rule, specify a special price under this section in excess of any such maximum lawful price, which shall be applied for purposes of such sections if the President determines that such special price is necessary to provide incentives for the production of natural gas or the manufacture of synthetic gas in categories which involves high cost"—which incidentally are not specified, and then it continues—"such as production,"—this is inclusive but not exclusive—"(1) in depths of more than 500 feet of water, (2) more than 15,000 feet below the surface of the Earth, or (3) from geopressurized brine."

So the President does this, has absolute authority in the sections relating to pricing. He has absolute authority to set up standards and categories, and so forth, except as otherwise limited.

Then I come down here and I find that at line 10 in H.R. 6831, the President—and I am reading now—"The President may specify such special prices for categories of production or on a national, geographic area, or case-by-case basis in accordance with section 553 of title 5, United States Code."

Now, this is a form of rulemaking—an informal rulemaking. So what you have done in the one bill, you vested yourselves enormous powers to pick and choose your procedures on the thesis that it is necessary that you have that power and yet in the other bill you are given great power with regard to pricing. Then you have set forth the idea that you should again adhere to a different procedure, an informal rulemaking.

Now I got some problems with using informal as opposed to formal rulemaking because of the evidentiary problems that exist. On the other flank, I got problems with the fact that you are getting massive powers to set up the rules of the game. And then I note that by a curious retreat or change you then set forward a specific, although rather restrictive, process under which the action will be done.

So you have gone from the point where you have said"We need power to make rules of general applicability" back to the point where you are going to have almost untrammeled authority to fix prices, and you have then recomplicated your simplified procedures

by setting out a whole new mechanism which is not found in your procedural sections of your restructured bill.

Now can you explain to me this curious anomaly?

Mr. O'LEARY. May I ask Mr. Fygi to address the procedural aspects and I will address the other anomalies, Mr. Chairman, if I may.

Mr. FYGI. All right.

The first anomaly, insofar as the reference to section for rulemaking contained in the passage that you read, suggests nothing more momentous than the fact that in a practical sense development of these two legislative initiatives occurred simultaneously and involved different people, and results in a situation rather similar to that with the Allocation Act administered by FEA where you have the reconciliation of the section 4 standards adverted to in the Allocation Act with somewhat more refined rulemaking standards found in section 7 of the FEA Act. So looking at it as a lawyer I don't think that particular facet of the passage you read would pose any legal problems, and were that authority carried out by the Energy Department, the section 553 procedures as buttressed by section 501 rulemaking procedures would be those employed to carry out that authority.

Mr. DINGELL. You will understand that on the one flank you are saying "We have to have authority to have everything under the same tent;" then in terms of the rulemaking and the procedural aspects, on the other hand, you then say "We should go back and should use section 553."

Now I find the first statement to be inconsistent with the second.

Mr. FYGI. Well, any apparent inconsistency reflects nothing more momentous than the fact that these bills were developed simultaneously by different people and were they both enacted in their current form they would present no particular legal problem in their administration were the President to delegate this authority under the National Energy Act to the Energy Department. The Energy Department would have to employ the rulemaking procedures in section 501.

Mr. DINGELL. I am not disposed to quarrel with what you say as to the substance but I am troubled in that it appears to set forth an apparent inconsistency of policy or an inconsistency with regard to whether or not the broad authorities set out in title V are in fact necessary.

Now am I incorrect in that?

Mr. FYGI. Well, from a lawyer's standpoint I would not necessarily characterize title V as an authority provision as much as guidance that would be given to the Department as to additional procedural safeguards that it would have to provide when it conducted rulemaking proceedings.

Mr. DINGELL. Guidance. In other words, they don't even have to adhere to these guidance provisions.

Mr. FYGI. No, it would be mandatory guidance they would be obliged to observe in order to promulgate a valid rule.

Mr DINGELL. Well, you know the inconsistency I find curious. I must confess that the mixture of authorities given tends to indicate that maybe I ought to have a few cold chills running up and down

my back from the standpoint of the amount of authorities you good folks are going to be exercising with the very breadth of authorities to set procedures and without over much limitation in terms of overview. Maybe you want to comment.

Mr. O'LEARY. Yes, Mr. Chairman, I think I would like to address that aspect of it. You know that the contemplation of relatively high prices for natural gas is limited to those instances in which we think there is a strategic target that is not within reach of the pricing regime laid out in the President's energy plan, which is to say within the $1.75-and-below energy regime. Specifically here we are thinking of the Devonian shales which offer a potentially very large resource, the geopressurized zones in the gulf.

Mr. DINGELL. The section that we are addressing deals with natural gas.

Mr. O'LEARY. Indeed, I am addressing that.

Mr. DINGELL. 15,000 feet below the surface, geopressurized, et cetera. I am not prepared to quarrel with you as to the wisdom. I find this amalgamate of authorities to be rather sweeping and your need to have one single process, as you set out, to be vitiated by the provisions of the last part of the matter which I read.

Mr. O'LEARY. Yes; let me address the substance of that matter. There may be a range of prices necessary to bring in, for example, on the one hand, gas from the Devonian shale; on the other hand, gas from the geopressurized resources of the U.S. gulf. It seems to me that as we begin to explore these we ought to have the tools available in the Administrator—I am sorry—in the Secretary of Energy to apply an appropriate price for an appropriate period of time so we can get some hands-on experience with the technology that is required to achieve these new objectives and bring them into play and that is the substantive reason for that particular provision.

Mr. DINGELL. Let me then come to a little bit else here.

This is an enormous power which is vested in the Secretary, or in the President, depending on which bill you read and it is an enormous amount of power which you vest in one man. Heretofore the Congress has carefully, and I think prudently, vested it in panels of 5, or 7, or 11, or 21 members, depending on which one of the Federal regulatory bodies you took. Yet here we are vesting it in one man, with, I think, rather less than adequate attention to due process, with rather less than adequate attention to the requirements of openness and sunshine and with rather loose standards in terms of definition.

Now please comment.

Mr. O'LEARY. Yes, Mr. Chairman.

I really don't regard this as an enormous power. I think it is a very significant power but I don't believe it is well characterized by the use of the term "enormous." Let's consider what we would be doing. We would be going to a completely pioneer area of natural gas production. We would in all likelihood look upon this as at the outset a contributor in the first few years of its application of a portion of 1 percent or perhaps 1 or 2 percent of the national production of natural gas, if it were successful. It is largely experimental in nature.

The context here is there are—we understand from our discussions with ERDA—some potentially very important resources that are not available within the current price context; we don't want to raise the total price regime to attract these resources into play. How do you deal with it? You deal with it, I think, in this sort of a setting where you can go out after a very limited target with very, very minuscle impacts upon the national natural gas in the bill.

Mr. DINGELL. Not to quarrel with what you are saying, for purposes of our discussion, let me concede them.

First of all, one, once these prices are fixed they become floors, as opposed to a ceiling, you won't go down below them. And, two, these prices will remain for all intents and purposes fixed for all similar categories in that area for at least, any reasonable foreseeable future.

Now do you deny either of those statements?

Mr. O'LEARY. Yes, I think I would disagree with your conclusion there, Mr. Chairman.

Were we, for example, to adopt a price—let's just pick one out of the air—of $4 in terms of 1977 dollars for geopressurized methane and have some experience with that, go in and find that on an accounting basis the cost with a comfortable rate of return, were in the area of $3, it seems to me that we would be driven to reduce the price for future transactions into the cost plus reasonable rate of return basis.

Now that does——

Mr. DINGELL. Mr. O'Leary, you have comforted me greatly. Please tell me where in the bill that is.

Mr. O'LEARY. Mr. Chairman, none of this is in the bill.

Mr. DINGELL. I see.

Mr. O'LEARY. The authority is in the Secretary to set prices.

Mr. DINGELL. I am less comforted. You are asking—I am to take this then on which of the three great virtues: Faith, hope or charity?

Mr. O'LEARY. We are dealing in faith at the moment, a great deal of hope, and, as ever in your case, with some charity.

Mr. DINGELL. I suspect there is very little of the last, possibly some of the second, and practically none of the first.

Mr. O'LEARY. Mr. Chairman, you know the great discipliner in this sort of activity is the very fact that whoever is running this agency would have from time to time to come before you and to explain his actions. I think if he were in the position of having made great gifts to the oil producing industry or the gas—more particularly to the gas producing industry under this authority—that you would pull him up short in short order and knowing that would be the case, he would use great restraint and discipline. I really think—

Mr. DINGELL. Let me recall to you the days before I took this subcommittee, a fellow by the name of Torbert Macdonald, my very special friend. The FEA addressed and very calmly, under the procedures that you set out, gave the industry $1 initially on the old oil prices. They raised it from $4-1/4 to $5-1/4 and Mr. Macdonald literally tore his hair out over this matter. Very fine man, fine chairman. FEA was not moved at all by this.

Now, how am I to assume then that I have this faith, in me, that you were setting forth?

Mr. O'LEARY. Well, Mr. Chairman, let's get back to what we are dealing with.

Mr. DINGELL. That is what we are dealing with, what you are talking about here.

Mr. O'LEARY. Right.

Mr. Chairman, we are dealing with a prospective resource that is not in the picture at the moment; that even with the best luck in the world, couldn't add up to say more than 1 percent if you were to begin now very heavily, 5 years from now. During that period of time, you in the Congress and we in the executive branch would gain a great deal of experience with the sort of price regime that would be necessary in order to optimize the contribution that this resource could make.

Mr. DINGELL. I have always heard it said that education is expensive. And I am satisfied that the kind of education set out here would be very expensive.

Now my problem is we have here today a commission that does in sunshine and debate, with rulemaking, public openness, public anticipation, yet under a rather curious set of rules we are moving this all into the hands and power of one man. As a matter of fact we don't even have it clear we are moving it into the hands of one good citizen.

How does that rhyme with what you are telling me?

Mr. O'LEARY. Yes, Mr. Chairman, I think ultimately one man would make the decision. But we call for better precision, better decisionmaking through better procedures for rulemaking, better public notice, better access to the problem, and equal public attention to the process under these rules as compared to the rules that would apply to the Federal Power Commission currently.

Mr. DINGELL. Mr. O'Leary, I am taking a great deal of the time of the committee. Would you tell us please in a memorandum how that in fact would be so?

Mr. O'LEARY. I surely will.

Mr. BROWN. Would you just yield for an observation, Mr. Chairman?

Mr. DINGELL. Yes, I would be glad to yield.

Mr. BROWN. The bill may not be the moral equivalent of war maybe, but certainly is the power equivalent of war. We seem to be extending great powers here that remind me very much of the wartime powers that we extended to the President in previous years that took us of a whale of a time to get back. I think that is what makes us nervous.

Mr. GORE. The Chair will recognize counsel, Mr. Demarest, for 3 minutes.

Mr. DEMAREST. Thank you, Mr. Chairman.

Mr. Fygi, I would like to review briefly the judicial review provisions, in particular section 501 in which it provides that the judicial review of agency action taken under any law, the functions of which are transferred by this act shall, notwithstanding such transfer, be made in the manner specified in such laws.

I would like to compare that to the language set forth in the FEA Act which says that judical review of administrative rulemaking of general and national applicability done under this act, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, and goes on to set forth the judicial review procedures.

Now, earlier, when we spoke about the incorporation by reference of FEA administrative procedures and their application to EPA rulemaking, we said a similar result would occur under the Department of Energy bill as occurs under the FEA Act, that is, the FEA Act by reason of reference in section 5 to allocation of price control authority under EPA specifically applies to FEA Act procedures to further rulemaking udner the authority of the Allocation Act.

I would think a similar result would obtain with respect to the judicial review except for the fact that the Department of Energy bill states that its functions which are transferred rather than transferred or delegated.

What is the significance of that? What EPA judicial review procedures remain, if any?

Mr. FYGI. There is no particular significance to the way the subsection (f) was drafted. The clear intent I believe was to preserve the existing modes of judicial review and in view of the fact that in the administration's original bill the Allocation Act authority was not transferred in that legislation because of Presidential authority as opposed to authority vested directly by statute in a line agency, the Department of Energy bill was merely silent as to any aspect of the Energy Act directly. And consequently, the manner of judicial review specified in the Allocation Act would continue even after a delegation of the President's authority under that statute to the Department of Energy.

Mr. DEMAREST. I think that result is inconsistent with your earlier statement to the extent that one could argue that these authorities are now in effect vested under this legislation, or not vested, and you get two different results don't you?

Mr. FYGI. I think the reason we have two different results is inherent in the way section 5 of the FEA Act is structured. It is noteworthy in the rulemaking procedures part of section 7 there is no parenthetical excepting Allocation Act functions, whereas there is such exception with respect to judicial review, so that suggests strongly even within section 7 itself that the Congress intended the new administrative procedures to apply to Allocation Act rulemakings as well as all others, but they did not have the same intention with respect to judicial review of Allocation Act rulemaking.

Mr. DEMAREST. Why the different treatment then, why is there not provision made for judicial review of functions not only transferred but vested, particularly in view of (f)(2) which provides that the district court shall have exclusive original jurisdiction of all other cases or controversies arising under this act, in view of your interpretation earlier that the administrative procedures of the FEA Act were made applicable to action taken by FEA under section 5 to administer the allocation act, that being a delegated authority and therefore becoming issuance of rules pursuant to the FEA Act.

Similarly, that same kind of rationale would apply here that the delegation of authority by the President to the Secretary who would then exercise those authorities pursuant to this act would give rise to not judicial review under section (f)(1) but rather under (f)(2).

I think the same rationale applies to that judicial review of cases and controversies under the Emergency Petroleum Application Act, under (f)(2), of one not being applicable.

Mr. FYGI. I would like to make a couple of observations as to our analysis. I think it is very helpful that we are going through this.

First, the comparison between the structure of section 501 of the Department bill to the rest of the bill and with section 7 and 5 of the FEA Act as compared with the allocation act is less than symmetrical because in section 5 of the FEA Act there was a quite differing and quite explicit contemplation expressed by the Congress in that statute, that indeed the Allocation Act authority would be administered by the FEA.

The other aspect is that section 501(f)(2) which provides for U.S. district court review of anything else that is left over, if you will, was not envisioned as applying to any circumstance other than, say, a personnel law issue or something like that where the nature of the complaint and the cause of action was such that it did not rely on a specific authority applicable to the Department that had its own judicial review positions.

The last point I would make is that the allocation act itself provides that initial judicial review shall occur in the district courts just as section 501(f)(2) does, so there is not necessarily a glaring inconsistency.

Mr. DEMAREST. There is a glaring inconsistency with respect to the review. That is a significant issue, is it not?

Mr. FYGI. There is no question but that the intention of the administration's proposal was to have the mode of review with respect to all the substantive authorities to be lodged in the new Department remain the way they now are.

Mr. DEMAREST. Well, it seems to me it would be useful to the committee if you could provide us with some memo explaining specifically why section (f)(2) does not apply to appeals of Emergency Petroleum Allocation Act orders.

Mr. FYGI. We would be happy to do that.

Mr. GORE. Without objection the record will be held open to have that material inserted at this point.

[The following material was received for the record:]

Section 501(f)(2) clearly states that it applies to "cases or controversies arising under this Act or under rules, regulations, or orders issued *exclusively* thereunder . . . " (Emphasis added). This formulation excludes from its scope actions arising under any other statutes, including the Emergency Petroleum Allocation Act (EPAA). Accordingly, judicial review under EPAA would continue to be carried out in the same manner as is now the case.

Mr. GORE. The Chair now recognizes counsel, Mr. Finnegan.

Mr. FINNEGAN. Mr. Fygi, title V does provide for the use of the Administrative Procedure Act, is that not correct?

Mr. FYGI. That is correct.

Mr. FINNEGAN. Now in addition to that, it has a number of subsections, all of which I understand have their origin from section 7 of the Federal Energy Administration Act.

Mr. FYGI. That is correct.

Mr. FINNEGAN. Now those subsections are in fact derived at a time of an emergency and they were emergency provisions put together that differ insofar as informal rulemaking procedures in section 553 of the Administrative Procedure Act is concerned. Is that correct?

Mr. FYGI. I would disagree with that characterization.

Mr. FINNEGAN. Do you have a copy of section 553 presently before you?

Mr. FYGI. I don't have it before me to my knowledge, but section 553 provisions are somewhat more modest. It is a shorter provision.

Mr. FINNEGAN. What is the requirement for rulemaking, the minimum time for rulemaking required under section 553?

Mr. FYGI. 5 U.S.C. 553 as I understand it provides for a period of 30 days before rules may go into effect, before they are adopted.

Mr. FINNEGAN. With the 30-day notice, is that correct?

Mr. FYGI. I would have to go through and read it closely again.

Mr. FINNEGAN. I point out subsection (d), "The requirement of publication of service of subsequent rules shall be made not less than 30 days before the effective date."

There are exceptions, there are waivers. One is that you cannot waive that 30-day requirement on items of policy and interpretation of rules.

Mr. FYGI. I cannot argue with you on that.

Mr. FINNEGAN. This provision authorizes a waiver to the extent it only establishes a minimum of 10 days, isn't that correct?

Mr. FYGI. The administration proposal does establish a minimum of 10 days.

Mr. FINNEGAN. It also allows you to go ahead and promulgate the rules and hold hearings after promulgation, is that correct?

Mr. FYGI. That is correct. To be contrasted with section 553 which contains no hearing requirement whatsoever.

Mr. FINNEGAN. But all of these provisions are established as emergency provisions.

Mr. FYGI. That is the point I want to speak to. The FEA Act procedures were adopted by the Congress in response to some historical aspects of the method in which, first, the Cost of Living Council, and then during the emergency the FEA had promulgated rules. It was designed as a means of limiting the agency's discretion and constraining the circumstances under which notice of comment periods were waived and the imposition of the hearing requirement was a plain reflection of the Congress' intent at that time, which was well after the embargo had terminated, so the emergency, the apprehension of the embargo period were well beyond the country at that juncture and it was felt that there was a necessity to have more elaborate procedures than those of section 553.

Mr. GORE. If counsel will yield, I thought it was passed largely in response to the Arab oil embargo and there was, if I remember correctly, a real feeling of urgency.

Mr. FYGI. I believe that is correct. The House action on the bill finally occurred in December. The Senate action, however, I believe, was not finally concluded until—certainly the conference action—until [redacted]ne of 1974. No, May of 1974, I beg your pardon, and the emba[redacted] had been lifted in that spring.

And, even so close to the emergency, we had experienced a good deal of criticism as to the rulemaking procedures employed to carry out the Allocation Act and the section 7 procedures were designed to provide additional safeguards.

Mr. GORE. Final passage may have been at some later time, but the procedures under discussion were enacted in the immediate wake of the embargo period.

Mr. FYGI. The procedures as I recall them were floor amendments that were introduced in the Senate at the behest of members of the Judiciary Committee who were concerned with the manner in which rulemakings had been carried out by the Cost of Living Council and the Federal Energy Administration and they were designed to constrain the degree of latitude the agency would have in waiving the comment period, waiving notice requirements and that sort of thing.

Mr. GORE. They relected the urgency of the legislation itself?

Mr. FYGI. They went in a direction quite different, in my own judgment, from the manner one would expect the Congress to respond to an emergency and they were designed to make more elaborate and provide additional safeguards for the process under which rules were promulgated. It is a so-called hybrid type of procedure.

The administrative scholars would agree that these kinds of rulemaking procedures are becoming more widely adopted and I think they were designed to work adequately in an emergency but provide additional notice and opportunity for public participation in the rulemaking process, more so than that which occurred during the embargo and prior to the FEA Act enactment.

Mr. GORE. As I understand your statement, they could have been more preemptory than they ended up?

Mr. FYGI. Absolutely.

Mr. GORE. That doesn't take away from the urgency that they reflect overall?

Mr. FYGI. I think that is a valid judgment and my own reactions I am recounting now were based in some measure on my personal recollections of the atmosphere that existed at the time and the reasons for those amendments.

Mr. FINNEGAN. The point of the matter is that the procedures you are recounting here were a modification of the Economc Stabilization Act procedures that were being used in connection with the FEA Act, but they did not go back to the APA-type procedures, particularly in connection with the informal rulemaking and the notice requirements and some of the other provisions. And the APA procedures are the ones used by the Federal Power Commission. The Federal Power Commission does not now use these types of procedures. Am I right, Mr. Journey?

Mr. JOURNEY. We have no set of regulations which codify all these steps, but we do insofar as affording due process requirement, we have gone beyond the APA procedures.

Mr. FINNEGAN. As a minimum you start with the APA procedures?

Mr. JOURNEY. Yes.

Mr. BROWN. Would counsel yield?

I don't think the record is getting made here as it should. First came the EPA, and those were rather limited opportunities for hearing and comment and that sort of thing. Then we went to the FEA, which expanded those opportunities but still did not go to the breadth which is contained in the APA and the APA does not have the breadth that the policies used as regular procedure by the FPC have. Is that the fact?

Mr. JOURNEY. Congressman Brown, if you put this in historical context, the APA was passed in 1946. These pieces of legislation Mr. Fygi was speaking about were circa 1970, somewhere in there. The case law that interpreted the APA was largely made by the Federal Power Commission, the Communications Commission and the CAB, in litigating and applying that statute in the 1940's and 1950's.

I don't think you can say that one is built on the other in the sense of being 2 inches broader, or comparisons of that nature——

Mr. BROWN. That is not what I am saying. I am saying that the Federal Power Commission and some of the other agencies which you mention built on the APA and expanded it to some extent in terms of the individual rights of the person who wanted to have his case heard.

But when we came to the EPA in response to the embargo, we restricted those rights in order to deal with the emergency. We expanded them a little when we got to the FEA, but they still have not been expanded to the extent that the Federal Power Commission and other existing agencies in a peacetime context or a nonemergency context have had them expanded based on the APA.

Mr. FYGI. I would disagree with that characterization for this reason, sir: The bedrock as far as rulemaking is concerned, the common denominator that exists throughout the government is section 553 of the APA. That is what every agency in town uses that doesn't have one of the more complicated provisions.

In the FEA case, before there was an FEA, the Economic Stabilization Act and the Allocation Act also used 553, section 4 rulemaking of the APA.

When the FEA Act was enacted, the Congress said: section 553 applies, and in addition all these other provisions must be used.

I would observe, going back to some other questions concerning the 30-day period, if you look carefully at the way section 501 is structured and the way section 7 of the FEA Act is structured, the first premise is, the APA applies. Then the text of each relevant statute says: In addition, here are these other steps. So in response to your earlier question, Mr. Finnegan, about the relevance of the 30-day provision, that is now applicable and would continue to be applicable under the formulation in the Department of Energy legislation because the first line of that is subchapter 2 of title V of the United States Code which shall apply and the other procedures will apply. The latter are an additional set of requirements.

Mr. FINNEGAN. Ten days is not an additional requirement to 30 days.

Mr. FYGI. It is when the statute says that 30 days is waiveable "as otherwise provided by the agency for good cause to be shown." The agencies can waive the 30 days for any reason they feel like it.

Mr. FINNEGAN. Not under APA, where statements of policy pertain.

Mr. FYGI. Yes.

Mr. FINNEGAN. No, read subsection D, above the line above.

Mr. FYGI. With respect to statements of policy, there does not even have to be good cause.

Mr. FINNEGAN. It says they are not waiveable. You cannot waive the 30-day rule as to the three items mentioned. Is that correct?

Mr. FYGI. In subsection D—let's see if we read the same thing. It says, "The required publication or service of a substantive rule shall be made not less than 30 days before its effective date except," and the first category is that a substantive rule that relieves restrictions—in other words, it affords greater leniency than the existing set of rules. There one does not need to observe the 30-day requirement.

Second, interpretive rules and statements of policy. There the 30-day requirement does not apply.

And, third, as otherwise provided by the agency for good cause shown.

Mr. FINNEGAN. I read it differently.

Mr. FYGI. It seems quite clear—and certainly that is consistent with the Cost of Living Council's experience under this regimen which approached the Congress in posing this set of rules.

Mr. FINNEGAN. You feel they have to have a 30-day rule in all cases?

Mr. FYGI. Our interpretation is under section 501 of the Department of Energy legislation this provision including the 30-day requirement, would apply according to its terms.

Mr. FINNEGAN. When would the 10-day apply?

Mr. FYGI. The 10 days is a floor.

Mr. FINNEGAN. You have to have a minimum of 30 and 10 is not a floor.

Mr. FYGI. It is a floor on the amount of time that the rule must be out in the public. It governs the latitude that otherwise would be provided the agency head to waive the 30-day rule for any reason he chose.

Mr. FINNEGAN. Mr. Fygi, 30 days is the notice requirement, the time for the public to have to comment on the rules.

Mr. FYGI. It is not the notice requirement. If you read subsection D, it says, "The required publication or service shall be made not less than 30 days before its effective date."

Mr. FINNEGAN. I don't want to pursue it any further. You and I have to talk about it afterwards.

Mr. FYGI. I will be glad to. It means you can adopt the final rule rolling it out the door the way the Cost of Living Council did and have it effective 30 days down the pike and you are home free and don't even have to waive the provision.

Mr. FINNEGAN. Let me ask one more question before my time is up: The provision in section 7 of the FEA Act, one provision is subsection D that you added, 501-D, having to do with adjustments and hardships.

Did you now, however, pick up all of that particular section of section 7? Can you explain why?

Mr. FYGI. Some of those provisions, as I recall them in section 7, were designed and stem from the Energy Conservation and Production Act and were designed to deal with circumstances involving the way FEA carried out some of its responsibilities at a particular moment that we felt were not necessarily relevant in terms of a permanent organization structure for a Cabinet-level department. Where there is no assurance whatsoever that given the variety of authorities, the kinds of restrictions included in section 7 would be appropriate in the long term.

Mr. FINNEGAN. But they do provide in the case where a hardship is—where adjustment is denied because of hardship, they do provide for appeal procedure. You would strike that appeal procedure and not make it applicable in this case.

Earlier you said the FEA procedural language was the latest word of the Congress in this area, but you haven't taken all of the provisions. You made a decision that some provisions are good and some are not.

Mr. FYGI. We made the judgment that some of the provisions were more timeless than others.

Mr. FINNEGAN. More what?

Mr. FYGI. Timeless.

Mr. FINNEGAN. I am not sure what that means in the context of the statute.

The basic question I raise and that Mr. Gore and others have raised is, if you did not have title V, would any of the functions that are transferred to the Secretary, any of the FEA functions or any of the FPC functions not work? In other words, could you still have procedural requirements?

Mr. FYGI. Never being one to underestimate the skill and resourcefulness of our lawyers, we could make almost anything work I suppose, but I would offer that that is not necessarily the best test of the appropriateness——

Mr. FINNEGAN. You would agree that the procedures under which the Secretary would operate—the policy provisions he would carry out under the Federal Power Act and the Natural Gas Act, they could be carried out under the procedures now being utilized by the Federal Power Commission, namely, the APA; is that correct?

Mr. FYGI. If your question was do I concede that it could be done without section 501 as a technical matter, of course, it could be done.

Mr. O'LEARY. One of the objectives is not to pick up ERDA and transplant it intact and take FEA and the power marketing agencies and transplant them intact, but rather to have a Department that has like functions regrouped around missions and what have you.

It seems to me when you take the tack that you are taking, you place a very, very heavy administrative burden on it. It is quite conceivable to me you could have parallel functions subject to quite
-ent rules if you were going to apply the philosophy you are
ıtly driving at.
k that is the reason that we took a look at the overall
ral aspects of it and chose what we regard as reasonable
.970's rules, not 1940's rules, to apply to the extent that you

can make this sort of thing apply across the board to the Department.

I think that that is a useful step in light of the homogenization of functions that the Department implies.

Mr. FINNEGAN. By bringing those together as uniform rules, you have made a substantive change.

Mr. O'LEARY. Not on substance but on a procedural matter we are still bound, of course, as has been explained several times now by the statute and, of course, by the ultimate test of being able to go through the courts and prevail in any sort of contest into which we enter.

So I really think we are not dealing with the substantive matter here, we are dealing with a purely procedural matter and I realize the sensitivity of it.

On the other hand, I think what we have done is, we have not gone to the lowest common denominator at all. We have raised the standard as Mr. Fygi pointed out above the raw, bare standards of the Administrative Procedure Act and I think in the process we have provided a higher degree of public protection than would have been afforded if we had stayed literally with the statutes and the procedures that have grown up around those statutes and rolled them into the new Department intact.

Mr. GORE. I think one of the many concerns that surround the assumption that the courts will move back and forth from this act and previous acts is the likelihood that the court may ask why did Congress act—this is after all a subsequent enactment of Congress, and to that extent may cancel out the previous provisions which in some instances are to be applied in order to achieve the consistent result and in some instances are not to be applied. That might conceivably be another difficulty.

Would you like to respond to that?

Mr. FYGI. I think in the context, the matter that we are discussing now, just the manner in which rules are promulgated, that there is almost no probability that that kind of result would obtain because we believe that the bill is so clear that you have to observe both section 553 as buttressed by these procedures, that the agency in promulgating its rules, just as the FEA, is not going to attempt to adopt shortcuts that would tend to run against the evident intent of Congress. There is no percentage in that.

The risk of adverse court decisions is simply too great for any agency to undertake anything of that nature.

Mr. GORE. I would like to say for the record I think you do a marvelous job of making almost anything work and one of the questions for this subcommittee is whether we want to enact into law almost anything, or whether we want to preserve the time necessary to do a more artful job of putting these two functions together in a way that not only promotes the convenience of the Administrator but also preserves all of the procedural rights that the citizens of this country are entitled to.

I want to thank each of the witnesses who have been with us throughout this long evening session and I commend you for your statements. It has been a very productive interchange.

The subcommittee will stand in recess until 9:30 tomorrow morning.

[Whereupon, at 9:45 p.m., the hearing was adjourned.]

XXXIV. Nomination of Dr. James R. Schlesinger to be the nation's first Secretary of Energy. Hearing before Senate Committee on Energy and Natural Resources, 95th Congress, 1st Session.

NOMINATION OF DR. JAMES R. SCHLESINGER TO BE THE NATION'S FIRST SECRETARY OF ENERGY

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

THE NOMINATION OF DR. JAMES R. SCHLESINGER TO BE THE SECRETARY OF ENERGY

AUGUST 3, 1977

Publication No. 95-57

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1977

96-279 O

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NOMINATION OF DR. JAMES R. SCHLESINGER TO BE THE NATION'S FIRST SECRETARY OF ENERGY

WEDNESDAY, AUGUST 3, 1977

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 8 a.m., in room 3110, Dirksen Office Building, Hon. Henry M. Jackson, chairman, presiding.

Present: Senators Jackson, Church, Metcalf, Johnston, Abourezk, Bumpers, Ford, Durkin, Metzenbaum, Hansen, and McClure.

Also present: Grenville Garside, staff director and counsel; D. Michael Harvey, chief counsel; W. O. Craft, Jr., minority counsel; and Ted Orf, deputy minority counsel.

OPENING STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

The CHAIRMAN. The hearing will come to order. The purpose of today's hearing is to consider the proposed nomination of Dr. James R. Schlesinger to be the Nation's first Secretary of Energy.

The creation of this Department is the first step in developing a rational approach to the Government's energy responsibilities. The new Department of Energy is no panacea for our energy problems.

However, it does provide a vital focal point for energy planning and the institutional framework for more effective management of national energy programs.

Whether the Department works will largely depend on the men and women nominated by the President to direct its affairs. The proposed nomination of Dr. Schlesinger as Secretary suggests that the President is well aware how much depends on the success of this Department, and the importance of people in running the Department.

Dr. Schlesinger's credentials are well known. While his distinguished service in past administrations may not have prepared him for the political chaos of energy, he appears to be adjusting to his new environment.

Dr. Schlesinger has, of course, been deeply involved in the preparation and presentation of the President's national energy plan. Members of this committee have found him a receptive listener, as well as a persuasive and effective advocate, in our consideration, of that plan.

We are delighted to welcome you once again, Dr. Schlesinger, to the committee. We have a rule which requires that our nominees be sworn, if you don't mind.

[Whereupon, DR. JAMES R. SCHLESINGER was duly sworn by the chairman.]

The CHAIRMAN. You have, I think, an opening statement.

Dr. SCHLESINGER. Mr. Chairman, I can read the statement or place it in the record, as you prefer.

The CHAIRMAN. It is a short statement, why don't you read it into the record.

STATEMENT OF DR. JAMES R. SCHLESINGER, NOMINEE TO BE THE NATION'S FIRST SECRETARY OF ENERGY

Dr. SCHLESINGER. Mr. Chairman, and members of the committee, I am pleased to be here this morning for your consideration of my proposed nomination to be Secretary of Energy, and I am most grateful to you, Mr. Chairman, for the speed with which you have called this hearing.

The President, in transmitting the national energy bill to Congress in April of this year, stated that in each period of our history the Nation has responded to challenges which have demanded the best in all of us.

This is one of those times. The creation of the Nation's first new Cabinet department since 1966 reflects the seriousness of the challenge that we face. Rarely have we faced a more difficult task, rarely has the need for cooperation between the Congress and the executive branch been more essential, and rarely has the response of both the Congress and the American people been more heartening.

Congress has created the Department of Energy in just 5 months, a gratifyingly short period of time. Both the Senate and the House are acting on major elements of the President's national energy plan, many portions of which will be administered by the Department of Energy.

Now, we must begin the job of organizing the Government to meet the challenges we face ahead. The President believes that the Congress has given us the tools to undertake that task by creating the Department of Energy.

Yet, I do not want to underestimate the difficulty of the organizational job that lies ahead in combining the Federal Energy Administration, the Energy Research and Development Administration, the Federal Power Commission, and a variety of programs and responsibilities from other Cabinet departments into a coherent, manageable, and effective Department of Energy.

This task of organizational integration is currently underway. We have not yet reached many firm conclusions, but are moving forward toward those decisions. I hope and intend to consult with this committee and the Members of Congress over the next few months as these decisions are made, to seek your views and your advice.

In the course of creating the Department, the Congress has already given some very definite guidance. We are pleased that we have been given the flexibility to organize sensibly along functional lines, taking

into account the need for a new structure that can meet changing conditions and new programmatic responsibilities.

And, in creating the new Federal Energy Regulatory Commission within that Department, the Congress has recognized the need for continuing independence in decisionmaking in certain key areas relating to natural gas and electricity, and yet has created a cooperative mechanism under which the Secretary and the Federal Energy Regulatory Commission hopefully can arrive mutually at decisions that will aid the integration of national energy policy with other societal goals.

If confirmed, I am determined to insure that the Department of Energy results in a more cost-effective use of Federal funds, and I am committed to seeking the advice and cooperation of the Congress, the States, and the localities, and interested individuals and groups of all perspectives.

I look forward with great anticipation to the challenge ahead and to working with you on the many problems we will face together.

Mr. Chairman, I will be happy to respond to any questions that the mittee may have.

The CHAIRMAN. Thank you, Dr. Schlesinger. I have three boilerplate questions that ought to be asked in accordance with the rules of the committee.

Will you be available to appear before this committee and other congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Dr. SCHLESINGER. Absolutely.

The CHAIRMAN. Your financial statements have been submitted to the committee. Our rules require that the statement be made public unless the committee decides that special circumstances justify an exception. Do you have any objection to publication of your financial statement?

Dr. SCHLESINGER. No, sir.

The CHAIRMAN. Are you aware of any personal holding, investment, or interest that could constitute a conflict of interest, or create the appearance of such a conflict, should you be confirmed and assume the office to which you have been nominated by the President?

Dr. SCHLESINGER. No, sir, but I shall review my holdings again, to reinforce that judgment.

The CHAIRMAN. Yes. While we are on that point, I think my colleagues have the financial statement. I wonder if we might just go through the stocks. Do you have that? I will ask the staff to bring down the copy that you submitted.

Five thousand shares of Sea Containers. I assume that is ship container operation?

Dr. SCHLESINGER. Yes, sir, they operate container ships, and they provide containers.

The CHAIRMAN. Do you know if they have any interest in any energy company, to your knowledge?

Dr. SCHLESINGER. Not to my knowledge, no, sir, I don't believe that to be the case.

The CHAIRMAN. 1,929 shares of Central Telephone. Is that regional telephone, local telephone company?

Dr. SCHLESINGER. Yes, sir, we have holdings scattered around the country, some in Virginia, and some in the Chicago area.

The CHAIRMAN. A small, independent telephone company.

Dr. SCHLESINGER. Yes, sir.

The CHAIRMAN. As far as you know they do not own any interest in any energy company or substantially involved——

Dr. SCHLESINGER. No, sir.

The CHAIRMAN. 1,250 shares of Fred S. James & Co. That's insurance?

Dr. SCHLESINGER. That is an insurance brokerage firm, I believe, sir.

The CHAIRMAN. I don't see anything in that—2,100 shares in New Oil, Land and Farming. Is that agricultural land, farming?

Dr. SCHLESINGER. It is primarily agricultural land. The principal source of earnings, I believe, is an amusement park north of Los Angeles.

The CHAIRMAN. They might use energy but you don't think they are selling any.

Dr. SCHLESINGER. I do not know the extent to which there may be gas or oil on such lands.

The CHAIRMAN. Will you have your staff check those out?

Dr. SCHLESINGER. Yes, sir.

The CHAIRMAN. Obviously, that is not their business, energy, to your knowledge?

Dr. SCHLESINGER. Not their major business; no, sir.

The CHAIRMAN. 300 shares of Victor Comptometer. What is that?

Dr. SCHLESINGER. I believe they are primarily in recreational goods, golf clubs, tennis rackets.

The CHAIRMAN. That is owned by your wife?

Dr. SCHLESINGER. Yes, sir.

The CHAIRMAN. Tennis rackets?

Dr. SCHLESINGER. Yes, sir.

The CHAIRMAN. That ought to fit in with the White House.

Dr. SCHLESINGER. Well, it's not an energy conflict of interest, Senator.

The CHAIRMAN. That's excess energy. One hundred shares of Boise Cascade. That is your wife's, too?

Dr. SCHLESINGER. Yes, sir.

The CHAIRMAN. Unlisted stocks, 400 responsive environments. What is that company? Is this your wife's, too?

Dr. SCHLESINGER. No, sir. I do not know which of these unlisted stocks are viable, and I have not checked.

The CHAIRMAN. As I understand it from the White House letter, you advise you own unlisted stocks. The total value of these stocks is $1,000 or less, and their actual value may be zero. That kind of puts you in a difficult spot, as an investment counselor here.

Senator METZENBAUM. He's going to have a $15 billion budget to work with; I don't know if he is responsible. [Laughter.]

Dr. SCHLESINGER. It gives one some familiarity with dry holes, Mr. Chairman. [Laughter.]

The CHAIRMAN. That's a pretty good response. I love the descriptive references, though, 6,000 shares. That sounds like a lot, Rosegold. Good thing you're not in the mining business. Rosegold.

Dr. SCHLESINGER. Sir, I don't remember just what business that outfit was in except that it owns a motel.

The CHAIRMAN. And 700 shares of funding.

Dr. SCHLESINGER. That should be Funding Systems. They rent computers.

The CHAIRMAN. Rent computers. Looks like they are not doing too well. That's all the questions I have. Now, the rest of your assets relate to your home, real estate, interest in a farm, and the money you have paid into pension plans, roughly.

Dr. SCHLESINGER. Yes, sir.

The CHAIRMAN. That's all the questions I have. I will put the letter in the record, too, from the White House counsel, Mr. Lipshutz.

[The letter follows:]

THE WHITE HOUSE,
WASHINGTON, D.C., *August 2, 1977.*

Dr. JAMES R. SCHLESINGER,
Secretary-Designate, Department of Energy, Washington, D.C.

DEAR DR. SCHLESINGER: I acknowledge receipt of your response to the Outline of Information Requested of Prospective Nominees. I congratulate you on your notification of the President's intention to nominate you to be Secretary of the Department of Energy. I also acknowledge receipt of your letter of commitment to the President.

It is my understanding that you have fully severed your relationship with Johns Hopkins University and have no further obligation to that institution nor do you have any commitment to return to it following your government service. Similarly, I understand that you have no ongoing obligation or commitment to any of the institutions which paid you fees or honoraria for speaking, writing or participaing in seminars during 1976.

You have advised that you own security interests in six different companies which are listed on stock exchanges. I understand that none of these securities are in energy related companies. If you learn that any of these companies engage in energy related activities you should divest yourself of such securities. Moreover, you should disqualify yourself to act on any particular matter, as that phrase is defined in 18 U.S.C. 208(a), which would affect the interest of any of those companies. Should you determine that you need to disqualify yourself more than infrequently as a result of such stock ownership, I recommend that you divest yourself of those securities which are causing that disqualification or establish a blind trust which complies with the standards established under the Carter-Mondale Guidelines on Conflicts of Interest.

You have advised that you own unlisted stocks in three companies. The total value of these stocks is $1,000 or less and their actual value may be zero. However, if Responsive Environments is still a viable enterprise, it would seem to have an interest in the rules, regulation and actions of the Department of Energy. Accordingly, I suggest that you sell or otherwise dispose of this stock if it has any value at all. The elimination of the appearance of a conflict is important.

I understand that the legislation establishing the Department of Energy will require sale of all energy related stocks owned by Executive Level appointees to the Department. In my opinion, such divestiture is appropriate.

I assume that there is no oil or gas drilling, or coal mining, on the farm in Springfield, Ohio in which you hold a 20% interest. Any interest in mining, drilling or exploratory operations, would be inappropriate for the Secretary of the Department of Energy.

It is my understanding that you are not a member of any organization or group which lobbies before Congress, is likely to lobby at the Department of Energy or seeks grants or applications from other federal government agencies or departments. You have advised, however, that you are a member of the Audubon Society which may take an interest in some environment matters.

Based on our review of the materials you have submitted and assuming you take the actions you have indicated you will take and those that are suggested in this letter, it appears that you will have complied with the Guidelines on Conflicts of Interest.

It has been a pleasure to work with you at the White House. I know that you will fulfill your new responsibilities with great distinction.

Sincerely,

ROBERT J. LIPSHUTZ,
Counsel to the President.

The CHAIRMAN. Senator Hansen.

Senator HANSEN. Let me pass, Mr. Chairman.

The CHAIRMAN. All right. Senator Metcalf.

Senator METCALF. I have no questions, Mr. Schlesinger. I notice from your employment record that you have had new positions before, so this is not a novel experience for you to come before us and take another new and most important position.

I look forward to working with you in the years—well, while I am still in Congress, in this very important function.

Dr. SCHLESINGER. Thank you, very much, Senator.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. Dr. Schlesinger, the GAO, the Congressional Budget Office, the Library of Congress, and the Office of Technology Assessment have all made their own evaluation as to whether or not the administration's energy goals can and will be reached with the administration's program.

With no exception they have all concluded that it will not be reached. If my recollection serves me right, I think even on the national energy plan itself, some doubts have been raised by the administration.

I am assuming, not talking about changes made by Congress, that some of which would increase the possibility of obtaining those goals, and some of which would decrease the possibilities of obtaining those goals.

Have you made any new evaluation with respect to the objectives, and if you would be kind enough first to state what those objectives are because my recollection is, and I am not certain about this, that even if the objectives were totally obtained, we would only conserve or we would only use 4 percent less energy than would otherwise be used, if there were no program at all by 1985.

I am not certain about that statement, but that's my recollection of it. I would just like to have an overview at this moment, sort of 3 or 4 months after the program started, wending its way through Congress.

Dr. SCHLESINGER. Sir, we have been engaged in continued monitoring of these projections. As for the projections made by the various institutions that you mentioned, the CBO said that we would make three quarters of our goal; OTA was generally very positive about the program; and while the GAO did not evaluate the effects of our program, in general they were critical.

Senator METZENBAUM. They were critical?

Dr. SCHLESINGER. They were critical in regard to the ability to achieve the ultimate objectives through these means.

I would make three points. First, our crystal ball is as murky as other people's crystal ball. We are attempting to induce changes in the habits and perspectives of the American people. We are attempting to introduce attitudinal changes with regard to energy.

For that reason one must distrust the models on which our projections are based, and similar models on which the projections of others are based.

The President has called for a set of goals for 1985 and we shall monitor the progress toward the achievement of the goals. We intend to come back to the Congress for additional measures in the years ahead, if we fail to achieve our projected path toward the achievement of those goals.

While we do not know precisely what will happen, we are approaching a national commitment with regard to the achievement of these goals. I think that we are fully determined to achieve those goals.

The third point that I would make is that this is framework planning. While we do not know with precision what will occur, and while we are not attempting to prescribe what individuals and corporations should do, we will change the signals in the years ahead in order to induce the achievement of these final end objectives.

With regard to the conservation question that you raised, what we are attempting to do is to cut the historic growth rate of American energy consumption, that 4 percent per annum, to under 2 percent per annum.

That is a major change that will be achieved by this conservation legislation. We have the mixed fortune at this particular period to be coming out of a period of severe unemployment. We have the growth of the economy and that will somewhat mitigate the conservation effects in the next 7 years, if we do indeed achieve an economic growth rate in excess of 5 percent.

When you balance that out, given stable employment conditions, we will be saving approximately 2 percent per annum, from historic levels of energy growth, and that is a considerable achievement.

Senator METZENBAUM. Of the 2 percent, how much of that is expected to be achieved by increasing the price of the product, whether it be oil or whether it be natural gas, or whether it be coal, or other energy components, and how much of it has to do with conservation of energy for reasons other than cost related?

Dr. SCHLESINGER. I think it is a combination. Offhand I would say it would be about 40 to 50 percent as a result of the price-related features. The majority would be coming from other devices, including supplementary means to insulate one's home, automotive standards with which you are familiar, and the like.

The price features are ancillary but necessary, I believe, to achieve these goals. We should have the price system working for us, rather than against us.

Senator METZENBAUM. Your projections are based upon a growth rate of 5 percent in the national economy. But that is in excess of what we have experienced in the past and the projections go entirely askew according to the Congressional Budget Office projections, as I recollect reading them, if the real growth rate is the historic 3 percent.

If you only have the 3 percent national growth rate, which we have every reason to assume will be the growth rate without strongly convincing evidence to the contrary, and some of the economic indicators that have been occurring within the last several weeks, are certainly not encouraging vis-a-vis the question of the 5 percent growth rate.

What is your fallback position in order to conserve energy, or to cut back on our use of energy, cut back on our imports. My recollection is that I saw one figure where, absent that 5 percent growth rate, if you cut it down to 3 percent, it just wreaks havoc totally with the whole question of further utilization of coal instead of oil and natural gas.

Dr. SCHLESINGER. A slower growth rate for the economy, less than 5 percent, would be beneficial from the narrow standpoint of energy

conservation. That is a way to achieve energy conservation that we hope to avoid.

If the growth rate is less than 5 percent, for each tenth of a percent lower growth rate, there will be energy savings that will tend to reduce the level of imports.

That would be beneficial in this narrow sense, but we do not wish to avail ourselves of that way of conserving energy. It is axiomatic in the President's plan that there should be sufficient energy for the economy to grow, for production to grow, for jobs to increase.

Senator METZENBAUM. Although the slower growth rate would help on one side of the balance sheet, it would cause substantial losses as far as the achievement of that growth rate on the other side of the balance rate, which is one of the major portions.

My recollection is in this area we're talking about 60 percent of the total savings to be affected by the program. Then if you change this factor, I don't remember exactly but it's somewhere in the area of 50 or 70 percent of that 60 percent savings. I think the figures for that, where we expected to save 200 million tons with respect to coal, it would only be 40 tons.

I am wondering whether there is a model that you have indicating what happens if the growth rate remains static or remains at the traditional 3 percent.

Dr. SCHLESINGER. Senator, we can insert that into the record. [See p. 13.] It depends in part on one's projections with regard to new plant and equipment as opposed to other segments of the economy, such as the service trades.

If we have the growth of new plants and equipment using coal burning facilities, we should be able to achieve a high rate of conversion to coal, and at the same time, given the assumption that you mentioned, energy demand would grow less than in our projections.

Senator METZENBAUM. Dr. Schlesinger, you know, I have voiced myself to you directly, and elsewhere as well, a number of times, that part of the keystone of the entire administration program has to do with the fact that you take domestic oil prices and bring them up to the world oil price.

You take natural gas prices and bring them up to the PG equivalent of oil, and the administration fails to take any position with respect to coal prices. But there are some who believe that coal will go to $60 per ton if there are not some restraints in that area.

My questions to you are—One: What are your own projections absent controls with respect to coal pricing by 1985: Second, isn't the fact that the administration feels that the greatest, the major portion of the way, the manner in which to obtain conservation is by pricing the product out of the market? Or pricing the product to the market level? I guess out of the market would be wrong.

Then I would ask you what supportive evidence, if any—I think I asked this of you or Mr. O'Leary; I think Mr. O'Leary at an earlier point—what evidence is there that merely increasing the price of oil, natural gas, or whatever the case may be, will cause any conservation?

We are aware of the fact that the new Harris poll the other day said that people probably would not cut back much on the use of gasoline, I think, unless the price went to $1.35 per gallon, and Heaven forbid that.

Dr. SCHLESINGER. That is a very probing question, Senator. Let me say at the outset that the administration's proposals with regard to oil and gas pricing are to raise the prices for new supplies. But for old oil, what we contemplate is protection for the consumer of the real value of the barrel of oil produced. Only new oil, so called, will receive the world price. This is regarded as an inducement to greater production. But for the rest of it, for the other tiers of oil, all of the benefits of the crude oil equalization tax will flow to the Treasury and then through rebates to the American people.

With regard to coal pricing——

Senator METZENBAUM. Dr. Schlesinger, I don't mean to interrupt. I am not questioning, I am not taking issue with you as to whether that will or will not happen, although I have my own concerns and reservations about that in view of what the administration and Members of Congress have said about how to use those dollars.

My question is that prices are going to go up to that world price, with the exceptions that you know of. That being the case, what evidence is there that that will cause anyone to cut back on the use of gasoline and oil in this country?

Dr. SCHLESINGER. There are two parts of that. One is the industrial use of oil, the industrial use of energy generally. It is clear that our corporations keep a very sharp pencil with regard to energy prices, and in the years since 1973 they have already taken major measures to conserve energy.

And as a consequence the industrial share of our total energy consumption has declined. With regard to consumer behavior, the evidence is more mixed. Most models suggest that there is a low but measurable elasticity of demand for gasoline consumption.

Polls of consumers have indicated that there have been some cutbacks in gasoline consumption, as a result of the price rises that have taken place since 1973. Unfortunately this has occurred mainly among lower-income groups.

Senator METZENBAUM. Is there any part of the administration program that would provide for competition to help drive prices down rather than those aspects of the program drive up? The Democratic platform called for the enactment of horizontal divestiture legislation. The President addressed himself to this subject a number of times during the campaign.

The administration has now indicated that it does not support horizontal divestiture. The fact is that horizontal divestiture would provide a possibility and an opportunity for free competitive market forces to be invoked in order to bring down the price of energy, particularly with respect to alternative energy resources.

Is there any part of the program that the administration can look to and say, well, in this area free competition is working and will work to the advantage of the American consumer?

Dr. SCHLESINGER. Yes, sir, it is our clear intention to maintain the efficacy of competitive forces in the coal market.

Senator METZENBAUM. How do you do that?

Dr. SCHLESINGER. The coal market is quite different from the oil and gas market. Quite obviously, with the stringency of supply at the present time, there is not enough reserve capacity to drive prices down toward the level of costs in the oil and gas market.

There is no natural stringency of supply in the coal market. Coal production should be adequate to bring down the pressure on prices, so that they are not disproportionately higher than costs.

We intend to monitor that very carefully, in terms of observing the business performance of the industry as well as the market structure of that industry.

The antitrust division will be watching the performance of that industry. In addition, the "due diligence" provision for production of western lands can be employed, to see that production is maintained, so that monopolies do not emerge in the coal market.

It is essential for us to maintain the competitiveness of that market, or otherwise one will be lured in the direction of excessive government interference in this market.

Senator METZENBAUM. The courts have stated in the past in a number of antitrust companies, cases, that you can have domination of a market by as low as 7 percent of the market, maybe even 3 percent in one instance.

The facts are that 40 percent of the coal reserves, some say 44 percent of the coal reserves of this country, are controlled by the oil corporations of the country. Testimony to that effect was submitted as recently as yesterday before the Senate Antitrust Subcommittee.

Government reports now indicate that 50 percent of the new supplies in the West would be coming from the oil companies. The fact is that the oil companies have testified 7 years earlier, one of them, that they would certainly not undercut the price of coal vis-a-vis in competition with oil that they own.

You talk about free competitive factors in the coal market, yet the facts belie that statement in that the oil companies do indeed dominate that market. They don't have to have 100 percent in order to dominate the market, and each day, each month we find more and more oil companies moving into that market.

Yet you say that we will be monitoring it, we will be watching it, the antitrust department will be looking at it. It is obvious that the antitrust department has failed in its efforts to do something with the oil companies. They are still bogged down in the courts.

Absent some kind of effective control, the horse is going to be out of the barn and not be able to be put back in. My question comes back, it's nice to say that antitrust will be looking at it, and it's reassuring to feel that you will be keeping your eye on it.

But the facts are that there is nothing that I can find in the Carter program that says that we are going to emphasize the free enterprise approach, free competition, strong competition between different segments of the economy, fighting for part of the consumer dollar in order to drive down prices, but rather we will wait until, maybe too late, and then say maybe we should have talked about horizontal divestiture back there in 1977 when we took office.

I guess I would like to find out what the rationale was for the change of position between that which was stated in the campaign and that which has become administration policy now.

Is it fair to say that this is part of your direction and your leadership, a change on the part of the White House, or why have we changed it? What occurred in the last several months that caused that change to come about?

Dr. SCHLESINGER. I would be careful not to overstate the change. The administration is taking the position that horizontal divestiture is premature; it is not appropriate at this time. We will reserve judgment on it, but we have not foreclosed the possibility.

It is, in my judgment, premature at a minimum. The big advantage of the oil companies is that they have large amounts of capital to invest, and, in order to bring about the investment necessary to put downward pressure on costs, their capital is useful.

You mentioned the question of reserves, and that the oil companies now own 40 percent of the reserves. The reserves are dominated by the Government of the United States. At any future point that the Government of the United States wants to diversify the holdings of reserves, it can do so simply by adopting policies that permit a greater diversity of ownership.

The fundamental difference between the oil and gas market and the coal market is that there is a vast supply of reserves of coal, which does not exist in oil. That will, I believe, be the source of the maintenance of competitive forces.

Third, I do not want to be an apologist for the oil industry, but the industry does not and cannot behave as a monolith. Collectively the oil firms may own 40 percent of the reserves, but they have never, by themselves, been able to control the price of oil.

What they have been able to do, with ancillary support by the Government in such forms as the Texas Railroad Commission, is to control production. But they have always required ancillary support if they are to achieve a restraint on production.

It is not the intention of the U.S. Government to provide any such ancillary support for the restraint of production. We shall monitor it very carefully. Indeed, if there are tendencies that are observed toward the restriction of production, we will take the kinds of action required in terms of the diversification of ownership.

But for the moment it would seem premature to move toward horizontal divestiture. The large amounts of capital that the oil companies can bring to this industry will be useful, both for expansion of capacity and for technical advance in an industry, I might say, that historically has not been noted for its technological aggressiveness.

Senator METZENBAUM. Dr. Schlesinger, you say the industry is competitive and has not been known for its constraint on production. Walter Meezday, the special investigator for the antitrust committee, made an investigation of the oilfields of Texas and Louisiana, and indicated they were producing at that time 15 percent of their national efficiency rate. Not the maximum producing rate, but 15 percent of their national efficiency rate.

The Secretary of the Interior went into the oilfields and said indeed there was a withholding of natural gas. An investigator for Congressman Moss' committee made an investigation and indicated that the gas companies were withholding natural gas.

The Federal Power Commission has conducted a number of investigations and has concluded there is as much as almost 8 trillion cubic feet of natural gas behind the pipe that would be forthcoming if only the gas companies would permit it to do so.

There have been 15 separate studies that I know of that you are familiar with this well because I think I wrote you a letter, and the facts are that the industry has not been producing, the industry has found it to their economic advantage to withhold production, both of natural gas and oil.

Yet you say that industry is competitive and they are not withholding. My questions to you are: What governmental report are you familiar with? Or what sources do you have that indicate that the industry has been producing at its maximum efficient rate of anything close to that, even in the field of oil or gas?

Because all of the reports that I have seen indicate that quite the contrary has been the fact.

Dr. SCHLESINGER. Senator, let me underscore that I have suggested that we will keep the coal market competitive, even with the introduction of oil firms. I did not suggest that the oil or gas production area has been free from elements of monopoly.

But those elements of monopoly have been exascerbated, to a large degree, by Government policies, such as the Connally Hot Oil Act, the interstate oil contracts, and the prorationing laws that started with the Texas Railroad Commission and then were spread to other States.

The CHAIRMAN. Import quotas.

Dr. SCHLESINGER. Import quotas. This is a very complex market, and it historically has been a very volatile market and has had elements of monopoly in it. We are not suggesting that that market has been free. We are going to keep the coal market free of these kinds of influences because coal must be produced on the basis of daily production, based upon outlays of cost. You must employ miners and so forth.

The marginal costs of production of oil are very low, once you have your infrastructure in place, and it is that that has led to this period of ruinous competition that these Government devices have sought to alleviate.

Let me reassert that the evidence that you have cited, if it is indeed as persuasive and correct as some of those studies would have it, is evidence of self-centered behavior. It is not evidence, necessarily, of monopolistic behavior.

It suggests that individual companies find it in their own interest to hold down the level of production, partly because in recent years they have expected a bonanza in future years because of a substantial raising of oil and gas prices.

Senator METZENBAUM. Dr. Schlesinger, I would like to point out to you that a vast majority of our leases down in Texas and Louisiana are not one company operations, they are mostly joint ventures.

Let me just ask you one question, I must leave. On July 19, I addressed a communication to concerning you the fact that domestic oil and coal price controls will expire in 1979. The natural gas bill provides that natural gas prices will be related to the Btu equivalent of oil.

If price controls expire in 1979, then the equivalent price for natural gas will be permitted to rise to the equivalent of the OPEC world price. I know that the administration has been opposed to deregulation, but the fact is, as of this moment, there is no legislation in from the administration on the subject and it would therefore be tantamount to effectuating decontrol of natural gas totally as a part of the administration's program by 1979.

It is not enough to say we intend to come in with some legislation somewhere down the road because, if we pass the natural gas pricing act out of this committee, as it is now drafted, we will be deregulating natural gas prices in 1979, even though a great number of us on this committee do not favor such deregulation.

I would like to find out—I did ask you at that time where the administration is on this subject, and why there has been no legislation forthcoming, and whether it is indeed your intent to deregulate the price of natural gas in 1979, as the legislative picture presently indicates, but certainly totally contrary to everything I have said publicly.

Dr. SCHLESINGER. Yes, sir. I think the point that you raise is quite pertinent. We must look forward to a long term set of circumstances in which oil prices will have to be controlled.

We now face very clearly, even more so than in the past, a condition in which oil prices are administered. At the present time they are administered by the OPEC cartel. To the extent that they affect the American consumer, if they are to be administered, they should be administered by the Government rather than by the firms in the market.

The points which you have raised are ones in which the administration is in entire agreement. The EPCA authorities do not expire until 1981 or 1982. Although there is a congressional requirement that we maintain controls until 1979, the administration has indicated it will maintain controls as long as those authorities are there, which would be until 1981, at the earliest.

The legislation was not sent forward for reasons of avoiding complexity. The administration has indicated it will send forward a request for the extension of EPCA at a more opportune time.

Senator METZENBAUM. Mr. Chairman, I do have some additional questions. I would want to leave. As I indicated to the chairman earlier, I will try to get back as promptly as possible. I do appreciate the committee's indulgence in permitting me to ask as many questions as I have.

[Subsequent to the hearing the following information was submitted for the record by Dr. Schlesinger:]

THE IMPACT OF A LOWER GROWTH RATE UPON THE INDUSTRIAL COAL CONVERSION PROGRAM

In its analysis of the savings achieved by the industrial coal conversion program, the Administration relied upon a macroeconomic model which predicted a 4.3% average annual increase in real GNP and a 5.1% annual increase in industrial energy use.

The 4.3% GNP growth rate represents the Council of Economic Advisor's target growth rate for the period through 1985. Although this figure is higher than recent historical figures, it should be noted that the U.S. economy has in the past several years suffered from a major recession—the most severe since the Great Depression. At this point, the economy possesses substantial unused capacity and estimates of potential GNP are much higher than actual GNP. In short, the economy has some "catching up" to do.

Other analysts predict a real growth rate substantially above recent history. The 4.3% growth rate is well within the range of alternative GNP growth used by the Congressional Budget Office and the House Budget Committee.

The figures cited by Senator Metzenbaum, a drop from 200 million tons to 40 million tons of increased coal production, are roughly derived from a Congressional Research Service critique released on June 10, 1977. The critique argued that the industrial growth rate would be lower and conversion costs

higher than Administration estimates. As a result, in a revised version of the critique, CRS concluded that the increase in industrial coal use resulting from the coal conversion program would be only 80–97 million tons in 1985, compared to the Administration's estimate of 177 million tons (after the conversion effects of the other programs in the National Energy Plan are accounted for).

The Administration is giving this question careful attention. As yet, no formal estimate has been made of the effects of slower growth upon the coal conversion program. However, a recalculation was performed, relying upon the CRS methodology but correcting one error, which estimated a 123 million ton increase under low growth conditions.[1] In short, although CRS may be correct in pointing out that a lower rate of industrial growth would reduce the impact of the coal conversion program, the CRS estimate considerably overstates the magnitude and importance of this effect.

[1] A detailed review of the CRS critique was released by the Office of Energy Policy & Planning on July 21, 1977.

REVIEW OF THE CONGRESSIONAL RESEARCH SERVICE

CRITIQUE OF OIL AND GAS REPLACEMENT PROGRAM IMPACTS

OFFICE OF ENERGY POLICY AND PLANNING

EXECUTIVE OFFICE OF THE PRESIDENT

July 21, 1977

(15)

In a recent analysis,* the Congressional Research Service (CRS) reviewed the estimates published by the staff of the Office of Energy Policy and Planning (OEP&P) of the increased coal use expected under the Administration's proposed oil & gas replacement program. CRS concluded that the industrial growth rate would be lower and conversion costs higner than OEP&P estimates. As a result, much of the expected increases in coal use were considered unlikely to occur.

The staff of OEP&P has reviewed the CRS analysis and described the essential points of agreement and disagreement in this memorandum. The basic conclusions reached were:

1) Although CRS is correct in noting that the amount of new coal use is dependent upon the industrial growth rate, the CRS methodology involves several assumptions which overstate the sensitivity of coal use estimates to changes in the growth rate. Furthermore, even if the CRS assumptions were correct, total oil imports in 1985 would be lower than estimated under the National Energy Plan.

*"The Carter Coal Conversion Plan for Industry: A Critique" by David E. Gushee, Congressional Research Service, June 10, 1977

2) The estimates of the costs of conversion to coal developed by the Administration are not substantially different from the alternative estimates cited by CRS. CRS estimates of industry pollution control costs were based upon utility, rather than industrial, scrubber system costs. As a result, CRS scrubber costs are overestimated.

Section I contains a review of the analysis of the impact of alternative growth rates. Section II reviews the cost estimates included in the CRS study.

SECTION I

The Growth Rate Issue

The CRS analysis argues that the Administration's projected growth rate of energy inputs to industry of 5.1% per year is too high, and that a lower growth rate would reduce estimates of increased industrial coal use. By assuming that the rate of growth will be less (3.1%), CRS concludes that the increase in industrial coal use in 1985 would be 80-97* million tons compared to the NEP's estimated 177 million tons.

* The text of the original CRS document claimed that an increase of 80 tons would result under the coal program and a low rate of frowth (40 from new and 40 from existing facilities). An attachment to the document calculated 97 million tons. No explanation of the difference was provided.

This section describes the derivation of the Administration estimates and discusses the assumptions made by CRS concerning reduced industrial growth. The central points may be summarized as follows:

1. The Administration energy growth estimates were based upon the economic targets of the Council of Economic Advisors. Most of the controversy over the industrial energy growth rate is really a dispute over the GNP growth rate. This rate, although higher than most recent experience, is within the range of growth rates used in other analyses. If GNP grows at a slower rate, both opportunity and the need for conversion to coal are reduced.

2. CRS calculations included conversions which would not be affected by lower growth rates, such as conversion of facilities that have the capability to burn coal or accelerated replacement of existing facilities. Inclusion of these conversions results in overstating the effect of lowered growth rates. The impact of any reduction on the expected savings of the oil and gas replacement program would be much

smaller than CRS predicts. CRS predicts a 80-97* million ton increase. Administration calculations using the CRS assumptions concerning the industrial growth rate predict a 123 million ton increase.

3. Oil imports would still be reduced by the NEP under a low growth scenario. Although a lower rate of industrial growth would result in a decrease in the growth of oil imports without consideration of the impact of the NEP, the NEP would provide additional savings in any case.

4. The CRS analysis relates principally to the expected impact of the oil and gas replacement program. However, an oil and gas replacement program is necessary regardless of whether the ultimate increase in coal use is 130 or 200 million tons. The Administration does not consider the CRS criticisms to qualify in any way the need for such a program.

* This range represents the different estimates contained in the CRS document. See the footnote on page 3.

Source of Administration Estimates of the Growth of Industrial Energy Demand. The projections of future industrial production were derived from a macroeconomic model and are based upon the Council of Economic Advisors' (CEA) announced economic targets. The CEA objectives provide for a real growth rate of GNP of 4.3% annually. Macroeconomic projections were run on the Data Resources, Inc. (DRI) model to determine the expected growth rates in the industrial sector, as measured by the Federal Reserve indices of production in manufacturing, chemicals and primary metals. The DRI model predicted an overall average annual growth rate for industrial production of 5.6%.*

* The average annual production growth rate for selected categories were:

Manufacturing	5.88% per year
Chemicals	7.06% per year
Primary Metals	5.27% per year

These projected industrial growth rates form the inputs into FEA's PIES model, which predicts the energy growth rates. That is, the estimates of increased demand for various fuels in the industrial sector are based upon the industrial production estimates. PIES estimates the

expected energy growth rate accompanying a given level of production on the basis of historical relationships between energy inputs and industrial outputs. It is unlikely that these relationships have changed. To the extent that one believes that the growth rate of energy input to industry is too high, therefore, the dispute should probably be with the original GNP growth rate targets.

It should not be assumed, because the growth rates in the immediate past were lower than current Council of Economic Advisors' (CEA) targets, that the projected 4.3% GNP growth rate is unreasonably high. The CEA GNP targets are well within the range of alternative growth rates used by both the Congressional Budget Office and the House Budget Committee for the next five years. Over the longer period, estimates from all of these sources coincide at the full employment rate for potential GNP. For the interim period, the gap between potential GNP and actual GNP is sufficiently large that an actual growth rate above that of potential GNP is a reasonable economic goal.

Impacts of Lower Estimates of Industrial Growth. Even if the lower CRS growth rate estimate is accepted, CRS substantially overestimates the effect of a lower growth rate by including factors which are not affected by lower growth in its calculations.

The Office of Energy Policy and Planning (OEP&P) has recalculated the CRS estimate, making only a single change. For these recalculations, it was assumed that conversion in existing facilities and early retirement would not be affected by a lower growth rate. (CRS, while stating that such conversions and early retirements would not be affected, reduced the coal use increases from them anyway.) If this portion of conversions is not affected by lower growth rate assumptions, the NEP and the oil and gas replacement program under the CRS low growth calculations will result in an increase of 123 million tons. Table I summarizes the different projections. (Relevant calculations are described in Attachment A.)

TABLE I

SUMMARY OF ESTIMATES OF INCREASES IN 1985 INDUSTRIAL COAL DEMAND WITH COAL AND OTHER NEP PROGRAMS

(10^6 TONS)

Low Growth		
	CRS (6/10/77)*	80
	CRS (revision)	97
	OEP&P revision using CRS methodology**	123
Expected Growth		
	Administration***	177

* While the text of the CRS report estimated an 80 million ton increase (40 new, 40 existing), the attachment's calculations were 97 million.

** The Administration has not yet made its own estimate of the effect of a lower growth rate upon the impacts of the NEP. The CRS calculations involve several unsupported assumptions concerning the relationship between total energy growth and the growth in use of each fuel.

*** Includes effects of coal, conservation and other programs in the NEP. This is consistent with CRS calculations, which include the effects of conservation programs.

Placing Estimates of Program Impact in Perspective. It is important to note that the CRS critique relates primarily to the expected impact of the Oil and Gas Replacement Program, rather than to the need for such a program.

As long as industrial growth occurs, whatever the rate, demand for oil - a demand that is supplied largely by imports - will increase. If the industrial growth rate is lower than expected, less new coal-fired capacity will be constructed, but there will also be a lower demand for oil. To some extent, therefore, impact of the plan will vary with the potential for increased coal use. Even if the proposed program achieves a smaller savings of oil than predicted, some program for this purpose is necessary. Furthermore, total oil imports after the NEP would be reduced if a lower industrial growth rate is assumed.

SECTION II

The Cost Issue

The CRS study also takes issue with the Administration estimates of the actual costs of conversion in industrial facilities. The $10 million figure cited by CRS represents an estimate of the total cost of a 25 MW boiler (without

pollution control). Administration estimates were based upon the difference in cost between coal-fired units and those that use oil or gas. CRS also noted a discrepancy between the Administration estimates of the cost of scrubber systems -- about $1.9 million -- and the $5 million estimate of the American Boiler Manufacturers Association (ABMA).

The Office of Energy Policy & Planning (OEP&P) has reviewed the sources and estimates used by CRS and finds that the original estimates (used in the development of the National Energy Plan) remain the best estimates of the additional costs imposed by the oil and gas replacement program.*

Boiler Costs. CRS in its analysis may have assumed that the conversion cost faced by a firm deciding whether to build a new coal-fired boiler or a new oil-fired unit would be equal to the entire cost of the coal-fired unit. If the firm has already decided to build a new unit, however, the true cost of using coal would be the difference between the cost of coal and the alternative fuel. The OEP&P estimate of the cost of a coal-fired and oil-fired 25 MW boiler is

*A review of the estimates contained in the CRS analysis is included as Attachment B.

summarized in Table II.* The cost of a 25 MW boiler using coal is about $9.9 million. The cost of using oil fuel is $4.0 million. The differential cost of using coal is thus $5.9 million. CRS took its "Administration estimate" from an earlier table which related only those costs which differed depending upon fuel use. Some of the factors which do not vary between coal-fired and oil-fired units (and thus do not affect the cost difference between them) were not included in the earlier table CRS referred to. In addition, one factor (ash handling costs) which does affect the difference was also omitted from the table inadvertantly, but was included in the analysis.

Table II contains a full summary of the estimated costs of a 25 MW boiler. The total cost estimated, $9.9 million, does not differ substantially from the estimate of $11.4 million provided to the Texas Industrial Commission and cited by CRS. If the cost of pollution control (discussed below) is excluded, the OEP&P estimate does not differ much from that of the American Boiler Manufacturers Association either. A full discussion of boiler cost estimates is included in Attachment B.

*As noted in the table, the figures summarized are the estimates used in calculating the extent of oil and gas replacement under the policies contained in the NEP.

TABLE II

COMPARISON OF CAPITAL COSTS OF NEW COAL AND OIL BOILERS

250,000 pounds of steam per hour field erected boilers[1/]

($1000)

Cost Component	Coal	Oil	Incremental Cost of Coal
Boiler related costs	3750	1875	1875
Fuel handling	550	100	450
Ash handling[2/]	400	-	400
Boiler feedwater treatment	750	750	-
Powerhouse[3/]	90	45	45
Total direct, less environmental	5540	2770	2770
Total indirect, including contingency and engineering	2504	1252	1252
Total, less environmental	8044	4022	4022
Environmental cost (wet scrubber)	1900	-	1900
TOTAL COST	9,944	4,022	5,922

Source: Office of Energy Policy and Planning

1/ Shop erected oil boilers are available at this size. Such units cost approximately $400,000 less than field erected units.

2/ Excluded from Table 4 of Appendix A but included in the analysis. After adjustment for engineering and contingency (shown separately), this component results in a difference of $580,000.

3/ Powerhouse cost estimates included the cost of physical supports, but included no costs for an enclosure. Such enclosures are not necessary and utility boilers do not use them. Industry use may vary, however, and the matter is being studied. The choice between boiler types is not believed to be sensitive to small differences in capital costs.

Pollution Control Costs. CRS also noted a discrepancy between Admimistration estimates of pollution control costs and those of the American Boiler Manufacturers Association. The CRS analysis did not mention that Administration estimates agreed with those provided to the Texas Industrial Commission ($1.9 million vs. $2.2 million).

Furthermore, the higher ABMA estimate did not take account of the substantial differences between scrubber systems used by utilities and those employed by industry. The scrubber systems used by industry are simpler, smaller units which are constructed from relatively standardized "package" units. Utility scrubbers, by contrast, are larger and more sophisticated units which are designed and erected on a customized basis. ABMA was unaware of this difference and simply scaled down the costs of the more sophisticated customized units to the requirements of the smaller industrial users. This resulted in a substantial overestimate of pollution control costs.

Attachment A

RECALCULATION OF EXPECTED COAL USE IMPACT OF NEP COAL PROGRAM UNDER CRS LOW GROWTH ASSUMPTIONS

The CRS study prefers using historical growth rates for energy use in the industrial sector. CRS uses the historical 3.1% growth rate, while Administration calculations are based on CEA's target 5.1% growth rate. CRS recalculated coal use projections for a low growth scenario. These calculations involve simplifications of the many effects of a changed growth rate. Even if most of the assumptions used are believed reasonable, one error accounts for fully one-third of the CRS reduction from the original Administration estimate. The CRS low growth calculations include portions of coal use (conversion and accelerated replacement) which are not affected by growth rate. A recalculation which separates portions of coal use which are not affected by industrial growth rate scenarios is presented here. The resulting 1985 industrial coal use projection under low growth assumptions is about 123 million tons. The original CRS calculation estimates 97 million tons under low growth.

In its calculations, CRS assumes that the share of total new energy taken by each fuel is the same regardless of the growth rate. In other words, CRS assumed that if the overall growth rate of industrial energy use were reduced 10%, that the rate of growth of oil and coal would each be

reduced by 10% also. To the extent that a fuel, such as oil, is under supply constraints, this assumption is questionable.

The Administration is currently examining the effect of alternative growth rates upon NEP impacts. For this review, the CRS methodology was used to recalculate the coal use impacts of the NEP under low-growth assumptions, but the resulting estimate represents no more than a correction of one of several CRS assumptions.

DETERMINATION OF BASE CASE (NO NEP) UNDER LOW GROWTH RATE

In 1976, 1.9 MMBD equivalent coal used. Base case growth projections for 1985 coal use are 2.7 MMBD equivalent. This increase implies a coal use growth rate of 3.9% annually under CEA's industrial energy growth target (5.1%) with no National Energy Plan. Reducing the 3.9% coal use growth rate by the ratio of low to DRT industrial energy growth rates ($\frac{3.1}{5.1}$) yields a coal use growth rate of 2.4%. Increasing the 1976 coal use (1.7 MMBD) by 2.4% annually for 9 years yields a 1985 coal use projection of 2.4 MMBD with no NEP (Base Case) or 212 million tons of coal.

CRS PROJECTIONS UNDER LOW GROWTH WITH THE NEP

With implementation of the National Energy Plan, the Administration expects industry energy growth to decrease from 5.1% annually to 4.6% (a 10% increase from the Base Case scenario) annually. Adjusting the low growth scenario industry energy growth rates similarly to reflect the impact of the NEP decreases the 3.1% (no NEP) rate to 2.8% (with NEP).

Moderate growth projections of coal use under the NEP imply an annual growth rate of coal use of 11.35% through 1985. Adjusting this growth rate to the low industrial growth scenario under the Plan ($11.35 \times \frac{2.8}{4.6}$) yields a coal use growth rate of 6.9%. Applying this 6.9% growth to 1976 coal use yields the CRS estimate of 1985 use of 3.5 MMBD equivalent under the NEP (309 million tons).

The CRS estimate of the effect of the NEP under the low growth scenario is thus 3.5 MMBD (with NEP) minus 2.4 MMBD (no NEP) or a net increase of 1.1 MMBD, or 97 million tons.

RECALCULATION SEPARATING COAL USE NOT INFLUENCED BY GROWTH RATE ASSUMPTIONS

The OEP&P recalculation removes from these growth calculations those parts of the increase which are not

affected by a lower growth rate. As CRS states, only 81% of the industrial coal increase comes from new units which would be affected by growth rate assumptions. Consequently only 81% of the industrial coal use increase from 1.9 MMBD (in 1976) to 5.0 in (1985) should be reduced to reflect the CRS low growth scenario. This 81% is .81 (5.0-1.9) or 2.51 MMBD.

The remaining 19% (.6 MMBD) should not be reduced. Subtracting this 0.6 MMBD from the projected 5.0 MMBD provides a growth increment from 1976 to 1985 of 4.4/1.9 or an implicit growth rate of 9.8%. Adjusting this 9.8% coal use growth rate by a ratio correcting for CEA versus low growth scenarios ($\frac{2.8}{4.6}$) gives a 6.0% coal use growth rate. This growth rate yields 3.2 MMBD coal use in 1985. Adding this growth affected portion (3.2 MMBD) to the 0.6 MMBD yields an estimate of coal use of 3.8 MMBD under the low growth scenario. The increased coal use would be 3.8 MMBD less 2.4 MMBD for the Base Case or 1.4 MMBD. The 1.4 MMBD increase is equivalent to 123 million tons/year of coal.

Thus, the CRS estimate of 3.5 MMBD of coal use in 1985 underestimates coal use under the low growth scenario by 0.3 MMBD or about 26 million tons, even if the simplifications involved are accepted.

Attachment B

EVALUATION OF COAL BOILER COST ESTIMATES

Office of Energy Policy and Planning
Executive Office of the President

A. Introduction

The purpose of this paper is to discuss the cost of installation of a new coal-fired boiler. Several estimates have been prepared of average boiler costs by different companies, and these estimates differ in many respects. This paper compares the boiler cost data developed by the Office of Energy Policy and Planning (OEP&P) using information supplied by Energy & Environmental Analysis, Inc., and used in analysis of the National Energy Plan (NEP) impacts, with other cost estimates.[1/]

The NEP analysis focused upon the cost of using coal in a boiler relative to the cost of using oil or gas. For

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1/ The principal estimates against which the OEP&P cost estimates are compared are:

a. H. K. Ferguson Company, "Costing Examples of Industrial Applications Coal-Fired Boiler Plants" presented by B. Dwight Coffin at the January 26, 1977 Texas Boiler Conversion Seminar (contained in transcription of proceedings, pg. 155-165).

b. The written statement of the American Boiler Manufacturers Association (ABMA) on (H.R. 6831) National Energy Act Title 1 Conversion to Coal and Other Fuels, May 17, 1977.

In addition to estimates contained in these documents, some cost estimates prepared by Gilbert/Commonwealth are discussed.

boilers originally designed to use coal, the OEP&P determined the cost of converting back to coal. For new boilers, the NEP analysis was focused on the difference in cost between new oil/gas boilers and new coal boilers. This distinction is very important because there are entire classes of expenses and equipment whose costs are not influenced by the type of fuel used. Table 1 shows a list of the expenses involved in construction of a boiler. In this list the categories which are directly influenced by the choice of fuel are shown at the top and those expenses which are independent of the fuel type are shown below.

TABLE 1

CAPITAL COST COMPONENTS OF BOILER CONSTRUCTION

Fuel Related Expenses	[Boiler and Related Equipment
	[Fuel Handling and Storage
	[Ash Handling and Disposal System
	[Environmental Control Equipment
	[Powerhouse and Site Preparation
	[Electricity, Rail and Other Utility Hookup
	[Contingency for Indirect and Unforeseen Costs*
	[Engineering*
	[Administration and Professional*
Non-fuel Related Expenses	[Raw Water Supply, Pumping and Storage
	[Boiler Feedwater Treatment
	[Steam and Condensate Piping Beyond Powerhouse

* These costs are affected by fuel type indirectly, in that they are estimated as a percentage of the total capital cost.

As mentioned above, estimates of the cost of converting a coal-capable boiler back to coal, as well as the incremental cost of installation of a new coal boiler have been developed in the analysis of NEP impacts. Independent estimates of the average cost of conversion of existing coal capable boilers back to coal have not been developed, so there is nothing with which the OEP&P estimates can be compared. Therefore, the remainder of this paper is devoted to a comparison of the total cost of a new coal-fired boiler, implied by the OEP&P incremental cost estimates, with the cost estimates prepared by other sources.

Table 2 provides a comparison of the OEP&P total cost estimate with estimates of H. K. Ferguson and ABMA. This table indicates that the total cost implicit in the NEP estimate is similar to other estimates. For purpose of comparison, all estimates in Table 2 have been broken down into fuel related and non-fuel related costs. This breakdown has been estimated for the ABMA and H. K. Ferguson costs because no such breakdown has been provided.

It is necessary to recognize that all of the costs included in each of the estimates can only be considered

TABLE 2

COMPARISON OF CAPITAL COST ESTIMATES

FOR A NEW 25 MW COAL BOILER

Cost	NEP	H.K. Ferguson	ABMA
Total Capital, Excluding Environmental	8.0	9.2[a/]	10.0
Fuel Related Capital Excluding Environmental	7.0	8.1[b/]	8.8[b/]
Non-Fuel Related Capital	1.1	1.1[b/]	1.2[b/]
Environmental Control Equipment	1.9	2.2[c/]	5.0
Total Capital Cost Including Environmental	10.0[d/e/]	11.4[e/]	15.0[e/]

a/ Estimated by extrapolation from cost curve in Figure 3.

b/ Estimated by OEP&P for purposes of comparison. These sources do not provide such a breakdown, nor are component costs shown.

c/ Maximum cost cited by author, including both scrubber and an electrostatic precipitator separately. Author does not provide an estimate for simultaneous SO_2 and particulate control, which is the basis for the NEP estimate.

d/ The figure shown here is different from that provided in Appendix A of the June 2, 1977, Report on the Oil and Gas Replacement Program because several factors were inadvertently omitted from the summary chart. They were, however, included in the analysis from which the conversion estimates were derived.

e/ Totals may not add, due to rounding.

average costs for a typical installation. For each type of equipment there is significant variation in cost depending upon site parameters and the kind of equipment needed for a particular industrial application. Variation in costs around the average estimates prepared by any source can easily be on the order of plus or minus 50 percent.

B. Costs Which Are Fuel Dependent

1. Boilers and Related Equipment

The NEP cost estimate for a new coal-fired boiler and associated equipment[1/] is based on quotations from equipment vendors. These average $15 per pound of steam per hour capacity. This value is identical to that mentioned in the ABMA statement[2/] for a 250,000 pounds of steam per hour boiler. The H. K. Ferguson paper [3/] does not provide a specific breakdown of this cost component.

2. Fuel Handling and Storage

The OEP&P coal handling cost was developed in a similar fashion to the boiler costs. Unfortunately, neither the ABMA

1/ Related equipment includes pulverizers, fans, sootblowers, economizers, superheaters, air heaters and associated piping and ducting.

2/ Ibid, p. 2.

3/ Ibid.

statement nor the H. K. Ferguson paper cite the cost of coal handling systems. However, in a study performed by Gilbert Associates, Inc., [1] the cost of the coal handling systems shown are comparable with the NEP estimates.

3. Ash Handling and Disposal System.

As with coal handling equipment, the NEP cost estimate of ash handling and disposal cannot be compared to either the ABMA statement of the H. K. Ferguson paper, but can be compared to the Gilbert Associates work.[2] Again, the OEP&P estimate is comparable. Unfortunately, the ash handling costs were not included in Table 4 of the NEP methodology paper [3] although they were included in the cost analysis. Typical cost of a pneumatic ash handling system for a 25 MW boiler is approximately $400,000.

4. Environmental Control Equipment.

In this category, there is a significant difference between the costs presented by ABMA and those included in

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1/ Gilbert Associates, Inc., "Major Fuel Burning Installation (MFBI) Analysis of Cost for Coal Conversion," prepared for FEA, October, 1976.

2/ Ibid

3/ Executive Office of the President, "Replacing Oil and Gas with Coal and Other Fuels in the Industrial and Utility Sectors," Appendix A, June 2, 1977.

the OEP&P estimates and the H. K. Ferguson paper. ABMA cites a cost of approximately $5 million for a scrubber on a 250,000 pounds of steam per hour boiler.[1] This is significantly higher than the NEP estimate of $1.9 million, or H. K. Ferguson's estimate of approximately $2.2 million[2] for a comparable sized unit.

The estimate used in analysis of the NEP impacts was derived from a recent survey of industrial scrubbers installed on coal-fired boilers.[3] This survey analyzed many different types of industrial scrubbers, and the cost data are based on vendor quotations, as well as actual installed costs reported by industries.

The cost estimates prepared by H. K. Ferguson are of the same magnitude as the OEP&P estimates. The slight difference between these two estimates appear to be partly as a result of different assumptions on the type of equipment required, however, the exact basis for the H. K. Ferguson estimate is unknown.

1/ Ibid., pg. 2.

2/ Ibid., p. 159.

3/ Energy and Environmental Analysis, Inc., "Survey of the Application of Flue Gas Desulfurization Technology in the Industrial Sector," prepared for FEA, December 22, 1976.

The higher cost estimate prepared in the ABMA testimony is the result of extrapolation of utility scrubber costs to industries. This is not appropriate for several reasons. Primarily, utility scrubbers are custom field erected installations, whereas industrial scrubbers are frequently shop erected "package" units employing relatively standardized designs. As indicated by the EEA report, with few exceptions, industrial scrubber vendors do not compete in the utility market.[1/] Industrial scrubbers generally are specifically designed for small scale application rather than scaled down from utility scrubber technologies.

5. Powerhouse and Site Preparation

The costs of a powerhouse and site preparation are greater for coal boilers than for oil or gas boilers because coal boilers are larger. The OEP&P cost estimates do not include site preparation (except insofar as it is a component of contingency costs) because of the highly site specific nature of these costs. Site preparation is not considered by H. K. Ferguson, and it is uncertain what costs are considered by the ABMA testimony.

1/ Ibid., pg. ii.

The cost of a powerhouse is considered in both the NEP and H. K. Ferguson estimates. The original NEP cost estimate of $90,000 for a 25 MW boiler shown in Table 4 of the methodology paper is approximately the cost of structural support for such a boiler. It does not reflect the cost of weatherproof enclosure. Such boilers do not need to be enclosed; utility boilers frequently are not. Industry practice varies, however, and OEP&P is giving this matter further study. It is expected that the cost of a full enclosure will not affect the capital cost differential between coal-fired and oil-fired units significantly, however. Moreover, the economics of coal conversion are relatively insensitive to small changes in capital cost.

6. Other Fuel Related Costs

Other costs which are influenced by the type of fuel used include all costs which are typically estimated by taking a percentage of the capital cost of the installation. These "other direct and indirect costs" include everything from profit and overhead expenses to provision for cost overruns and other unforeseen expenses. The OEP&P cost estimates include three categories of expenses. First, provision

is made for electricity, rail, and other utility and service hookup. These costs are estimated at 10 percent of the capital cost. Next, a contingency cost is included, which is a broad category inclusive of all miscellaneous costs excluding engineering. These costs are estimated at 20 percent of the plant capital cost. Finally, engineering costs are estimated at 10 percent of the plant capital cost.[1/]

It is not possible to tell what sort of adjustments are included in the estimates prepared by either H. K. Ferguson or ABMA. The category of miscellaneous expenses can be very substantial, however. In one cost estimate for a 30 MW equivalent coal-fired boiler, fully a third of the bottom line cost of the boiler is attributed to "insurance, taxes. overhead, profit," etc.[2/] In the OEP&P cost estimates, insurance, taxes and overhead are considered in the contingency category. Profit is not estimated as a cost category

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1/ Contingency and engineering costs allowances are standard engineering cost estimation practices. Refer to Seymour Calvert, "Air Pollution," A. C. Stern, editor, 3rd edition, Volume 4, pp. 288, 298, Academic Press, New York, N.Y., 1977.

2/ T. J. Heil and C. H. Leatham, Jr., Gilbert/Commonwealth, Electric Boilers up to 175,000 lbs./hr., presented to the American Power Conference April 19, 1977.

because the rate of return on the investment is evaluated as part of the decision criteria which determines the economic feasibility of coal utilization.

C. Costs which are Independent of Fuel

The major cost in this category is the cost of boiler feedwater treatment. This cost is included in the H. K. Ferguson estimate, and probably also in the ABMA estimate. As discussed in this paper, boiler feedwater costs were not included in the OEP&P estimates. For this reason, these water costs were not included in the chart in Appendix A of the June 2 report. The incremental cost of a coal boiler is not affected by costs which are not related to the fuel type. Boiler feedwater costs are approximately the same for coal and oil-fired facilities.

D. Conclusion

In conclusion, the major difference between the cost estimates used in analysis of NEP impacts and other cost estimates is the focus of the OEP&P estimates on the incremental cost of using coal. The total estimated cost of a new 250,000 pounds of steam per hour coal boiler is about $9.9 million, including pollution control costs. This value

is close to that shown by H. K. Ferguson, but much lower than the cost mentioned in the ABMA testimony.

The major difference between OEP&P estimates and ABMA estimates is for environmental costs. The OEP&P cost for environmental control is similar to that shown by H. K. Ferguson, and far lower than that estimated by ABMA. ABMA's estimate of costs is extrapolated from utility costs. Experience with industrial scrubbers has indicated that such extrapolation is not reasonable.

APPENDIX A

COMPARISON OF CAPITAL COSTS OF NEW COAL AND OIL BOILERS

250,000 pounds of steam per hour field erected boilers[1/]

($1,000)

Cost Component	Coal	Oil	Incremental Cost of Coal
Boiler related costs	3750	1875	1875
Fuel handling	550	100	450
Ash handling[2/]	400	-	400
Boiler feedwater treatment	750	750	-
Powerhouse	90	45	45
Total direct, less environmental	5540	2770	2770
Total indirect, including contingency and engineering	2504	1252	1252
Total, less environmental	8044	4022	4022
Environmental cost (wet scrubber)	1900	-	1900
TOTAL COST	9944	4022	5922

Source: Office of Energy Policy and Planning

1/ Shop erected oil boilers are available at this size. Such units cost approximately $400,000 less than field erected units.

2/ Excluded from Table 4 of Appendix A but included in the analysis. After adjustment for engineering and contingency (shown separately above under 'total indirect'), this component results in a difference of $580,000.

REFERENCES

1. American Boiler Manufacturers Association (ABMA), Written Statement on (H.R. 6831) National Energy Act, Title 1 - Conversion to Coal and Other Fuels," May 27, 1977.

2. B. Dwight Coffin, the H. K. Ferguson Company, "Costing Examples of Industrial Applications Coal-Fired Boiler Plants," presented to the Texas Boiler Conversion Seminar January 26, 1977, pp. 155-165 in the Transcription of Proceedings Texas Boiler Conversion Seminar.

3. Energy and Environmental Analysis, Inc., Survey of the Application of Flue Gas Desulfurization Technology in the Industrial Sector, prepared for the Federal Energy Administration, December 22, 1976.

4. Executive Office of the President, Replacing Oil and Gas with Coal and Other Fuels in the Industrial and Utility Sectors, Appendix A, June 2, 1977.

5. Gilbert Associates, Inc., Major Fuel Burning Installation (MFBI) Analysis of Cost for Coal Conversion, prepared for the Federal Energy Administration, October 1976.

6. D. E. Gushee, Congressional Research Service, The Carter Coal Conversion Plan for Industry: A Critique, June 10, 1977.

7. T. J. Heil and C. H. Leathan, Jr., Gilbert/Commonwealth, Electric Boilers Up to 175,000 lb/hr, Available Designs and Applications, presented to the American Power Conference, April 19, 1977.

The CHAIRMAN. The Chair would state that there is a bill-signing ceremony at 9 o'clock. I would like to be down there and you represent us. This committee has been involved in it for many, many years, and we are all glad to see a legislative resolution on this problem. Senator Hansen.

Senator HANSEN. Mr. Chairman, if I might, let me just observe that there is no one on the Senate side, in my opinion, who has worked longer and more diligently than has the distinguished senior Senator from Montana. I would just have to observe that he and you, if two persons were to go down to try to represent this body, you two would be my nominees, and I want that to be on the record because I greatly respect the contribution that Senator Metcalf has made as chairman of that subcommittee.

He has worked very long and very hard, and I am sorry he can't be down.

The CHAIRMAN. I would join you in that. The truth is that Senator Metcalf has carried the load for all of us in this committee. It's been a long, protracted process, and Senator Metcalf, for the Senate side, has been the key advocate and leader in bringing this to its final conclusion today. Senator Hansen.

Senator HANSEN. Dr. Schlesinger, let me first say that although I have not necessarily enthusiastically agreed with everything that President Carter has done, I can assure you that your nomination to become Secretary of the Department of Energy certainly leaves me with no doubts in my mind that he has picked a topflight man for an extremely important, difficult job.

I am not unaware of the very distinguished role that you have played in Government under several Presidents, the significance of the contributions you have made, and I congratulate the President, with renewed confidence in the ability of this democracy to survive this very real problem too.

Dr. SCHLESINGER. Thank you, Senator.

Senator HANSEN. The act creating the Department of Energy has a number of provisions. One deals with leasing of Federal lands. The bill, in section 209, mandates the establishment of a leasing liaison committee to assure required liaison between the Department of Energy and the Department of the Interior.

The Senate was greatly concerned about the continued development of the Federal energy resources. Is it your intention to move swiftly to get the leasing liaison committee set up and moving?

If I may, I will state another question along with that. Would you propose to make this a powerful instrument for carrying out our Federal leasing policies?

Dr. SCHLESINGER. I would hope it would be an effective instrument, Senator Hansen. Indeed, the act does impose responsibilities on the Department of Energy in collaboration with Interior, to establish production goals. In addition, Energy will take over many of the economic regulatory aspects of the Federal leasing process. The actual leasing will be done by Interior, the selection of areas to be leased will be done by Interior. But the production goals, the due diligence requirements, and the economic arrangements will be those established by the Department of Energy. Indeed, I do believe we should develop our resources rapidly, and that will be a major objective of that Department.

Senator HANSEN. The bill effectively gives the Interior Department a lead role in environmental impact statements. That is the so-called EIS's, for most, if not all, Federal leasing actions under the National Environmental Policy Act.

Since these EIS's are often the pacing or critical path items in new leasing schedules, I am concerned that this control over EIS's could be used by the Interior Department to delay or frustrate our leasing programs.

Can you assure us that your Department will be an active participant in these EIS's and insure that there are no unnecessary delays? Can you assure us that you will inform this committee if there is any such delay or frustration of our leasing policy so that we can review the statute?

Dr. SCHLESINGER. We will not be the lead participant in the development of those EIS's. That is a responsibility of the Secretary of the Interior.

We will be pressing for expeditious handling of such statements to assure that with appropriate protection of the environment, that there are no unnecessary delays. Of course, we, as well as Secretary Andrus, will be happy to keep this committee informed as to progress.

Senator HANSEN. The new splitting of responsibilities between Energy and Interior Departments could take a long time to sort out and get new regulations in place. This could introduce some serious delays in our Federal leasing, in my opinion.

How soon do you expect to have any new regulations ready to go?

Dr. SCHLESINGER. I cannot give a precise date on that. We have established a number of task forces. I failed to mention earlier, Mr. Chairman, that it is our objective to have this department in operation, if we can possibly do so, on October 1.

That is a shorter period than has historically been given to the formation of a department, but the needs of the times, plus a prudent desire of any sane man to avoid keeping two sets of books in one fiscal year, lead us to strive for that October 1 date.

We will, Senator Hansen, be attempting to work very closely with Interior to develop appropriate methodologies. We recognize there is some new legislation that the Congress, that both houses of Congress, have dealt with on the OCS. We are eager to see that such new legislation does not result in undue delay, and we'll be working with Interior to simplify these procedures, if we can possibly do so.

Senator HANSEN. With respect to regulatory transfers into the new department, the new department will have many of the functions of the FPC and the ICC in the new Federal Energy Regulatory Commission. Other FPC and ICC functions will be in your authority, so I understand.

It is extremely important that these authorities and functions be sorted out so that the energy industries can have a predictable and available regulation. When will you have your regulations for these authorities and functions and can you assure us that the regulations will closely follow the legislative history we have established.

I might observe that, as we took action on the bill yesterday, in order to clarify some issues that we thought required and needed clarification, we had some colloquies that occurred by way of legislative history.

Dr. SCHLESINGER. Senator, we will consider the totality of the legislative history and the wording of the act. There are some difficulties, as you indicate, in the area of integrating these various lines of regulatory activity. We will proceed as rapidly as we can.

I would think that we will be able to make clear to the industry the changes in the processes and it is my hope, once again, that many of the regulatory requirements of the past can be eliminated.

Much of this consists, in my judgment, of bureaucratic redtape and unnecessary forms. Hopefully the process can be simplified so that reviews can be shorter, less costly for those dealing with regulatory authorities, and more stable or predictable as you indicated.

Senator HANSEN. Can you assure us that we will see and be briefed on the regulations as soon as you have them available. I might say that we attach considerable importance to these regulations.

We would appreciate very, very much an opportunity to look at a draft of such regulations.

Dr. SCHLESINGER. We would be happy to consult with members of the committee, Senator Hansen, and in certain areas, such as energy actions, those actions come to the Congress for decision.

Senator HANSEN. The conference bill repealed section 7K of the Federal Energy Administration Act, and I understand you submitted a letter yesterday saying that the problem—saying that the Department would continue the policies of 7K, even though the requirement, the mandatory requirement has been repealed.

Can you assure us to that effect? Mr. Chairman, if it would not be inappropriate, I would like to ask that the letter be placed in this hearing record.

The CHAIRMAN. Without objection, the letter—do you have the letter, Mr. Secretary?

Dr. SCHLESINGER. Yes, sir, it is a letter to Chairman Brooks and was reflected in the debate on the House side yesterday.

The CHAIRMAN. And a similar letter is in the record, I believe, in the House debate on the conference report.

Dr. SCHLESINGER. Yes, sir, as well as a letter to Senator Ribicoff, yes, sir.

The CHAIRMAN. That will be placed into the record then.

Dr. SCHLESINGER. You have those assurances made in the letter, Senator Hansen.

Senator HANSEN. Thank you, very much.

Mr. Chairman, I have several other questions, but in order that others here may have a turn, I would be happy to yield at this time.

[The letter referred to by Dr. Schlesinger follows:]

THE WHITE HOUSE,
Washington, August 2, 1977.

HON. JACK BROOKS,
Chairman, Committee on Government Operations, House of Representatives, Washington, D.C.

DEAR CHAIRMAN BROOKS: It has come to my attention that a provision of the Department of Energy Organization Act repeals section 7(k) of the Federal Energy Administration Act. This subsection limits enforcement actions against independent marketers based on changes in rules or regulations or interpretations thereof, applied retroactively.

It is the full intention of the Administration and of the Department of Energy to carry out its regulatory responsibilities as they relate to the subject matter of section 7(k) of the Federal Energy Administration Act as if the subsection

were still in force and had not been repealed. In this regard, it is our intent to assure procedural fairness to independent marketers by carrying out a Department of Energy enforcement program consistent with section 7(k) of the FEA Act.

Thank you for bringing this matter to my attention.

Sincerely,

JAMES R. SCHLESINGER,
Assistant to the President.

The CHAIRMAN. Senator Durkin.

Senator DURKIN. Thank you, Senator. Thank you, Doctor, I have the feeling you are going to see a lot of this committee. As one who opposed—I think I was the only Democrat who spoke in opposition to the Department of Energy—I was concerned with the concentration of economics and politics in an energy policy.

I am concerned that there did not seem to be any recollection of some of the particular problems we have in the Northeast. But I hope you prove me wrong, and I would be happy to work with you to help you prove me wrong.

New England, probably more so than the rest of the country, without adequate transportation, without adequate energy supply, we are at the expensive end of any and every energy pipeline. We won't make it economically.

It may be desirable to solve the energy problem in other areas of the country, it is an absolute necessity for us. I look for your support.

We can convert to coal, but unless we bring the coal in by sea, it would be very, very difficult to get it with the inadequate rail transportation. I look for your support of beefing up and supporting our rail lines.

I look for your support in implementing hydro. We have waterpower in northern New England that is not being utilized, and I look for your support and your help in implementing a hydro program in the Northeast.

I would hope that the problem of strategic oil reserve for the Northeast could be solved and we might be assured that there will be a strategic oil reserve, whether it be crude or byproduct, somewhere in the northeast.

One of the problems we run into everywhere, a problem all over the country, polls have indicated, you indicated, and everyone indicates that most people do believe Johnny Carson asked last night how many people believe there is an energy crisis or an energy shortage.

I think one or two people in the audience indicated possibly there was. One of the problems is that there is no data. As you know, the Senate just recently mandated the Outer Continental Shelf bill, that a study including onshore/offshore, inventory of our reserves, including the right to drill was the only way to get adequate data.

The Senate passed that, 54 to 39, I believe. The administration took hands off, but now the Department of Energy is on the way. Can we count on your support to push for that legislation and to push for an aggressive study so that we know just what is the extent of our inventory.

I for one don't think we will convince the American public until we tell them how much is in the cupboard.

Dr. SCHLESINGER. We will endeavor to bring that information to the American public, and we hope we can count on Congress support. The point you make, Senator, is well taken.

Perhaps crisis is not the precise term we should employ for our energy problem. It's more like cancer, kind of a wasting disease. We know now that we will peak out worldwide in terms of production capacity in the next decade, possibly a few years later, and we will no longer be able to accommodate increasing demand for oil.

That is as certain as the Sun will rise in the east. But we face a crisis, as it were, without a physical shortage, and that is very difficult to convey. However, if we are to deal with these problems effectively for our children and grandchildren, we must successfully convey that to the American public while we still have time to adjust.

Senator DURKIN. Don't you think that part of the problem is that most of our projections are based upon oil company data? Naturally the American public is suspicious of oil company data.

Dr. SCHLESINGER. Even if we disregard these estimates of proven reserves, which by and large are provided by domestic and international oil companies, we have the historic projections of the geological survey.

The geological survey suggested that all of the oil that exists in the world, and might be discovered, amounts to some 2 trillion barrels. In this decade alone we will consume something like 200 billion barrels of oil.

So we have, inevitably, a situation in which our oil will be exhausted. We see countries around the world that are about to peak out in terms of capacity. Iran, which has every desire to produce oil, will peak out sometime in the late eighties or nineties.

Other countries have already peaked out. The United States has probably already peaked out in the lower 48 States. So we know that this resource of nature will eventually be exhausted and will certainly be less available for boiler fuel in the years ahead. And if we have foresight we will adjust now.

Senator DURKIN. You mentioned oil, but this committee held a couple days of hearings with respect to a study on oil and gas reserves, which was started originally, I think, by Fred Weinhold, and then taken over by Dr. Nutzin. I don't know whether Dr. Nutzin is right or wrong because we don't have the data to prove it one way or the other. His figures indicate that they will be 40 years of natural gas at a very, very reasonable production cost.

Without resolving that question——

Dr. SCHLESINGER. I think he is probably close to right. Those numbers come from the geological survey and our standard estimates of available, conventional natural gas are about 600 to 800 trillion cubic feet. And I would hope that we could maintain 20 trillion cubic feet of production for the next 30 or 40 years.

Senator DURKIN. If these figures are right, isn't there a strong possibility that in the interim, in the transition, there is going to be a production crunch with oil, I think we all admit that.

In that transition, might not natural gas, rather than converting to coal, with the greenhouse problems, transportation problems, strip mining problems and all those problems, the problem in New England of getting coal there, might not we be better advised to utilize more natural gas during the interim than switch to the expensive and environmentally damaging coal.

It poses, I think, a second question. If there is that much gas, would not that act as a depressant to the OPEC oil price, and weaken, if not break or bend, the OPEC cartel?

And I question the advisability of a wellhead tax which really builds a political and economic floor under the OPEC price, if there is that much gas available.

Dr. SCHLESINGER. A number of points are raised by your question. One secondary point is that the green house effect comes about from the burning of Btu's; burning natural gas from the standpoint of the greenhouse effect is no better than burning coal. You are putting carbon dioxide in the atmosphere.

We are more optimistic about gas, certainly, than we are about oil. But we will have difficulty, I think, in getting back up to the 20 trillion cubic feet of gas. There is about 27 trillion cubic feet of demand out there.

This will not be a substitute by itself for crude oil imports, and it will not significantly effect worldwide demands.

Senator DURKIN. But you say there is still a production problem; even the reserves may be there; there is still a production problem.

Dr. SCHLESINGER. That's right, there is the problem just of drilling the wells, and, as has been indicated, there is a problem of providing incentives for the producer, given the character of the free enterprise system.

We would hope that we would indeed be able to provide gas of this conventional sort. The Government is also working on a variety of R. & D. measures to bring on unconventional sources of gas. We may do far better in terms of total gas supplies in the future than we presently prudently estimate.

Under the circumstances, there would be more gas available for industry. Certainly much of the growth of residential housing should make use of gas. It is more economical and a most efficient way to heat homes.

Senator DURKIN. Two quick questions with respect to Alaska——

Dr. SCHLESINGER. May I interrupt, Senator. You asked another question with regard to placing a floor under the OPEC price. Indeed, that is far from our intention. What we have done is establish a variable tax. We will continue to urge a reduction in the OPEC price. Of course, if there were such a reduction, the tax would shrink.

The U.S. Government and the people of the United States have no desire to see a larger share of their real income going overseas. In addition, higher OPEC prices create great financial and political turmoil around the world.

We have no desire to see that occur, and the mechanism that we choose is not so much a floor; it is a ceiling. It's sort of a collapsible ceiling that may float downward, depending on the behavior of the OPEC cartel, which will depend in large measure on the supply and demand conditions in the international oil market.

Senator DURKIN. As you know, every tremor in OPEC is an earthquake in New England.

Doctor, the President made some ambiguous statements when he was down visiting the oil rigs, with respect to Senator Jackson's amendment, with exploratory drilling in the Outer Continental Shelf, prior

to lease sales. He made ambivalent statements with respect to the amendment mandating an oil and gas reserve study, with the authority to drill, if that was the only way to get adequate data.

I understand from your answer today that you support both those programs.

Dr. SCHLESINGER. Yes, sir. We will explore the possibility of Government drilling and of course the Government has financed drilling in the past on the naval petroleum reserve.

That is a proposal that must be studied with considerable care, but, indeed, with regard to the other element, we have every intention of getting as good reserve data as we possibly can get.

Senator DURKIN. Thank you, Doctor.

With respect to Alaska, as you know, the Congress heeded the stated intent of Dr. O'Leary, and Juanita Krepps, that they were opposed to any restriction on the right to export Alaska oil to Japan.

We now hear that the McKinney and McIntyre amendments foreclose that possibility because I now hear there is talk about building a refinery in the Valdez area, and exporting Alaskan oil to Japan by way of a refined product.

Does the administration have a position on that?

Dr. SCHLESINGER. I think the answer to that is that there is nothing in that.

Senator DURKIN. Fine. With respect to the Alaska natural gas pipepine, all the proposals seem to indicate that finance, that to finance the natural gas pipeline from Alaska, will require a heavy contribution of consumer money, construction work, and project approach for pipelines, whatever.

What is the administration's position with respect to asking the consumer to finance the natural gas pipeline from Alaska?

Dr. SCHLESINGER. I can't give you a complete answer to that question because the President will be studying that question in the course of the days and weeks ahead.

The Government's preference is that the transportation route be privately financed. However, we shall seek to avoid undue incumbrances that place a burden on the consumer, and to hold down the cost of service.

We do not want to get into a position in which we are forced to impose this burden on the taxpayer. Therefore if private companies are going to build it, they must have reasonable protection against risk. This will be one of the largest private ventures.

But we will be dealing with these details as the President approaches his recommendation, which the Congress will wish to approve or disapprove. And we will be able to provide additional data.

Senator DURKIN. I appreciate the fact that the taxpayer is not going to be asked to pay the burden, but there are some others that are concerned that the unsuspected ratepayer is going to have to pay an inordinate amount for construction of the pipeline.

By way of wrapping up, coming from a State where we have had 7 years of hassle with the siting of a generating station, I would hope that one of your early endeavors is to streamline the procedure, make it a neutral procedure. I don't want you to favor the power companies, I don't want you to favor any groups, I don't want you to put environmental groups at a disadvantage.

But I think the bureaucratic ping-pong going on with respect to that reactor in Seabrook has cost everyone dearly, and there has to be some way to streamline and expedite a fair and neutral ajudicatory process so that we can get a final yes or no on these things in a much shorter time frame.

Dr. SCHLESINGER. Senator, I am delighted at the question you have raised. We will be working in the weeks ahead, and hope to have full presentations to the Congress early in September.

Such a piece of legislation that I think all parties will endorse because we all recognize the cost of the protracted delays that exist in the present procedures.

Senator DURKIN. Thank you, Doctor. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Durkin. I think all the members should ask fully the questions on their mind. With that, Senator Abourezk.

Senator ABOUREZK. As a premise for some of these questions, I am going to try to state what I understand the administration policy to be. If I state it wrong, I know you will correct me.

The President has asked for quite rapid conversion to coal use rather than natural gas and oil. We do have a lot of coal reserves in the country, and I am curious to know if the administration and your Department and you personally are going to allow the existing oil companies to move in to control of the Nation's coal reserves, to the point where price competition between those two kinds of fuels would be brought in.

Horizontal divestiture is the simplest way to state it. Do you believe in that? Do you believe it ought to be instituted as quickly as possible?

Dr. SCHLESINGER. There are two parts to your question, Senator. The Government is determined that competitive practices continue to prevail in the coal market, which is a market entirely different in structure and performance from that of oil and gas.

We feel it is premature to move towards horizontal divestiture now.

Senator ABOUREZK. If my figures are correct, I think the oil industry at present control something like 35 or 40 percent of the Nation's coal reserves. At what point do you think it would be appropriate to move to prevent them from controlling any more.

Would you wait until it got too far and then have to break them up? Or would you rather try to prevent it now?

Dr. SCHLESINGER. Senator, the U.S. Government controls the great bulk of those reserves. It wants to lease those reserves to those who will use them effectively and who will bring coal to market.

As long as the oil companies perform in that way, as long as the business performance of the industry is adequate, it would seem to me to be premature to move in that direction.

Forty percent of the reserves now leased by the Government may be in the hands of the oil companies, but the industry is not a monolith. The coal industry historically has been a highly competitive industry.

Some in the industry would say it is too competitive. I think that the existence of large numbers of producers should be able to maintain competition in this industry. If necessary, the Government will also use its due diligence provisions to encourage those who have Federal leases to work those leases.

In the area of coal production, there are not all of the ambiguities that were cited, I think, by Senator Metzenbaum, and possibly by Senator Durkin, with regard to oil and gas production.

So the due diligence provisions should be effective in maintaining production from federally leased lands, irrespective of who happens to hold the lease.

Senator ABOUREZK. I want to recite some testimony which I took in the antitrust subcommittee, when I first introduced the horizontal divestiture bill. It is from the vice president of Continental Oil Co., who also owns Consolidated Coal. This is paraphrasing: I asked if Continental would allow or authorize its coal subsidiary to undersell its oil subsidiary on a Btu equivalent basis.

The answer I received was something like this: "We would not do it, we would be crazy to do it," and I think he's right. It seems to me——

Dr. SCHLESINGER. Senator, it may be crazy from their perspective, but they are going to do it. We want to see an increasing gap between the oil price Btu equivalent cost of energy and the coal price.

That gap should increase. One of the purposes of the oil and gas user charges that the President has suggested, is to increase that gap and to make coal more attractive.

We intend to see to it that prices reflect costs with an adequate return to the producers. But we are running short of oil. If there is competition in the coal markets, coal should not be dragged upward in price, simply because oil is going in that direction.

If indeed what you heard from those who discussed the problem with you were to be revealed in practice, that would be direct prima facie evidence of monopolistic practices.

Senator ABOUREZK. What plans would you have for the oil industry if you were convinced that they were undertaking anticompetitive practices?

Dr. SCHLESINGER. If indeed the circumstances which you envision were to materialize, we would have to reconsider the issue of horizontal divestiture in order to provide a different market structure for that industry. Before we reach that stage, I think we would use such provisions as the due diligence provisions with regard to coal production to see to it that an ample supply of coal is being brought to market in such a way that there is no shortage, so that prices will not rise unduly above costs.

Senator ABOUREZK. I agreed with President Carter's decision on the breeder reactor. His plans, your plans, I should say, or other nuclear power facilities, are a little unclear to me.

I think I understand it to be that you intend to go forward with regular nuclear power.

Dr. SCHLESINGER. Uranium-burning plants are appropriate. They all, I think, are an essential ingredient in our power mix.

As Senator Durkin indicated, one of the advantages is that they avoid providing combustion products so that you do not have the greenhouse effect.

Once again I reiterate my response to Senator Durkin. We will be moving toward a streamlined process in the licensing of these plants.

Senator ABOUREZK. Have you concerned yourself with the question of what to do with waste materials from nuclear plants?

Dr. SCHLESINGER. Yes, sir. The considerations, of course, have been altered by the decision of the President to defer reprocessing. The decision to defer reprocessing, of course, implies a deferral of ultimate waste disposal.

What we plan to do in the immediate future is to provide a firm fee by which utilities in the United States can relinquish title to fuel rods to the U.S. Government.

This will supply the utilities with firm cost effectiveness calculations when they go before the State regulatory bodies. The Government would acquire title to those fuel rods.

It would store those fuel rods until such time as an ultimate decision is made with regard to reprocessing. If the ultimate decision is to go against reprocessing, those fuel rods would be stored permanently in geological storage.

If the decision is to go for reprocessing, the uranium and plutonium content would be withdrawn and the rest of the waste would also go into geological storage.

Senator ABOUREZK. What would be the cost to the fee program? Do you have an estimate?

Dr. SCHLESINGER. We have no intention of allowing the Government to pick up the costs of the program. The fee charged to the industry would be such as to cover the Government's cost. There may be short term variation in those costs because of the need to create fuel storage capacity.

But the fee would be substantial enough so that the cost of that storage capacity would be covered by the fee.

Senator ABOUREZK. In other words that would come from the industry itself?

Dr. SCHLESINGER. Yes, sir, that's the purpose here, to provide a fixed calculation for establishment of the rate base by the State regulatory body.

Senator ABOUREZK. Do you have an estimate of the cost of storage of the nuclear waste that you anticipate, or the cost of its ultimate disposal?

Dr. SCHLESINGER. Yes, sir, we have made very preliminary calculations. I do not have them here and we will insert them into the record.

Senator HANSEN. Would the Senator from South Dakota yield?

Senator ABOUREZK. Yes.

Senator HANSEN. As I understand you, Dr. Schlesinger, you were speaking about the policy of the Government as regards the domestic nuclear industry, and the storing of those wastes or the handling of them.

Would these same general conditions apply to international users as well? I may be anticipating a question that you have, but I am just curious as to what might be the position of the Government with respect to those powerplants?

Dr. SCHLESINGER. I have outlined for Senator Abourezk the general provisions. We have not finalized this as yet, Senator Hansen. I think that there would be variations on the international scene, but I believe that we will be prepared to accept fuel rods from other countries if they will relinquish title in this manner.

Senator DURKIN. We don't want any of those in New Hampshire.

Senator HANSEN. Would you venture any guess as to when that decision might be announced, Doctor?

Dr. SCHLESINGER. We would hope that the decisions would be announced in the near future. That should be no longer than 60 days, just to [illegible]e an estimate.

Senator HANSEN. I thank my friend from South Dakota for yielding.

[Subsequent to the hearing the following information was received for the record:]

PRELIMINARY ESTIMATES OF SPENT FUEL STORAGE COSTS

One concept presently being evaluated involves transferring title of spent fuel to the U.S. Government upon payment by the users of a single fixed fee. This fee would cover both the annual costs of interim storage until the fuel is placed in permanent storage and the costs of permanent storage. This fee may vary with the length of time the fuel must be in interim storage, the time of payment and other factors. Two of the key elements which would go into such a fee are the following:

Annual cost for storage of spent nuclear fuel in away-from-reactor storage basins: $5,000 to $20,000 per metric ton of spent fuel per year. (Based on commercial estimates, actual cost depends on size of storage facility.)

Cost for permanent storage of spent nuclear fuel in a geologic repository: $70,000 to $200,000 per metric ton of spent fuel per year. (Based on preliminary information from Office of Waste Isolation, Oak Ridge.)

Senator ABOUREZK. ERDA testified at one of the hearings before this committee that the cost of military waste disposal alone for their foreseeable amount of waste would be something like $20 billion. Do you disagree with that figure?

Dr. SCHLESINGER. I would hesitate to disagree with any of ERDA's numbers. [Laughter.]

Senator ABOUREZK. My question is: Would the utility or the Government ultimately pay for disposal of nuclear waste?

Dr. SCHLESINGER. I think I should underscore that most of the problem of nuclear waste in this country is military waste. By the end of this century the amount of high-level waste generated by the civilian nuclear power program will amount to 3 percent or less of the total nuclear waste by volume if spent fuel is reprocessed or 12 percent if the spent fuel is permanently stored.

The total cost for disposal will likewise depend on the reprocessing decision. Permanent disposal of all the spent fuel by 2000 would be on the order of $10 billion to $15 billion. Permanent disposal of high-level wastes from reprocessing would be about one-quarter of the spent fuel disposal cost.

Indeed, these costs would be paid for by the power companies and these are legitimate charges against those companies and ultimately against the ratepayer.

Senator ABOUREZK. No matter how much the amount of waste increases from utility companies, that would still be paid for by the utility companies and not the Government?

Dr. SCHLESINGER. Yes, sir, it is part of the national energy plan that the full costs of energy should be covered in price.

Senator ABOUREZK. I was not listening when Senator Durkin asked his questions about it, but it had to do with foreign fuel waste. Did you answer as to whether or not we would pay for foreign fuel waste, or did you say there was not a decision as yet?

Dr. SCHLESINGER. I indicated that there would be, in all likelihood, a similar development with regard to foreign fuel, but there would be variations as between what we would propose for the domestic utilities and for foreign producers.

I am not in a position at the moment to define those variations with precision.

Senator ABOUREZK. Basically the foreign countries would pay for waste disposal even if we disposed of it.

Dr. SCHLESINGER. I think that is the underlying thrust, yes, sir.

Senator ABOUREZK. In summarizing this particular area——

Dr. SCHLESINGER. Along the lines of the President's nonproliferation policy, I should underscore that we have some desire to see that spent fuel not remain overseas, if that can be avoided.

Senator ABOUREZK. Would it be fair to summarize your position as saying that it is your policy to go all out on a nuclear energy plan?

Dr. SCHLESINGER. It is our policy to remove unnecessary obstacles with regard to the construction of nuclear plants.

But the decision as to whether to go coal or nuclear should be the decision of the utility rather than a decision by the Government. We do not want that decision to be unduly biased by ineffective Government policy. That decision must be made by utilities, and presumably the State regulatory bodies will be examining the cost effectiveness of the utility proposals.

Senator HANSEN. Would the Senator from South Dakota yield for a moment for one question that I think is closely related? Dr. Schlesinger, if I understood you correctly, you indicated that we might anticipate a policy decision from the administration shortly, with respect to this country's intentions vis-a-vis the handling of waste and spent fuel, nuclear fuel materials, from foreign countries.

Actually, my question is: What role do you contemplate or envisage for the United States as a repository for spent nuclear fuel? I am thinking of three kinds: That which would result from use by the domestic energy companies; that from the military programs of this country; and also that which might come from foreign countries in furtherance of the President's nonproliferation concerns.

What sort of role would this country play, in your opinion?

Dr. SCHLESINGER. That role is impossible to define with any precision until such time as there is a national decision whether the President's request for deferral of reprocessing be made permanent or only temporary. I do not think that there is any eagerness to have the United States become the burial grounds for nuclear waste. During this period in which we are awaiting a decision with regard to long-term reprocessing, the President is suggesting to other countries that they also defer reprocessing and therefore accept the costs of not reclaiming the fuel value of the spent fuel rods.

During this period the United States does feel that it could be able to accept those spent fuel rods, but the issue of long-term disposal of nuclear waste certainly has not been resolved, and we have no desire to create that kind of worldwide facility.

Senator HANSEN. I thank my colleague from South Dakota.

Senator DURKIN. Senator, would you yield? Doctor, I don't think we need to stress that in the deliberations, when this decision will be made by the administration, I, for one, would strenously object and try to get as many as we can—51 at least—object to making the United States either an international dumping ground, an international nuclear dump. I can't say that any too strongly.

I think it would cause an uproar across the country and I would like to make that point now while the decision is still in an ongoing stage.

Dr. SCHLESINGER. We are well aware of that and we share that desire. I should take this moment to stress the very limited area involved in the disposal of highly radioactive nuclear wastes. Between now and the end of this century, for example, it will take, for above ground storage, approximately a few acres of land.

We are not talking about inconveniencing people with regard to considerable areas of land. It's very limited in terms——

Senator DURKIN. I gather you would not want to camp out or sleep near that acre of land.

Dr. SCHLESINGER. It would have the usual protective limits, and I would think, given whatever the perimeter is, it would be perfectly safe to be outside the perimeter, whether it be a mile or two miles or 50 yards.

Senator DURKIN. Thank you.

Senator ABOUREZK. There are three major sources of energy that are available to the country at this point; fossil fuel, nuclear, and solar energy. Of the three, which do you believe is the preferable source?

Dr. SCHLESINGER. The preferable source is solar energy, if we can make it sufficiently economical.

Senator ABOUREZK. What measures do you support in order to make it sufficiently economical?

Dr. SCHLESINGER. Well, there are a number of aspects to that. With regard to solar hot water heating and solar heating and cooling, we believe that these technologies should be introduced now with commercial operation.

The President has established a goal for 1985 of the rapid introduction of solar units in new housing.

Senator ABOUREZK. Through tax credits?

Dr. SCHLESINGER. Through tax credits. But that is the financial mechanism. I think we must face the fact that it is necessary not only to provide financial acceptability but we must create a fashion in which it becomes appropriate and desirable in various communities to have solar facilities.

In the longer run we must be looking at solar generation of electric power. That is further down the road. At the moment we are engaged in research and development experiments, and we should maintain expenditures at that level, so that every promising opportunity will be pursued.

Senator ABOUREZK. With regard to providing tax credits for home heating and cooling with solar power, aren't the costs right now of those components fairly high, as compared to what they would be if they were mass produced?

I understand they are not in real mass production yet. Would it be better to have a low-cost loan program similar to the old rural electric program instituted back in the thirties and forties in this country? Would it be better to have that to make solar components available to homeowners, rather than presuming that everyone has the cash to buy a solar component now and then receive a tax credit later on. Wouldn't that be a more realistic way to encourage the use of home components?

Dr. SCHLESINGER. I would think that tax credits are a reasonably effective means in the upper income groups or middle income groups. Your suggestion is that we should examine utilizing low interest rates. We will examine that prospect.

At the moment I don't want to give a horseback opinion on the subject.

Senator ABOUREZK. Apparently you have not considered it for now.

Dr. SCHLESINGER. We considered it briefly, but, in view of your question, we are prepared to consider it again and we will insert some preliminary material in the record.

Senator ABOUREZK. I just have to say that, even though the present state of financial affairs for either middle income people right now, I am not sure that a lot of people are capable of laying out $5,000 or $6,000 in cash just like that in order to get a tax credit.

I don't know how you are fixed, I wouldn't be able to do it. And Senator Durkin testified he wouldn't be able to do it. Howard Metzenbaum is a different matter. [Laughter.]

Senator METZENBAUM. I am going to.

Senator ABOUREZK. I guessed right.

Dr. SCHLESINGER. The point that should be underscored is the initial point you made about the need to reduce the cost of components. It will only be through the reduction of the cost of components that we effectively introduce this into general use.

Recent evidence is sort of promising.

Senator ABOUREZK. I think that if there is a market created for those components, that people will get into manufacturing, that market forces will take over in that regard, and make them better and cheaper. I would guess. But I seriously doubt that it will happen with a tax credit, I think it will increase it some, not nearly enough, with the tax credit.

I would strongly urge you to look into the other way of doing it.

Dr. SCHLESINGER. Yes, sir.

[Subsequent to the hearing the following information was received for the record:]

LOW INTEREST LOANS FOR SOLAR ENERGY SYSTEMS

In developing the national energy plan, the administration considered a number of incentives for residential installations of solar energy. The administration chose the tax credit because analysis indicated it would achieve significant, rapid market penetration and because it is relatively cost-effective and relatively easy to administer. In these respects, it is considered superior to an interest subsidy program.

A tax credit is a powerful incentive because it puts into the hands of the consumer after his next tax return a percentage of the total price of the solar system, even if that price is being paid over a period of years (*e.g.*, through a mortgage). Thereby, it directly reduces the first cost of the solar energy system. By contrast, a low interest loan does not affect the first cost, but reduces the carrying charges. The borrower must still repay the full amount of the principal.

At the present time, solar energy systems are marginally cost-effective, principally compared to electric systems. The primary immediate market for solar energy systems is new homes (since retrofit installations are more expensive and thus less cost-effective) that otherwise would use electricity (since solar generally is not yet cost-effective compared to natural gas or heating oil). Installations in this market are likely to be financed by first mortgages. A study by Regional Urban Planning Implementation, Inc. (RUPI), concluded that a program to provide loans at the government borrowing rate would have little impact on payments under a conventional 25 year mortgage.[1] Subsidies to reduce the interest rate even more would have a more significant impact, but would be substantially less cost-effective than a tax credit.[2]

A low interest loan program could have a significant impact on the interest of retrofit loans. However, since most installers of residential solar energy systems will be homeowners who itemize their deductions,[3] the benefit of the interest subsidy will be reduced by the tax deductibility of interest payments. Moreover, a relatively small percentage of major home improvements (approximately 17 percent) is financed by home improvement loans.[4]

Where homeowners do seek to finance solar hot water installations through home improvement loans, they are likely to be able to obtain financing. One study concluded:

"The inclusion of solar domestic hot water heating in new homes is likely to meet relatively little resistance among lenders. Moreover, the retrofit of such systems in existing home—likely to be the most important part of solar retrofitting—will typically be financed with consumer or home improvement loans. In reviewing requests for this type of financing, lenders are far more concerned with the creditworthiness of the borrower than with the specific use or purpose for which the loan is being sought." [5]

A program directed to installation of solar energy systems in low-income households would not make the best use of available Federal support. The primary energy conservation need of low-income households is insulation (and other energy-saving devices) rather than solar energy. Solar energy systems cannot be effectively used in homes that are not adequately insulated. Accordingly, the National Energy Plan proposes a major expansion of the low-income weatherization program rather than a program to provide solar energy systems for low-income households. Any Federal funds that might be available for a low-income solar program would be better spent on low-income weatherization.

Moreover, it is inevitable that a range of start-up problems will be encountered in the introduction of solar energy systems, as in the introduction of any new technology. In the early years, there are likely to be some problems with design, installation, performance, service, warranties, high costs, and other aspects of the systems. We expect that after experience is gained, these problems will diminish. In particular, real costs are likely to decline, as production and marketing increase and as designers and installers become more familiar with the systems. It is our judgment that low-income people are the least able to bear the burdens of being the pioneers for a new energy technology. They have little or no discretionary income with which to meet unanticipated costs for repairs, and they are likely to have the least success in dealing with manufacturers, installers, insurance companies, and other institutions. They are likely to benefit from waiting until the start-up problems have been overcome and the real unit costs of solar energy systems have been reduced. At that point, it would be appropriate to consider possible Federal programs to make solar energy systems more widely available to low-income people.[6]

[1] RUPI, Inc., "A Cost Impact Analysis of Federal Financial Incentives to Encourage Residential Use of Solar Energy Hot Water and Heating Systems 11–12" (April 1977) ("RUPI Study").

[2] R. Bezdek, et al., "Analysis of Policy Options for Accelerating Commercialization of Solar Heating and Cooling Systems 102" (April 1977). A subsequent RUPI study reached the following conclusion: "Front-end subsidies (tax credit or rebate/grant type programs) appear more desirable than loan programs. Front-end incentives should have a significantly greater market impact than loans on the market for solar domestic hot water systems, the solar application with the most immediate potential for residential use. Government loan programs, particularly at the small dollar amounts required for hot water systems, have transaction costs and administrative complexities that make a loan approach likely to be unworkable in practice." RUPI, Inc., Federal Incentives for Solar Homes: An Assessment of Program Options (Draft) (Executive Summary, July 1977) ("RUPI II Study"). The same study concluded that a small loan subsidy is significantly less cost-effective than a tax credit in the range of the tax credits proposed by the Administration and adopted by the House. Id., p. 4.

[3] It appears unlikely that tenants would make the substantial capital investments that are required for solar energy systems. The business energy credit would provide a subsidy for installation of solar energy systems by landlords.

[4] RUPI Study, p. 11.

[5] Barrett, Epstein & Haar, "Financing the Solar Home: Understanding and Improving Mortgage Market Receptivity to Energy Conservation and Housing Innovation," p. iii (June 1976).

[6] The RUPI II Study reached the following conclusion: "Skewing benefits towards lower income households appears inappropriate at this time, given the risks still inherent in the use of solar technologies and the availability of more proven means to help relieve the hardship imposed on the poor by rising energy costs. Conversely, concern with extending subsidies to more affluent households may be out of place in the context of a program encouraging homeowners to 'pioneer' a new technology."

Senator ABOUREZK. Now, on natural gas prices, my understanding is that you want to see natural gas prices rise, but you don't want to deregulate them. Is my understanding correct?

Dr. SCHLESINGER. That is correct.

Senator ABOUREZK. What's wrong with establishing natural gas prices as the cost of production gas plus a reasonable profit, rather than setting an arbitrary ceiling on what they are?

Dr. SCHLESINGER. This is an industry that is not a routinized industry. The methods of public utility regulation are employed, for example, with regard to gas transmission lines, or electric power rates. These are routinized industries where the costs of output of supply are predictable. In the natural gas industry, the producers vary widely and it has never been thought appropriate to apply the methods of public utility regulation to an industry of this character.

I think, in addition, that this would be very difficult to administer. Perhaps it is not possible to effectively administer such a measure. A shrewd member of the industry would be able to run up costs in such a way as to hold his rate of return to some fixed level, such as 18 percent, and, as a result, could bring about a rapid expansion of his net worth without having any higher rate of return. That, I think, would run counter to the purposes for which this proposal has been made.

Senator ABOUREZK. Dr. Schlesinger, hasn't this system worked fairly well in the past 20 years, in the regulation of natural gas rates, based on cost plus reasonable return? Why would that have to change now?

Dr. SCHLESINGER. There would be some argument over how well that has worked over the past 20 years. It is our judgment that the system of regulation that emerged from the Natural Gas Act is one that reflected the character of industry and the character of market supply of 20 or 30 years ago.

At that time gas was a byproduct of the production of oil, and could essentially go at any price. At that time there was no shortage. It is plain that in the past 6 or 7 years, perhaps longer, that that mechanism has worked quite badly in terms of eliciting appropriate levels of production, and bringing the market into balance.

It is for that reason that changes have been suggested, some more radical than the President has proposed.

Senator ABOUREZK. What you are saying, as I understand it, is that the producers of natural gas want not a reasonable rate of profit but an exhorbitant rate of profit. Is that how I can interpret your statement?

Dr. SCHLESINGER. They may want both, but it should be the purpose of the Government to see that regulation does not deny them a reasonable rate of profit.

One of the problems of the traditional method of regulation, in accordance with the Natural Gas Act, has been that we are looking at gas priced at 13 cents or 26 cents, under circumstances in which the cost of developing new gas has risen to a dollar, in any event, or $1.40.

Once one establishes these arbitrary prices based upon historic costs in a period of rapid inflation, the compensation for the preducers threatens to become inadequate. We are attempting to correct that without allowing the price of gas to go utterly free because we recognize this is a market in very bad imbalance.

Senator ABOUREZK. Do you believe that the U.S. Government ought to purchase oil from exporting nations for use in this country for resale, or do you believe we should maintain the present system where oil companies essentially buy for themselves and resell it in this country?

Dr. SCHLESINGER. I believe that requires careful examination. In response to the Conyers amendment on the House side, and the debate that developed in the Government Operations Committee, I indicated that the Department of Energy would study that proposal and we plan to study it.

I do not have a predilection at this time. I recognize that this is a very complex business. Before the Government goes into it, it should be very clearly assured that it knows what it is doing.

Senator ABOUREZK. With regard to what is known as the President's energy plan right now, the thrust of that plan appears to be reduced consumption through higher prices, taxing measures and so on, rather than through mandatory requirements that we not use so much.

Will that be your position, if you are confirmed as Secretary of Energy?

Dr. SCHLESINGER. Well, I would not phrase it the way you have, Senator. I think both aspects are necessary. One needs to have a price mechanism working for movements in the right direction, rather than against them. At the same time we have many mandatory provisions in this legislation.

In particular, the legislation that has emerged from this committee with regard to coal conversion is mandatory in nature and is a necessary ingredient. It works most effectively when financial incentives are denied when the decision is made to stay with oil and gas, and that is the purpose of the President's oil and gas user tax. These two things work in a complementary way, so I would not say that one overshadows the other. They must both be employed.

Senator ABOUREZK. It is very obvious that you, the administration, has stayed away from mandating fuel efficient automobiles. This committee just passed out a bill that has a provision that minimum mileage would have to be 16 miles a gallon, and phased higher over the next few years.

First of all do you support that kind of mandatory fuel efficient car, second would you support a higher mileage rate?

Dr. SCHLESINGER. Let me reject the initial observation, Senator. The administration wholly supports mandatory requirements with regard to fuel efficiency, and has done so for major electric household appliances. It would have done so with great eagerness had not Congress in EPCA already done so.

Since Congress had already done the work, we did not feel it was necessary to go beyond the provisions that the Congress had previously established, but we embraced those provisions.

We wish to reinforce those provisions through the gas guzzler tax, and the purpose of that is to change the character of the market that the automobile manufacturers face.

At the present time there is no question that the American public does have a preference for high-powered, large automobiles, which have historically been fuel inefficient automobiles. We wish to elicit a change in the character of the market.

Once again price measures would be reinforced or be complementary to the mandatory provisions as reflected in EPCA.

With regard to the specific legislation that you mention, we shall have to examine that and we will be prepared to take a position.

However, the fuel savings of minimum standards of say 18 miles per gallon or even higher are relatively small because the rate of production in the future of the true gas guzzlers will also be small.

Senator ABOUREZK. I guess I take from what you are saying that you would support even higher mileage standards than—if the Congress were to put those through, you would support them.

Dr. SCHLESINGER. I answered that question only with great hesitancy. I think it is important for us to increase fuel efficiency, but I also think it is important for us to provide a relatively stable set of rules against which the automobile companies, in this case, can make their investment decisions.

I would be hesitant to see a set of conditions in which the standards or requirements were subjected to frequent oscillation. I think we should set a set of standards and stay by them.

My own bias, however, is toward greater fuel efficiency.

Senator ABOUREZK. I agree. I think you are right in setting them and staying with them. But if we were to set them this year higher than they have already been set, would you support that if it were established this year?

Dr. SCHLESINGER. I think we would, of course, be prepared to support any measures that emerge from the Congress in this regard.

The President has spoken of the Congress strengthening the bill. Senator Metzenbaum earlier referred to the question of whether or not we could achieve our objectives. The President has indicated a desire for strengthening, but I cannot discuss the question in the abstract.

I must once again reinforce the enormous importance for us, as long as we retain our present system, not to subject industry to frequent gyration in standards. That would just lead to hesitancy in business.

Senator ABOUREZK. Thank you, Dr. Schlesinger. Senator Durkin has a question and then I will pass it on to Senator Metzenbaum.

Senator DURKIN. Thank you. Seeing some of the consumer groups represented in the audience, what are your plans for public participation in the very, very important deliberations of the agency?

And with respect to discretionary attorney's fees and what have you for consumer and public groups to participate.

Dr. SCHLESINGER. I think the administration has in general endorsed legislation to that end. The provision of financial support for attorneys or for intervenors is embodied in that legislation, which the administration supports.

I am not familiar in detail with that legislation, but, I, of course, support the position of the administration.

Senator DURKIN. We can be assured that to the extent possible under the law, you will provide for and encourage public participation in the deliberations of the agency.

Dr. SCHLESINGER. We are eager to have public participation. As I mentioned before, we are going to fail unless the general thrust of this program has widespread citizen support.

There must, therefore, be these kinds of actions in order to elicit a sense of fairness in the process.

Senator DURKIN. Doctor, one other area that Senator Abourezk brought up earlier. The whole area of solar energy. Again, take northern New England. With the hydropower we have, with the utilization of remote site, it seems to me an awful lot of emphasis has gone to have central distribution of solar-generated electricity, that same capital intensive distribution system.

Can we have an assurance that you will support a remote site technology. Take for example, 5-, 10-, 15-megawatt remote site solar-generated facility, tied in conjunction with a low head hydroproject, could provide plenty of electricity for a good size community in New England, good size community in northern New England, even central New England.

Tie in a wood-fired generating plant, especially in the areas so heavily forested in the northern tier, what is your position on this approach, as opposed to the central distribution of solar-generated electricity?

Dr. SCHLESINGER. The position of the administration is that it is eager to see the diversity of sources of power as long as they can be carried on economically. The reason for moving toward central power stations and large power stations is economical production.

Central power stations, all power stations, of course, waste approximately two-thirds of the energy invested. It is for that reason that the President has pressed forward with proposals on cogeneration, so that we can recapture the energy that would otherwise be wasted. We would encourage communities to move in that direction.

There is a provision in the proposed legislation that provides tax credit for industry, if it will adopt cogeneration techniques. In general, we are for this degree of diversity. To the extent possible, the reversal of the move toward central power stations should be encouraged.

But we are not going to do it in such a manner that it results in greater diseconomies.

Senator DURKIN. This committee will be marking up, right after recess, the utility reform legislation. To me one of the most insidious developments in the whole utility field is the allowance of construction work in progress.

The only constraint on the utility has been the banker, the regulatory agencies for the most part acted with very little restraint with respect to utilities. But the bankers, if they could not get their notes paid, were not going to provide financing, and that provided a regulatory framework, poor as it may be.

With construction work in progress, the utility can pass that on to the rate payer, a few cents at a time, and then the bank is assured that he is going to get his return.

By law, the stockholder of the utility is going to get their rate of return and the consumer is going to get, from where I view construction work and progress. I would like to know your feeling. If you are not prepared today, when we come back I would like to have an answer in writing with respect to the construction work in progress problem.

Dr. SCHLESINGER. I would be delighted to do so. I think that once again this points to the need for a stable and predictable climate for investment activity. To the extent, for example, that the period of

construction of a nuclear plant is stretched out to 10 or 12 years from what had been 48 months a few years ago, and that the period of construction is quite unpredictable, that this unpredictability in the growth of cost must be paid for by somebody.

That goes back to your observations about streamlining. Streamlining of legislation and streamlining of construction fits together very neatly.

Senator DURKIN. Yet maintaining all the safeguards in a nuclear process.

Dr. SCHLESINGER. Yes, sir, it fits together very neatly in discussion of construction work in progress. Construction work in progress could expand to 10 or 12 years, and the utility is faced with all sorts of unpredictable costs. It is going to avoid investment.

Utilities are required by law to provide service. They are limited in the rates of return, and therefore they must, as in all public utility areas, have some routinized and predictable circumstances against which they make their investment decisions.

Senator DURKIN. Many people feel that if we allow construction work in progress, we'll never get to a remote site capability for generating power because the banks, the insurance companies, the utilities will find it much more in their economic interest to maintain the centralized, capital intensive system.

That's one of my concerns.

Dr. SCHLESINGER. I think we will have to examine that very carefully, Senator, and we will not have a total understanding of that next month or 2 months from now. I think it will take some years before we get a better feel for the totality of the problem, and even then it will undergo continuing change.

Senator DURKIN. What I hope too is that the consumer would not be asked to bear the cost twice, bear the cost of an inefficient governmental system which protracts the delay, and then a failure of construction work in progress on top of it.

Dr. SCHLESINGER. I certainly share that goal.

Senator DURKIN. One final question. How do you respond to the argument—let me preface that. A month or so ago we were in Canada at a Parliamentary meeting. The Canadians relaxed the price of natural gas, and they tell us they are swimming in natural gas in Alberta, and they are willing to export gas to the United States for many years to come.

How do you respond—I am not saying that this is my argument; it is not. But how do you respond to the argument that what we have now is the best of both worlds? We don't have a deregulated competitive market to the extent that the market can be competitive.

We have the cost of regulation, and we have a regulated price which produces, some say the worst of both worlds.

Why is not the answer total deregulation of new natural gas?

Dr. SCHLESINGER. I think that if we had had deregulation of new natural gas a year ago, that the argument about deregulation would now be over.

As a result of last winter's natural gas crisis, given the severity of the winter and the nature of the demands, the price of new natural gas would have risen at that time to something on the order of $5 or $6 per 1,000 cubic feet.

That experiment I think would have been rapidly terminated by the U.S. Congress.

I would underscore the fact that the principal sufferers from such prices would be those in the most gas dependent States, to wit, the producer States. The State of Texas, for example.

There are contracts that include most-favored-nation clauses and redetermination clauses, so that if the price of gas had risen to $5 or $6, the fee in those contracts would have gone to $5 or $6 and have remained there unless action were taken by the State government to roll back those prices.

A price of $5 or $6 would have been crippling to the economy of Texas. I think this is an aspect of the problem that is not frequently known.

What we have here is a market that is subject to sudden surges of demand, as in a severe winter, with great inelasticity of supply. And as a result it is a highly volatile market.

At the moment there is a vast imbalance between supply and demand. While the President has taken a step toward deregulation and is prepared to examine the market to see whether additional steps could be taken, given the imbalance in the market and the volatility in supply and price it would be imprudent to run that experiment. And if it had been run, it would now be terminated.

Senator DURKIN. Thank you, Doctor. I am happy to hear you say that, and I would only urge the administration to make that case a little more frequently and as forcefully as you have.

It seems that every day you get whacked in the face with the Mobil ad telling the American public that we are somehow a group of subversives because we are not moving to totally deregulate the price of natural gas.

I urge you and the administration to continue to make the forceful case you have made but make it a little more frequently.

Dr. SCHLESINGER. Well, I don't know how credible Mobil's ads are, even to Mobil's stockholders. [Laughter.]

Senator DURKIN. Thank you, Doctor. I appreciate your patience and your tolerance.

Senator METZENBAUM. Senator Hansen.

Senator HANSEN. Dr. Schlesinger, with respect to energy information and planning, Senator Metzenbaum earlier this morning asked a question about horizontal divestiture.

The Department of Energy sets up an energy industry profile analysis. I was concerned that this other money would be the first step toward divestiture actions.

Do I understand that you will not necessarily move immediately in view of this profile for divestiture planning analysis?

Dr. SCHLESINGER. Absolutely. This is purely an information-gathering measure.

In the Department of Energy legislation there is this profile analysis or financial reporting system. And the President in his national energy plan proposed a similar system.

The purpose of this is to gather information. It is not a prelude to divestiture, and it should not be so regarded. The information that comes in may suggest that divestiture is inappropriate at this time. We cannot anticipate what that information will be.

Senator HANSEN. It would be your intention or your willingness to keep the Congress, the committee informed of the intended uses of this energy information?

Dr. SCHLESINGER. Yes, sir.

Senator HANSEN. The bill also mandates a major energy planning effort by the Department. Those parts of the provision which smacked of Humphrey-Hawkins planned economy approach to energy planning was marked out in conference.

Can you assure us that the remaining energy planning provisions will not be used to impose a fully Federal Government-planned energy economy on our people?

Dr. SCHLESINGER. It is the underlying purpose of the plan, Senator, through providing the appropriate price signals and through better forecasting, to rely primarily on the voluntary choices of individuals and corporations.

I do not think that the Government has the competency to effectively get into the kinds of detailed decisions to which you refer.

This provides us with an opportunity to do better framework planning, which is our intention to do, but not the kind of detailed planning to which you refer.

Senator HANSEN. With respect to energy conservation, the bill gives energy conservation the highest priority in energy planning. There are many voluntary conversion plans now under the Energy Policy and Conservation Act and the Energy Conservation and Production Act.

Can you assure us you will give these voluntary programs, which have been, in my opinion, underfunded and underemphasized, a full chance to work?

In effect, may we give the American people and industry a voluntary chance to see what can be done before a mandatory program takes over?

Dr. SCHLESINGER. We encourage a voluntary response. Indeed we will be dependent for the overall success of the program on voluntary decisions by individuals and corporations to take those steps which they will recognize to be in the national interest and in their own long-term interest.

While we say we must make use of voluntary measures, including those on the books, this should not be taken to exclude mandatory measures.

Senator HANSEN. The Energy Extension Service Act became law this spring. It is a good example of giving our people support for voluntary conservation.

Can you assure us that you will vigorously pursue that concept?

Dr. SCHLESINGER. Yes, sir.

Senator HANSEN. Fully and currently informed is a term that is often used these days. As chairman of the Atomic Energy Commission you became familiar with the requirement to keep the Joint Committee on Atomic Energy fully and currently informed.

Can you assure us that you will continue to follow that requirement in the new Department?

Dr. SCHLESINGER. Senator Hansen, I will be delighted to keep the committee fully and currently informed. I would hope that it would not be in precisely the same manner in which the AEC was required to keep the joint committee fully and currently informed.

Senator HANSEN. I share that view, Doctor.

With respect to nuclear matters, we are greatly concerned that nuclear energy and nonproliferation policies are increasingly nominated by the State Department and the Arms Control and Disarmament Agency. For instance, under a bill reported this week a new International Nuclear Fuel Authority is being mandated, apparently with administration approval.

This new authority could make major changes in our own nuclear program, including stockpiling of enriched uranium and possibly internationalized spent fuel storage.

When you get the Department actively into these fast-changing policy areas, we would hope that the Department would closely review these matters.

We are also greatly concerned that our Nonproliferation Treaty, particularly the nonproliferation bill, will have a tremendous negative impact on our domestic nuclear industry.

Can you assure us that the new Department will carefully monitor our policies to prevent that result? In my opinion, the administration's own plan would need to the increased need for domestic nuclear power.

I realize I have asked you several questions, and you can comment in your own good fashion.

Dr. SCHLESINGER. It is our intention, Senator, with the approval of the President, to get involved in these matters when the Department comes into being.

I do not believe that either the American people or the U.S. Government is about to permit its own energy policies to be determined by international bodies. Under no circumstances should we give such license to any international body.

Senator HANSEN. As you well know, Doctor, we have had an unfortunate problem with the administration over the Clinch River breeder reactor project which required us to start two GAO investigations.

You and Senator Baker and Senator Jackson apparently have resolved the disagreement so that finally the administration has agreed to keep the project alive until the final decision is made for fiscal year 1978.

The conference bill mandates an annual authorization for the new Department. This committee will handle that authorization.

Can you assure us that you will closely follow that authorization and that we won't have a succession of Clinch Rivers?

Also there is a feeling that the administration intends to try to delay this year's ERDA authorization to death because of Clinch River and other controversial provisions.

Can you assure us that you as Secretary will make a good faith effort to get this year's and following years' authorization bills into law, even if we disagree on some parts?

Dr. SCHLESINGER. Yes, indeed. The purpose of the Department of Energy will be to execute that law as adopted by the Congress and signed by the President.

There are difference with respect to the Clinch River plant. Those differences will be resolved. I suspect, although all of you gentlemen might not entirely concur, that they will be resolved to the satisfaction of the administration.

But I underscore in the area of Clinch River that the President is as determined as others that the nuclear efficiency option be preserved and breeder technology must be developed.

While there may be differences about this particular plant, while there may be differences about the timing or the immediate necessity of breeder development, there is no difference with regard to the necessity of maintaining technology and efficiency options.

Senator HANSEN. Later this morning the committee will hear testimony on oil pricing policy. As you know, prices under EPCA were frozen in 1976 and were rolled back last January and March by 65 cents per barrel.

Under EPCA it was intended that oil prices should escalate at up to 10 percent per year to bring the upper tier nearer the world price by the intended phaseout of controls at the end of May 1979.

Since EPCA was enacted OPEC oil prices have been increased twice while domestic prices have actually been rolled back. I note that the price freeze has again been extended through August.

Wouldn't it remove some of the uncertainty industry faces in planning an exploratory program to get back to the intent of EPCA in allowing oil prices to escalate at the rate of inflation plus an incentive factor?

Dr. SCHLESINGER. The proposal of the administration has been in general to permit the price of oil to rise in accordance with the GNP deflator, to preserve the real value of a barrel of oil produced.

With regard to the escalation or reescalation question, indeed it would be desirable from the standpoint of industry planning purposes to have that resolved. And it is our intention to resolve that shortly.

The precise formula for reescalation, however, has not been finally determined. But there should be an announcement shortly.

Senator HANSEN. Mr. Chairman, Senator Domenici who was tied up in the clean air conference until almost midmorning, between 12 and 6, has some questions, but I would like to yield to you, sir, and ask the questions that he has later.

Senator METZENBAUM. Dr. Schlesinger, the President has addressed himself within the last several days to the fact that voluntary conservation measures may not be working and that we may need more mandatory measures.

About the same time a national poll was published indicating that the American people, by a margin of 71 to 31—I don't know what happened to the other 16—would very must favor regulatory measures as distinguished from increased prices.

In view of the President's comment, has the administration or is the administration prepared to come forth with any new mandatory conservation measures?

Dr. SCHLESINGER. You know, Senator, under EPCA we have a variety of areas with regard to the particular problems to which the President addressed himself, namely the importation of oil.

We will be examining some of these options. It has been our purpose to this point to keep our eye on the longrun goal and to avoid precipitating action that might be the source of disruption in the American economy.

I think the problems of maintenance of stability deserve support just as much as the objective of long-term energy conservation.

But we will be reviewing these measures.

With regard to your initial observation, I think that some of these mandatory measures sound better in the abstract than under those circumstances in which one comes face to face with them.

There has been discussion of rationing schemes, for example. Rationing schemes tend to break down over the longer run, and it is for that reason that we have attempted to avoid rationing schemes.

As they break down they tend to have a corrupting effect on the body politic, something that in the long run we must take every measure to avoid.

Senator METZENBAUM. You have as part of the voluntary program the concept of home retrofit which actually would amount to a very substantial number of barrels saved. Your total coal regulatory program will save several hundred thousand barrels a day. Your appliance program will save 620,000 barrels a day.

Home retrofits having to do merely with the flue device and an orifice has been projected to save 700,000 barrels a day, which certainly has to be considered a significant amount. In fact, it is equal to the coal regulatory program.

In view of those circumstances, since it already is a part of your voluntary program, can you see the administration supporting a mandatory program for home retrofits in this area?

Dr. SCHLESINGER. I can see that possibility, Senator, and I do not want to say that we would be prepared to support it now.

I think, however, your question underscores a distinction that is very important. The transfer of a home takes place rarely.

Senator METZENBAUM. National average is a total turnover once every 7 years.

Dr. SCHLESINGER. That is right, as opposed to the filling up of a gasoline tank which takes place once or twice a week. It is for that reason that one can hope that mandatory controls in an area like the shift of homes will be effective over long periods of time, whereas the prospect of maintenance of mandatory controls in the area of routine transactions such as filling the gasoline tank is far more difficult.

Senator METZENBAUM. Do I understand you to indicate that you would support a concept providing for retrofit at the point of sale since that does take place over time? Actually the period of time is somewhat commensurate with the 1985 goals of most of your program.

Dr. SCHLESINGER. No, Senator, you didn't understand that. I very carefully avoided a commitment to that.

What I did say is that I could envision circumstances under which we would support it.

Senator METZENBAUM. Dr. Schlesinger, the Attorney General has indicated his support, or his Department's support for divestiture of oil pipelines from the oil companies of this country.

Will you as the new Director of the Department of Energy support that concept?

Dr. SCHLESINGER. I am not in a position to do so now, Senator. I would have to review the advice of the Attorney General on this matter before we come to a judgment. That is, I presume, a recommendation from the Antitrust Division.

Senator METZENBAUM. I don't know—I think it came signed by the Attorney General, I am not certain.

Dr. SCHLESINGER. Just as the issue we discussed earlier, in principle one would like to have fairly balanced distribution of capital among many units.

In practice what we do have is a very high concentration of capital availability in the oil companies.

Senator Durkin raised the question about whether or not the gas pipeline to be chosen by the President and approved by the Congress, could be privately financed. It certainly would be harder privately to finance that pipeline without the participation of oil companies than it would be with their participation.

We are always examining this tradeoff about whether we want to keep a market more structurally competitive as opposed to the availability of capital that might not otherwise be forthcoming and have to be provided by the taxpayer.

In the abstract, I can't answer that question. I just recognize that one is pulled in both directions.

Senator METZENBAUM. In that connection, I should point out—I know you were not present, but yesterday at the Antitrust Subcommittee hearings, the testimony indicated that there had been greater growth in the independent coal company, greater production in the independent coal companies than there had been in those owned by the coal companies, and that there had been an ability to raise the necessary capital for independent companies.

There also was some comment with reference to the possibility of other industrial giants such as General Motors, IBM, Xerox, and other companies moving into some of these alternative energy fields which would then provide a competitive factor in the marketplace.

Dr. SCHLESINGER. We are eager to have them, Senator.

Senator METZENBAUM. You could assist them by supporting horizontal divestiture.

Dr. Schlesinger, I would like to talk with you for a moment about a question pertaining to a matter that I raised earlier, and that is the fact that by 1979 or 1981—either one, but I think 1979 under the law unless there is an extension for 2 years—under the EPCA program, there would be effective deregulation of natural gas prices.

Would the administration support a freeze of natural gas prices at the present rate as provided for in the administration legislation plus an inflation factor?

Dr. SCHLESINGER. As a triggering mechanism, I think it is quite possible, Senator. Let us examine that further. I think it is unnecessary because it is essential, I think, in order to avoid a growing gap between gas and oil prices or the tendency to drag gas prices up when oil prices rise, to have an appropriate relationship between those prices. They are such close substitutes, one for the other.

Senator METZENBAUM. Under your projections, the Btu equivalent price would not be $1.75, it would be $1.86 next year, and would go all the way up to $3.23 by 1985 or an 80-percent increase. That is getting pretty close to deregulation.

My question is, how can we provide some reassurance to the American people in this natural gas bill that we will be marking up very

shortly in order to see to it that natural gas prices do not rise at an exorbitant rate and far beyond the needs of the marketplace?

Dr. SCHLESINGER. The rate of increase is primarily determined by the anticipated rate of inflation in such projections. In constant dollar terms, the price of natural gas should rise from $1.75 to approximately $2.10.

Senator METZENBAUM. By when?

Dr. SCHLESINGER. By 1985 if you follow the Btu equivalent in constant dollar terms. To that you must add whatever rate of inflation you project. If the rate of inflation is 6 percent, that would imply a growth of about 50 percent, simply the cumulative impact of inflation which would pull you up to about the price you mentioned in the data.

The question before the Congress is, to what extent should the constant dollar value of natural gas be altered?

The proposal of the administration is to allow that to flow upward on a Btu equivalent basis with the price of domestic crude. If the Congress wishes to adopt a different provision, it could have an escalation factor as we have with other prices as opposed to floating with the Btu equivalent.

Senator METZENBAUM. Would you be good enough to have your associates make available to the committee some language, if you support the concept, and my understanding from some of your associates is that you do, that there is a gap with reference to the natural gas price being related to the Btu-related price of oil, and that the Btu, that the controls with respect to oil to expire in 1979 as I read the law, and possibly 1981 as you interpret it.

Senator BUMPERS. Senator, while you have a break, could you tell me about how much longer we are going to be——

Senator METZENBAUM. I am going to be about 1 minute.

The CHAIRMAN. The Secretary has been on now 2½ hours.

Senator BUMPERS. He still looks pretty fresh.

Dr. SCHLESINGER. You are coming in, in teams. [Laughter.]

The CHAIRMAN. We are used to the platoon system.

Senator BUMPERS. I am going to be mercifully short.

The CHAIRMAN. Go ahead.

Senator METZENBAUM. I am asking for an answer to the last question: that is all I have.

Dr. SCHLESINGER. Yes, sir. I reiterate that the position of the administration is that the mandatory requirements for oil price controls come off in 1979, but the authorities to maintain them last until 1981. It is the intention of the administration to maintain those controls in the manner outlined in the national energy plan, to bring about an extension of the act. And that legislation will be forthcoming.

Senator METZENBAUM. My question is, if that provides an uphill battle to get an extension of the act, that brings back to the fore again the whole question of deregulation of natural gas since natural gas prices are tied to the Btu equivalent of oil.

My question is: Can we not in this legislation obtain some language from the administration that covers that problem so that we need not have to battle twice?

Dr. SCHLESINGER. Yes, sir, we would be happy to provide a drafting service.

Senator METZENBAUM. Thank you very much. I have no further questions.

The CHAIRMAN. Senator Bumpers.

Senator BUMPERS. Dr. Schlesinger, as a matter of fact, this week, on Monday, I introduced an amendment before this committee that would have mandated that within 180 days, the President come up with a mandatory rationing plan, after which either House of Congress would have 15 days to disapprove it.

That was enthusiastically embraced by about three members of the committee.

My question is this: The President has been making some public utterances recently indicating that he no longer believes, if he ever did, that this country is going to voluntarily conserve enough fuel to make a difference—the kind of difference we have to make. And he is increasingly concerned about what looks like a $25 billion trade deficit this year, most of which can be attributed to imported oil. Some people think next year it will go as high as $35 billion.

It occurs to me, of course Walter Litton used to say it is never good in politics to be right before it is popular, but it occurs to me that this is where we have to wind up.

I am curious whether you accept that premise or not as to what your own personal feelings are about it.

Dr. SCHLESINGER. Rationing schemes are of two sorts, and I should draw that distinction. The first is a drastic rationing scheme to deal with potential supply interruption that will be presented to Congress. Your reference, I think, is for a long-term noncrisis rationing scheme.

Senator BUMPERS. Yes.

Dr. SCHLESINGER. I am fearful that we may have to come to that. But there are very great drawbacks to rationing. The rationing systems have historically broken down in the longer run. And given the attitudes of the American public, they can have a corrupting effect.

I talked some days ago to one of the leading public figures in energy in France. He said to me, the only true market is a black market. That attitude is not one that is consistent with American values, but one can understand the underlying logic.

I think it would have a corrupting effect in the United States if we established a set of standards which fell visibly short, and that is what I fear most about a rationing scheme.

It has worked in the past for brief periods of time. But even with the Nation's uniting impulses of World War II, rationing had broken down before the end of the war in many places and totally collapsed in some places after the end of the war.

So I am apprehensive, but we may have to come to that.

Senator BUMPERS. Let me say this, and I will go to another question. Rationing right now would not have to be as austere or Draconian as it was in World War II, which would eliminate some of the normal corrupting influences of rationing.

No. 2, it occurs to me that we could at the outset set as a goal 10 percent conservation, which I think would have the salutary effect of putting people into smaller automobiles that get more miles per gallon.

As I say, I think we are going to have to go to it, and I think the best designed plan that we can come up with ought to be on the drawing boards right now.

Second, I want to ask you something that I have never quite understood, and that is the rationale behind the crude oil tax on domestic crude.

Dr. SCHLESINGER. The rationale is very simple, I think, Senator, and I hope persuasive. First, for the last 4 years we have been subsidizing each barrel of oil that comes into the United States. Subsidizing each barrel of oil that comes into the United States is not the road to energy independence or anything like it.

Senator BUMPERS. When you call that a subsidy, Dr. Schlesinger, are you referring to the difference between the controlled price of domestic oil and the OPEC price?

Dr. SCHLESINGER. I am not simply referring to that; I hope I am referring to that with some complexity.

Senator BUMPERS. I never thought of that in terms of a subsidy before.

Dr. SCHLESINGER. Every barrel of oil that comes into the United States comes into a refinery, and its price to the refinery is below the price of the imported oil. It may not be a direct subsidy from the Treasury, but it is a subsidy nonetheless.

The President's purpose is to avoid circumstances in which the cost of the marginal barrel of oil is hidden, as it is in this scheme, from the consumer.

Therefore, if we are not to bury our heads in the sand, we must recognize that our marginal oil comes from overseas and comes in at the world price, whether we like it or not. We may not want to have our producers receive the world price for oil because the world price does not necessarily determine the returns of our producers, but we must recognize the world price for what it is.

Third, given the world price, we think that the benefits of the receipts from that price should not go solely to producers, but should come into the Treasury to be redistributed to the Nation at large. If we fail to do so, we would drive profits to an unnecessarily high level, reflecting the monopolistic pricing practices of OPEC, and there is no need to do that.

We may have to accept the Shah's price for practical purposes, but we do not have to accept the Shah's price as the appropriate return to our producers.

Senator BUMPERS. How much would that tax increase the cost of gasoline at the pump?

Dr. SCHLESINGER. I prefer to look at it the other way, Senator.

Senator BUMPERS. Look at it my way for just a moment if you can.

Dr. SCHLESINGER. I will endeavor to do so. Raising the price of oil from the present composite to the world price would raise the price of gasoline at the pump by about 5 to 7 cents per gallon.

Senator BUMPERS. I must say that is the major part of the program that I am not prepared to support.

Let me ask you finally that—as far as I am concerned right now, the Clinch River project is virtually dead. I personally thought the President was very bold. I carried water for him on the Senate floor to no avail, but he succeeded anyway.

If a supplemental appropriation comes through on that, do you know whether the President is prepared to veto a supplemental appropriation?

Dr. SCHLESINGER. I can't speak for the President in that regard except to say that he is unalterably opposed to the Clinch River plant. The problem with supplementals is that supplementals can be tied to bills that cannot be vetoed.

Consequently, I think that the President may have to find some other way of dealing with that problem other than to veto a supplemental bill. He may be able to veto it; he may not. I cannot speak to that.

Senator BUMPERS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Johnston.

Senator JOHNSTON. Thank you, Mr. Chairman.

Dr. Schlesinger, the record will show that I supported strongly the President's energy program on conservation, and I have spent as much time working on that as I guess most anybody in the Senate. And I have been for most parts of it, except Senator Bumpers' rationing program, and I have to find out whether I get an "A" or "C" car before I make that judgment.

Senator BUMPERS. I will give you both if you promise to vote for it now.

Dr. SCHLESINGER. The Senator should give a "U" slip which is unlimited.

Senator JOHNSTON. I am sure the voters back home would approve of that, too. [Laughter.]

Dr. Schlesinger, I have strongly opposed the President's program from the standpoint that it doesn't do anything for production.

I want you to tell me what the President's program does for production on a step-by-step basis, and let me plot the steps if I may.

The President's Continental Shelf bill doesn't do anything for production; does it?

Dr. SCHLESINGER. I am not sufficiently familiar with that bill to make a categorical judgment, but I do not know of any way in which it would increase short-term production.

Senator JOHNSTON. It would in fact delay, to whatever extent it has an effect, it would delay because you have new environmental impact statements, you have new opportunities for lawsuits, you have new regulations that have not yet been established, you have Government drilling, you have split production in exploration.

All of those things are not calculated to speed up; if anything, they are calculated to slow down; isn't that correct?

Dr. SCHLESINGER. Yes, sir, it may not be demonstrable that the OCS amendments will speed production, although I do not believe these amendments will delay it.

Senator JOHNSTON. Very well.

What has the President done in his program to help in the mining of coal as far as making it easier to get, making it cheaper, making it more available to the American economy?

Dr. SCHLESINGER. I think the President has taken some remarkable steps with regard to the mining of coal. Outside of the peculiarities of the oil and gas market which are now to a large extent dominated by OPEC pricing, we expect a market such as coal to reflect conditions of supply and demand.

The effect of the legislation that the President has sent up will be to increase demand for coal by 200 million tons a year above the level

that would otherwise have been reached in the absence of that legislation.

At this time we do not anticipate any insuperable difficulties of the market providing that additional supply. But we are prepared to watch very carefully the development of mines and the development of transportation capacity, to assure that this higher level of demand which is engendered by the President's program is satisfied by supply.

Senator JOHNSTON. Recognizing that the President's program is calculated to produce bigger demand for all kinds of energy, the point I am making—I am not opposed to everything in the strip mining bill, indeed I just voted for the conference report on the strip mining bill, although many provisions of it I disagree with.

The point I am making is that the President's program does not make it any easier to mine coal. The strip mining bill makes it more expensive, delays it, and to some extent makes it impossible to mine in some areas. Whether or not one supports all of those provisions, the fact is it does have that effect. Wouldn't you agree with that?

Dr. SCHLESINGER. It would add to the cost indeed, and it would exclude certain areas. But the United States has for 40 or 50 years boundless resources of coal. There should be nothing that could prevent that coal from coming to the marketplace.

And at least in this respect, Senator, I would urge you to share my faith in the efficacy of the market economy.

Senator JOHNSTON. Well, I have a lot of confidence in the market, and I don't doubt that there is a lot of demand. I am just walking through the President's energy program in terms of what it is doing for production.

Now, the transportation of coal, the President has come out or some one has come out in favor of coal slurry pipeline, but it has been with such notable lack of enthusiasm that I am not sure whether anyone is aware of it.

I wish the administration would support that because I can tell you that that is not getting off the ground, and I would urge you to do that. That is one thing that has been done.

Dr. SCHLESINGER. We have enthusiastically supported the enabling legislation for the coal slurry lines.

Senator JOHNSTON. I am glad to hear that.

With respect to oil and gas, on natural gas the intrastate market, which is getting most of the new gas produced now at an average price of $2, the President's program is going to lower that price to $1.46 initially and by next year maybe $1.75.

That is lowering the price, ergo, lowering the incentive; that is not going to do anything to supply; is it?

Dr. SCHLESINGER. The President's proposals will provide a much broader market for natural gas and a market of considerable breadth and resiliency. It will also provide a stable, predictable climate with regard to the interstate market—a steady escalation of prices.

I would think that there would be every incentive to invest in gas exploration.

Senator JOHNSTON. To go from over $2 down to $1.75; that is not an escalation.

Dr. SCHLESINGER. If we look at the Louisiana market, with which you are familiar, the Louisiana market never hit $1.75 until the natural gas crisis of last winter. It first reached $1.75 in December of last year.

We have chosen a price where we combine the intrastate market to provide a market of considerable resiliency with a very substantial incentive for the production of gas from shallow deposits, and have indicated at the same time the intention of the administration to decontrol the prices from the more exotic sources of supply.

You might add that to your list of production incentives.

Senator JOHNSTON. They have that now, their decontrol now in the intrastate market, and they have a gathering system that allows them to gather it from most everywhere. Call it resilient if you wish, but my producers down in my State look at the mathematics, and they say $2 which they are getting now for spot sales now, down to $1.75 is not increasing incentive; it is just the opposite.

They say under that definition of a mile and a half and 1,000 feet, that that is pretty well a geologist's definition of where there is no oil and gas. They can show you by maps.

There is a lot of oil and gas to be found down there, but I think it is going in the opposite situation, and I hope it doesn't kill the situation altogether.

Dr. SCHLESINGER. Senator, prices of oil and gas have escalated dramatically. The price of oil internationally has quadrupled. Profits for firms in this industry have dramatically risen. The number of drilling rigs in operation has doubled in the last 4 years.

The prices that the majors pay are also a good example. For offshore tracts in Louisiana, the latest sale was $1.3 billion when the Interior Department expected to receive $600 million in that sale. That $1.3 billion is a very good indication of the amount of incentive above cost that the bidders expected to get.

With regard to the independents, the independents repeatedly and pridefully and rightfully point out that they put 100 percent of their cash flow back into the ground. I know that anybody who puts 100 percent of his cash flow back into the ground must receive some incentive to do so.

This is an industry in which incentives are good and have been improving, improving to a degree that would never have been anticipated 5 months ago.

Senator JOHNSTON. I understand that. And you can say there are more drilling rigs, twice as many now as there were in 1973, and in 1973 there were half as many as there were in 1957 when production came down.

All I am pointing out is that you are driving down the price of natural gas, and that that is regarded as anti-incentive. Whether you say they have enough incentive now, whether there is enough drilling now, I am just telling you that from over $2 down to $1.75 is not incentive, no matter how you add that up.

Dr. SCHLESINGER. We recognize that the program has not been universally popular with oil producers, but we are somewhat fearful of endorsing a program that would indeed have been universally popular among oil producers.

Senator JOHNSTON. I understand that, and I can read polls, and I know that to be on the side of big oil is like being in league with the devil. Everyone knows that Exxon manages construction in this country, almost, the polls indicate that. It is tough to be from a producing State and have to say a good word every now and then for production.

I really think the President's coal program overall—last winter will make us nuclear. I won't go through and point out that there is nothing to cut through 10 years of redtape.

Dr. SCHLESINGER. As we indicated earlier, in the national energy plan is the commitment by the President to bring forward legislation for the deliberation of the Hill. This will be comprehensive legislation, and we hope to have that legislation to the Hill about the 7th of September.

We have promised from the first that that legislation would be forthcoming after the Department of Energy was created.

Senator JOHNSTON. I am going to support your nomination and support it enthusiastically. I do so notwithstanding an occasional answer that does not thrill me, but I do so because I think you are a man of intelligence, balance, and courage. And I think if we can point out some of these things to you, I think you will stand up for what is right, and that is all I ask for.

If you do that, we will perhaps get a little incentive in the energy program that so far has been notably lacking.

Thank you.

The CHAIRMAN. Senator Church.

Senator CHURCH. Thank you, Mr. Chairman.

I subscribe to the latter endorsement, Dr. Schlesinger. I think your past record of public service has been such that you are the man for this job. You have run the Department of Defense and the CIA, and you can run the new Department of Energy.

I also subscribe to what you have just said about incentive. Our investigation of the large oil companies in the subcommittee—we found no lack of incentives, no lack of price incentive, no lack of capital investment.

I recall the presidents of oil companies, large oil companies, under oath testifying that it was not a lack of financial incentive that was delaying in bringing in new oil, but the distance to the North Shore of Alaska, the difficulties of getting it from the Continental Shelf. And certainly the profits of this oil company doesn't suggest that they are lacking in adequate capital.

So I fully agree with you on that matter.

The one thing that I can't quite buy is the imposition of a tax that will apply at the wellhead and that will represent the difference between the domestic price in this country for oil and the OPEC price.

I would like to go back into that for 1 moment. If there is going to be such a tax, then I would prefer that its revenues go to Government so that appropriate use can be made of that money to advance the general energy program.

I don't agree with those who say it should go to industry to give them still more incentive. But I worry about the need for such a tax.

First of all, we have the OPEC cartels. We know that the oil price has nothing to do with the—it is a political price established at as high a level as possible. The effect of this would be to adopt the OPEC cartel price for domestic production.

I suppose my question is, why. If the Congress were to adopt the administration proposal to impose a 5 cents tax on gasoline, and if in addition we were to adopt the tax at the wellhead that is proposed, gasoline price by my calculations, from what you have previously said, would go up somewhere between 13 and 15 cents a gallon. What would be accomplished by that very serious stimulant to inflation?

It is probably the most pernicious of economic problems that faces the Nation. I can't see any compensating reason, I can't believe that 15 cents would really reduce the consumption of gasoline sufficiently to justify the added cost, and on the hardship that will mean to a lot of people who will find it very difficult to pay that much more for gas.

I would like to have your views, a further elucidation of the administration's position, because I am troubled by it.

Dr. SCHLESINGER. The total impact would be approximately 11 and 12 cents if one added the two sources of additional price rises together. While one would have to judge the political and economic effect ultimately, for purposes of analysis they should be separated.

Let me go to the equalization tax which is really the heart of the question that you raised. In the first place, your initial observation suggested that we were in some way legitimating that OPEC price. I think we are in entire agreement that the U.S. Government does not wish to make legitimate that price, but we should bend our efforts to reducing that price.

This is a variable tax. If indeed, as we should strive to do, we are able to reduce that OPEC price of oil, of course the yield of the tax would decline, but the benefits to the country would clearly increase.

The principal aspects of the tax from the technical standpoint are, one, that by imposing this equalization tax we will be facing every refiner in the country with the same price of crude oil. It will permit us to sweep aside a system of entitlements which is vastly complex, which represents bureaucratic redtape, and in this way we can dramatically simplify the Government's involvement in the oil and gas industry or in the oil refining business.

I think that the reduction of the complexity of regulation is desirable.

Second, at the present time, we are subsidizing every barrel of oil that comes into the country. We are not doing it directly by an appropriation, but we are doing it indirectly through our regulatory devices. Each barrel of oil gets a subsidy of several dollars, and subsidizing the importation of oil is hardly the way to come closer to energy independence.

Senator CHURCH. May I ask a question there. I have the same difficulty I suppose that Senator Bumpers had with visualizing this as a subsidy. It would seem to me that if it is possible for us to produce oil in this country at a fair profit, that gives the producer plenty of incentive to go out and look for more, which enables us to blend that lower domestic prices with a high OPEC price. We not only give our consumers a break, but we improve our competitive position in world trade.

Here we are faced with a $25 billion trade deficit, and it seems to me we are throwing away the one advantage that our own domestic oil

gives us in world trade which is terribly important to the long-term prosperity of the country.

Dr. SCHLESINGER. Conceivably it can provide us with a short-term advantage in terms of world trade, but what we are doing here is taking high cost domestic oil and selling it at a lower price and blending it with low-cost foreign oil selling at a high price.

In the course of that, we lower the domestic price of crude to all users, consumers and producers, encouraging to some extent additional use, and thus encouraging additional import. Encouraging additional imports is not going to help our balance-of-payments problem.

One can question the extent to which moving to the world price will restrain demand, but it is plain that the benefits will be to reduce that flow of payments overseas.

In addition, once we get our total importation under control, we will create a condition in the international market which may not be conducive to further price increases on the part of the producers.

I would expect that in the years immediately ahead, we will not see much increase in the price of oil, simply because with the introduction of North Slope and North Sea oil, the sales of the OPEC nations will tend to recede slightly.

But if we have an expansion, and can look forward to an expansion of sales, the economic restraint on the producer will disappear. We would not only have to pay a higher price for the additional imported oil, we would have to pay a higher price for all of the other oil we are importing as would all of the other importing nations. That is a very great burden on international trade and international finance that we should attempt to avoid.

Senator CHURCH. I will study that argument.

Can you give me—do you have—an estimate, assuming that the price of gasoline would go up under the impact of this program 12 cents a gallon; do you have an estimate of how much that would actually reduce consumption of gasoline in this country?

Dr. SCHLESINGER. The standard projections of the elasticity of demand is one-tenths to two-tenths of 1 percent.

Senator METZENBAUM. I did not hear it.

Senator CHURCH. It would reduce consumption by one-tenths or two-tenths of 1 percent.

Dr. SCHLESINGER. No. If therefore we increase the price of gasoline in this example by something on the order of 23 or 24 percent, that should result in a reduction in consumption between 2 percent and 5 percent compared to what it would otherwise have been.

Senator CHURCH. Two and five.

Dr. SCHLESINGER. Compared to what it would otherwise have been.

Senator JOHNSTON. Gasoline or crude oil?

Dr. SCHLESINGER. Gasoline. The case was the 12-cent addition to the price of gasoline at the pump.

Senator CHURCH. Since OPEC increased the price of oil by 600 percent, that has affected our market price in this country and it has increased the price of gasoline by how much from 1973? Do you have that percentage figure?

Dr. SCHLESINGER. The price of gasoline has doubled approximately since 1973.

Senator CHURCH. Since the price has doubled in that period of time——

Dr. SCHLESINGER. But the nontaxed proportion has increased more.

Senator CHURCH. Has that doubling of price had a producible measurable effect on reduced demand?

Dr. SCHLESINGER. The evidence on that is somewhat equivocal. The result of public opinion polls indicates that a sizable number of respondents suggest that they have cut their gasoline consumption. A minority of respondents, but a sizable number.

In addition, we did see that there was a reduction of the rate of growth of gasoline consumption. And we must balance the effects of higher price in 1 year against the surge of demand over a period of years.

The evidence is indeed that there will be some minor effect on demand, not major, and that the responsiveness to such price increases for gasoline is low, particularly in the short run.

Senator CHURCH. I take it then that the basis upon which you make these recommendations for direct taxation on gasoline, and indirect taxation, would lift the price about 12 cents a gallon, primarily based on the anticipation that they will result in marked reductions in demand?

Dr. SCHLESINGER. Yes, sir. There will be some slight reduction from price effects, but I think that that desire for the equalization tax comes from equity considerations.

We do not want the complexity of having to have a dual-tier system for our refineries which results in an entitlements program, which is a poor program and getting worse.

At the same time, we do not want our producers to be the beneficiaries of the world price for old oil. So for equity considerations we drain that off for the taxpayer, and this will result in a rebate on the income tax.

Senator CHURCH. I want to give this part of the program further study because the arguments that you present should be carefully examined.

I have expressed the basis for my doubts, but I do want to wish you well. I have faith that the President's program is going to be improved by the Congress, and we will make progress.

Dr. SCHLESINGER. Thank you very much.

The CHAIRMAN. Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

Doctor, to follow up what Senator Church has said, the abandonment of entitlements, if you do that, what is the picture for independents?

Dr. SCHLESINGER. It depends. We will have to wrestle with the question of the small independents and what kind of protection might be offered to that small independent whose level of efficiency is not as great as that for a larger refinery.

There are large refineries and small refineries that are independent refineries. Some of the more efficient refineries are those large independent refineries, but the small refineries tend to be inefficient.

They have been induced into the market by the benefits that have existed under the regulatory program. Since they have been induced

into the market, one does not know at this stage what precisely should be done. And I am sure we will have considerable advice from the Congress on that subject.

Senator FORD. I have been accused of fighting for little folks in this committee, but it appears to me that if this is going to be something that you have to wrestle with, should this Congress take it upon itself to do that? Would you have a recommendation soon of what should be done?

Dr. SCHLESINGER. I think we would be prepared to discuss this matter with the Congress. There is no immediate need to do so because the entitlement system will continue for 3 years, and Congress will want to see what degree of protection, if any, it will offer to the small independent refiner.

Senator JOHNSTON. It phases out; doesn't it?

Senator FORD. Does it phase out over a 3-year period?

Dr. SCHLESINGER. Yes, sir, it phases out over a 3-year period.

The ad hoc committee on the House side has attended to this problem. It required a report from the administration in its bill as to what additional measures, if any, would be needed. So we will certainly be responding to that if the legislation passes.

Senator FORD. You are talking about 3 years, and it seems like a long time, but it could be a very short period of time and some of the independents could be swallowed up in that period of time if we don't make an effort to protect those efficient ones.

Dr. SCHLESINGER. The efficient ones will survive very handily. The real question is: what degree of proection, if any, should be offered to the high cost, relatively inefficient refinery that has been induced to come into the market by past regulatory policies of the Government?

Senator FORD. Did anyone ask the question—I apologize for being late—about the total amount of income that would come to the Treasury if all of your tax proposals are enacted?

Dr. SCHLESINGER. It would be on the order of $25 billion a year at its peak.

Senator FORD. Is there any——

Dr. SCHLESINGER. If you add the 5 cent tax which the administration has now endorsed on the House side, that would add an additional $6 billion in revenue.

Senator FORD. So we are talking about close to $30 billion.

Dr. SCHLESINGER. Yes, sir.

Senator FORD. Has any decision been made as to what will be done with the $30 billion?

Dr. SCHLESINGER. Yes, sir, a variety of decisions. The House bill calls for the use of that 5 cents tax to support mass urban and mass rural transportation and repair secondary roads, rural areas, and repair bridges.

I am informed that all of our 12,000 bridges, will collapse in the next decade. That 5 cents would be devoted essentially to transportation needs.

The recommendation of the administration is that virtually the entire wellhead equalization tax be rebated to the American people. That represents half of the total $30 billion.

The balance, the oil and gas user tax, will be available to those large users of oil and gas who are prepared to convert their facilities

to other fuels. Some of it will wind up in the general receipts of the Treasury, and that is a matter of $6 or $7 billion a year.

Senator FORD. So the incentive to a user to convert would be part of this money, some rebuilding of secondary roads.

Dr. SCHLESINGER. Yes, sir.

Senator FORD. I have a strange feeling, if I can use the word strange, that the American people are not necessarily interested in getting a rebate back or a credit back. If you take it away from the left hand, you give it back to the right hand, you don't stop the body from doing what it has been doing.

I have this feeling that the American people are willing to say, let's have a crash program, let's have a bold move by the administration to find an alternate source so we will not be brought to our knees by foreign elements.

Has any thought been given to that by the administration, to take the money and pursue an alternate source of energy?

Dr. SCHLESINGER. We believe that the R. & D. program is well funded, and we will continue to request from the Hill ample funds for the R. & D. program out of the general funds.

There is some technology that can be vigorously pursued. We will be asking for more money for certain types of activities, particularly those that offer promise in the near term.

Long-term activities such as fusion, and breeder power have been amply funded and I think will continue to be amply funded.

Senator FORD. You talk about being aggressive in those areas that seem feasible. It seems like we have taken an approach where we are putting some money in a lot of areas.

Can we expect some recommendation as to what areas you want to be aggressive, short term, long term——

Dr. SCHLESINGER. I think we will wish to preserve a variety of options until we have a better feel for the technical and cost characteristics of those options. At that time I think we will want to narrow down the menu and pick some areas to concentrate in.

It would be premature now. We do not have that much of a feel for the technology or ultimate costs.

Senator FORD. Since I represent a coal State, and many on this committee represent coal States, and the great emphasis by the administration is to increase the production of coal, I believe by some 65 percent, is there a feeling or an attitude that would be prevalent, if I may use that word, in your new agency as it relates to gasification and liquefaction of coal?

Dr. SCHLESINGER. Liquefaction. I think we will continue with experiments until such time as we anticipate that the price of other fuels will have risen to make liquefaction more attractive than it presently is.

Gasification. We would like to see the process of commercialization as soon as possible.

With regard to other technologies like coal use, I think that the major requirement continues to be to desulfurize coal as you burn it. There are some promising developments, but as you indicate, this is the central feature of near-term adjustments of our energy economy.

We will be eager in that department to pursue any technologies that offer promise of burning coal cleanly.

Senator FORD. I would ask no further questions, but assure the chairman I will vote for his approval.

Senator DURKIN. Doctor, the Senator and I both have an interest in solar factions. The fact that you did not mention it does not mean that you will not pursue solar faction?

Dr. SCHLESINGER. No, sir, we will pursue all of these technologies. I mentioned to Senator Ford that coal was a central feature of our near-term adjustments. I would hope that solar electric would be the feature of our longer term adjustments.

Senator DURKIN. Thank you, Doctor.

Senator Hansen.

Senator HANSEN. Dr. Schlesinger, I sympathize with you for the effort you have made here and your ability to present the very considered astute presence which is your hallmark.

I asked earlier a number of questions, and there is one that I would like to state again. I apologize for having grouped a number of questions together. My question specifically is: Regarding previous questions on annual authorizations, would you commit yourself to make a good faith effort on behalf of the administration to get the ERDA authorization for fiscal year 1978 enacted this session despite any differences we may have to work out?

Dr. SCHLESINGER. I think that the administration is eager to have the authorization for 1978 and certainly would work towards that end.

I cannot compromise on the President's right of veto if there is a particular element of that ERDA authorization included to which he has stressed strong disapproval.

Senator HANSEN. I am not sure I heard all of your response.

Dr. SCHLESINGER. The administration has no desire to see that issue delayed. Indeed, we have every incentive to see that issue successfully resolved. However, I cannot compromise the President's right of veto.

Senator HANSEN. Thank you very much, Doctor.

I don't know what the chairman's plans may be. Senator McClure is here, and he and Senator Domenici got home at 4 this morning and maybe even later.

The questions Senator Domenici had proposed were handed to Senator McClure, however he might want to handle that.

Senator MCCLURE. If the Senator was going to say I didn't get home until 4. I wish he would say why. My wife might want a better explanation than just that. We were in the clean air conference until past 2:30, and that is what he has reference to.

Dr. SCHLESINGER. If your wife asks, Senator, I will be happy to endorse that story. [Laughter].

The CHAIRMAN. Speaking of time, I think it should be noted that the secretary has been here nonstop since 8.

Senator MCCLURE. I will not ask the question, but I will suggest that we submit the questions as Senator Domenici was also in the clean air conference. If we can get written responses—let me ask a couple of areas, make one statement and ask one question.

First of all, the Department of Energy has been passed by the Congress. I, among others, am particularly happy that you will head that Department.

I have some reservations concerning some of the legislation language and the balances that were drawn, but I think you have the capacity

to make it work, and I look forward to working with you on those various problems.

A statement, not a question, because I know what the administration's position is, and I know what answers you have already given with regard to the breeder reactor program.

I am very hopeful that we will be able to work out a program in which the Clinch River project can be redirected with emphasis on the security aspects, rather than with very little emphasis or very little consideration of it. I think that would fit the goals of the Congress and the goals of the administration if we can do that. That might be the way in which we can resolve the dilemma which exists.

The question I have is on a very narrow area, and I am sure it has not been touched on by others, although it would have been had Senator Hatfield been here this morning.

That is in regard to the Office of Inventions, the effort made to provide a way in which the small inventor, the guy with a new idea, can come forward and get someone to evaluate whether that idea has any merit. If it does have some merit, to provide some assistance in moving it from the idea stage into models, prototypes, demonstrations, some means by which the fellow without large financial resources could actually have his idea tested.

I think the Congress and the administration have not worked together well enough to make certain that that office is staffed well enough to be able to discharge the responsibility which they have.

I have forgotten the statistics, but they are horrendous, the number of applications that have been made. If I recall correctly, it is something like 22 that have actually been acted upon out of thousands that have been submitted. I have had contacts from people in my own State as well as other States that can't even get their phone calls answered by any responsible officials. They never get any kind of affirmative response, it will go on for a year, 2 years, week after week, month after month, with only, glad to have your phone call, we will have an answer to you in a couple of weeks.

Are you familiar with that problem?

Dr. SCHLESINGER. Yes, sir, and we are determined to resolve it. The problem of the nonresponse or the spotty response is not a problem limited to small inventors, or small procurement sources.

I think the entire procurement procedures can be vastly strengthened, and simplified to assure that there are more rapid decisions rather than procrastination about decisions, and certainly more informative responses.

We intend to establish an office of small technologies, and that office of small technologies will have the responsibility for responding to the kinds of opportunities and offers to which you refer.

If the project is meritorious, we want to be able to provide some financial assistance, but we cannot specify precisely how that will work as yet, save that we fully share your intention and are determined to do something about it.

Senator MCCLURE. I don't know that these ideas have merit, but I remember talking years ago to the fellow who had come up with the idea for the Phillips' head screw, a very small idea, and it was taken over by others, but promoted.

And it is out of little things that sometimes large progress comes.

The other side of that, the lost opportunity for the innovation of people who don't know it can't be done come from different backgrounds and apply their skill to a new problem with a new perspective, lies the public confidence of the results.

You have heard, I am certain, as I have heard stories over the years that they know somebody who knew somebody whose brother now had a carburetor that could get 150 miles to the gallon. Either the oil companies or the auto companies bought it up and buried it.

I think part of the confidence of the American public in knowing that their Government is meeting the challenge is an ability to take every one of these ideas and determine whether or not it does have merit so that it doesn't just somehow get lost and then, subject to the kind of rumor that can never be traced and never pinpointed.

I think it is a larger question than simply satisfying the individual. I think it also has to do with the public confidence of the competence of the administration's approach to the energy problem.

Dr. SCHLESINGER. I think that is quite right, and we fully share those views, that we should make every effort to dispel these suspicions. But I think that we must recognize that there will be energy pie-in-the-sky throughout the rest of mankind's history.

Senator MCCLURE. I don't expect that if we force an office that is understaffed to make rapid decisions that we will get nothing but negatives. I don't want that to be the results either.

Dr. SCHLESINGER. Absolutely. The points you make are well taken. To be sure, it is only a small minority of inventions that turned out indeed to be productive, but they are very significant and we cannot lose sight of that small group of inventions simply because bureaucrats get tired of the larger group which add nothing to the totality.

Senator MCCLURE. I have any number of letters concerning a carburetor that had been developed in California that was going to meet the California air pollution control standards while enhancing gas mileage.

We happened to be fortunate in that particular one because that was fully evaluated. Having been evaluated, it was very easy to answer the inquiries of whether or not Exxon had bought it up and destroyed it or some similar story. They all have the same variation, but I think it is important to be able to answer. And I appreciate your concern.

It is the kind of thing that, in the larger problems it is very easy to overlook and get totally lost. I appreciate both your perception and your concern.

Dr. SCHLESINGER. I wholly agree, Senator.

Senator DURKIN. Thank you.

[Questions by Senator Domenici and subsequent responses by Dr. Schlesinger follow:]

QUESTIONS SUBMITTED BY SEN. DOMENICI TO DR. SCHLESINGER

REGIONALISM IN ENERGY DEPARTMENT

Dr. Schlesinger, I am disturbed by what I see as a growing trend toward regionalism in addressing our national energy dilemma. This manifests itself in the division between energy-rich and energy-poor states in determining national energy questions. It is also evident in questions of siting—off-loading facilities for oil tankers, electric power generating facilities, or nuclear waste repositories, to name a few examples.

How can we reconcile the legitimate state concerns with the pressing national need to solve the energy problem?

Is regionalism in energy-related concerns necessarily bad?

What role do you see for state energy planning in the national picture?

Do you foresee the time when it will be necessary for the national government to override state objections in the siting of facilities like those I have mentioned?

Do you believe that it is a responsibility of the Federal government to address "boomtown" problems created by the rapid expansion of energy-producing facilities?

ROLE OF UNIVERSITIES IN NATIONAL ENERGY POLICY

What role do you see for our nation's colleges and universities in assisting in the development and implementation of national energy programs? There is certainly a role in the area of manpower planning and training to meet the future need for energy-oriented scientists, engineers, and administrators. What about a role in the ongoing R. & D. efforts directed by your Department?

THE FUTURE OF ERDA, ITS PROGRAMS, AND ITS LABORATORIES

The new law creating the Department of Energy brings ERDA (not too long ago, the A.E.C.) into the new Department. Many people in my state are concerned about what lies about for ERDA's programs and personnel.

What are your thoughts about dividing ERDA's past responsibilities among the Under Secretary and 8 Assistant Secretaries created by this bill?

Specifically, what is your intention with respect to the National Security Programs carried out previously under the Division of Military Applications within ERDA? One Assistant Secretary is by law given this responsibility.

What role do you foresee for the nation's ERDA laboratories and research centers in the Department of Energy?

THE FUTURE OF BASIC RESEARCH IN THE DEPARTMENT OF ENERGY

It is my understanding that within the new Department of Energy there is to be an Office of Energy Research whose responsibility is to advise the Secretary (but not administer—as in the House bill) concerning ERDA's research program. I believe it is vitally important that someone in the Department of Energy be designated to support and be the proponent for basic and applied research relevant to the energy field.

Would you comment on your views regarding the importance of the Department of Energy funding and direction in energy-related basic research?

Is it your intention to assure that someone with stature within the Department of Energy be charged with the responsibility of supporting and being the proponent for basic energy research?

RESPONSES TO QUESTIONS BY DR. SCHLESINGER

HON. PETE V. DOMENICI,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOMENICI: Thank you for your encouraging words on my new position as Secretary of Energy.

The questions which you would like me to answer for the record raise some important issues about the organization and function of the new Department. We are actively working to develop definitive answers to many of those questions but have not yet made many of the key decisions. Taking your topics in order, my responses are as follows:

REGIONALISM IN ENERGY DEPARTMENT

The U.S. is made up of many different regions which have different energy problems and concerns. A major deficiency in previous energy planning has been an insensitivity to these special regional problems ad needs. In our development of the National Energy Plan and in the White House-Governors' conference on energy held last month we tried to recognize legitimate regional and State concerns. A major result of the conference was the establishment of task for[illegible] and other mechanisms for cooperation between the States and the

Federal Government in energy matters. One of the specific efforts focuses on how the Department of Energy might best be structured to work with the States in different areas. We will also review the existing Federal energy conservation programs which require State implementation to determine what changes might be required. To improve the process we specifically addressed the issues of energy impact assistance. A task force of the National Governor's Conference is working with a Federal task force in this area.

The question of Federal override in siting energy facilities is a difficult one. Resolution of the nation's energy problem requires a partnership between the States and Federal Government. We will try to work things out and overcome State objections through negotiation rather than through mandatory Federal override. The mechanism for this cooperation will, of course, have to be periodically reviewed.

ROLE OF UNIVERSITIES IN NATIONAL ENERGY PLAN

The nation's universities and colleges have played a significant role in providing manpower and new ideas for energy policy planning. We have not yet developed detailed plans or changes in existing policies for dealing with the universities but would expect that the universities would have a continuing role to play in research, development and transfer of new technology to the private sector, in training the variety of professionals needed for managing the nation's energy systems and in supporting State and local governments as they develop their own detailed energy plans and policies.

THE FUTURE OF ERDA, ITS PROGRAMS, AND ITS LABORATORIES

The Federal energy establishment has gone through one major change in the past several years with the establishment of ERDA and NRC and FEA, and will go through another change with the activation of the Department of Energy. We are currently examining alternative assignments of functions to the Under Secretary and Assistant Secretaries provided for in the bill. We are particularly concerned that the more than $10 billion in Federal funds which will be spent by the Department each year be effectively managed. This affects not only the ERDA laboratories (including the weapons laboratories), but the other large outlay programs being transferred from the Department of the Interior and the Federal Energy Administration. Although our organizational plans are not yet final, they will, of course, be in consonance with the specific provisions of the law. Section 209(b) deals specifically with the Division of Military Applications and recognizes it as an organizational unit established by the Act.

THE FUTURE OF BASIC RESEARCH IN THE DEPARTMENT OF ENERGY

The Act provides specifically for an Office of Energy Research to advise the Secretary on research programs. I believe that conduct of basic research is an important part of our overall energy responsibility and should therefore be continued as an effective part of the Department's program. We are looking for an individual with appropriate expertise and stature to serve as Director of the Office of Basic Research. The person will need to bring a variety of talents to the task.

The funding of energy related basic research will be addressed in detail during the preparation of the FY 1979 budget. I have not yet reviewed the proposed basic research budget for FY 1979 but will consider your views and those of others concerned with it within the coming months.

I hope that these answers give you an indication of our current thinking on these matters. As we firm up the organization of the Department and select the key officials more definitive answers will emerge.

Sincerely,

JAMES R. SCHLESINGER,
Secretary of Energy.

Senator DURKIN. I have a couple of questions here that I think we have touched on in part, but Common Cause asked that they be asked, and the chairman asked that they be asked. So they will be asked.

I might phrase two of them together. How do you plan to involve the public in major policy decisions, and do you favor reimbursing

parties that may make meaningful contributions to the Department of Energy regulatory proceedings.

I think you touched on that before.

Dr. SCHLESINGER. Yes; I did. Let me reiterate that the administration supports some proposals with regard to that matter.

We would be prepared selectively to reimburse parties who are involved in hearings or similar activities in the Department.

How do we plan to involve the public in major policy decisions? That, of course, is a very comprehensive question. We will seek a public device with regard to specific decisions, just as we had our outreach program with regard to the energy plan.

Where there are affected parties, we will seek their direct involvement. As I indicated earlier, unless we have broad public support, we are not going to deal successfully with our energy problems.

Senator DURKIN. Will you promulgate a regulation requiring that the Department of Energy officials at GS–16 and above to log all contacts and written material from outside parties?

Dr. SCHLESINGER. Let me answer that for the record.

Senator DURKIN. Fine. I gather the answer to these are yes, inasmuch as you indicated in prior testimony that you will promulgate regulations that will assure an open and competitive process for awarding energy research projects, and you favor orienting future energy contracts toward a greater diversity of energy sources.

I gather from your prior testimony that those are yes.

Dr. SCHLESINGER. Yes, indeed.

Senator DURKIN. That is it.

[Subsequent to the hearings the following information was received for the record:]

Question. Senator DURKIN. Will you promulgate a regulation requiring that the Department of Energy Officials at GS–16 and above log all contacts and written material from outside parties?

Answer. While there is no statutory or civil service regulation requiring such a regulation, the Federal Energy Administration has been working under such policy for the past few years. Apparently, the program has proved to be successful at the Federal Energy Administration, and we will therefore think seriously about continuing the practice at the Department of Energy.

The CHAIRMAN. Thank you. You have been, I must say, quite stoic and relaxed in your 3 hours and 35 minutes of nonstop testimony, Mr. Secretary.

We are most appreciative for your responsive answers. The Chair would state that the nomination is not formally before the committee at the moment. It may be up today, depending on whether the President signs the bill today, but I am informed he will sign it no later than tomorrow.

I would like to ask all of the members of the committee, and will so advise them, to be available for a meeting—a quorum, 10 or more—so that we can act on the Secretary's nomination by the President, as well as the other three nominations pending before the committee.

We would hope that that would all be completed some time not later than tomorrow. There is the possibility that it could be today, and I will get word to all the members of the committee.

Senator MCCLURE. Mr. Chairman, may I just take a brief minute to express my concern here in this forum with the Canadian treaty

which is on the floor of the Senate, will be voted on in less than half an hour.

It does not really address the problems, the fundamental problems, with regard to our relationship to our neighborhood to the north and the energy-related problems of the Alaska gas.

I feel confident that you will have a substantial input within the administration in formulating U.S. policy in response to what is happening north of the border right now.

But I share a very great concern that the Canadians are building up an expectation that they can pass the burden of the settlement of their internal questions onto the American consumer in the guise of a pipeline consideration.

If that is their expectation, there is only one alternative that we have, and that is to exclude the Alcan or any other Canadian pipeline from any consideration.

I think it is a terribly important question, and it has lagged far too long. I am afraid the primary impetus for that kind of negotiation agreement has been left to the State Department, and somebody once said somewhere along the line that foreign affairs are far too important to leave just to the State Department.

Certainly this is one case where what they have done is not adequate for the needs of this country. I am sure, Mr. Secretary, that you are not only aware, but will be a forceful voice in the conduct of those negotiations.

Dr. SCHLESINGER. We share your concerns with regard to the provisions of a hypothetical pipeline through Canada. We shall endeavor to resolve those concerns to your satisfaction.

The CHAIRMAN. Thank you, Mr. Secretary. We are most appreciative for your appearance here today. You have given the members almost unlimited time to ask the questions, as you are probably aware of at the moment.

We will act expeditiously. Thank you.

Dr. SCHLESINGER. Thank you, Mr. Chairman.

The CHAIRMAN. There are three witnesses who have also been patient this morning, Mr. Lee White, chairman of the Consumer Federation of America; Mr. Martin Rogol, Congress Watch; and Mr. James F. Flug, director and counsel, of Energy Action.

We will ask them all to come up to the table at the same time.

Gentlemen, we are pleased to welcome you to the committee.

I will ask Mr. Lee White to lead off with his comments first, and then Mr. Rogol and Mr. Flug.

STATEMENT OF LEE WHITE, CHAIRMAN, CONSUMER FEDERATION OF AMERICA

Mr. WHITE. Thank you, Mr. Chairman. It has been a long morning, and I will try to be exceedingly brief with my remarks.

The CHAIRMAN. The usual rule, if you have a prepared statement, put the whole thing in, and we will leave the record open.

Mr. WHITE. Obviously the confirmation hearings of a new Secretary of Energy is an important event. And having sat through most of Dr. Schlesinger's testimony, it seems to me there is no longer any question as to whether he is going to be the new Secretary.

Indeed our organization—I am here in my capacity as chairman of the energy policy task force of the Consumer Federation of America, is indeed that we do not oppose the nomination of Dr. Schlesinger. He is an articulate gentleman and one individual of great intelligence.

May I say he has also been relatively accessible and approachable to our organization. We have not had the President's ear, but we have had Dr. Schlesinger's. And even though we have not been very successful on many of what we deem to be important issues, we cannot say that he has not heard us out.

Some issues we support completely. Others that have been the basis of the administration's policy we find to be very difficult.

We think, for example, the longtime discussion here this morning about both the equalization tax on crude oil and this 5 cent per gallon increase in gasoline tax is just going to put a burden, maybe like $30 billion or $25 billion on the economy. But unfortunately this does not fall uniformly and evenly through our society.

It is one of the most regressive forms of taxation that there is, and to some extent we think that we are spokesmen for consumers, particularly those at the lower end of the scale.

So we are distressed with some of the policies.

We support, for example, enthusiastically the extension of regulation to the intrastate market. I believe, however, that the wiser, better and more equitable approach would be to follow that of cost-based regulation.

The problems Dr. Schlesinger spoke about in terms of administrative burden and difficulty really don't sound very convincing and persuasive in light of what the Government has done and can do.

We are a little distressed that the Carter campaign pledge on horizontal divestiture fell by the wayside. I think that these hearings were useful though in pointing up these issues, and I hope that the administration and the Secretary will be responsive.

But there is one final observation I would like to make that seems to be something that this particular committee is going to have to be concerned wtih in the years ahead. It has to do with the enormous power and authority that Congress is now about to invest in one individual.

During the deliberations by the Governmental Affairs Committee coming forth with the Department of Energy legislation, it was evident that there was great concern, not that we should continue to let energy policy and programs be fragmented, but in bringing them together we were about to put so much authority, so much power and responsibility in one individual, regardless of his or her capability.

We ought to be wary of it, and as a consequence, in the Senate and the House there was established a Federal Energy Regulatory Commission, one that would have described responsibilities. It was almost as though the Congress, wanting to move forward on energy, was apprehensive about giving all of that authority to one person.

You now have before you, I gather, two appointees to the Federal Power Commission from President Carter. One of them, Charles Curtis, is a gentleman well known to many of us who has worked with the House Commerce Committee.

I deem him on the basis of his background to meet the standards set in the Department of Energy legislation. Namely, he has a background and qualifications that one would believe will enable him to be a first

grade member of that body. And I assume that those members will also be nominated to serve on the new commission once the department goes into effect.

The second nominee, whom I do not know personally, Ms. Sheldon, kind of makes me believe that the concerns of having a secretary in charge of everything may be demonstrated by that particular nomination.

It is difficult for me to attack her, and I am not attacking her. What I am attacking is the process that permitted a name that we have never heard of before, we, meaning the public and not just our organization, to be designated to be a member of the Federal Power Commission and presumably the Federal Energy Regulatory Commission.

I would hope that early on this committee would establish some relationship with the White House, the administration so that names like that don't come streaming forth.

I am a Democrat, and I will probably be enthusiastic about the President's appointees, even those who are Republicans because of the constraint, and this is a Democratic committee.

But I did not believe—if the concept of the Department of Energy legislation and all of the studies going forth right now about the quality of regulatory appointments and regulation are to be given any weight, those nominations ought to be very carefully selected.

As I heard you, Mr. Chairman, it sounds as though that particular nomination will sail right on through. It is hard for me to say that it ought to be knocked out, it is easy for me to say that I don't think it ought to sail through quite so rapidly until at least the public has some idea of the background and qualifications and indeed the philosophy of the witness.

Perhaps it was——

Senator DURKIN [presiding]. Which nominee is this?

Mr. WHITE. Ms. Sheldon was nominated to the Federal Power Commission by President Carter simultaneous with his nomination of Mr. Curtis. It is that one that I am using of an illustration of what seems to me a danger point, a signal that I hope the committee would focus upon.

The final point that I would make referred to the aggressive character of some of the proposals and how they hit most hard on the poor people.

In the President's National Energy Plan we were advised that there would be a program aimed at assisting those people who are especially hard hit, namely the poor, and particularly the senior citizens who for the most part live on fixed incomes.

As far as I know, that has not been forthcoming. I would hope that the new secretary would feel an obligation to redeem that commitment and that this committee would press him to do so.

Right now we have come up with a plan that is going to put a big tax burden on a lot of people. We do not yet have the mechanism in general for rebating that. We do not yet have a plan, let alone a piece of legislation or an act that will assist those people right at the bottom of the economic scale.

They are constituents who can the least afford to take additional burdens. It isn't as if we were just starting out, people's bugets have already been pushed and stretched and decimated because of increases that have taken place in the past 3 or 4 years.

May I say without any objection to Dr. Schlesinger's nomination that I hope this occasion will give the committee a chance to focus on some of these problems as that new major big department is bound to take place.

Thank you.

Senator DURKIN. Thank you, Mr. White.

Mr. Rogol.

STATEMENT OF MARTIN ROGOL, CONGRESS WATCH

Mr. ROGOL. Thank you, Mr. Durkin.

When Dr. Schlesinger was asked if he supported funding and public participation in the Energy Department, he said he was not opposed.

If that is his response, we are not opposed, that is praise dimly. One of the things that concerns a number of consumer groups is the power, as Mr. White suggested, that resides in one figure.

I think there is tremendous responsibility on behalf of this committee and those of us in the public arena to provide vigilant and constant oversight over the activities of Dr. Schlesinger and the Department of Energy.

I would like to raise four areas where I think that oversight is especially necessary. In the President's message he described the need to move to renewable resources. They are essentially two, one of which is solar, and the other is nuclear with the breeder.

In Mr. Schlesinger's discussion with Senator Abourezk, he talked about solar, and he talked about solar as something that had to become economic.

If we look to nuclear and the effort on behalf of nuclear historically, we have seen subsidy on subsidy, either through the ERDA budget or through the tax system.

If we are talking about balance, solar versus nuclear, or moving toward solar, we would like to hear from the administration, Dr. Schlesinger in particular who has been an advocate of these high technologies, that the subsidies going to nuclear power will be eliminated.

So if there are diseconomies toward solar that they have a chance to be resolved in fact in solar's favor so we can move away from a highly capitalized, highly centralized form of energy which furthers the economic and political power of a few corporations in terms of the building of powerplants, GE and Westinghouse. We have seen it in terms of the oil companies' gathering of uranium supplies.

Senator DURKIN. I might add that we don't knock out the construction work in progress. It is going to be one centralized operation.

Mr. ROGOL. That is right, if that is going to the consumers for a low-cost loan to make some utilities being able to build their rate base even further.

The President originally said that conservation and solar were his priorities and nuclear would be a last resort.

In Dr. Schlesinger's actions it seems that conservation and solar are in fact the last resort and nuclear is what is being promoted.

The question Senator Durkin asked regarding public participation elicited a response from Dr. Schlesinger which is the most positive we have heard to date. And we hope those are continued, and we hope we receive his active support for public participation and passage of the Kennedy-Mathias legislation.

Senator METZENBAUM. Have you been called upon for your reaction, or do you know whether any public interest groups have been called upon by the administration for their input as far as the development of the entire national energy program is concerned?

Mr. ROGOL. If we look to the period of January 20 to April 20, selective people were called in at various points for input. After April 20 and the statement that the plan was in effect, numerous consumer groups from around the country were invited to Washington for their so-called input. Their report to me was that they got a sales pitch, that they should take the administration plan and go out and sell it to their constituency, rather than their input being solicited as to what was right and what was not right in the program.

In fact, to some extent the public participation to date has been a charade.

Senator METZENBAUM. Before April 20, some individuals were called in for input.

Mr. ROGOL. That is correct.

Senator METZENBAUM. Since then, none whatsoever.

Mr. ROGOL. Well, the program was essentially after April 20, other than the selling pitch done with community groups. There have been numerous conversations in terms of us and administration people working with the Congress as to the shape that the bill goes before the Congress and what amendments are acceptable.

As to the original shape of the bill, it was selective.

Mr. White raised a very important point in terms of Congress' action in keeping the NRC separate and in separating out some pricing functions for the Federal Energy Regulatory Commission.

Dr. Schlesinger was very involved in the decisions of those people being appointed to the Nuclear Regulatory Commission which would eliminate some of the independence of the Department of Energy from that commission.

It is going to be very important, especially for this committee, to maintain surveillance over the Department of Energy as to how the appointments are made in these independent regulatory boards so that in fact the fears which underline the separation of these boards are not exacerbated by the Secretary having the ability to control both of those regulatory boards.

Senator METZENBAUM. Do I interpret from what you are saying that your concern is that although the Secretary of the new Department was not given the authority with respect to prices, for example, in natural gas, that if indeed the appointees become his appointees that the net result would be just about equal to his having been given the whole authority in the first instance?

Mr. ROGOL. That is correct. That is a very serious concern.

Senator METZENBAUM. It seems to me that your concern on that score ought to be expressed to the President. I think there is validity to it, and that is what you are suggesting is you want independence that Congress has called for by reason of its action in connection with this

legislation. But I would think that the President ought to be alerted to this entire question of whether or not—of who is going to be the appointing person. And I think there would be merit in indicating that to the President.

I would see the likelihood of some members of this committee in the future inquiring of appointees or making appropriate inquiries at the White House as to whether or not the appointment had indeed been made by the President or if it was indirectly done by the head of the Department of Energy, which would do violence, as I see it, to the legislative concept that Congress has now enacted into law.

Mr. ROGOL. Your suggestion will be well taken.

Senator DURKIN. I think at this point I am sure you know, not just you three seated here and the groups you represent, but I think all of the citizen groups, all of the consumer groups and interest groups have a responsibility to help us meet our very, very severe oversight responsibility with respect to the whole energy field as it is within our jurisdiction.

The more you can help us, the more we can exercise the oversight responsibility effectively.

Mr. ROGOL. My concluding sentence, Senator, was in fact that we stand ready to help in that regard.

Thank you.

Senator DURKIN. Thank you.

Mr. Flug.

STATEMENT OF JAMES F. FLUG, DIRECTOR AND COUNSEL, ENERGY ACTION

Mr. FLUG. Thank you, Senator Durkin.

As is already apparent, there is some division of opinion certainly among my friends about Dr. Schlesinger and his performance thus far.

One group of my friends I think is, although it rarely admits to it, but it certainly should be very enthusiastic. This is a group that in the summer of 1976 was getting 52 cents for its new natural gas, and now as a result of the President's program will be getting $1.75 at least for its new natural gas.

This is a group that was facing a Presidential nominee who said that he was going to limit the return on natural gas to a reasonable profit. He said that he was going to break up the energy industry and prevent horizontal integration.

As we heard this morning, there has been no such step. In fact, there is no present intention to do so.

I should think that that group of my friends is extremely happy with the performance thus far.

On the other hand, others in the consumer community certainly have felt that they have not had, not only the substance of the program that they would have liked, but also as much public access, as much enthusiasm for public access and public input as they would have liked, apart from the merits of the program.

My own personal situation is that I have had ample access. Dr. Schlesinger has been willing to listen, he has been willing to talk, but I have certainly been around Washington long enough not to confuse access with impact, and not to confuse personal access with institutionalized access and meaningful access.

The Department of Energy bill makes very clear three specific mandates to the Secretary in sections 9, 12, and 15, subsections 9, 12, and 15 of 102(d): Promote the interest of consumers through the provision of adequate and reliable supply of energy at lowest reasonable cost, foster and insure competition among the parties engaged in the supply of energy and fuels; provide for, encourage and assist public participation in the development and enforcement of national energy programs.

I think the jury is still out on whether James Schlesinger will be able to meet those mandates. I think that the giving of those mandates by the Congress in very firm form will help meet those mandates.

I think the experience of the last 6 months has been that frequently the administration has been somewhat reticent in those areas, and when prodded or mandated by this body and the other body has then been willing at least to go along.

Senator DURKIN. Don't you think the jury is still out on the entire administration, not just Jim Schlesinger?

Mr. FLUG. Yes; but fortunately or unfortunately you don't get to confirm the entire administration, just the Secretary of Energy and his lieutenants.

Senator METZENBAUM. Neither does this administration get a chance to confirm this Senator to my left. So maybe that is the way it ought to be.

Mr. FLUG. I think it is apparent that Dr. Schlesinger has taken this new challenge for him and his experience in most of the areas he discussed this morning had been limited before January 20. He has taken them seriously. He had educated himself in a very difficult area.

Fortunately it is an area that the more you learn, the more you can do. And for those of us on the consumer side, the more you learn, the more your basic intuition and prejudices, if you will, are confirmed to the point where I think Dr. Schlesinger has recognized that frequently the decisions he makes will pit what he has called the greed of the energy industry against the interests of the public.

That is a difficult position to be put in. I think he is strong enough to put himself in the middle of that contest.

I think that he realizes that the lines between incentive and windfall are very hard to discern, but he and the President have admitted that perhaps their program is overly generous, has crossed the line between incentive and windfall.

Jody Powell was frank enough to talk about the $80 billion ripoff that deregulation would bring, including not only the difference between $1.75 in deregulation, but the difference between $1.45 and $1.75.

In competition we did have a strong campaign position. That position has weakened in the April 20 message. It was further weakened on April 29 when the spider web bill came out. I have written an analysis of that change that I will submit for the record.

[Subsequent to the hearing, the following was supplied for the record:]

ENERGY ACTION

June 14, 1977

CONTACT: Allison Beck
(202) 737-6220

FOR IMMEDIATE RELEASE

TESTIMONY OF JAMES F. FLUG, DIRECTOR AND COUNSEL, ENERGY ACTION COMMITTEE, ON THE NATURAL GAS PRICING PROVISIONS OF THE "NATIONAL ENERGY ACT", BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, JUNE 14, 1977.

Mr. Chairman,

Webster's Dictionary defines "rip-off" as "an act or instance of stealing; theft; also a financial exploitation".

I try not to use that word because of its emotional content.

But Jody Powell, Press Secretary to the President, used the word "rip-off" last Friday when he was discussing President Carter's reaction to the House Energy Subcommittee vote to deregulate natural gas prices. Deregulation, said the President's spokesperson, would be an "80 billion dollar rip-off of the American public".

A few minutes later he amended his statement when he was reminded that 15 of the 86 billion dollars in excessive producers revenues he had in mind would be the result (by the White House's very conservative estimates) of the President's own energy plan. With a smile he allowed as how deregulation would "be a paltry 71 billion dollar rip-off".

In fact that's only part of the story. For the "rip-off", or windfall, or excessive revenues, or whatever one wishes to call income beyond that necessary to cover all costs and a very generous profit, are likely to be much higher than that "paltry 71 billion" if Congress adopts the President's new gas price of $1.75 per thousand cubic feet.

The estimate of a 144 to 163 billion dollar windfall over the next 10 years from the legislation before you was a preliminary estimate we presented to the House Subcommittee nearly a month ago. At that time I urged others, especially the industry, to come up with a better or different estimate than ours. I am aware of none to date. The only relevant estimates which have come to my attention are the White House projections as to the revenue impact of a $2.25 gas price compared first with the Nixon-Ford FPC's proposed price (now under court challenge) of $1.45, and with the Carter Energy Plan price of $1.75. The 80¢ difference in the cap between the $2.25 price and

the FPC proposal would result in $86 billion of windfall, according to the White House, or about $1.07 billion for each cent of differential. The 50¢ difference between the Carter price and $2.25 was projected to produce $71 billion of windfall or about $1.4 billion for each cent of cap differential. Our estimate compared the $1.75 cap with our base case of 75¢ as a very generous "just and reasonable price," for new gas and produced, for the eight-year period, $103 billion to $116 billion of excess attributable to the $1 difference in price, or $1.03 billion to $1.16 billion per penny of difference, well within the range of the White House calculations.

Of course the essential difference is that we think that the windfall begins where a reasonable return on investment ends, whereas the White House estimates take as their base case the outrageous, and we believe illegal, FPC price for interstate gas, and the non-competitive and irrelevant recent spot price for intrastate gas.

Mr. Chairman, and Committee members, whether the windfall is $15 billion, or $115 billion, it will be incredible to the American people that you would even consider that kind of mandatory income transfer from the public to the producers without placing a very high burden of proof on the beneficiaries. We are told that we are going to have a new information system that tells us all we need to know about costs and reserves and profits. But what kind of Alice in Wonderland story is this that puts the verdict first and the facts later.

Mobil Oil had the unmitigated gall to offer testimony to the committee yesterday full of rhetoric of deregulation, railing against the lack of incentives at either $1.45 or $1.75, but without any facts to back up its incredible claim (not attributed to any particular person or company) that the "cost" of gas is even higher than $1.75. In fact the only specifics Mobil provided were two hypotheticals about onshore gas wells, one a low-cost well at $170,000 and the other a high-cost well of $1,700,000. What Mobil doesn't tell us is how much gas--and money--is likely to come from one of those wells. At a price of 50¢ per mcf, if the cheap well results in a finding of only 1000 mcf a day, the first year's income of $182,500 would more than pay for the exploratory well. If the expensive well produces discoveries of 10,000 mcf a day, the first year's revenues of $1,825,000 would more than pay for the exploratory well. Are these figures wrong? Too large? Too small? Let Mobil tell us why. We--and more importantly you--shouldn't have to guess in the dark as to whether 50¢ or $1.75 or something in between is the "right" price for gas.

It seems as though every new piece of information we get confirms the conclusion that $1.75 is way out of the ballpark:

--The squelched ERDA report (noted in Saturday's Post) which showed that a $1 price would be more than enough to cover all costs, all taxes, and a 15% profit on gas in the U.S. through the end of the 1990's.

--New Administration figures, and an analysis by an FEA expert, showing rates of return on oil and gas production of 25-35% before the 1976 gas price increase, and showing excess cash flow from production activities of $4.9 billion in 1975.

--The latest FPC report showing that in Oklahoma, where the state itself has found that gas prices are rigged, in the first quarter of this year the average price on new intrastate (uncontrolled) gas contracts was $1.64 and only 12% of new contract volumes sold above $1.75.

--And especially, the recent statement to a Security analysts meeting by a Conoco Vice President that the incentives for gas production in the Carter plan were "adequate," which has to translate, in lay terms, into "fantastic".

Perhaps we have become so numb that $1.75 for a thousand of anything doesn't sound like much. But $1.75 for a thousand cubic feet of gas is a huge amount. It is:

--10 times what producers were getting for gas a decade ago.

-- 6 1/2 times the 26¢ price agreed to by producers in 1970 as an "incentive" price to bring forth "additional supplies" and "meet the demands" of consumers.

-- Almost 3 1/2 times the last court-approved "just and reasonable" rate of 52¢.

-- Almost 3 times the 60¢ range which the FPC staff has said would produce ample returns and incentives.

-- Well above the levels in recent years of the uncontrolled (President Carter properly called them "exorbitant") intrastate gas prices.

-- And about 25% over the $1.42 price through which the Nixon-Ford FPC attempted to deregulate administratively, a price which the courts are likely to overturn as unsupported under the "just and reasonable" standard.

Let me focus for a minute on the $1.42 price, because the "Energy Plan", and most of the media, treats it as some sort of credible base case against which future developments can be measured. In fact, however, that price merely represents the personal opinion of three men:

-- appointed by Presidents committed to giving the industry unlimited profits,
-- themselves opposed to the process of price controls they were responsible for enforcing,
-- with backgrounds and political sponsorship reflective of the oil and gas producers' viewpoint.

For policy purposes, you and we are just as entitled to accept as a base case, the opinion of the experts in the FPC Office of Economics which recommended a 56¢ price, or the 61¢ price found adequate by the FPC Bureau of Natural Gas, or the view of the dissenting Commissioner who found the $1.42 price "excessive" and unsupportable:

-- We are certainly entitled to exclude from our own calculations the 40¢ of income tax, calculated at the highest rates which the FPC assumed -- without evidence and despite history to the contrary-- that the producers would pay.

-- We are certainly entitled not to accept calculations based on industry production, cost, and reserves figures that have repeatedly proved unreliable and that appear on their face to reflect political and legal circumstances rather than physical facts.

-- And we are certainly entitled to look at cost figures developed by other impartial observers, like the recent Oklahoma study which spoke of actual costs of producing gas in 1976 in the range of 35¢, 44 1/2¢, and 60¢(the latter allegedly up from 17¢ in 1973).

The fact is that the nation has been operating under an irrational regulatory scheme for natural gas, with two fatal flaws:

1. The combination of an uncontrolled intrastate market and a controlled national market for the same product has unavoidably led to minimal production for the controlled market and maximum production for the uncontrolled market. This factor alone is responsible for a major portion of the supply problems in non-producing states, as this committee is well aware;

2. The expectation--and fact--of continued sharp rises in regulated price, and the expectation--and hope-- of eventual deregulation, has made withholding gas more profitable than selling gas.

To remedy the first flaw we have to bring the interstate and intrastate prices together. We can do so either by bringing the national prices up to the uncontrolled levels of the intrastate market, giving all production the benefit of the fantastic windfalls which intrastate producers have been receiving for the past few years, or we can bring the "exorbitant" intrastate price down to a "just and reasonable" national level.

The proposal before you clearly reflects the industry's approach of raising the regulated interstate price to the unregulated intrastate levels, something the Congress has protected the American people from in the past. Anyone who has any doubt that this proposal takes the deregulation route need only look at the FPC's own statistics on uncontrolled intrastate prices. The weighted average of new intrastate contract sales of producers reporting to the FPC has never reached the $1.75 level until the crisis winter of 76-77, and even then many sales and contract renegotiations, in many places, were at much lower prices, including prices under $1.

The fact that the highest price for intrastate gas sales in Oklahoma as of January was $1.68, and the fact that New Mexico recently set $1.44 as the state-imposed cap on its local sales of local gas gives additional evidence that the $1.75 price is truly a deregulated price.

Moreover, as this Committee well knows, the reported intrastate prices are themselves artificially inflated not only by the aberrational spot-type emergency sales, but also by what the FPC euphemistically calls "sales between affiliated companies" or what most of us would call phony pricing or price fixing. You have had evidence of this phenomenon in the past, and now there is a brand new, startling set of disclosures in the Oklahoma legislative investigation of gas pricing in that state. I hope each of you will read it so that you can judge for yourself its objectivity and dispassionate approach. But I will say that if a $1.68 price can only be reached by that kind of self-dealing, connivance, and flim-flam, then the nation has no business whatsoever one-upping the price fixers by imposing a national price level of $1.75.

It's hard to think of anything worse than the $1.75 price itself, but the means of calculating that price, and determining its future course is worse. Tying the gas price to the price of U.S. crude oil immediately, of course, builds into the gas price a heavy dose of the OPEC oil windfall which is already well reflected in the price of U.S. crude. But if the oil pricing system suggested by President Carter is adopted, then the oil price on which the gas price is based must move upward much faster than inflation, and thus so will the price of natural gas. That is, while each of the three tiers of oil will ultimately be limited to price rises equal to the annual inflation rate, in the next three years "new" oil will move up faster than that as it rises to world price levels, and the proportion of "new" oil in the U.S. mix will also rise each year, so that the overall U.S. crude price, and with it the gas price, will keep rising sharply, and much faster than the general inflation rate.

Thus instead of removing the second major flaw in the current system, the incentive to withhold in anticipation of rapidly rising future prices, the current proposal would build in that expectation and thus assure future withholding and continuing supply problems. In other words, while the price level in any one year would be wildly beyond the most generous notions of "incentive" prices, the predictability of even higher prices in coming years would provide a disincentive to current production and a strong economic justification for placing available reserves in inventory.

Of course the whole notion that the oil and gas industry needs additional "incentives" to produce is a joke. We know that we don't know the whole story about oil and gas costs and profits, because the industry has been notoriously unwilling to share its data with either the government or the public, despite its continuous pleas for every kind of help based on assertions about that data. But we know enough to know that the industry has done very well under the recent pricing arrangements:

-- The top oil and gas companies increased their profits by over 100% from 1972, the last pre-embargo year to 1975.
-- Mobil alone increased its profits on U.S. energy operations from $171 million in 1975, to $430 million in 1976, and after spending about a billion dollars on Montgomery Ward and Container Corporation offered a third of a billion for the Irvine Ranch.
-- Standard Oil of California increased U. S. earnings from $240 million in 1975 to $461 million in 1976.
-- Exxon admits to a 25% return on capital in 1975 and a 20% return in 1976 for U.S. exploration and production operations, and showed an increase in U.S. oil and gas earnings of $38 million despite a decrease in production of both gas and oil.
-- Similarly, Phillips Petroleum showed a $350 million increase in revenues, and a $60 million rise in earnings on U.S. oil and gas operations despite a reduction in U.S. oil and gas production.
-- And I submit for your enjoyment and the record the cover of this year's Tenneco Offshore Company Inc. Annual Report which can only be described as an open celebration of the FPC's recent gift to the industry.

In fact what Mobil's Annual Report describes modestly as "some improvement in natural gas prices", has already produced such a windfall to the companies that it is entirely likely that their cutbacks in production reflect a fear that level or rising production rates at the rapidly increasing prices of the last 10 years would have shown such a gross excess of profits, even by oil industry standards, as to bring not only horizontal and vertical divestiture, but also a sharp rise in the already strong public sentiment in favor of still more severe government action.

Because we know that we do not know all the facts, we cannot accept industry claims about "hardships", "insufficient capital", and "inadequate incentives", especially when the known facts are to the contrary. President Carter has called for a detailed Petroleum Industry Reporting System, and once we see the detailed facts which that system will presumably generate, then we can decide whether the "just and reasonable" rate system is really inadequate--or perhaps over-adequate--to produce the cash flow legitimately required for continued investment in gas production. In the meanwhile we should consider the revenue and profit implications of the plan which the White House has put forth.

Any projections are necessarily speculative, but the attached computations are a first attempt at calculating the windfall inherent in the $1.75 "new gas" price, the allowances of interstate rollovers at $1.42 and intrastate rollovers at $1.75, and the locking in of the FPC Opinion 770 rates on the last two biennia. The projection is extremely conservative in that it calculates the rollover windfalls from the respective average prices rather than the actual prices of the rolled-over production, which would be a significantly lower base. It also assumes that the windfall factor would be constant over time, when in fact the windfall will accelerate as the gas price moves upward ahead of the inflation rate because of the oil equivalency factor discussed above. The two assumptions for "new gas" volumes are based (I) on President Carter's past assertions of a 85 rate, and (II) on projections based on the AGA estimate to Mr. Schlesinger of 5.5 trillion cubic feet of new gas by 1980. Obviously the assumptions of these figures differ substantially from those of the proposed system, but since there is no limit on the amount of "new gas," and since the aim of the program is to stimulate as much "new gas" production as possible, these figures, too, are likely to be conservative. The detailed bases of the calculations as well as further revisions as we refine the projections will be submitted to the committee.

Based on these preliminary calculations, however, it appears that the windfall factor, that is, excess profits generated by the pricing system, without any basis in increased cost or risk, will amount to (in billions of dollars):

Preliminary Estimate of Total Producer Windfalls under Natural Gas Provisions of Energy Plan

	Low	High
1978	4.5	4.9
1979	7.5	8.3
1980	10.2	11.4
1981	12.6	14.1
1982	14.7	16.5
1983	16.5	18.6
1984	18.0	20.4
1985	19.2	21.9
1986	20.2	23.2
1987	21.1	24.4
TOTAL	144.5	163.7

I want to emphasize that these are very rough estimates. I welcome and encourage the Committee, the industry, and especially the Administration to set forth different assumptions and derive different totals. But I assure you of one fact: As long as the base case is some realtistic notion of actual current and prospective cost plus a reasonable return, the windfalls under the proposed pricing system will be in the tens of billions of dollars over the period of the plan.

The American people cannot be asked to sacrifice when the oil and gas industry is going to be given that kind of unearned bonus.

A final word about "supply elicitation". The industry keeps reciting a litany to the effect that the Carter energy plan focuses on the demand "without doing anything about supply".

The Energy Program will produce adequate supplies to meet the curtailed level of demand in the national market at any given price level as long as

1. The drain of production into intrastate markets is eliminated by placing them under controls.
2. The expectation of sharp price increases in the interstate market is eliminated, and thus the incentive to withhold removed.
3. Our OCS leasing system is operated in such a way as to encourage competitive bidding and enforcement of due diligence in exploration and production.

The Carter plan already takes care of #1 (intrastate drain); with minor revisions it can cover #2 (speculative withholding) by moderating the rate of increase from whatever the new starting point is; and will cover #3 (OCS) as soon as this Committee and its House counterpart complete work on the new OCS leasing bill.

These three supply stimulators promise much more production for national markets than the meager additions projected under either the $1.75 or the deregulation scenarios, without the huge, economy-distorting income shifts of the high price routes.

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Mr. Chairman, we will have some detailed comments on problems with the technical provisions of the bill and some proposed amendments which, with your permission, we will submit in writing.

CHART 1

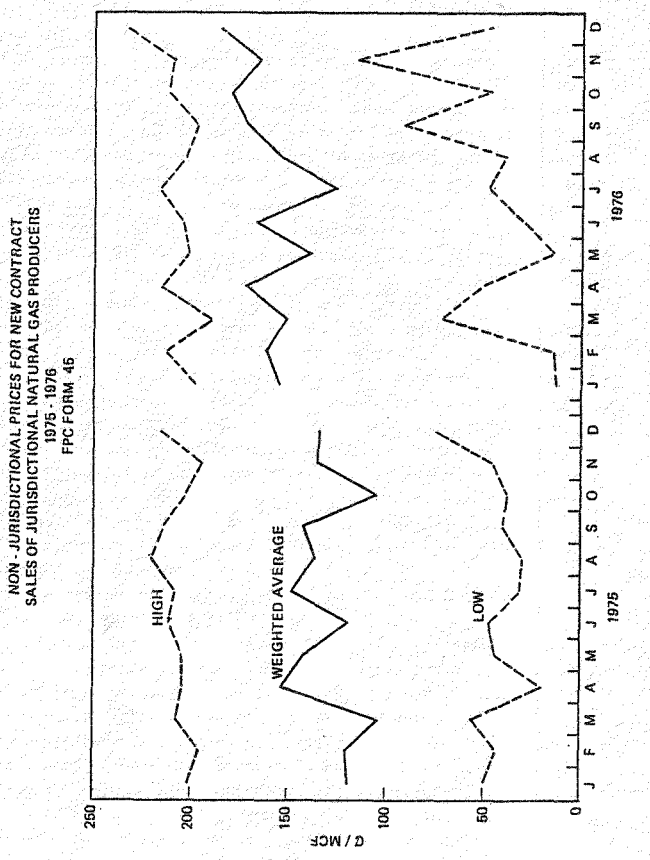

CHART 2 - Preliminary Estimate of Producer Windfalls under Natural Gas Provisions of Energy Plan

	'78	'79	'80	'81	'82	'83	'84	'85	'86	'87	Total
Interstate Rollover	1.3	2.4	3.3	4.0	4.5	4.8	4.9	4.8	4.6	4.4	
Intrastate Rollover	1.0	1.9	2.7	3.4	4.0	4.5	4.9	5.2	5.4	5.5	
New Gas I	1.0	2.0	3.0	4.0	5.0	6.0	7.0	8.0	9.0	10.0	
New Gas II	1.4	2.8	4.2	5.5	6.8	8.1	9.4	10.7	12.0	13.3	
770 Levels	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	1.2	
Total I	4.5	7.5	10.2	12.6	14.7	16.5	18.0	19.2	20.2	21.1	144.5
Total II	4.9	8.3	11.4	14.1	16.5	18.6	20.4	21.9	23.2	24.4	163.7

THE NATION

MAY 28, 1977 60 cents

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Michael Teitelman

Trouble With 'Sleeping Beauty' / Nancy Goldner

CARTER ON OIL & GAS

Fudging Away from a Hard Line

JAMES F. FLUG

On January 14, 1976, less than a week before the Presidential campaign began in earnest with the Iowa precinct caucuses, an ad entitled "Iowans Want Some Straight Answers on Energy" appeared in the *Des Moines Register*. It contained the results of a questionnaire on energy policies sent by a new consumer group, Energy Action, to fifteen Presidential hopefuls during December. Ten of the fifteen responded; Mr. Carter was not among them. But on January 16, in the same paper, the Carter campaign placed a larger ad. It explained that Governor Carter had not answered Energy Action's six questions because they "could not be answered honestly and directly with a yes or no answer." It then answered all six questions in detail.

Question Number 2 read, "There are legislative proposals to stimulate more competition among different sources of energy by preventing major owners of one type of energy resource from owning other types. Do you support or oppose legislative efforts in the U.S. Congress to prevent 'horizontal integration' and require major energy companies to divest themselves of such competing energy sources?" Carter's response was, "I support legal prohibitions against ownership of competing types of energy, oil and coal, for example."

Question Number 5 was, "A major issue before the U.S. Congress is whether the price of natural gas should continue to be set under a system which assures gas producers a 'reasonable return' or should be allowed to be set by the oil and gas companies themselves at whatever price (probably at least triple current prices) they think gives them the highest possible profits and allows them to take advantage of the high monopoly prices for oil set by the international oil cartel. What is your position?" Mr. Carter replied: "I support legal restrictions to allow a 'reasonable profit' on oil and natural gas rather than allowing prices to be set without restriction. . . . I support the overwhelming position of the National Governors' Conference to limit deregulation of natural gas to that small portion (less than 5 percent) of production not under existing contracts. This deregulation should not exceed five years."

James Flug is director and counsel of the Energy Action Committee in Washington.

Two key energy issues. Two entirely different types of answer. An unequivocal *yes* to horizontal divestiture of the oil companies, a proposal that was popular with consumer groups and anathema to Big Oil. An equivocal and puzzling *answer on natural gas deregulation*—priority Number One to the oil industry, for which each 10¢ rise in the average price of natural gas meant $2 billion more a year in profits. Equivocal because the commitment to "legal restrictions to allow a 'reasonable profit' " clearly conflicted with the reference to "deregulation." And the discussion of deregulation was in terms of a limit in amount (5 percent) and time (five years). Puzzling because in fact the Governors' Conference had *not* adopted such a position. A few weeks later, when the proposal was made to the conference, it was rejected.

Several things happened next. On divestiture, the late Senator Philip Hart (D., Mich.) standing side by side with Energy Action founder, Paul Newman, announced a major effort to pass *vertical* divestiture, a separate proposal to break the oil companies into their producing, transporting, and refining and marketing segments. It made horizontal *divestiture look mild by comparison*. As of May, when the Hart bill was, to everyone's surprise, reported from the Judiciary Committee, many legislators were saying, "I may not be able to go along with vertical, but I would go with horizontal."

On gas the pressures were conflicting. On the one hand, Carter the candidate was courting Oklahoma Gov. David Boren, a notable cheerleader for gas deregulation. But at the same time the House of Representatives, in early February, reversed a previous Senate vote for deregulation and not only rejected deregulation for all except small, independent producers but went on to extend regulation to the previously uncontrolled *intra*-state gas market.

Carter's positions reflected these developments. His stand on horizontal divestiture became even stronger. A campaign fact sheet, reiterating his support for horizontal separation, added new language: "When competition inadequate to insure free markets and maximum benefits to America's consumers exists, I will support divestiture. At the present time, I consider these circumstances to exist or to be a threat . . . within the coal and uranium industries because of excessive ownership and control by the oil companies."

The stand on natural gas became even more complex and puzzling. The campaign's gas fact sheet talked of deeper gas wells and said, "Under the present regulated price structure, producers who attempt to exploit these deeper wells are forced to take a loss on every cubic foot of gas they pump." On its face the statement was ludicrous. No one would produce gas at a loss. Actually, however, it was erroneous, too, for any producer with a high-cost well could and would go to the Federal Power Commission for an exception from the general price limit.

But the same fact sheet added a new element. The five-year period of limited deregulation now had a special purpose: "At the end of a five-year period, the success of the programs should be evaluated and appropriate new actions taken." In other words, Carter was not necessarily accepting the arguments for deregulation, just expressing a willingness to test them out.

This approach was even more explicit in Carter's written presentation to the Democratic Platform Committee on June 16, 1976, after he had clearly locked up the Democratic nomination. He called for "price protection for the consumer." And again his reference to deregulation was in terms of a limitation. "For natural gas, we should deregulate the price of *only* that natural gas not currently under existing contract (*less than 5 percent*) for a period of five years. At the end of the period of time, we should evaluate this program *to see if it increases production and keeps gas-related products at prices the American people can afford*." (Emphasis added.) The June position on horizontal divestiture was almost word for word the same as the January position.

Since Carter was firmly in control of the party by the time the Platform Committee met, hardly a word went into the platform that Carter issues chief, Stuart Eizenstat, and Washington representative, Joseph Duffey, had not specifically approved. And, perhaps because Carter was about to make a fund-raising swing into Texas, the energy planks were given special scrutiny. Yet there it was again, the promise of a "legal prohibition against corporate ownership of competing types of energy, such as oil and coal." And: "We believe such 'horizontal' concentration of economic power to be dangerous both to the national interest and to the functioning of the competitive system."

On natural gas, the platform moved further away from deregulation. It called for continued price controls on both oil (Carter's previous position) *and* gas, though it talked about narrowing the gap between oil and gas prices. In an interview about this time with the industry publication, *Oil and Gas Journal*, Eizenstat still spoke of what the publication called "the trial test on natural-gas deregulation." And for the first time there was mention of a possible hedge on horizontal divestiture. *Oil and Gas Journal* reported that "Eizenstat says 'legal prohibitions' would 'not necessarily' apply to existing industry structure but rather future purchases of competing forms of energy." That is, a prospective rather than retrospective remedy.

At this time—mid-July—the industry feeling, as reflected in *Oil and Gas Journal*, was that the Democratic platform was "tinted anti-oil" because it "calls for continued oil and gas price controls and for restrictions on *integration* by majors and on their *ownership* of other energy sources."

Sen. J. Bennett Johnston (D., La.), speaking for Carter at a July fund-raiser in Tulsa—an oil boomtown—took a more "optimistic" view, but one which confirms the general perception of—and industry reaction to—Carter's positions on coal/oil connections and gas. According to *Platt's Oilgram*, Johnston conceded Carter "could conceivably be for horizontal divestiture" but said, "While I don't think this is particularly wise, I don't think it is particularly crucial either." *Platt's* continued: "Carter also is for controls on 'old' natural gas, but favors a five-year trial decontrol period for new gas. 'I don't like the five-year proposition,' Johnston said, 'and I think we can get him to back off on that.' "

Nominee Carter spoke twice on energy during August of 1976, and did not relent on what was now his clear position against horizontal integration. Appearing at a luncheon sponsored by Ralph Nader, Carter said he would sharply restrict the investment of big oil companies in competing energy sources such as coal and uranium unless he was convinced there was "an adequate amount of competition, which there is not now." And, reporting to the press on a mid-August energy briefing in Plains, Carter described the discussion of vertical divestiture and complained that "there had been no discussion of horizontal divestiture, which he considered more important," according to *The New York Times* dispatch.

At about the same time, Sen. Adlai Stevenson (D., Ill.) floated what he called a "compromise" on natural gas which reflected his political judgment that if he didn't push a new price system that approached deregulation, immediate deregulation might be stampeded through Congress before the election. Stevenson's friends in the consumer movement were outraged, since his proposal would have tripled the price of natural gas from 52¢ per mcf (thousand cubic feet) to more than $1.50 per mcf. Their outrage was compounded when in late July, the Federal Power Commission moved on its own to raise the price for new gas contracts to $1.42 per mcf. In fact, the FPC action amounted to administrative deregulation. To reach the $1.42 level, three commissioners, all of whom were on the record as opposing the cost-based price regulations they were supposed to enforce, had to accept all the industry's cost and productivity data, and add hypothetical income tax (40¢ worth) at the highest rate.

That the industry data are highly suspect goes without saying. That there was no evidence that the producers pay *any* income tax, let alone the highest rates, should not be surprising. What should the price have been? The FPC's own staff found that at a price around 60¢ per mcf, the producers would recover all their costs and net about 18 percent return on investment. The dissenting commissioner found the $1.42 price "excessive," and a large group of consumer organizations, Senators, Congressmen, municipal gas distributors, and states immediately took the FPC to court. The arguments against the FPC's price also applied to the Stevenson price, and his bill died quietly.

A strange thing happened in October, however. A letter to the Governors of Texas, Louisiana and Oklahoma, over Carter's signature, began circulating in industry circles. It contained rhetoric and advocacy for the joys of natural gas deregulation that were unlike anything that had appeared in any other Carter position on gas. Much later, it was revealed that although it had been sent from Carter headquarters, the letter had a peculiar origin, involving Governor Boren of Oklahoma and one Duke Ligon, an oil industry advocate in Washington. Even on its face, it was obviously a strange document. It said nothing about the five-year and 5 percent limitation, or about the "test" to evaluate the arguments for deregulation. On the other hand, its operative sentence was virtually meaningless: "I

Bas. Tachydromos (Greece)

will work with the Congress, as the Ford administration has been unable to do, to deregulate new natural gas." The reason Ford could not work with Congress on gas was, of course, that Congress itself was split on the subject: the Senate had been stampeded into a vote to remove most gas price regulation. The House had narrowly voted not only to continue regulation of interstate gas but to extend controls to the previously uncontrolled intra-state market. Which way, then, did Carter intend to go?

In fact, the industry recognized that what came to be called the "Ligon letter" was an aberration, that even Carter, who had been known to adjust his positions, could not all that suddenly have abandoned his careful and clever straddle on natural gas. And as the final *Oil and Gas Journal* before the election made clear, the industry read into the letter Carter's oft-stated 5 percent and five-year limitations, and even focused on the letter's mention of an intent to "protect the consumer against sudden, sharp increases in the average price of natural gas," as a basis for continuing to question Carter's real sympathy for the industry position. The Washington column in that issue of the magazine was entitled, "May We Read the Fine Print, Please," and not only saw the earlier Carter qualifications as still operative but explicitly rejected that offer of a limited deregulation test as too little and too short. "Gas producers don't like the sound of a five-year plan," the article went on, pointing out that Senator Mondale, the very day before the Ligon letter, had told a Denver audience that the Carter administration would work to keep controls on oil and gas prices. Nevertheless, responsible journalists who should have known better, and industry officials and politicians who did know better, began after the election to talk about how Carter's "commitment" to natural gas deregulation had helped him win Texas and Louisiana.

The irony is that even if Carter *had* made a real commitment to deregulation, it would not have helped him with the voters of the gas-producing states. The *people* in places like Texas have, over the past two years, come to realize that nationwide deregulation of natural gas prices is the worst thing that could happen to them, since it would drive even higher the uncontrolled prices they now pay both for gas and, more importantly, for electricity made from gas. As small farmers have been driven out of business because they can't afford to run their irrigation pumps, and as householders see their utility bills running higher than their mortgage payments, Texans have come to realize that their interests are not identical to those of the oil and gas industry. There has been strong public pressure in Texas for tight state controls on gas prices, and New Mexico has already enacted such a law.

And strange as it must seem to those who claim there was a Carter "commitment" to deregulation, despite the winter's gas-supply problems—which would have sent Gerald Ford into a frenzy of deregulation rhetoric—President-elect Carter and President Carter never mentioned deregulation except when pushed by reporters, and then always in vague terms of describing his *past* statements about a five-year test. Had Carter been panting to espouse deregulation, one would have expected his January 21st statement on the natural gas emergency to be full of urgent calls for deregulation. But not a word. Why not? Energy adviser James Schlesinger may have provided the answer when he said, just before Inauguration Day, that the industry had received "considerable price increases recently" as an incentive for oil and gas searches, that "the problem has been uncertainties for the industry," not insufficient price, and that since consumers can't defend themselves against unfair price increases without regulation, "these are not ideal circumstances to deregulate gas." Asked point-blank whether he was opposed to deregulation, he told the A.P. that "the Carter administration has no position on deregulation so far."

And on February 10, Schlesinger pointedly told a consumer audience *not* to think that the administration's willingness to allow emergency natural gas sales at essentially uncontrolled prices during last winter's gas crisis represented Carter's long-term view on gas pricing. Again, when asked whether his statement meant that the White House was not committed to deregulation, he answered, "That would be a fair inference." The administrator-designate of the Federal Energy Administration, John O'Leary, had also been saying that raising gas prices would not increase supplies because "there just isn't that much gas to be found."

And Carter himself on January 30, responding to a question on gas, showed that the industry had been correct in focusing on his campaign words about protecting the consumer. Built into his gas policy, he said, "would have to be some prohibition against excessive or windfall profits from energy costs at the expense of the consumer." And at his first press conference: "I am going to try to make sure that all the natural gas companies . . . don't derive unwarranted profit when we cut back on consumption and when we encourage production." And, in his first fireside chat: "Oil and natural gas companies must be honest with all of us about their reserves and profits. . . . We will ask private companies to sacrifice, just as private citizens must do."

In the meantime, President Carter said and did nothing to dilute his clear commitment to horizontal divestiture. On the contrary, two key energy appointees, FEA's John O'Leary and Cecil Andrus, Secretary of the Interior, expressed their own support for the concept. The only new factor was a concerted industry drive to fight horizontal divestiture. At the American Petroleum Institute's winter meeting, there was a marked and open shift in emphasis from the previous industry focus on vertical divestiture to horizontal. The institute's literature against horizontal divestiture began appearing on Capitol Hill. Exxon and Gulf TV advertising began to extol the beauties of having oil companies in the coal, nuclear and solar energy businesses. The industry appeared at the White House "mini-conferences" held by Schlesinger and his staff during March, to plead the case.

There were also numerous private meetings between oil executives and high-level administration officials to discuss horizontal divestiture—as well as gas and other issues of billion-dollar levels of interest to the companies. And so the scene was set for the April unveiling of the Carter policy. The bidding up to then was:

Natural Gas: Hedged and conflicting statements, including on the one hand, Carter's January 1976 stand for a "reasonable profit" standard, against setting prices "without restriction," and his later opposition to "unwarranted" "excessive or windfall profits" for the gas producers; but, on the other hand, a willingness to *test* the arguments for deregulation by a trial for a limited time (five years) and limited amount (less than 5 percent), something the industry did not want and had rejected during the campaign.

Horizontal Divestiture: A clear, unequivocal, oft-repeated position that horizontal divestiture was important and necessary, and an undiluted commitment to do something about it. The only hedge was the isolated Eizenstat suggestion—never repeated by Carter—that the action might be prospective instead of retroactive.

On April 18, President Carter gave his "sky is falling" speech, a statement of energy goals and principles with no specifics as to program. Carter told Americans that "you may be right" in suspecting that gas was being withheld from the market, as a series of Congressional, executive and company reports all through the winter had indicated. He promised the energy companies fair treatment, but said he would not let them "profiteer." He said the sacrifices would be fair; that "no one will gain an unfair advantage."

April 20. E-day. The President's speech to a joint session of Congress was as ambivalent on gas as his campaign rhetoric. "Immediate and total decontrol of . . . natural gas prices would be disastrous for our economy and for working Americans, and would not solve long-range problems of dwindling supplies. . . . Because fairness is an essential strategy of our energy program, we do not want to give producers windfall profits beyond the incentives they need for exploration and production." This was clearly inconsistent with any notion of deregulation or with any price much beyond the 60¢ range which the FPC experts had said would provide adequate incentives. He added that he would also end the unreasonable distinction between interstate (controlled) and intra-state (uncontrolled) gas sales which had "caused people in the producing states to pay exorbitant prices" for their gas. Still no sign of a spirit of deregulation, since ending controls would drive all prices not only up and over the "exorbitant" $1 to $1.50 range at which intra-state gas had been selling during the previous two years but beyond the $1.50-to-$1.60 level to which much (but not all) intra-state gas had risen when the FPC's $1.42 price took effect.

Then the ghost of the "Ligon letter" reappeared in a paragraph that looked as though it had been thrown in at the last minute by someone who had not read the preceding sentences—perhaps by the same person who had dispatched the "Ligon letter" itself, since the wording was so similar: "I want to *work with the Congress* to give gas producers an adequate incentive for exploration, working carefully toward deregulation of newly discovered natural gas as market conditions permit." No five-year trial? No test to see whether higher prices really accelerate the finding of new supplies? No 5 percent limit? What had happened to the person who was worried about "fairness," about "windfall profits"?

Clearly the Ligon half of the split personality was in control when the next paragraph was written. For in that paragraph the proposal was that the new gas price be set at the price of the "equivalent energy value" of U.S. crude oil, which the accompanying "Fact Sheet" explained would be $1.75 per mcf:

¶Six and a half times the 26¢ price which producers had agreed in 1970 was high enough to last through 1977.

¶ Almost three and a half times the last (1976) judicially approved "just and reasonable" price of 52¢.

¶ Almost three times the 60¢ range which the FPC staff said should produce ample returns and incentives.

¶ Well above the overall trend of uncontrolled ("exorbitant") intra-state prices, especially without the aberrational emergency spot sales.

¶ About 25 percent over the $1.42 price by which the Ford-Nixon FPC had administratively deregulated, and which most observers agreed would be overturned in court as being unsupported by evidence that it was "just and reasonable."

Almost by definition, any gas price set at an oil-price equivalent would be a windfall price since domestic oil, unlike gas, did not have a history of cost-based pricing. On the contrary, the domestic price had been artificially inflated through production limits and import protection before the OPEC price jump and, despite the vestiges of post-1973 controls, had been drawn sharply upward in the 1970s on the coattails of the cartel's quintupling of world prices. Thus from an average price of $3.39 per barrel in 1972 U.S. crude has risen to $5.25 or $11.28, depending on the date it went into production.

Nor did the "Fact Sheet" provide any encouragement to the reader who thought that the speech's later exhortation that "the energy industry should not reap large unearned profits" might require some application to the gas area. The gas section of the "Fact Sheet" began with a hymn to the need for deregulation. Again no reference to the campaign qualifications about time and amount, no assurances that this was merely "a test," no recognition that the price picked was "exorbitant," no acknowledgment that the "current $1.42 mcf ceiling" was likely to be overturned in court, no estimate of the fantastic revenue benefits to the producers, *not even the bone which Gerald Ford threw to the public interest when he tried to deregulate*—the imposition of an excess profits tax and means to assure that extra gas profits would go to further gas explorstion.

Those waiting to hear about horizontal divestiture on April 20 waited in vain. It was not mentioned, except that Carter did say he believed in competition, "and we don't have enough of it right now." He said he would get new data from the energy companies about their operations: "strict enforcement of the antitrust laws based on this data may prevent the need for divestiture." Well, at least, he still thought there might be a "need."

The "Fact Sheet" added detail: "Effective competition in the energy industries is a matter of vital concern." Thus we would have "continuous vigilance" by an "Under Secretary." Finally the operative section: "Horizontal diversification by oil and gas producers, particularly into the coal industry has aroused fears that the major firms will be able to restrict the development of alternative fuel sources. The existence of such power could be very detrimental to the nation as it increases its reliance on coal, uranium and renewable energy sources. The trend of oil and gas company entry into coal mining merits continuous close attention."

Fine. Now what are they going to do about it—pass a law? Sue? Condition federal leases on horizontal separation? Not give help on coal or nuclear or solar projects to oil companies? No. The "Fact Sheet" continued: "From information available at the present time, it does not appear that new laws mandating either vertical or horizontal divestiture are required in order to promote or maintain competition in the energy industries. That conclusion is subject to change. If it should appear that there are anti-competitive problems in the energy industries that cannot be reached under current laws, new legislation would be proposed."

Well, it could have been worse, an optimist might say. It still recognizes the evils of horizontal integration. It specifically opens the door to future legislative action as the case becomes clearer under the new reporting requirements. The realist would have to say—it just isn't there. Words, maybe. Commitment, hardly. Action, nil. It couldn't be any worse.

The realist would have been wrong. It could have been worse and became much worse in the week between the April 20th message and the April 29th release of the actual "National Energy Plan," a 103-page tome with what appears to be part of an unfinished spider web on the cover. The metamorphosis has both subtle and blockbuster elements to it. The subtle: "has aroused fears" becomes "has led to concern"; "the existence of" horizontal market power is now "the potential exercise of such power"; "very detrimental" is downgraded to "detrimental."

The blockbuster: A new paragraph that can be described only as a brief *against* horizontal divestiture. Only a complete quote can give its full flavor—remember that it is supposed to represent the view of the man who wanted "legal prohibition against ownership of . . . oil and coal," because "there is not now" an "adequate amount of competition":

> Traditionally, the structure of the coal industry has been extremely competitive. It is still relatively unconcentrated compared to industries such as steel and automobiles. Nevertheless, recent trends have caused legitimate concern. A total of 32 oil and gas companies accounted for 16 percent of total U.S. coal production in 1974, a 48 percent increase over their share in 1967. These companies accounted for more than 18 percent of coal shipped to electric utilities in 1974, a 27 percent increase over their share in 1967. In 1974, they held 5 percent of total U.S. coal resources, compared to 1 percent in 1967. These figures do not indicate that the oil and gas companies have a dominant position or even significant market power in the coal industry. But the trend of oil and gas company entry into coal mining and the companies' activities and performance merit continuous attention to make sure that a competitive industry does not become noncompetitive.

The whole is incredible enough but the parts are mind-boggling:

¶"Unconcentrated compared to . . . steel and automobiles." Someone has a weird sense of humor. If you saw a film of a hostage who said his captors were gentlemen compared to Attila the Hun and Jack the Ripper you would know (*a*) that he is under duress and can't talk freely; and (*b*) that, like Attila and Jack, his captors were not gentlemen at all. Is there a speech writer hidden somewhere in the White House trying to signal us (*a*) that he's being held captive and forced to write paragraphs like this one against his will; and (*b*) that, like steel and autos, coal is really very concentrated?

¶"Thirty-two oil companies account for 16 percent of coal production." Why would anyone use that figure when the American Petroleum Institute itself admits that eight oil companies produced more than 20 percent of our coal, and other figures show an even higher percentage?

¶"Five percent of total U.S. coal resources." Off by a factor of 700 percent from other credible estimates of oil company coal holdings. Yet it is "these figures" that lead the Plan's author to conclude that the oil companies do not have "even significant market power in the coal industry."

Whereas on April 20 the "trend of oil . . . entry into coal" was enough to merit concern, by April 29 we would really only worry if, after the fact, we found that "the companies' activities and performance" were evil. A careful but vital distinction to any antitrust lawyer. It is not monopolistic structure and acquisition of a capacity to restrict competition that would trigger action but only getting caught in the act of overt misbehavior. And a final message from the April 29th phantom: to avoid any confusion as to *why* the oil-coal connections merit attention, he or she tells us "to make sure that *a competitive industry* does not *become* noncompetitive."

And so Mr. Carter came around by 180 degrees—from firm advocacy of horizontal divestiture between oil and coal, to worrying about that possibility, and finally to advocating the industry position that there is really nothing to worry about. Although the "Fact Sheet" on April 20 concluded that present information did not require new laws on competition, it warned: *"That conclusion is subject to change."* There was a change nine days later—the warning was deleted.

Meanwhile, the industry was not satisfied to rest on its laurels in the matter of gas. It had already managed to expand the definition of "new gas": Schlesinger's original draft, which made all gas within 5 miles of an existing well "old gas," had been changed to put the boundary at 2.5 miles. The industry began a public relations and lobbying campaign to expand the "new gas" definition even further, and it had the gall to complain about the $1.75 price as well.

Who cares, you say? Well the President says he does, and in so saying, suggests why you should: "If producers were to receive tomorrow's prices for yesterday's discoveries, there would be an inequitable transfer of income from the American people to the producers, whose profits would be excessive and would bear little relation to actual economic contribution."

Fine rhetoric, an excellent description of what the proposed gas pricing will do. The numbers are hard to estimate but here's a ballpark calculation to keep in mind:

¶If the FPC staff was right about the 60¢ price being ample a year ago, and we generously add 25 percent for inflation since then, we get 75¢ per mcf as the "ample incentive" price.

¶At $1.75 there is $1 of windfall on each mcf, even more on "old gas" that Carter will permit to be recontracted at $1.42 despite its low-cost, fully depreciated origins.

¶Even if we take the old Carter standby of 5 percent as the amount of gas to which the new gas, or other bonus prices, will apply, there will be a windfall of $1 billion the first year, $2 billion the second year, and so on, until by 1985 there has been a cumulative windfall of $36 billion—a gift from all of us to "them."

¶That estimate may be very low. The American Gas Association told James Schlesinger that its estimate was 5.5 billion mcf of "new gas" by 1980 (their broader definition is probably offset by their desire to have a conservative number, so this projection is relevant). That would mean about $60 billion of profiteering by 1985 on "new gas" alone, not to mention the "roll-over" windfalls, the Alaska oil bonus, the "new oil" windfall, the drilling tax de-reform, and other goodies to assure that the oil and gas people escape their share of the national sacrifice.

Why? How? Who? We must all try to find out. For if the ghost of Duke Ligon and the April 29th Phantom are running around the White House and can turn a campaign fudge on gas-price deregulation into a multi-billion-dollar commitment to the oil and gas industry, and can transmute a promise to the people to break Big Oil away from Big Coal into a tract against oil-coal separation, we all had better keep our hands on our wallets. □

Dr. Schlesinger has called it an exegesis, and he has warned that we should not put too much weight on that exegesis, the thrust of which was to show that somebody even between April 20 and April 29 substantially weakened the President's position on horizontal divestiture.

He has said it was not he. I have yet to track down who it was. He has said that it does not mean any change in the President's basic position, and we look forward to seeing him educate himself in that area.

I think some of the factual statements in the April 29 written plan are flatly incorrect. I think some of the things that Dr. Schlesinger said today are subject to challenge and will be challenged in the weeks and months ahead insofar as the coal industry is concerned and the oil industry's involvement in the coal industry.

On vertical accountability, the President said some wonderful things but did not send down any legislation. You have now repaired that to some extent in the provisions that you have put in the Department of Energy bill mandating various kinds of accountability, vertical and horizontal, diagonal, circular, and they have begun the process of fulfilling that mandate, and I think in a serious way under the leadership of Administrator O'Leary and his deputy, David Barden.

Senator DURKIN. To the extent that you haven't already, any analysis of the remaining points of inadequacies with respect to the national energy plan, I invite you to make them available to us.

Mr. FLUG. My final point is, on the plus side, he did not resist, but really did not support the Senate and House effort to have a provision which now exists in the law for an Assistant Secretary for Competition in Consumer Affairs.

That will be an extremely important role and position in the Department to fulfill these specific mandates.

Once again, as Marty has pointed out on public participation, the administration did not support the amendments that were proposed in the Senate, and therefore we are operating at a disadvantage right now in starting off this Department.

So in short, I think he certainly has the capacity to do this job and do it well. To some extent how well he does it will depend on the strength of the mandate he receives from you, and of course the level of oversight.

I will not try to respond to some of the specifics that were asked and answered this morning with regard to Government reserves and coal. I think we will have other occasions to deal with those.

I would like to take 1 minute, if now is the time, to address specifically one deep concern, and that is on appointments, especially to the Energy Regulatory Commission.

I really appreciate the committee's holding over the one nomination that was before it yesterday. We were frankly taken somewhat by surprise about it. We only discovered it after the hearing was scheduled, and we take responsibility for not being right on top of that.

We have tried to do our homework——

The CHAIRMAN [presiding]. Might I just pause, the two Senators—I voted, and that is why I left earlier. But we have rollcalls after that, and that is why they are leaving. It is not a discourtesy.

Mr. FLUG. I am sure. I have tried, Mr. Chairman, to do my homework on the nomination of Georgina Sheldon in the short time since we became aware of it. We look at it in the context first of the Federal Power Commission as it now exists. Like you, we consider this one of the most important consumer protection agencies in the Federal Government. The courts time after time have said that the FPC is to operate in the public interest, that its primary duty—that is a quote—"of the Federal Power Commission is protection of the consumer."

You followed that through in the Senate and House when you wrote the Department of Energy Act, and you provided for the successor to the Federal Power Commission when you provided for the Federal Regulatory Commission.

You said:

> Besides the specific mandates in the entire act, which include promoting the interest of the consumer through the provision of adequate and reliable supply of energy at the lowest reasonable cost.

You said that—

> Members of the Commission will be individuals who by demonstrated ability, background, training, or experience are specially qualified to assess fairly the needs and concerns of all interests affected by energy policy.

And I read that back meaning the interests of consumers among others.

You also wrote into that act a provision that—

> The members of the Federal Regulatory Commission, in the performance of their functions shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the department.

Then you had a basic disagreement with the White House on the relationship and the procedures between the Secretary and the Federal Energy Regulatory Commission. The long and short of it was, if your position prevailed that there would be a substantial, significant, and meaningful independent status of that commission and its decisionmaking authority subject to little or no review by the Secretary or the President.

This reflected a basic difference in approach and attitude between the Congress which was resolved for the most part in the direction of the congressional attitude.

Now, of course, the decisions made at the Federal Power Commission involve literally millions upon millions of dollars of basically the public's money. They involve a need sometimes to stand up to some of the most powerful, well represented, articulate, vigorous, if not omnipresent, forces in our society. They involve complex issues that take really years to understand and have a meaningful independent viewpoint on.

We are seeing probably the last months of the Federal Power Commission, if the Senate and House, unlike last year, are able to agree on legislation, especially on the natural gas issue. But I suppose it is possible that that might not happen, or that the House and Senate might agree on something that the President would not agree on.

Certainly the President has indicated his strong distaste for deregulation and should, by any unimaginable circumstance, the House and Senate agree on a deregulation bill, there would be a substantial risk that the President would not go along with it.

So there are possibilities that the Federal Power Commission may, for an indefinite time, continue to exercise this very important public protection function.

Even if not, the presumption has to be that the members of the Federal Power Commission, especially those newly appointed, would be prime candidates for the energy regulatory commission. And there is the symbolic meaning of these first two appointments to the FPC as setting again a tone and a president and a standard for the later appointments.

With all those factors in mind, we checked out the nomination of Ms. Sheldon as carefully as we could in the limited amount of time given, and the thinness of our own resources.

Our first problem was a process problem. Apparently this was done in a rush. There was no attempt for outreach to check her out to see if she could meet the legislative standards in the new bill or the inherent standard of the Federal Power Commission.

No one I know, in at least the public side of the energy community, was asked for any assessment or even knew her in any way and had a chance in advance to make some personal judgments.

Second, and the information here is limited, it appears that she did have a prior relationship, in a business sense, to Dr. Schlesinger. It is not clear what the nature of that relationship was, whether she would qualify in terms of independence and especially in the sense of the new legislation and whether she realizes the nature of the role that she would be expected to follow in terms of its independence of the Secretary.

Third, I get the impression that this was an attempt to fill a position quickly because of the sense that a quorum was necessary in the Federal Power Commission during the congressional recess.

Apparently the commissioners have determined for their own reasons, some of the existing commissioners, that they need to resign now to avoid complications in their own personal lives, that some of the provisions in the new act might entail. Therefore, there would be a quorum lacking on the commission.

I am aware of no matter so pressing over the congressional recess that a perfunctory appointment or confirmation is justified. That is the best characterization I can give to the process which went on, both before this nomination was made and to some extent would be likely to go through this week.

I have checked as carefully as I could. I have found people I know who know the nominee, and here is what I have found out.

This is a person who is highly respected, highly regarded, is thought to be one of the most wonderful people in Washington, has many good, close friends, not just on the Republican side. She is a Republican nominee, and the Ford people who recommended her and who are listed on her résumé as her references, Melvin Laird, the former Governor of North Dakota, and two former officials of the Republican National Committee, apart from those partisan people there are Democratic leaders and others whose party affiliation I do not know who highly regard her as a person and who think she did an excellent job in the positions she has held thus far.

On the other hand, there are those who have some doubts as to whether her performance in the positions she had held thus far would qualify her for this particular position.

One of the people I spoke to is somebody I have known for years and who is I would say a dedicated public servant and would have recommended her for the Presidency of the United States if that had been an issue, and thinks that she is one of the most wonderful people he has run across, qualified for any job he can imagine. He has even had some energy responsibilities.

But there were some dissenting views. I don't think the committee ought to take secondhand what I have been able to obtain. I think the committee should do its own thorough check.

I am aware that there was a disagreement in the White House about this nomination. If the committee is not aware of that disagreement and the reasons for it, I think the members of the committee should be aware of that before they vote on this nomination.

I think the committee should reach out and find people who are personally familiar with the nominee's performance in her past Government positions so that it can make its own judgment on what apparently is a disputed issue in terms of her qualifications for this particular appointment.

I am sure that she would be well qualified for a variety of public positions, but I do think this position calls for special talents, special experience, a demonstrated capacity as a consumer protector because that is the role here, and a demonstrated capacity for independence for standing up to very powerful interests, and for regulating those interests.

I think especially in light of the difference of opinion between the White House and the Congress of the basic relationship between the Regulatory Commission and the Secretary, that the committee has another reason to look very closely at this.

If, as may appear, this is an appointment which more reflects the White House attitude about the relationship between the Secretary and the Regulatory Commission, then I think the committee has to think that through very carefully and see whether it wants to impress that difference upon the nominee or call into question the nomination.

In any event, I think there is no need for rush. It is too important a nomination not to do the job first, rather than rushing through it and perhaps being sorry later.

I want to emphasize that most of the questions I am raising have nothing to do with the nominee. They have to do with the process, the basis on which she was selected, with the committee's process.

As I say, she has some great fans among people whom I regard very highly.

The CHAIRMAN. Thank you, Mr. Flug.

I think you have been objective in your comments. I would only observe that Charles Curtis gave her a very strong recommendation. Dr. Schlesinger has spoken very highly of her.

I asked her a number of questions, and my own personal view is that she is a person of—how can you decide all these things the first time you meet, but it is my own view based on response to questions that she is a person of integrity.

She made it clear to me that she was not ideological. That is, she was not in a situation in which she had preconceived ideas about what was involved.

I also gathered her sincere desire to protect the public interest, and I tried to emphasize the quasi-judicial role.

If approved by the Senate she would be at somewhat a disadvantage not having had previous regulatory experience except in the Civil Service Commission. I think she is a decisive person based on Senator Ford's encounter with her when he was Governor. He found she was one person who could make a decision and give a yes or no answer, and he had been struggling with the Pentagon for quite a while.

I mention only these things, and I do it honestly to reflect what is in my mind. I must finally say that we check the White House situation as you suggested.

Mr. FLUG. I would also recommend that you check with people at the civil defense agency and people who have dealt with the disaster relief agency because I think those were her principal functions. And I think you have to make your own assessment as to whether her performance in those areas meets the standards that you want to set.

The CHAIRMAN. As you know, this nomination normally would be perfunctory after the FPC goes out of existence. They will all have to be resubmitted, and should there by anything of substance we have overlooked, that is an added safeguard.

Mr. FLUG. I am not sure you were here, Mr. Chairman, when I suggested we don't know yet how long the FPC is going to exist, and as one of the first appointments really under the new regime in energy, it does set a standard and a precedent.

There are already indications, other indications, that the White House is not accepting willingly and enthusiastically the congressional mandate for the independence of some of these regulatory entities. And I think it is important that that standard be laid down, and laid down strongly right from the beginning.

But I want to get to point out to you that I was aware in my comments of Dr. Schlesinger's feelings about her. I had discussed it with him. I was aware of Mr. Curtis' position and what he said about her utility and management role in the Commission, and I took those into account.

The CHAIRMAN. I think you have been very decent to her, you gave the pros and cons, and she is in the room and smiling.

Mr. FLUG. I met her for the first time this morning, and the assessment I received is that she is an extremely personable and agreeable and enjoyable person.

The CHAIRMAN. I think all of you have been very fair about it. None of the comments are directed to her personally, it is a question of the statute that you raise.

I want to thank each and all of you for, first of all for your patience in waiting so long. A number of us have been working quite a while up at this end too, and we do want to thank you as always for your helpful counsel and advice.

We will, of course, have these nominations, other than the Secretary, back I suspect in a reasonable period of time.

Thank you very much.

[Subsequent to the hearing the following statement was received for the record:]

STATEMENT OF DAVID COHEN, PRESIDENT, COMMON CAUSE

The Senate Committee on Energy and Natural Resources has a heavy responsibility as it begins its confirmation hearings on the nomination of James Schlesinger as Secretary of the new Department of Energy. Common Cause has often

noted the importance of the confirmation process and the need for careful scrutiny of Presidential nominations. In light of the seriousness of the energy problem and the lack of operational precedence for the newly created Department, we consider the selection of the Secretary to be of major national concern. In order to establish a complete record, adequate time and careful deliberation must be given to a thorough review of the nominee's record and the nominee's views on major substantive and organizational issues.

There are a number of areas of concern which Common Cause believes Mr. Schlesinger should address in the hearings. We would appreciate it if you would pose the following questions to Mr. Schlesinger.

1. Conflict of interest

The increasing influence of regulated industries in government agencies is tied to various conflict of interest situations in the executive branch. Many agency policymakers used to work for the companies they now regulate and often take high-paying jobs within the industry once they leave the agencies. Some officials have financial holdings in these companies. Although the law establishing the Department of Energy contains strong conflict of interest provisions, the Secretary can play a key role in administering and enforcing these provisions.

Mr. Schlesinger should be asked what steps he will take to insure full compliance with the conflict of interest provisions of the law. Mr. Schlesinger should be required to submit a detailed personal financial disclosure report to the committee on sources and amounts of his income and financial holdings. Also, he should detail steps he has or will take to comply with President Carter's conflict of interest order. This information should be made a part of the public record and released to the public before the Committee votes on his confirmation.

2. Public participation

Public participation in energy decision-making is fundamental if the public is to perceive the resolution of our energy problem as equitable. But because of the technical nature of the energy issue, special efforts to educate the public must be taken. The Department of Energy statute provides the Secretary with an opportunity to institutionalize public participation at the Assistant Secretary level. Mr. Schlesinger should be asked:

Will you create an Assistant Secretary position with public participation as a primary responsibility?

How do you plan to involve the public in major policy decisions?

Do you believe the Department should prepare decision-making documents with alternatives and consequences set forth in clear terms as a basis for public hearings that precede policy decisions?

How will you insure meaningful public participation at the regional office level?

Do you favor reimbursing parties that make meaningful contributions to Department of Energy regulatory proceedings?

The Department of Energy statute also provides for the creation of various advisory committees. Advisory committees have been the subject of much abuse because of their secrecy and industry domination. Mr. Schlesinger should be asked:

How will you insure that Department's advisory committees fully comply with the Federal Advisory Committee Act, particularly its open meetings and balanced representation requirements?

Will you openly solicit nominations for membership on the advisory committees in the Department of Energy from the ranks of public interest representatives?

Will you make public the qualifications of the nominees?

Will you regularly evaluate the usefulness of each advisory committee?

3. Energy information

The lack of valid information on energy resources is one of the prime reasons for our nation's inability to develop a coherent energy policy. The Department of Energy statute seeks to correct this deficiency by establishing an Energy Information Administration. Mr. Schlesinger should be asked:

Do you believe all energy companies should release complete data as to their full operations?

Do you believe there should be a uniform accounting system for all energy companies?

How will you provide for the enforcement of these data access provisions?

What policy guidelines will you use to determine which of this information will be withheld from the public?

4. Logging on outside contacts

Regulated industries and other outside interests spend an immense amount of time and money seeking to influence agency rulemaking, contracting, and other policy matters. There is virtually no public scrutiny, however, of the interaction between these outside parties and agency officials. Nor are the documents submitted by outside interests readily available for public analysis. This secrecy threatens the integrity of the administrative process and undermines effective public participation in agency proceedings. Some agencies have sought to remedy these problems by requiring employees to log outside contacts, letters or meetings for the public record.

Mr. Schlesinger should be asked if he will promulgate a regulation requiring Department of Energy officials at GS–16 and above to log all contacts and written material from outside parties.

5. Appointments

The Department of Energy statute authorizes the Secretary to make a number of key appointments. Mr. Schlesinger should be asked if he will adopt an open appointments process with opportunity for suggestions and comment on prospective appointees by outside parties on the public record.

6. Energy research

A large percentage of the current energy research contracts made by the Energy Research and Development Administration favor the major energy companies. In addition, most of the contracts are oriented towards expensive and highly complex technologies. Mr. Schlesinger should be asked:

Will you promulgate regulations which will assure an open and competitive process for awarding energy research contracts?

Do you favor orienting future energy contracts towards a greater diversity of energy resources?

7. Openness

The decisionmaking process in most executive agencies is often closed to public scrutiny and participation. Meetings are rarely open to the public. Public hearings on important rule-makings, licensing and leasing decisions, or other policy issues are seldom held. Although the new Freedom of Information Act amendments have facilitated public access to agency information, many agencies continue to operate under a presumption of secrecy. Mr. Schlesigner should be asked:

What steps will you take to open Departmental proceedings and policymaking to the public?

What steps will you take to facilitate public access to the Department's policy-related documents and to ensure complete and timely compliance with Freedom of Information Act requests?

Common Cause urges the committee to question Mr. Schlesinger on these issues and other major policy issues such as leasing and energy pricing before voting on his nomination. Members of this committee are well aware of our critical energy situation. The Secretary of the Department of Energy is in a position of extraordinary power. It is essential that the Committee develop a full record that enables the Senate to make an informed judgment on this critical nomination.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

James R. Schlesinger

Honors and Awards Continued:

Honorary Degree of Humane Letters - Wittenberg College - 1977

Distinguished Intelligence Service Medal - 1975

Department of Army Distinguished Service Medal - 1976

Department of Navy Distinguished Public Service Medal - 1976

Department of Air Force Exceptional Civilian Service Medal - 1976

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
None		

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

Jan 77	Present	US Government	White House	Ass't to President	
Nov 75	Jan 77	Johns Hopkins SAIS	Wash.,D.C.	Visiting Scholar	New Position
Jul 73	Nov 75	US Government	Wash.,D.C.	Secretary of Defense	Termination
Feb 73	Jul 73	US Government	Wash.,D.C.	Director, CIA	New Position
Aug 71	Feb 73	US Government	Wash.,D.C.	Commissioner, AEC	New Position
Mar 69	Aug 71	US Government	Wash.,D.C.	Associate Director, OMB	New Position
Mar 62	Mar 69	Rand Corporation	Santa Monica, CA	Consultant/Director	New Position
Sep 55	Mar 62	Univ.of Virginia	Charlottesville, Va.	Asst Prof/Asso Prof	New Position
Jul 57	Dec 57	Naval War College	Newport, RI	Acad.Consultant	End agreement
Sep 51	Jun 55	Harvard University	Cambridge, MA	Teaching Fellow or student or unemployed prior to Sep 51	
1962	1964	Amerad Corp.	Charlottesville, Va.	VA Consultant	End agreement
Feb 62	Feb 62	Foreign Policy Research Inst., Univ.of Pa.	Philadelphia, PA	Associate	End agreement
1962	196]	Bd of Governors, Fed.Reserve Bd.	Wash.,D.C.	Consultant	End agreement

Personally identifiable information removed

Government experience:

List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

See employment record

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written.

Political Economy of National Security -- published in 1960. Countless technical articles plus FORTUNE (March 76) and READERS DIGEST (April 76).

Qualifications:

State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Not applicable

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. Do you expect to serve the full term for which you have been appointed?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

BUSINESS MEETING

THURSDAY, AUGUST 4, 1977

The Committee on Energy and Natural Resources met in open markup session on Thursday, August 4 at 10 a.m. in room 3110, Dirksen Senate Office Building, to consider the nomination of James R. Schlesinger to be Secretary of the Department of Energy. Those present were: Senator Jackson, presiding; Senator Church, Senator Metcalf, Senator Johnston, Senator Abourezk, Senator Haskell, Senator Bumpers, Senator Ford, Senator Durkin, Senator Metzenbaum, Senator Matsunaga, Senator Hansen, Senator Hatfield, Senator McClure, Senator Weicker, and Senator Domenici.

Senator Jackson then moved that the nomination of Mr. Schlesinger be favorably reported to the Senate.

There being no objection, and on a unanimous rollcall vote of 13 yeas, the nomination of James R. Schlesinger to be Secretary of the Department of Energy was reported to the Senate.

○

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

Normal legislative activities of a Federal officer

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Not applicable

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