Proposed Energy Conservation Contingency Plan: Emergency Restrictions on Advertising Lighting

Authorities
Need, Rationale, Operation

Office of Contingency Planning
Office of Regulatory Programs
Federal Energy Administration

April 1977

Federal Energy Administration

Contingency Plan No. 5

ENERGY CONSERVATION CONTINGENCY PLAN NO. 5 OF 1977

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, pursuant to the provisions of sections 6261, 6262, 6393(a) and 6422(a) of Title 42 of the United States Code.

EMERGENCY RESTRICTIONS ON ADVERTISING LIGHTING

CONDITIONS OF EXERCISE

Section 1. (a) This Plan shall not become effective unless the President:

(1) has found that putting the Plan into effect is required by a severe energy supply interruption or in order to fulfill obligations of the United States under the international energy program; and

(2) has transmitted such finding to the Congress with a statement of the effective date and manner for exercise of the Plan.

(b) This Plan may remain in effect for no more than nine months, and may be earlier rescinded by the President.

DEFINITIONS

Section 2. As used in this Plan --

(a) "Administrator" means the Administrator of the Federal Energy Administration.

(b) "Advertising sign" means a sign or device which identifies or describes a firm, product, product characteristic, trademark, or service.

(c) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas which has ever been transported by interstate or intrastate pipeline.

(d) "Person" means any individual, corporation, company, association, firm, partnership, society, trust, joint venture, joint stock company, the United States or any State or political subdivision thereof, or any agency of the United States or any State or political subdivision thereof, or any other organization or institution.

(e) "Window display" means any display of products, merchandise, and/or decorative items which is primarily intended for viewing by individuals through a window or windows on the perimeter of an area where business is transacted.

REDUCTION OF ADVERTISING LIGHTING

Section 3.(a) No person shall:

(1) use electricity or natural gas for illumination of any advertising sign; or

(2) use electricity or natural gas for illumination of any window display.

(b) Notwithstanding the provisions of subsection (a)(1) of this section, any commercial, retail or service establishment when open for business may use electricity or natural gas for illumination of any advertising sign which is essential to direct customers to the open business by identifying it and/or by informing customers of the products or services supplied by it.

RELATION TO STATE LAW

Section 4. (a) This Plan shall apply in every State and political subdivision thereof and shall preempt any law of any State or political subdivision thereof to the extent that such law is inconsistent with this Plan or any rule, regulation, or order promulgated pursuant to this Plan.

(b) Notwithstanding the provisions of subsection (a) of this section, the President may, on his own initiative or in response to a request for exemption, exempt a State or political subdivision thereof from this Plan and any rule, regulation, or order promulgated pursuant to this Plan, in whole or in part, during a period for which (1) the President determines a comparable program of such State or political subdivision is in effect, or (3) the President finds special circumstances exist in such State or political subdivision.

(c) A State which seeks an exemption for itself or a political subdivision thereof on the ground that a comparable program is in effect shall submit to the Administrator a request for exemption which shall include (1) a full description of the comparable program, (2) the amount of energy which such program will conserve, (3) the period of time during which such program will be in effect, and (4) such other information as the Administrator may require, and the Administrator shall review the request and make a recommendation thereon to the President.

(d) A State which seeks an exemption for itself or a political subdivision thereof on the ground that special circumstances exist shall submit to the Administrator a request for exemption which shall include (1) a full description of the special circumstances, (2) a detailed explanation of why implementation of this Plan, in whole or in part, is not practicable, (3) an estimation of the period

of time in which the special circumstances will exist, (4) any alternative energy conservation measures which may be practicable and their expected savings, and (5) such other information as the Administrator may require, and the Administrator shall review the request and make a recommendation thereon to the President.

(e) For purposes of this section, "comparable program" means a program which deals with the same subject matter as this Plan, which is mandatory, and which conserves at least as much energy in the State or political subdivision thereof as this Plan would be expected to conserve in such State or political subdivision.

ADMINISTRATIVE PROVISIONS AND JUDICIAL REVIEW

Section 5. (a) The Administrator is authorized and directed to implement, administer, monitor and enforce this Plan. Authorities vested in the Administrator under the Federal Energy Administration Act of 1974 (Pub. L. 93-275), the Energy Conservation and Production Act (Pub. L. 94-385), the Energy Policy and Conservation Act (Pub. L. 94-163), and the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93-319), as amended, and in effect on the date this Plan was transmitted to the Congress shall apply as applicable to the implementation, administration, monitoring and enforcement of this Plan, notwithstanding the subsequent

expiration of any or all such authorities.

(b) Section 523 of the Energy Policy and Conservation Act of 1975 shall apply to any rule, regulation, or order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, issued under this Plan.

(c) The Administrator may delegate all or any portion of the authority granted to him under this Plan to such officers, departments or agencies of the United States, or to any State (or officer thereof), as he deems appropriate.

PUBLIC INFORMATION

Section 6. The Administrator may collect and disseminate such information as he deems appropriate regarding the operation and goals of, and responsibilities under, this Plan.

PENALTIES

Section 7. Any person who fails to comply with any provision prescribed in, or pursuant to, this Plan shall be subject to the applicable penalties set forth in section 525 of the Energy Policy and Conservation Act.

REPORT

Section 8. The Administrator shall report to Congress and the President, within 60 days after the termination of this Plan, on the operation of the Plan. Such report shall include an estimate of the energy conservation achieved and may include any recommendations deemed appropriate by the Administrator.

STATEMENT OF THE NEED FOR, RATIONALE AND OPERATION OF ENERGY CONSERVATION CONTINGENCY PLAN NO. 5 OF 1977

Need for the Plan

Energy Conservation Contingency Plan No. 5 of 1977 (Emergency Restrictions on Advertising Lighting) is intended for implementation only in the event of a severe energy supply interruption or in order to fulfill obligations of the United States under the International Energy Program ("IEP"). Although during a period of abundant energy supplies the likelihood of a severe energy shortage may seem remote, a sudden cutoff of foreign oil could plunge the United States into an energy crisis of even greater proportions than that produced by the 1973-74 oil embargo. At the time of that embargo, the Nation's inability to import sufficient quantities of oil resulted in an estimated $10-20 billion decline in gross national product and considerable economic and social disruption. Imports now exceed seven million barrels per day, while domestic production has declined. At the present time the United States imports, at an annual rate, more than 40% of domestic petroleum requirements, compared with less than 35% just prior to the 1973-74 embargo. Thus it appears that the Nation is even more vulnerable to an interruption in foreign oil supply today than just three years ago.

Under the IEP, in an embargo or shortage situation in which only one or a few member nations lose more than seven per cent of normal petroleum requirements, the targeted country or countries must absorb any shortfall up to seven percent. The other member nations would share the remaining shortfall among themselves. In the event of a widespread shortage, in which all oil-consuming countries sustain a reduction of not more than seven percent of the normal petroleum consumption rate, each participating country must absorb the shortfall itself. If the shortfall exceeds seven percent but is less than twelve percent, each member must reduce consumption by seven percent, and the remaining shortfall would be shared. If oil supplies should fall short by twelve percent or more, each participating country must restrain demand by ten percent, draw down emergency reserves, and share whatever oil is still available with other member nations.

As a participant in the IEP, the United States has pledged to comply with its emergency provisions, whereby each member must have ready a program of contingency demand restraint measures which would be sufficient to reduce demand for oil by seven percent and ten percent of normal consumption. These measures would likely be implemented in conjunction with storage drawdown in case of an emergency, although the IEP Agreement allows signatory countries to substitute drawdown of storage for use of demand restraint measures.

In the event of a severe petroleum shortage, three

types of actions are available to alleviate the adverse impact: actions to increase domestic petroleum supplies and use alternative forms of energy; actions to distribute the available supply in an equitable manner; and actions to reduce public and private demand for energy. The authorities available to the President and other public officials for taking such actions comprise the basis of the country's energy shortfall management program. The need for energy conservation contingency plans should be viewed in the context of this total program, as described below.

(1) Increase domestic petroleum supplies and use alternative forms of energy.

In general, the opportunities for the United States to increase petroleum supplies or substitute other forms of energy for petroleum on an emergency basis are extremely limited. The primary options, and their limitations, are as follows.

(a) Produce petroleum at or in excess of the maximum efficient rate.

Because the United States is producing domestic crude at near capacity from all domestic sources, including the Naval Petroleum Reserves, increased domestic production offers little potential in an emergency. While section 106 (42 U.S.C. 6214) of the Energy Policy and Conservation Act ("EPCA") (Pub. L. 94-163) authorizes the President to require production of petroleum or natural gas at or in

excess of the maximum efficient rate, the potential increase in production would be minimal relative to total United States consumption.

(b) Draw down existing inventories.

Although the distribution system for crude and petroleum product in the United States contains a large inventory, this inventory is necessary for the operation of the system. Without adequate inventory in the system, distribution interruptions would occur almost immediately. Furthermore, over half the inventory is located in tank bottoms and pipelines and is therefore unavailable for use even in an emergency.

(c) Draw down strategic petroleum reserve.

The Strategic Petroleum Reserve ("SPR") authorized in Title I of the EPCA may ultimately hold up to one billion barrels of crude oil and petroleum products, and half of that total must be in place by 1982. As part of the SPR, the EPCA also requires establishment of an Early Storage Reserve of 150 million barrels by 1978 to provide limited near-term protection against an oil embargo. The amount of crude oil and refined product in the SPR, however is not expected to be greater than 15 million barrels by the end of 1977.

(d) Increase use of coal.

The Energy Supply and Environmental Coordination Act of 1974 ("ESECA") grants authority to the Federal Energy

Administration ("FEA") to order the conversion of certain oil- and gas-burning facilities to coal. As the FEA continues to implement this legislation, emergency coal conversion potential will be limited to the decreasing number of convertible facilities which have not already been converted under ESECA. Suspensions of air quality standards would enable some expedited conversion during an emergency. Increased utilization of coal baseloading capacity could also be used to decrease the usage of petroleum products. Increased use of coal, however, cannot be expected to play an important part in the solution to any emergency shortfall in energy supply.

(e) Increase use of natural gas.

Since natural gas production in the United States presently falls short of demand, natural gas cannot be considered to have more than a limited potential as an oil substitute in an emergency.

(f) Increase use of nuclear, hydroelectric, solar and geothermal energy.

These energy sources may represent long-term alternatives to petroleum, but their near-term potential as oil substitutes in an emergency is not significant.

(2) Distribute the available supply in an equitable manner.

Supply distribution mechanisms do not increase supply, nor are they able or intended to reduce demand for energy.

Rather, they simply provide for the distribution of the available supply of crude and product in a manner designed to maximize equity and serve national priorities.

There are two principal programs for establishing rights or entitlements to receive crude oil and refined petroleum products: allocation and rationing. During a shortage FEA could continue or, if they had been phased out, might reimpose its Mandatory Petroleum Allocation Regulations, which assign rights for crude to refiners and rights for refined petroleum products to bulk purchasers and suppliers according to historical usage and established priorities. In order to increase the effectiveness of the allocation system, FEA could exercise its authority to control refinery yield, which would specify the mix of products to be produced by crude oil refineries.

In the case of gasoline and diesel fuel, the allocation program would probably continue substantially the same as at present with respect to suppliers and bulk purchasers. In addition, a rationing system could be implemented which would assign entitlements (in the form of coupons) to every individual and firm purchasing these products for use as fuel.

A Gasoline and Diesel Fuel Rationing Contingency Plan has been developed for approval by the Congress. Because of the high cost of rationing and the complexity of its administration, this plan is intended for implementation only if

all other options for managing a shortage of gasoline or diesel fuel should prove inadequate.

(3) Reduce public and private demand for energy.

Conservation programs seek to reduce energy consumption by promoting greater efficiency and discouraging wasteful energy usage. During an energy shortage, ongoing mandatory and voluntary conservation programs, such as the 55-mph speed limit and carpooling, could be intensified, and other steps for the elimination of nonessential energy usage could be taken. Individual states could implement their own conservation contingency plans, as provided for within Part C (42 U.S.C. 6321-6326), of Title III of the EPCA, and take other actions as appropriate to meet the emergency.

During a severe and prolonged shortfall, however, even greater reductions in energy demand would be needed on a national level. When the demand for energy far outweighs the available supply, it is impossible to meet normal energy requirements and, even with the invocation of the above mandatory and voluntary measures, a large gap between supply and demand would remain. Assuming price controls, this gap could be closed further only by temporarily curtailing or eliminating normal energy-consuming activities and habits.

The primary difficulty in formulating energy conservation contingency plans is to identify those normal energy

short-term basis, in order to minimize the impact of an energy shortage situation. The rationale for the selection of Emergency Restrictions on Illuminated Advertising and Certain Gas Lighting as an energy conservation contingency plan is described in the following section.

Rationale of the Plan

Section 4(a) of Executive Order 11912 of April 13, 1976, authorizes and directs the Administrator of FEA, in consultation with the heads of appropriate agencies, to develop for the President's consideration the energy conservation contingency plans prescribed under the EPCA. In developing the energy conservation contingency plans for the President's consideration, FEA reviewed more than 250 potential measures relating to all types of energy consumption in the transportation, commercial, residential and industrial sectors. Each potential measure was evaluated in the light of various constraints that were imposed by the EPCA and other criteria developed by FEA.

The following evaluation criteria were used in the selection process.

(1) No plan may be based on the use of rationing, taxes, tariffs, user fees, pricing mechanisms for petroleum products or tax credits or deductions.

This restriction is imposed by section 202(a)(2) of the EPCA (42 U.S.C. 6262(a)(2)) and eliminated from consideration

measures which would reduce demand through mechanisms such as a tax-rebate system, a tax on gasoline or an electricity bill surcharge.

(2) Plans must be capable of rapid payoff.

This criterion is based on the necessity of a plan's having rapid effect in an emergency and also on the provision in section 201(a)(1) of the EPCA (42 U.S.C. 6261(a)(1)) that no contingency plan may remain in effect more than nine months. Therefore no measure was selected which could not be fully effective within 45 days following a decision to implement it.

(3) Plans must not overlap existing authorities.

Since any plan must be approved by Congress and the EPCA does not appear to contemplate plans which are redundant with existing authorities, no emergency conservation contingency measure was selected which could be implemented under existing authorities. Plans which would rely solely on voluntary compliance and those which would apply solely to the Federal government (e.g., reduced government travel) were not selected, since these can be implemented under existing authorities. Certain potential measures, such as mandatory commercial airline load factors, were dropped from consideration because their objectives could best be achieved through already existing methods, such as the allocation program.

(4) Plans must be enforceable by Federal authorities.

Although it is expected that states and localities

would implement and enforce their own emergency conservation plans in the event of an energy shortage, it is unlikely that state and local authorities would administer Federal contingency plans without Federal funding assistance. Due to the long lead time and the administrative complexities involved in the Federal funding process, this approach may not be compatible with the necessity for rapid implementation. Therefore, those potential measures for which Federal enforcement was not considered feasible were eliminated from consideration at this time.

(5) The potential for energy demand reduction must be significant.

Only those measures were selected which offered the potential for a significant reduction in energy demand, either directly or through the capacity to heighten overall public awareness of the emergency situation and the need to conserve. The lack of historical experience and the need to make many assumptions regarding human behavior make estimates of demand reduction difficult to validate. For example, while a mandatory four-day work week superficially appears to offer a high potential for reducing demand for energy (based on a twenty percent decrease in commuter travel and heating or cooling of work sites), calculation of the reduction in energy demand attributable to a four-day work week must also consider the energy required for increased

pleasure driving, increased heating (or cooling) of residences, etc., that would occur during the added leisure time.

(6) No measure should impose an undue hardship on any sector of the economy.

Section 521 of the EPCA (42 U.S.C. 6391), referring in part to the contingency plans, provides as follows:

> "To the maximum extent practicable, any restriction ...on the use of energy shall be designed to be carried out in such manner so as to be fair and create a reasonable distribution of the burden of such restriction on all sectors of the economy, without imposing an unreasonably disproportionate share of such burden on any specific class of industry, business, or commercial enterprise or any individual segment thereof."

This requirement of the EPCA was considered in the selection and development of plans. Such consideration was assisted by the objective economic analysis of any plan to be submitted to Congress which was prepared pursuant to section 201(f) of the EPCA. Section 201(f) provides in part that any contingency plan "be based upon a consideration of ... the potential economic impacts of such plans."

The impact of plans on the various sectors of the economy was analyzed in the context of an energy shortfall which would in and of itself be expected to have a substantial impact upon the Nation's economy. The impact of an energy shortfall would be more severe for certain sectors of the economy than for others, simply because some sectors are

more energy intensive than others. It is believed appropriate to assess the economic impacts of energy conservation contingency plans from an economic baseline representing the probable circumstances under which such plans could be implemented and not from a baseline representing an economy untouched by a severe energy shortfall.

Moreover, the EPCA further requires, in section 202(c), that any plan "shall not deal with more than one logically consistent subject matter." This requirement predisposes any particular plan to focus on the energy-consuming activities and habits of a particular sector of the economy more directly than on those of other sectors. Accordingly, this plan is seen as one of a group of plans affecting transportation, residential, industrial and commercial energy consumption in a variety of economic sectors. It is believed that a group of these measures, if available as standby energy authorities, would provide an appropriate and important part of a total program for managing an energy shortfall which would provide the flexibility to equalize the economic burden of the shortage situation.

Based on the above criteria, several energy conservation contingency plans, including this one, were selected for submission to Congress at this time. This plan was selected because outdoor advertising lighting would constitute an

especially conspicuous and visible form of energy consumption during an emergency. A mandatory plan to minimize excessive and unnecessary illumination of outdoor advertising and display lighting would reduce demand for energy by approximately 5,000 barrels per day of oil and 32,000 barrel equivalents per day of natural gas and other fuels, assuming full compliance. A more important benefit, however, is that the restrictions would serve as a constant reminder to the general public of the severity of the energy shortage situation and the need to conserve at all times.

The plan's mandatory restrictions on outdoor advertising lighting can be enforced by Federal inspection personnel. Although a total ban on outdoor advertising and display lighting could severely impair the nighttime supply of goods and services, the partial restrictions contained in this plan will permit all businessmen, during the hours that they are open for business, to illuminate any sign that is essential to inform customers of their location and the products or services that they provide.

Operation of the Plan

The Emergency Restrictions on Advertising Lighting Plan prohibits the use of electricity or natural gas for the illumination of advertising signs and window

displays. However, the plan does permit any commercial, retail or service establishment that is open for business to illuminate any advertising sign which is essential to direct customers to the open business by identifying it and/or by informing customers of the products or services supplied by it.

The restrictions on outdoor advertising lighting contained in the plan were selected following a careful analysis of safety and security considerations and the needs of both businesses and consumers. Street and highway lights are not included in the restrictions due to their importance in reducing the potential for crime and motor vehicle accidents.

The plan would be implemented, administered, monitored and enforced by FEA. It is contemplated that enforcement actions would follow procedures used by FEA to enforce other programs for which it has responsibility. These procedures could include on-site inspections conducted by FEA enforcement personnel. In appropriate circumstances certain enforcement responsibilities could be delegated to other Federal agencies or to the States or could be contracted out. Any person who fails to comply with any

provision prescribed in or pursuant to the plan would be subject to the applicable penalties set forth in section 525 of the EPCA (42 U.S.C. 6394).

Part 205 of the Federal Energy Administration Regulations (10 CFR 205) specifies the exceptions process (Subpart D) and the appeals process (Subpart H) that are applicable to many of FEA's existing programs. The exceptions and appeals procedures for this plan could conform to these procedures wherever appropriate. For example, the existing regulations provide that "an application for an exception may be granted to alleviate or prevent serious hardship or gross inequity." A similar criterion would probably apply to those persons adversely affected by this emergency plan.

The plan would apply in each State or political subdivision thereof and preempt inconsistent State or local laws. The plan would provide, however, that the President may, on his own initiative or in response to a request for exemption, exempt a State or political subdivision thereof from its application, in whole or in part, if the President determines a comparable program is in effect or finds special circumstances exist in such State or political subdivision. These provisions are pursuant to section 202(b) of the EPCA.

Based on these assumptions pertaining to the operation

of the plan, the plan could be implemented for the maximum nine months duration at a general estimated cost of $5.0 million with a general estimated staffing level of 260 persons.

GPO 913-915