The original documents are located in Box 27, folder "7/21/75 HR4035 Petroleum Pricing Review Act (vetoed)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

Vetoed 7/21/75

(Veto message delivered to Clerk of House of Representatives 4:05 pm - 7/21/75)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 21 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4035 - Petroleum Pricing Review Act
Sponsor - Rep. Wirth (D) Colorado, and 7 others

Last Day for Action

Purpose

Extends the Emergency Petroleum Allocation Act for 4 months until December 31, 1975; requires a national average price ceiling on currently uncontrolled oil; authorizes increases of up to fifty cents per barrel in the price of "old" oil; provides a 20-day period for Congressional review of petroleum price increases; exempts small refiners from certain requirements of the crude oil entitlements program; and extends authorities for coal conversion under the Energy Supply and Environmental Coordination Act.

Agency Recommendations

Office of Management and Budget	Disapproval
Federal Energy Administration	Disapproval (Informally)
Department of the Interior	Disapproval (Informally)
Department of the Treasury	Disapproval (Informally)
Department of Commerce	Disapproval (Informally)
Department of State	Disapproval (Informally)
Council of Economic Advisers	Disapproval (Informally)
Council on Wage and Price Stability	Disapproval (Informally)
Environmental Protection Agency	Defers to FEA (Informally)
Council on International Economic Policy	Disapproval (Informally)

Discussion

H.R. 4035 would extend the Emergency Petroleum Allocation Act, FEA's basic authority to control the distribution and prices of crude oil and petroleum products, for 4 additional months to December 31, 1975, and amend that Act in several respects.

On July 17, under the terms of that Act, you sent to the Congress a plan to raise the price of so-called "old" domestic crude oil by 3.3 percent a month for the next 30 months until it reaches a ceiling of $13.50 a barrel.

The enrolled bill contains two provisions directly counter to the decontrol plan. One would have the effect of reducing the price of currently uncontrolled oil (including so-called "new," "released," and "stripper well" oil) from the current level of approximately $13.00 a barrel to the January 1975 price of $11.28 a barrel. The other would authorize the President to increase the price of "old" oil (currently held at $5.25 a barrel) by up to 50 cents without Congressional review if justified by declines in field production and increased costs of advanced recovery methods.

In addition, the enrolled bill would:

- -- increase the time for Congressional review of decontrol proposals to 20 days from the present 5 days and require that such proposals be accompanied by Presidential findings and reports on anticipated economic impact;

- -- provide a partial exemption for small refiners from the purchase requirements of FEA's crude oil entitlements program; and,

- -- extend FEA's authority under the Energy Supply and Environmental Coordination Act to require conversion of powerplants from using oil and natural gas to using coal (this authority expired on June 30, 1975.)

Although the extension of coal conversion authorities was requested by the Administration, the key energy agencies and OMB agree that the bill should be vetoed because of the conflict between its oil pricing provisions, which are more significant, and the approach to price deregulation exemplified by your July 17 plan.

The bill was passed in the House by 239-172 and in the Senate 57-40, in both cases less than the number needed to override a veto.

We are working with the Federal Energy Administration to prepare a veto message, which will be sent to you separately.

James T. Lynn
Director

Enclosures

Signed 7/21/75

THE WHITE HOUSE

WASHINGTON

MR PRESIDENT:

Attached for your signature is the approved Veto Message for H. R. 4035.

Jim Connor
7/21/75

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my approval H.R. 4035, the Petroleum Price Review Act, because it would increase petroleum consumption, cut domestic production, increase reliance on insecure petroleum imports and avoid the issue of phasing out unwieldy price controls.

H.R. 4035 would go counter to the Nation's need to conserve energy and reduce dependence on imported oil. It would increase petroleum imports by about 350,000 barrels per day in 1977, compared to import levels under my phased decontrol plan. It would even increase imports by about 70,000 barrels per day over continuation of the current system of mandatory controls through 1977.

The provisions in this bill to roll back the price of domestic oil not now controlled, to repeal the "stripper well" exemption from price controls and to establish a three-tier price system which would require even more complex regulations would be counterproductive to the achievement of energy independence.

The bill does contain an Administration requested provision which would continue the coal conversion program through December 31st. Since coal conversion authorities authorized last year in the Energy Supply and Environmental Coordination Act expired June 30th, I urge rapid enactment of a simple one year extension of these authorities.

Last Wednesday, July 16, I submitted to Congress a compromise plan to phase out price controls on crude oil over a thirty-month period. Coupled with administratively imposed import fees, this plan will reduce the Nation's imports by 900,000 barrels per day by 1977. It will reduce our vulnerability to another embargo by adding slightly over one cent per gallon to the price of all petroleum products by the end of 1975 and seven cents by 1978.

If Congress acts on this compromise and on other Administration proposed energy taxes, including the "windfall profits" tax and energy tax rebates to consumers, the burden of decontrol will be shared fairly, and our economic recovery will continue.

I veto H.R. 4035, because it increases our vulnerability to unreliable sources of crude oil and does not deal with the need to phase-out rigid price and allocation controls enacted during the embargo. I urge Congress not to disapprove my administrative plan of gradual decontrol. If it is accepted, I will accept a simple extension of price and allocation authorities. If decontrol is not accepted, I will have no choice but to veto the simple six-month extension of these authorities now being considered by Congress.

For too long, the Nation has been without an energy policy, and I cannot approve a drift into greater energy dependence.

Gerald R. Ford

THE WHITE HOUSE,

July 21, 1975.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 21 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4035 - Petroleum Pricing Review Act
Sponsor - Rep. Wirth (D) Colorado, and 7 others

Last Day for Action

Purpose

Extends the Emergency Petroleum Allocation Act for 4 months until December 31, 1975; requires a national average price ceiling on currently uncontrolled oil; authorizes increases of up to fifty cents per barrel in the price of "old" oil; provides a 20-day period for Congressional review of petroleum price increases; exempts small refiners from certain requirements of the crude oil entitlements program; and extends authorities for coal conversion under the Energy Supply and Environmental Coordination Act.

Agency Recommendations

Office of Management and Budget	Disapproval
Federal Energy Administration	Disapproval (Informally)
Department of the Interior	Disapproval (Informally)
Department of the Treasury	Disapproval (Informally)
Department of Commerce	Disapproval (Informally)
Department of State	Disapproval (Informally)
Council of Economic Advisers	Disapproval (Informally)
Council on Wage and Price Stability	Disapproval (Informally)
Environmental Protection Agency	Defers to FEA (Informally)
Council on International Economic Policy	Disapproval (Informally)

Discussion

H.R. 4035 would extend the Emergency Petroleum Allocation Act, FEA's basic authority to control the distribution and prices of crude oil and petroleum products, for 4 additional months to December 31, 1975, and amend that Act in several respects.

On July 17, under the terms of that Act, you sent to the Congress a plan to raise the price of so-called "old" domestic crude oil by 3.3 percent a month for the next 30 months until it reaches a ceiling of $13.50 a barrel.

The enrolled bill contains two provisions directly counter to the decontrol plan. One would have the effect of reducing the price of currently uncontrolled oil (including so-called "new," "released," and "stripper well" oil) from the current level of approximately $13.00 a barrel to the January 1975 price of $11.28 a barrel. The other would authorize the President to increase the price of "old" oil (currently held at $5.25 a barrel) by up to 50 cents without Congressional review if justified by declines in field production and increased costs of advanced recovery methods.

In addition, the enrolled bill would:

- -- increase the time for Congressional review of decontrol proposals to 20 days from the present 5 days and require that such proposals be accompanied by Presidential findings and reports on anticipated economic impact;
- -- provide a partial exemption for small refiners from the purchase requirements of FEA's crude oil entitlements program; and,
- -- extend FEA's authority under the Energy Supply and Environmental Coordination Act to require conversion of powerplants from using oil and natural gas to using coal (this authority expired on June 30, 1975.)

Although the extension of coal conversion authorities was requested by the Administration, the key energy agencies and OMB agree that the bill should be vetoed because of the conflict between its oil pricing provisions, which are more significant, and the approach to price deregulation exemplified by your July 17 plan.

The bill was passed in the House by 239-172 and in the Senate 57-40, in both cases less than the number needed to override a veto.

We are working with the Federal Energy Administration to prepare a veto message, which will be sent to you separately.

(Signed) James T. Lynn

Director

Enclosures

July 21, 1975

Received from the White House a sealed envelope said to contain H.R. 4035, An Act to provide for more effective congressional review of proposals to exempt petroleum products from the Emergency Petroleum Allocation Act of 1973 and certain proposed administrative actions which permit increases in the price of domestic crude oil; and to provide for an interim extension of certain expiring energy authorities, and a veto message thereon.

Pat Greene for
Clerk of the House of Representatives

4:05 p.m.
Time received

Maybe the veto message today should append the decontrol plan the Pres. submitted?

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ADMINISTRATOR

July 20, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: FRANK G. ZARB

SUBJECT: VETO MESSAGE FOR H.R. 4035

Attached is a draft copy of the veto message for H.R. 4035, the Petroleum Price Review Act, which was enrolled by the Congress on Friday. The speech writers and others are standing by for any revisions you may suggest early Monday morning.

I met last night with Congressmen Tim Wirth (D-Colo), Joe Fisher (D-Va), Clarence Brown (R-Ohio), John Brademus (D-Ind), Charles Wilson (D-Texas), and Robert Krueger (D-Texas). We had a two hour discussion on general parameters for potential compromise. Nothing conclusive resulted from that meeting. We agreed to meet again on Sunday evening at 7 P.M.

I will report to you the substance of the Sunday meeting early Monday morning.

DR
P. has approved - can I go ahead and re-produce?
Dick

Attachment

VETO MESSAGE

H.R. 4035

PETROLEUM PRICE REVIEW ACT

I am returning without my approval H.R. 4035, the Petroleum Price Review Act, because it would increase petroleum consumption, cut domestic production, increase reliance on insecure petroleum imports and avoid the issue of phasing out unwieldy price controls.

H.R. 4035 would go counter to the Nation's need to conserve energy and reduce dependence on imported oil. It would increase petroleum imports by about 350,000 barrels per day in 1977, compared to import levels under my phased decontrol plan. It would even increase imports by about 70,000 barrels per day over continuation of the current system of mandatory controls through 1977.

The provisions in this bill to roll back the price of domestic oil not now controlled, to repeal the "stripper well" exemption from price controls and to establish a three-tier price system which would require even more complex regulations would be counterproductive to the achievement of energy independence.

The bill does contain an Administration requested provision which would continue the coal conversion program through December 31st. Since coal conversion authorities authorized last year in the Energy Supply and Environmental

Coordination Act expired June 30th, I urge rapid enactment of a simple one year extension of these authorities.

Last Wednesday, July 16, I submitted to Congress a compromise plan to phase out price controls on crude oil over a thirty-month period. Coupled with administratively imposed import fees, this plan will reduce the Nation's imports by 900,000 barrels per day by 1977. It will reduce our vulnerability to another embargo by adding slightly over 1¢ per gallon to the price of all petroleum products by the end of 1975 and seven cents by 1978.

If Congress acts on this compromise and on other Administration proposed energy taxes, including the "windfall profits" tax and energy tax rebates to consumers, the burden of decontrol will be shared fairly, and our economic recovery will continue.

I veto H.R. 4035, because it increases our vulnerability to unreliable sources of crude oil and does not deal with the need to phase-out rigid price and allocation controls enacted during the embargo. I urge Congress not to disapprove my administrative plan of gradual decontrol. If it is accepted, I will accept a simple extension of price and allocation authorities. If decontrol is not accepted, I will have no choice but to veto the simple six-month extension of these authorities now being considered by Congress.

For too long, the Nation has been without an energy policy, and I cannot approve a drft into greater energy dependence.

TO THE HOUSE OF REPRESENTATIVES:

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For too long, the Nation has been without an energy policy, and I cannot approve a drift into greater energy dependence.

THE WHITE HOUSE,

H. R. 4035

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To provide for more effective congressional review of proposals to exempt petroleum products from the Emergency Petroleum Allocation Act of 1973 and certain proposed administrative actions which permit increases in the price of domestic crude oil; and to provide for an interim extension of certain expiring energy authorities.

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 "Petroleum Pricing Review Act".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby finds that—

(1) the President's State of the Union message announced his intention to lift all price controls on domestic oil under the authority of existing law; and

(2) the removal of petroleum price controls would substantially increase the price of crude oil and all petroleum products, including gasoline, home heating oil, and residual fuel oil, thereby creating major inflationary pressures throughout the economy.

(b) The purpose of this Act is to permit the Congress an opportunity to review and the right to disapprove any proposal to remove existing price ceilings or to raise the price of domestic oil, and to provide for an interim extension of certain expiring energy authorities.

CONGRESSIONAL REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS RELATING TO PRICE AND ALLOCATION CONTROLS

SEC. 3. Section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973 is amended to read as follows:

"(2)(A) Subject to the requirements of this paragraph, the President may prescribe an amendment to the regulation under subsection (a) exempting crude oil, residual fuel oil, or any refined petroleum product from the provisions of such regulation as such provisions pertain to either (i) the allocation of amounts of any such oil or product, or (ii) the specification of price or the manner for determining price of any such oil or product.

"(B) The President shall transmit (i) any amendment (bearing an identification number) to the regulation prescribed under subparagraph (A) of this paragraph, accompanied by a specific statement of the President's rationale for such amendment, and (ii) the matter described in subsection (h) of this section, to both Houses of Congress on the same day and to each House while it is in session. Such an amendment may apply only to one oil or one product with respect to either allocation or price and may provide for scheduled or phased implementation.

"(C)(i) Such an amendment shall take effect on the date or dates specified in such amendment, but not sooner than the end of the first period of twenty calendar days of continuous session of Congress (within the meaning of section 906(b) of title 5, United States Code) after the date on which such amendment is transmitted to it; except that such an amendment shall not take effect if, between the date of transmittal and the end of such twenty-day period, either House passes a resolution of that House, the matter after the resolving clause of which is as follows: 'That the ——— does not favor the amendment (numbered ———) to the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973, transmitted to the Congress by the President on ———, 19—.', the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled.

"(ii) Section 908 and sections 910 through 913 of title 5, United States Code, shall apply to any resolution described in clause (i), and for purposes of the consideration of a resolution under this paragraph, the twenty calendar days specified in section 911 of title 5, United States Code, shall be shortened to ten calendar days; any reference to a resolution under section 908 and section 910 through 913 of title 5, United States Code, shall be deemed a reference to a resolution described in clause (i); and any reference to a reorganization plan shall be deemed a reference to an amendment to which this paragraph applies.".

PRESIDENTIAL REPORT AND FINDINGS RESPECTING ACTIONS SUBJECT TO CONGRESSIONAL REVIEW

SEC. 4. Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new subsection:

"(h)(1) Any amendment which the President transmits to the Congress under subsection (g)(2) of this section shall be accompanied by a report, which includes his findings with respect to the following matters:

"(A) the need for the proposed amendment;

"(B) the prices of imported and domestic crude oil, residual fuel oil, and refined petroleum products, and other fuels and forms of energy which are in fact anticipated to result from such amendment;

"(C) the impact of such amendment upon domestic production and consumption of crude oil, residual fuel oil, and refined petroleum products, and other fuels and forms of energy;

"(D) the impact of such amendment and of the resulting prices of crude oil, residual fuel oil, and refined petroleum products, and other fuels and forms of energy upon living costs, employment and unemployment, and real incomes; and differential economic impacts among regions, socioeconomic groups, and industrial sectors of the United States;

"(E) the impact of such amendment on competition in the petroleum industry; and

"(F) the anticipated effects, with respect to the considerations in subparagraphs (C) and (D) of this paragraph, of reasonable alternatives to such amendment.

"(2) In any judicial review of any provision of the regulation under subsection (a), the reviewing court may not hold unlawful or set aside any such provision solely on the basis that a ground for holding unlawful or setting aside agency action specified in subparagraph (A), (D), or (E) of section 706(2) of title 5, United States Code, applies with respect to one or more of the findings required to be made by the President under this subsection and transmitted to the Congress pursuant to subsection (g)(2) of this section.".

OLD CRUDE OIL PRICE REGULATION, AND ENCOURAGEMENT OF SECONDARY AND TERTIARY RECOVERY METHODS

SEC. 5. The Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new section:

"OLD CRUDE OIL PRICE REGULATION, AND ENCOURAGEMENT OF SECONDARY AND TERTIARY RECOVERY METHODS

"SEC. 8. (a) Beginning on the date of enactment of this section, except as provided in subsection (b) of this section, no amendment to the regulation under section 4(a) which would have the effect of permitting an increase in the national average price of old crude oil above the January 1, 1975, base price may take effect except in accordance with the provisions of section 4(g)(2).

"(b) Subsection (a) of this section does not apply to any amendment to the regulation under section 4(a) and such amendment may take effect without regard to the provisions of section 4(g)(2), if—

"(1) the purpose of such amendment is to take into account decline in field production or significant increases in the cost of production of crude oil resulting from the use of secondary or tertiary recovery methods, and

"(2) such amendment would not permit increases in the price of old crude oil or any classification thereof so as to result in a national average price of old crude oil which exceeds by more than 50 cents per barrel the January 1, 1975, base price.

"(c) For purposes of section 4(g), an amendment described in subsection (a) and to which subsection (b) does not apply shall be considered an amendment described in section 4(g)(2)(A)(ii).

"(d) No amendment described in subsection (a) which takes effect after January 1, 1975, and prior to the date of enactment of this section, may remain in effect for a period of longer than thirty days after such date of enactment, and the President shall rescind any such amendment within such thirty-day period, unless such amendment is transmitted to the Congress within such thirty-day period for review under the provisions of section 4(g)(2), in which case such amendment may continue in effect unless disapproved under the provisions of section 4(g)(2).

"(e) For purposes of this section—

"(1) the term 'old crude oil' means old crude petroleum as defined in section 212.72 of title 10, Code of Federal Regulations (as in effect on January 1, 1975); and

"(2) the term 'January 1, 1975, base price' means the national average price of old crude oil as measured on January 1, 1975.".

MAXIMUM PRICE FOR DOMESTIC CRUDE OIL

SEC. 6. The Emergency Petroleum Allocation Act of 1973, as amended by section 5 of this Act, is further amended by adding at the end thereof the following new section:

"MAXIMUM PRICE FOR DOMESTIC CRUDE OIL

"SEC. 9. (a) (1) Not later than thirty days after the date of enactment of this section, the President shall promulgate and put into effect an amendment to the regulation under section 4(a), which amendment shall specify a price or prices (or specify a manner for determining a price or prices) for all crude oil produced in the United States (including crude oil subject to section 4(e) (2)) which is not old crude oil, as defined in section 8(e) (1) of this Act.

"(2) The price or prices (or manner for determining price or prices) for crude oil specified in the amendment under paragraph (2) of this subsection shall not be, or result in, a price or prices for such oil which are greater than the price or prices generally prevailing on January 31, 1975, for crude oil subject to such amendment.

"(b) The President may thereafter amend the regulation under section 4(a) with respect to such price or prices, except that no such amendment to the regulation under section 4(a) which would have the effect of permitting any increase in, or exemption from, the price or prices (or manner for determining the price or prices) specified in subsection (a) of this section may take effect except in accordance with the provisions of section 4(g) (2).

"(c) For purposes of section 4(g), an amendment described in subsection (b) of this section shall be considered an amendment described in section 4(g) (2) (A) (ii).".

ENTITLEMENTS

SEC. 7. (a) Section 4 of the Emergency Petroleum Allocation Act of 1973, as amended by section 4 of this Act, is further amended by adding at the end thereof the following:

"(i) Insofar as any regulation promulgated and made effective under subsection (a) of this section shall require the purchase of entitlements, or the payment of money through any other similar cash transfer arrangement aimed at equalizing the cost of crude oil to domestic refiners, such regulation shall exempt from such requirement the first 50,000 barrels per day of any refiner whose total refining capacity (including the refining capacity of any person who controls, is controlled by, or is under common control with such refiner) did not exceed on January 1, 1975, 100,000 barrels per day; except that nothing in this subsection shall be construed to restrict the right of any small refiner (as defined in section 3(4) of this Act) to receive payments for entitlements or through any other similar cash transfer arrangement.".

(b) The amendment made by subsection (a) of this section shall apply with respect to payments due on or after the last day of the calendar month during which the date of enactment of this Act occurs.

INTERIM EXTENSION OF EXPIRING ENERGY AUTHORITIES

SEC. 8. (a) Section 4(g) (1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975" whenever it appears and inserting in lieu thereof "December 31, 1975".

(b) Section 2(f)(1) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" and inserting in lieu thereof "December 31, 1975".

(c) Section 11(g)(2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" whenever it appears and inserting in lieu thereof "December 31, 1975".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

CONGRESSIONAL REVIEW OF PRESIDENTIAL DECISIONS TO REMOVE EXISTING ALLOCATION AND PRICING CONTROLS OF PETROLEUM PRODUCTS

MARCH 14, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 4035]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 4035) to provide for more effective congressional review of administrative actions which exempt petroleum products from the Emergency Petroleum Allocation Act of 1973, or which result in a major increase in the price of domestic crude oil; and to provide for an interim extension of certain expiring energy authorities, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

CONGRESSIONAL REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS UNDER THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

SECTION 1. (a) Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by adding at the end thereof the following new subsection:

"(h) (1) (A) Beginning on the date of enactment of this subsection, except as provided in subparagraph (B) of this paragraph, no amendment to the regulation under subsection (a) which would have the effect of permitting an increase in the national average price of old crude oil above the January 1, 1975, base price may take effect except in accordance with the provisions of subsection (g) (2) of this section.

"(B) Subparagraph (A) of this paragraph does not apply to any amendment to the regulation under subsection (a) and such amendment may take effect without regard to the provisions of subsection (g) (2) of this section, if—

"(i) the purpose of such amendment is to take into account decline in field production or significant increases in the cost of production of crude oil resulting from the use of secondary or tertiary recovery methods, and

"(ii) such amendment would not permit increases in the price of old crude oil or any classification thereof so as to result in a national average price of old crude oil which exceeds by more than 50 cents per barrel the January 1, 1975, base price.

"(2) For purposes of subsection (g)(2) of this section, an amendment described in paragraph (1)(A) of this subsection and to which paragraph (1)(B) does not apply shall be considered an amendment described in subsection (g)(2)(A)(ii) of this section.

"(3) No amendment described in subparagraph (1)(A) which takes effect after January 1, 1975, and prior to the date of enactment of this subsection, may remain in effect for a period of longer than thirty days after such date of enactment and the President shall rescind any sucuh amendment within such thirty-day period, unless such amendment is transmitted to the Congress within such thirty-day period for review under the provisions of subsetcion (g)(2) of this section, in which case such amendment may continue in effect unless disapproved under the provisions of subsection (g)(2).

"(4) For purposes of this section—

"(A) the term 'old crude oil' means old crude petroleum as defined pursuant to the regulation under subsection (a) in section 212.72 of title 10, Code of Federal Regulations (as in effect on January 1, 1975); and

"(B) the term 'January 1, 1975, base price, means the national average price of old crude oil as measured on January 1, 1975.".

(b) Section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973 is amended to read as follows:

"(2)(A) Subject to the requirements of this paragraph, the President may prescribe an amendment to the regulation under subsection (a) exempting crude oil, residual fuel oil, or any refined petroleum product from the provisions of such regulation as such provisions pertain to either (i) the allocation of amounts of any such oil or product, or (ii) the specification of price or the manner for determining price of any such oil or product.

"(B) The President shall transmit (i) any amendment (bearing an identification number) to the regulation prescribed under subparagraph (A) of this paragraph, accompanied by a specific statement of the President's rationale for such amendment, and (ii) the matter described in subsection (i) of this section, to both Houses of Congress on the same day and to each House while it is in session. Such an amendment may apply only to one oil or one product with respect to either allocation or price and may provide for scheduled or phased implementation.

"(C)(i) Such an amendment shall take effect on the date or dates specified in such amendment, but not sooner than the end of the first period of fifteen calendar days of continuous session of Congress (within the meaning of section 906(b) of title 5, United States Code) after the date on which such amendment is transmitted to it; except that such an amendment shall not take effect if, between the date of transmittal and the end of such fifteen-day period, either House passes a resolution of that House, the matter after the resolving clause of which is as follows: 'That the does not favor the amendment (numbered ————) to the regulation under subsection (a) of the Emergency Petroleum Allocation Act of 1973, transmitted to the Congress by the President on , 19 .', the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled.

"(ii) Section 908 and sections 910 through 913 of title 5, United States Code, shall apply to any resolution described in clause (i), and for purposes of the consideration of a resolution under this paragraph, the twenty calendar days specified in section 911 of title 5, United States Code, shall be shortened to five calendar days, any reference to a resolution under section 908 and sections 910 through 913 of title 5, United States Code, shall be deemed a reference to a resolution described in clause (i), and any reference to a reorganization plan shall be deemed a reference to an amendment to which this paragraph applies."

(c) Section 4 of the Emergency Petroleum Allocation Act of 1973 (as amended by subsections (a) and (b) of this section) is further amended by adding at the end thereof the following new subsection:

"(i)(1) The President shall support any proposed amendment to the regulation under subsection (a) which is transmitted to the Congress under subsection (g)(2) of this section with a finding that such amendment is consistent with the attainment of the objectives specified in subsection (b) and in the case of—

"(A) any proposed exemption of an oil or product pursuant to subsection (g)(2)(A)(i), with a finding that such oil or product is no longer in short supply and that exempting such oil or product will not have an adverse impact on the supply of any other oil or product subject to this Act, and

"(B) any proposed exemption of an oil or product pursuant to subsection (g)(2)(A)(ii), with a finding that competition and market forces are adequate to protect industrial and individual consumers from price gouging and to assure that prices of such oil or product will be just and reasonable.

"(2) In the case of an amendment described in subsection (g)(2)(A)(ii) of this subsection which would have the effect of permitting an increase in the price of old crude oil, the President shall, in addition to the findings required under paragraph (1) of this subsection, support any such amendment with findings that—

"(A) such increase is a necessary factor in producers to meet financial needs for sustained or increased domestic production of crude oil, and

"(B) such sustained or increased domestic production of crude oil would not otherwise occur but for such increase in price.

The President shall also report to the Congress at that time on the availability of materials and services necessary for domestic oil exploration and production of crude oil and give his assessment of the marginal increase in domestic production of crude oil, by year for the succeeding five-year period, which he projects as occurring as a result of such price increase.

"(3) Any amendment which the President transmits to the Congress under subsection (g)(2) of this section shall be accompanied—

"(A) by a statement of the President's views as to the potential economic impacts (if any) of such amendment, which, where practicable, shall include his views as to—

"(i) the State and regional impacts of such amendment (including effects on governmental units),

"(ii) the effects of such amendment on the availability of consumer goods and services; the gross national product; competition; small business; and the supply and availability of energy resources for use as fuel or as feedstock for industry; and

"(iii) the effects on employment and consumer prices; and

"(B) in the case of an amendment described in subsection (g)(2)(A)(ii) of this section, by an analysis of the effects of such amendment on the rate of unemployment for the United States, and the consumer price index for the United States.

"(4) In any judicial review of any provision of the regulation under subsection (a), the reviewing court may not hold unlawful or set aside any such provision solely on the basis that a grounds for holding unlawful or setting aside agency action specified in subparagraph (A), (D), or (E) of section 706 (2) of title 5, United States Code, applies with respect to one or more of the findings or views required to be made by the President under this subsection and submitted to the Congress pursuant to subsection (g)(2)(B) of this section."

INTERIM EXTENSION OF EXPIRING ENERGY AUTHORITIES

SEC. 2. (a) Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975" whenever it appears and inserting in lieu thereof "December 31, 1975".

(b) Section 2(f)(1) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" and inserting in lieu thereof "December 31, 1975".

(c) Section 11(g)(2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" whenever it appears and inserting in lieu thereof "December 31, 1975".

Amend the title so as to read: "A bill to provide for more effective congressional review of proposals to exempt petroleum products from the Emergency Petroleum Allocation Act of 1973 and certain proposed administrative actions which permit increases in the price of domestic crude oil; and to provide for an interim extension of certain expiring energy authorities."

Purpose of the Legislation

The principal objective of this bill is to provide a more efficient mechanism for Congressional review of Presidential proposals to exempt petroleum and its products from the allocation or pricing controls currently in effect under the Emergency Petroleum Allocation Act of 1973 (the Allocation Act).

Bill Summary

This bill would expand from 5 to 15 days the Congressional review procedure contained in the Allocation Act; incorporate by reference certain expediting procedures so as to permit either House of the Congress to act within the 15-day period with respect to a proposed removal of allocation or price controls; and, require the President to submit a supporting analysis in justification of any proposed action to decontrol prices or remove a product from the program. Section I of the bill would insert a new subsection in the Emergency Petroleum Allocation Act to require Congressional review with an opportunity to disapprove any Presidential decision which proposes to permit the price of "old oil" to increase above its national average price of $5.25.

This bill would also extend certain expiring energy authorities. The Allocation Act would be extended an additional four months from August 31 to December 31, 1975; the authority to issue coal conversion orders under the Energy Supply and Environmental Coordination Act and the authority to gather energy data under that Act—both scheduled to terminate on June 30, 1975—are to be extended until December 31, 1975.

Background

On January 15, 1975, the President used the occasion of his State of the Union address to the Congress to outline a number of legislative and administrative proposals which he considered to be essential ingredients of a comprehensive and cohesive energy policy. In the following weeks, these proposals took legislative form. And, on February 4, 1975, the President's omnibus energy bill—The Energy Independence Act of 1975—was assigned to committee. Nine of the 13 separate titles of this comprehensive package were assigned to the Committee on Interstate and Foreign Commerce.

In this Congress, our committee has formed a new Subcommittee on Energy and Power in order to give focus to our decisionmaking responsibilities on energy policy matters. Since its creation, this subcommittee has been engaged in intensive (and virtually continuous) hearings to gain an undrestanding of the dimensions of this Nation's energy difficulties and to give focus to legislative deliberations. Already the subcommittee has compiled a legislative record of several thousand pages. Similarly, this committee's Subcommittee on Public Health and the Environment has moved with dispatch to expedite consideration of energy-related proposals to revise our environmental laws. This committee recognizes the full measure of its responsibility to move expeditiously to the development of a cehesive, comprehensive, and rational energy program at the earliest possible date. We will devote our full capacities to that task. Yet, while we intend to act with a sense of urgency, we must reserve an opportunity for reasoned analysis and decisionmaking.

The committee views with considerable disquiet pronouncements by the President that he intends to move forward to implement those aspects of his program for which he claims administrative authority without awaiting enactment of their legislative complements. The President's unilateral action to impose import fees on imported crude oil has already precipitated an unfortunate confrontation between the Congress and the Executive. Even of greater potential concern, the President appears to remain committed to a plan to lift domestic price ceilings on old crude oil by May 1, 1975. Witnesses testifying on behalf of the President before this committee's Subcommittee on Energy and Power confirmed that it was the President's intention to move forward on a proposal to decontrol old crude oil without awaiting enactment of the windfall profits tax or any other aspects of the Administration's legislative energy and economic program.

The President and his spokesmen have repeatedly—and accurately—stated that the administration's proposals constitute an interrelated strategy for coping with this nation's energy and economic ills. The Congress has been admonished not to move on a piecemeal basis. As Federal Energy Administrator Frank Zarb has put it: "There is no piecemeal program which can provide the balance that is required." This caution should apply with equal force to stay any further unilateral action on the part of the President.

The Congress is clearly committed to early decisionmaking. The leadership in both the House and the Senate committed their respective policy advisory structures to an unprecedented effort to devise a joint congressional response to the President's program. In the House, this committee and the Committee on Ways and Means are engaged in parallel analyses of legislation within our respective jurisdictions with the avowed intention of bringing legislation to the floor of the House by late April to be melded into a comprehensive legislative package. We are confident that the President and the Congress can and will work together to develop a rational energy policy. The committee sees hopeful signs that the President, having established the need for expeditious action on the part of the Congress, is willing to work with the appropriate jurisdictional committees in a positive and constructive manner.

Economic and Inflationary Impacts of the President's Program

From the moment of its initial announcement, the President's program has generated considerable discussion of its economic and inflationary impacts. The energy aspects of the administration's overall program were designed to have a neutral effect upon the economy. In other words, it was the administration's intention to put back into the economy through a series of tax rebates and adjustments to the tax code all of the money which was to be extracted from the economy by new energy taxes. Thus, the underlying arithmetic and supporting

analyses submitted by the administration estimate the cost of the total energy package to be about $30 billion, exactly equal to the amount which would be returned to the economy in the form of tax cuts and rebates. Administration analysts admit to an inflationary impact from the energy package of a one-time increase in the consumer price index of approximately 2 percent. And all of this is to be coupled with a proposed rebate of $16 billion on 1974 taxes which is expected by the President to provide a sufficient stimulus to bring this nation out of its economic spiral.

Great debate surrounds these analyses. The importance of the controversy cannot be overstated because if the economic measure is wrong, the program will not accomplish its goals. And if the margin of error is considerable, wholly unintended effects would occur with dire consequences for our economy.

Consider for example, the analysis prepared by the Library of Congress Congressional Research Service which is appended to this report at page 23. That analysis estimates the cost of the energy package at $50.3 billion, a figure which if correct would more than wipe out the $16 billion rebate intended to stimulate the economy. The overall impact would devastate any hopes for economic recovery and could produce an additional half-million to six hundred thousand unemployed.

In microeconomic terms, the potential for adverse effect is more discernable and even more disconcerting. For example, the fertilizer institute has estimated that the President's energy program would add direct additional costs to the manufacturer of fertilizer of $240.7 million and add $600 to $800 million to the farmers' fuel bill. This coupled with certain ripple effects in the cost of rail transport and herbicide and pesticide production would add greatly to the food bill of this nation, or in the alternative, result in a considerable reduction in food production. The collusion of energy policy with our national commitment to growth of agricultural production was apparently not perceived in the development of the administration plan. Administration witnesses advised the commitee that they are now considering various proposals to provide relief for the farm community. Also, the commercial airlines submitted testimony to the committee demonstrating that the energy package would have exeremely dire consequences for that industry. To illustrate, if domestic commercial carriers attempted to absorb the added fuel costs which would result from the President's program without a fare increase, this could only be done by running at a load factor of 65 percent. But this would necessitate a reduction by 25 percent of capacity, the grounding of between 450 and 500 aircraft, and the furloughing of between 45,000 and 50,000 airline employees. If, on the other hand, the airlines attempted to deal with the problem by raising fares, the amount of the needed increase would depend upon the reduction in capacity that was tolerable from a public service standpoint. At a 15 percent rate increase, capacity would have to be cut by approximately 11 percent, aircraft grounded would total 250 to 275, and from 25,000 to 30,000 employees would have to be furloughed. Here, as in the case of the farmers, Administration representatives are meeting with the airlines to discuss proposals for granting relief to this industry.

The committee is not prepared to conclude at this point that the Administration's estimates of economic and inflationary impact are faulty. Indeed, the Federal Energy Administration has reviewed the analysis prepared by the Libary of Congress Congressional Research Service and remains unshaken in its belief that it has correctly valued the program.[1] It is sufficient to make the point that it is critically important that the Congress have a firm understanding of the economic consequences of policies to which it is being asked to accede. Ours is an extremely complex and sophisticated economic system. We must take the economic measure of any attempt to reshape market mechanisms either as a result of imposing additional governmental controls or withdrawing existing ones.

For this reason, the committee has determined that the existing mechanism for review of Presidential proposals to exempt petroleum products from existing controls under the Emergency Petroleum Allocation Act is inadequate for our purpose for it contemplates that the Congress would act within the impossibily short period of 5 legislative days and that the Congress would do so without the assurance that it would have before it any statement or analysis of the potential impact of a Presidential decision to remove allocation and pricing controls. Thus, the bill reported by your commitee proposes to extend the 5-day review period to 15 days and incorporate by reference certain expediting procedures which have, in the past, been demonstrated to be both necessary and workable in facilitating congressional review of Presidential decisions under the Reorganization Acts. Greater specificity is called for on the part of the President in defining the justification for any proposed withdrawal of allocation and pricing controls and—most significantly—the President is called upon to accompany any decision to decontrol prices with a detailed analysis of the effect of such action on consumer prices and the rate of unemployment.

Decontrol of "Old Oil"

The Emergency Petroleum Allocation Act[2] was enacted in November, 1973 against a background of severe shortage of crude oil and its products. A number of circumstances—deriving from both misdirected governmental policy and a change in economic conditions—combined to produce substantial dislocation in the regional availability of petroleum products and exerted severe pressures on the competitive position of marketers and refiners who were not affiliated with or themselves producers of crude oil. Various voluntary allocation programs were tried and failed. And as the supply situation worsened, hundreds of independent distributors and retailers were forced out of the marketplace. This situation became suddenly exacerbated with the imposition of the Arab oil embargo in October following the outbreak of war in the Mideast.

The principal aims of the act were to meet the nation's priority petroleum needs, to distribute the remaining available products equitably, and at equitable prices, and to accomplish these objectives in ways that would preserve the competitive viability of the independent segments of the industry. The committee believes that there is fairly general agreement that the act was a necessary and useful instrument

[1] The FEA comparison of estimates can be found in Appendix I of this report.

[2] The complete text of the Allocation Act is printed as Appendix II for convenient reference.

for getting this Nation through the sustained period of critical shortage resulting from the Arab oil embargo with minimum adverse result.

At the time of the passage of the Emergency Petroleum Allocation Act, price control authority over the petroleum industry and the rest of the economy as well was exercised by the Cost of Living Council, which had discretionary price and allocation authority pursuant to the Economic Stabilization Act of 1970. Upon enactment of the Allocation Act, the President directed the Cost of Living Council to delegate pricing authority with respect to petroleum products to the newly created Federal Energy Office which was then charged with the administration of petroleum pricing and allocation authority.

The Economic Stabilization Act has since expired and the Allocation Act now constitutes the only Federal authority for the control of petroleum prices. The current price regulatory system finds its roots in the regulations prescribed by the Cost of Living Council in August of 1973 during the so-called "Phase IV" sector-by-sector approach to economic controls. These regulations provided (and their successor regulations still provide) for classification of domestically produced crude oil into "old" and "new" designations.

Regulations, thus, establish a "two-tier pricing system" which imposes a price ceiling on that classification of crude oil which is denominated as "old oil" while allowing other classifications to sell at the market.[3] Under the terms of the existing regulation, old oil (that is, oil from properties producing at, or less than, their 1972 levels) is controlled at the price which prevailed in the field on May 15, 1973, plus an additional $1.35 per barrel. This formula results in a national average price for such oil of about $5.25 per barrel.

At present, "old oil" constitutes approximately 66 percent of domestic production or 5.16 million barrels a day. The remaining 33 percent of domestic production which is not price-regulated sells on a national average basis at $11 per barrel. Federal Energy Administration analysts estimate that if the ceiling price is lifted, as the President proposes, the price of "old oil" will rise to a market clearing price of $11 per barrel—a $5.75-per-barrel increase. The administration projects a $13.1 billion increase in direct costs of crude oil will result from withdrawing the current ceiling price on old oil. This figure assumes no secondary cost or ripple effects—which some economists argue would be on a factor of 1.5 to 2.

A number of the members of your committee hold the opinion that the economy is simply too weak to withstand an inflationary surge of this magnitude. Indeed, economists testifying before this committee's Subcommittee on Energy and Power as well as those who appeared before the Ways and Means Committee and the Joint Economic Committee were virtually unanimous in advising against precipitous decontrol of old oil prices. While testimony differed as to the wisdom of an ultimate move to a so-called "free market" pricing system, no one stepped forward to defend a Presidential decision to decontrol in advance of congressional action on windfall profits taxes or other aspects of the economic and energy program.

[3] On February 18, the Temporary Court of Appeals of the United States in a decision re *Consumers Union* v. *Sawhill,* held that, by permitting the price of new crude oil to float at free market levels, the regulations failed to satisfy the requirements of the Allocation Act. The court's decision is printed in Appendix III. The United States has petitioned for rehearing before the Temporary Emergency Court of Appeals, *en banc.*

Questioning during the subcommittee's hearing revealed that the administration has made no analysis of the impact which is likely to result from the decontrol of old oil should it occur in advance of a windfall profits tax, the requested tax rebate, or other components of the program to restore economic vitality. In the absence of such analyses, subcommittee Chairman John D. Dingell asked the economic consulting firm, Chase Econometric Association, Inc., to develop an econometric analysis of the effects on employment, output, and prices should the President follow this course of action. The Chase projections are attached to this report as appendix IV. Briefly stated, they indicate that if the President had decontrolled old crude oil on April 1 (as he originally proposed) and levied a $3 per barrel import tariff—all in the absence of a windfall profits tax and a return to the economy of the receipts from that tax—the unemployment rate for 1976 would increase by almost 1 percentage point, from 8 to 8.9 percent. In other words, the potential is for as many as 700,000 additional unemployed. If the Congress succeeded in enacting a windfall profits tax but did not complete its task until October 1, 1975, the increase in unemployment was projected to be 0.6 or about ½ million additional unemployed. This estimate may be modified somewhat if the windfall profits tax was made retroactive to the first of the year.

But the point is that the economic impact varies considerably depending upon the timing of legislative enactment of the windfall profits tax and the tax rebate mechanisms. It is especially prudent, therefore, for the Congress to equip itself with an improved review mechanism of any Presidential decision to decontrol old oil so that we may examine the proposal in light of the circumstances extant at that time and with a better undertanding of the economic consequences

It should be emphasized in this report, that the committee does not now purport to pass on the wisdom of the President's proposal to withdraw from continued price regulation of old oil. This bill does not bar that action, but merely expands on and makes more efficient the congressional review mechanism in the Allocation Act.

One aspect of the committee's effort to approve the mechanism has been the addition of the requirement that the President support any proposal to decontrol oil prices with findings that increased prices are a necessary factor in enabling producers to meet financial needs for sustained or increased production of crude oil and that such sustained or marginal additions to production would not otherwise occur. It is to be recalled that in November, 1973, President Nixon permitted an across-the-board increase of $1 per barrel for old oil production without any supporting analysis that the increase was necessary to obtain additions to supply. It is the committee's belief that the consumer, at the very minimum, should be assured, if he is asked to pay yet higher and higher prices for energy, that he is at least bargaining for the maintenance of or additions to supply. We in the Congress should not be in the position of continually granting "inducements." The consumer should have some measure of insurance that additional production will be forthcoming.

Oversight Findings and Recommendations in Connection With the Interim Extension of Certain Expiring Energy Authorities

As noted in the background section of this report, the committee is devoting its full capacities to the task of developing a comprehensive energy program. While proceeding on a schedule which contemplates bringing legislation to the floor of the House by mid or late April, it is patently clear that several additional weeks thereafter will be required to resolve our differences with the Senate and fashion final legislation. Two important authorities under the Energy Supply and Environmental Coordination Act are scheduled to terminate on June 30, 1975, unless extended. The first of these is the authority to compel utilities and other major fuel burning installations with the capacity to burn coal to switch off of petroleum and natural gas. The administration has asked that this so-called "coal conversion" authority be extended. The committee sees no reason to await the development of a comprehensive energy program before making a decision on the coal conversion order granting authority. Clearly this is an ongoing and needed program which has suffered somewhat in the startup stage from various administrative difficulties. It is now prepared to move ahead and it should be permitted to do so. Thus, the committee considers it appropriate to extend at this time the coal conversion authority contained in section 2 of the Energy Supply and Environmental Coordination Act for an additional six months until December 31, 1975.

Similarly, the energy data gathering authorities contained in that act should be extended through December 31, 1975. Quite clearly the need for energy data collection and certification is going to be with us for some time. Only the committee's desire to conduct detailed oversight hearings into the administration of this authority and the vigor (or lack thereof) of the Federal Energy Administration's efforts to develop verifiable and complete information, dissuade the committee from recommending an even longer extension.

This bill would also extend the Emergency Petroleum Allocation Act of 1973 for an additional 4 months until December 31, 1975. The administration has advised us that the Federal Energy Administration has underway an extension examination of the Emergency Petroleum Allocation Act and the current mandatory allocation program. It is the administration's position that we cannot usefully consider what continuing allocation authority is necessary until we have before us the detail of the national energy program upon which the President and the Congress reach agreement. If the committee were to adopt the administration's scenario, time would not permit the careful consideration and examination needed to address the allocation question prior to the termination date of August 31, 1975. Here to, the committee thought it wise to provide a margin of safety so as to assure the Congress an opportunity to consider the highly complex and controversial questions which attend removal of allocation controls. A 4-month extension was thought adequate for that purpose.

Committee Consideration

To gain an understanding of the dimension of our energy difficulties, the committee's newly formed Subcommittee on Energy and Power conducted an intense review of the President's energy proposals—

both their legislative and administrative components. This review was conducted in 4 days of hearings beginning on February 17 in which approximately 45 witnesses appeared before the subcommittee. An attempt was made to take the economic measure of the President's program in macro- and microeconomic terms. Witnesses included economists, representatives of utilities, all aspects of transportation, the petrochemical industry, farmers, marketers, producers, and consumers.

The week before the hearings commenced, subcommittee Chairman John D. Dingell introduced H.R. 2991, a bill which proposed to stay the President's hand for 90 days to prevent the decontrol of old oil pending congressional deliberations on the full package of legislative proposals submitted by the President. This bill had been readied to act in tandem with t he proposal to suspend import fees.

As was announced in the beginning of the hearings, inquiry was directed throughout the week to the question of whether the Congress should prevent the President from acting unilaterally without awaiting congressional action on the comprehensive energy plan. Witnesses were nearly unanimous in the opinion that the President's proposal to decontrol oil by April 1 in advance of congressional action on other aspects of his program was ill-advised. Even administration witnesses stressed that the energy and economic program are inseparable and that piecemeal implementation should be avoided.

The subcommittee met the following week for the purpose of marking up H.R. 2991. Believing that the administration wished compromise and to avoid further confrontation, the subcommittee determined to abandon the effort to stay the President's hand for 90 days and instead reported a clean bill whose principal purposes were to improve the congressional mechanism for review of Presidential proposals to exempt petroleum products from allocation or pricing controls and to extend on an interim basis certain expiring energy authorities so as to permit an opportunity for the reasoned and orderly analysis of the President's program and various legislative alternatives to it. With some perfecting amendments, the substitute was reported by the committee as a clean bill, H.R. 4035, and introduced by Mr. Wirth and a majority of the subcommittee's members. On Tuesday, March 4, the full Committee on Interstate and Foreign Commerce met for purpose of considering the subcommittee's reported bill, H.R. 4035. With some further amendment, this bill was ordered favorably reported to the House by voice vote, a quorum of the committee being present.

Inflationary Impact Statement

For purposes of considering the impact of this bill upon inflation, the bill may be segmented into four parts:

1. Extension of the Emergency Petroleum Allocation Act from August 31 to December 31, 1975;
2. Extension of the Coal Conversion Authority of the Energy Supply and Environmental Coordination Act from June 30 to December 31, 1975;
3. Extension of the Reporting and Information Gathering Provisions of the Energy Supply and Environmental Coordination Act from June 30 to December 31, 1975;
4. Modification of Section 4(g) of the Emergency Petroleum Allocation Act and provisions for creating expedited review procedures for consideration of submissions from the President under Section 4(g).

1. Extension of the Emergency Petroleum Allocation Act from August 31 to December 31, 1975

This action produces the most direct inflationary impact of this bill. The impact results from the impact of the 4 month extension upon the Federal Energy Administration's budget. The proposed fiscal year 1976 budget of the FEA contains a net decrease of $14 million. This represents a reduction in staff of 1,410 positions as a result of the termination of the Emergency Petroleum Allocation Act.

FEA has informed the committee that a 4 month extension of the Emergency Petroleum Allocation Act from August 31, 1975, to December 31, 1975, would necessitate the delay in termination of 1,410 positions until expiration of the allocation authority on December 31. The continuation of these positions for the 4 month period represents 117 man years per month or 468 man years over the 4 month period. The Federal Energy Administration estimates that salaries, benefits, travel, etc., equals $18,000 per man year, and thus the 4 month extension would require additional appropriations of $8.4 million.

This extension will nonetheless result in an annualized decrease in the FEA budget of $5.6 million from the previous fiscal year. Therefore, by comparison with previous Government spending a net budget reduction in fiscal year 1976 still results. Termination of the Allocation Act authority on December 31, 1975 does not result in an addition to the rate of inflation by comparison with 1974. It may be contended that the extension does result in increasing Government spending of $8.4 million above the projected budget for fiscal year 1976 and, therefore, the extension would add to inflation by comparison with what the rate would be absent extension of the Allocation Act and absent the additional $8.4 million in Governmental spending. This increase in spending must be considered minimal, however, by comparison with the other Federal Budget and overall economy and therefore the inflationary impact is not significant.

2. Extension of the Coal Conversion Authority of the Energy Supply and Environmental Coordination Act from June 30 to December 31, 1975

This action has a net deflationary impact. The FEA budget request for fiscal year 1976 contemplated extension of the coal conversion authority beyond its expiration on June 30, 1975. Therefore, a supplemental appropriation request will not be necessitated and no increase in Government spending above the level of the proposed budget is contemplated as a result of this extension.

Utilization of existing power by FEA should result in the conversion of some facilities to coal. To the extent that coal is a cheaper fuel on a Btu basis, such conversion will reduce cost of operation of those facilities and result in a deflationary impact.

3. EXTENSION OF THE REPORTING AND INFORMATION GATHERING PROVISIONS OF THE ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT FROM JUNE 30 TO DECEMBER 31, 1975

The extension of the reporting and energy data gathering authority of the Energy Supply and Environmental Coordination Act will primarily result in the production of two additional reports to the Congress by FEA. The cost of these reports is estimated to be $100,000 per report. This will necessitate a supplemental appropriation to cover this additional expense but the magnitude of this budget increase is insignificant as an inflationary factor. The utilization of existing energy data gathering authority by FEA will not require increased budget requests because similar information gathering capability would be maintained by FEA to administer other energy data gathering authority of the Agency, particularly under the Federal Energy Administration Act, which does not expire during fiscal year 1976.

4. MODIFICATION OF SECTION 4(g) OF THE EMERGENCY PETROLEUM ALLOCATION ACT AND PROVISIONS FOR CREATING EXPEDITED REVIEW PROCEDURES FOR CONSIDERATION OF SUBMISSIONS FROM THE PRESIDENT UNDER SECTION 4(g)

The amendments to section 4(g) of the Emergency Petroleum Allocation Act and the inclusion of expedited procedures for congressional consideration of proposed exemption actions, has no direct budgetary impact and no direct inflationary impact. However, to the extent that decontrol of any petroleum products covered by the Emergency Petroleum Allocation Act and, in particular, removal of price controls from "old" domestic crude oil, could have resulted in price increases, such decontrol actions would have had a major inflationary impact. For example, it is estimated that decontrol of "old" oil would result in increased energy costs of $13.1 billion. The Library of Congress has estimated that this action would contribute significantly to the rate of inflation in 1975 assuming no windfall profits tax were in place to recycle these funds. This action in providing expedited procedures for congressional consideration and review of such decontrol proposals, and assuming that such decontrol proposals will, in fact, be submitted to the Congress under the provisions of section 4(g), provides a mechanism for congressional veto potentially of excessively inflationary administrative actions.

Notation of the Absence of Reports

The committee states that no report has been received from the Committee on Government Operations respecting oversight fundings and recommendations under clause 2(b)(2) of rule X of the Rules of the House and it has not received any estimate and comparison respecting budgetary matters from the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

Agency Reports

At the time that the committee's report was filed no agency report had been received on the bill H.R. 4035.

Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-510), the committee estimates the following costs will be incurred in carrying out the functions under the authorities extended by this bill:

Extension of Emergency Petroleum Allocation Act from Aug. 31 to Dec. 31, 1975	$8,400,000
Extension of the coal conversion authority of the Energy Supply and Environmental Coordination Act from June 30 to Dec. 31, 1975	0
Extension of Energy Supply and Environmental Coordination Act reporting authority from June 30 to Dec. 31, 1975	200,000
Modification of Section 4(g) of the Emergency Petroleum Allocation Act	0

Section-by-Section Explanation

SECTION 1. CONGRESSIONAL REVIEW OF CERTAIN ADMINISTRATIVE ACTIONS UNDER THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

Section 1 of the bill contains three subsections, subsection (a) dealing with the President's authority to amend the regulation under section 4(a) of the Emergency Petroleum Allocation Act of 1973 to permit an increase in the national average price of old crude oil, subsection (b) dealing with congressional review of certain actions under the Emergency Petroleum Allocation Act of 1973, and subsection (c) dealing with the findings and views which the President must submit to the Congress when he transmits certain amendments to the regulation under the act to the Congress.

Subsection (a) amends the Emergency Petroleum Allocation Act of 1973 by adding a new subsection (h) at the end of such section. This subsection provides, in paragraph (1)(A), that beginning on the date of enactment of subsection (h), except as provided in paragraph (1)(B), no amendment to the regulation under subsection (a) which would have the effect of permitting an increase in the national average price of old crude oil above the January 1, 1975, base price may take effect except in accordance with the provisions of subsection (g)(2) of this section. This amendment was thought necessary to close a potential loophole in the existing pattern of congressional review. By its terms, any proposal to significantly increase the current ceiling must be subjected to congressional scrutiny.

Paragraph (1)(B) provides that subparagraph (A) of this paragraph does not apply to any amendment to the regulation under subsection (a) and such amendment may take effect without regard to the provisions of subsection (g)(2) of this section, if the purpose of such amendment is to take into account decline in field production or significant increases in the cost of production of crude oil resulting from the use of secondary or tertiary recovery methods, and such amendment would not permit increases in the price of old crude oil or any classification thereof so as to result in a national average price of old crude oil which exceeds by more than 50 cents per barrel the January 1, 1975, base price. Thus, the President is permitted a margin of administrative flexability to allow prices to increase for certain purposes without involving Congress in the decisionmaking process.

Paragraph (2) of this new subsection (h) provides that for purposes of subsection (g)(2) of section 4 of the Emergency Petroleum Allocation Act of 1973 an amendment described in paragraph (1)(A) of this subsection and to which paragraph (1)(B) does not apply shall be considered an amendment described in subsection (g)(2)(A)(ii) of section 4, i.e., as if it were a proposal to exempt old crude oil from the pricing provisions of the regulation.

Paragraph (3) of this new subsection (h) to section 4 of the Emergency Petroleum Allocation Act of 1973 states that no amendment described in subparagraph (1)(A) which takes effect after January 1, 1975, and prior to the date of enactment of subsection (h), may remain in effect for a period of longer than thirty days after such date of enactment and the President shall rescind any such amendment within such thirty-day period, unless such amendment is transmitted to the Congress within such thirty-day period for review under the provisions of subsection (g)(2) of section 4, in which case such amendment may continue in effect unless disapproved under the provisions of subsection (g)(2).

Paragraph (4) of new subsection (h) contains two definitions. It states that, for purposes of section 4, the term "old crude oil" means old crude petroleum as defined pursuant to the regulation under subsection (a) in section 212.72 of title 10, Code of Federal Regulations (as in effect on January 1, 1975), and the term "January 1, 1975, base price" means the national average price of old crude oil as measured on January 1, 1975.

Subsection (b) of section 1 of the bill revises section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973. The new section 4(g)(2) provides that, in subparagraph (A) of this revised paragraph (2), that subject to the requirements of this paragraph, the President may prescribe an amendment to the regulation under section 4(a) of this act exempting crude oil, residual fuel oil, or any refined petroleum product from the provisions of such regulation as such provisions pertain to either (i) the allocation of amounts of any such oil or product, or (ii) the specification of price or the manner for determining price of any such oil or product.

Subparagraph (B) of this paragraph (2) states that the President shall transmit (1) any amendment (bearing an identification number) to the regulation prescribed under subparagraph (A) of this paragraph, accompanied by a specific statement of the President's rationale for such amendment, and (ii) the matter described in subsection (i) of this section, to both Houses of Congress on the same day and to each House while it is in session. Such an amendment may apply only to one oil or one product with respect to either allocation or price and may provide for scheduled or phased implementation.

Subparagraph (C) of this paragraph (2) provides that such an amendment shall take effect on the date or dates specified in such amendment, but not sooner than the end of the first period of 15 calendar days of continuous session of Congress (within the meaning of section 906(b) of title 5, United States Code) after the date on which such amendment is transmitted to it; except that such an amendment shall not take effect if, between the date of transmittal and the end of such fifteen-day period, either House passes a resolution of that House, the matter after the resolving clause of which is as follows: "That the   does not favor the amendment (numbered   ) to the regulation under subsection (a) of the Emergency Petroleum Allocation Act of 1973, transmitted to the Congress by the President on   , 19 .", the first blank space therein being filled with the name of the resolving House and the other   therein being appropriately filled.

Subparagraph (C) also provides that section 908 and sections 910 through 913 of title 5, United States Code, shall apply to any resolution described in this subparagraph, and for purposes of the consideration of a resolution under this paragraph, the twenty calendar days specified in section 911 of title 5, United States Code, shall be shortened to five calendar days, any reference to a resolution under section 908 and sections 910 through 913 of title 5, United States Code, shall be deemed a reference to a resolution described in this subparagraph, and any reference to a reorganization plan shall be deemed a reference to and amendment to which this paragraph applies.

Subsection (c) of section 1 of the bill adds another new subsection at the end of section 4 of the Emercency Petroleum Allocation Act of 1973. This subsection (i) provides, in paragraph (1) of this new subsection, that the President shall support any proposed amendment to the regulation under subsection (a) which is transmitted to the Congress under subsection (g)(2) of this section with a finding that such amendment is consistent with the attainment of the objectives specified in subsection (b) and in the case of any proposed exemption of an oil or product pursuant to subsection (g)(2)(A)(i), with a finding that such oil product is no longer in short supply and that exempting such oil or product will not have an adverse impact on the supply of any other oil or product subject to this Act; and in the case of any proposed exemption of an oil or product pursuant to subsection (g)(2)(A)(ii), with a finding that competition and market forces are adequate to protect industrial and individual consumers from price gouging and to assure that prices of such oil or product will be just and reasonable.

Paragraph (2) of this new subsection (i) provides that in the case of an amendment described in subsection (g)(2)(A)(ii) of this subsection which would have the effect of permitting an increase in the price of old crude oil, the President shall, in addition to the findings required under paragraph (1) of this subsection, support any such amendment with findings that such increase is a necessary factor in enabling producers to meet financial needs for sustained or increased domestic production of crude oil, and such sustained or increased domestic production of crude oil would not otherwise occur but for such increase in price. The President shall also report to the Congress at that time on the availability of materials and services necessary for domestic oil exploration and production of crude oil and give his assessment of the marginal increase in domestic production of crude oil, by year for the succeeding 5-year period, which he projects as occurring as a result of such price increase.

Paragraph (3) of this new subsection (i) states that any amendment which the President transmits to the Congress under section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973 shall be accompanied by a statement of the President's views as to the potential economic impacts (if any) of such amendment, which, where practicable, shall include his views as to the State and regional impacts of such amendment (including effects on governmental units), the effects of such amendment on the availability of consumer goods and services; the gross national product; competition; small business; and the supply and availability of energy resources for use as fuel or as feedstock for industry; and the effects on employment and consumer prices; and in the case of an amendment described in subsection (g)(2)(A)(ii) of this section, by an analysis of the effects of such amendment on the rate of unemployment for the United States, and the consumer price index for the United States.

Paragraph (4) of subsection (i) provides that in any judicial review of any provision of the regulation under subsection (a), the reviewing court may not hold unlawful or set aside any such provision solely on the basis that a grounds for holding unlawful or setting aside agency action specified in subparagraph (A), (D), or (E) of section 706(2) of title 5, United States Code, applies with respect to one or more of the findings or views required to be made by the President under this subsection and submitted to the Congress pursuant to subsection (g)(2)(B) of this section."

SECTION 2. INTERIM EXTENSION OF EXPIRING ENERGY AUTHORITIES

Section 2 of the bill contains three interim extensions of certain expiring energy authorities.

The first interim extension, which is contained in subsection (a), extends the authorities under the Emergency Petroleum Allocation Act of 1973 for four months, from its present expiration date of August 31, 1975, to December 31, 1975.

The second interim extension, which is contained in subsection (b) of this section of the bill, extends the authority of the Federal Energy Administrator to issue orders or rules under subsections (a) through (d) of section 2 of the Energy Supply and Environmental Coordination Act of 1974 (relating to coal conversion) for six months, from June 30, 1975, to December 31, 1975.

The third interim extension, which is contained in subsection (c) of this section, continues the authorities under section 11 of the Energy Supply and Environmental Coordination Act of 1974 (relating to reporting of energy information) for six months, from June 30, 1975, to December 31, 1975.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

The Emergency Petroleum Allocation Act of 1973

* * * * * * *

MANDATORY ALLOCATION

SEC. 4. (a) Not later than fifteen days after the date of enactment of this Act, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (f), such regulation shall take effect not later than fifteen days after its promulgation. Except as provided in subsection (e) such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States.

* * * * * * *

(g)(1) The regulation promulgated and made effective under subsection (a) shall remain in effect until midnight [August 31, 1975] *December 31, 1975*, except that (A) the President or his delegate may amend such regulation so long as such regulation, as amended, meets the requirements of this section, and (B) the President may exempt crude oil, residual fuel oil, or any refined petroleum product from such regulation in accordance with paragraph (2) of this subsection. The authority to promulgate and amend the regulation and to issue any order under this section, and to enforce under section 5 such regulation and any such order, expires at midnight [August 31, 1975] *December 31, 1975*, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight [August 31, 1975] *December 31, 1975*.

[(2) If at any time after the date of enactment of this Act the President finds that application of the regulation under subsection (a) to crude oil, residual fuel oil, or a refined petroleum product is not necessary to carry out this Act, that there is no shortage of such oil or product, and that exempting such oil or product from such regulation will not have an adverse impact on the supply of any other oil or refined petroleum products subject to this Act, he may prescribe an amendment to the regulation under subsection (a) exempting such oil or product from such regulation for a period of not more than ninety days. The President shall submit any such amendment and any such findings to the Congress. An amendment under this paragraph may not exempt more than one oil or one product. Such an amendment shall take effect on a date specified in the amendment, but in no case sooner than the close of the earliest period which begins after the submission of such amendment to the Congress and which includes at least five days during which the House was in session and at least five days during which the Senate was in session; except that such amendment shall not take effect if before the expiration of such period either House of Congress approves a resolution of that House stating in substance that such House disapproves such amendment.]

(2)(A) Subject to the requirements of this paragraph, the President may prescribe an amendment to the regulation under subsection (a) exempting crude oil, residual fuel oil, or any refined petroleum product from the provisions of such regulation as such provisions pertain to

either (i) the allocation of amounts of any such oil or product, or (ii) the specification of price or the manner for determining price of any such oil or product.

(B) The President shall transmit (i) any amendment (bearing an identification number) to the regulation prescribed under subparagraph (A) of this paragraph, accompanied by a specific statement of the President's rationale for such amendment, and (ii) the matter described in subsection (i) of this section, to both Houses of Congress on the same day and to each House while it is in session. Such an amendment may apply only to one oil or one product with respect to either location or price and may provide for scheduled or phased implementation.

(C)(i) Such an amendment shall take effect on the date or dates specified in such amendment, but not sooner than the end of the first period of fifteen calendar days of continuous session of Congress (within the meaning of section 906(b) of title 5, United States Code) after the date on which such amendment is transmitted to it; except that such an amendment shall not take effect if, between the date of transmittal and the end of such fifteen-day period, either House passes a resolution of that House, the matter after the resolving clause of which is as follows: "That the   does not favor the amendment (numbered   ) to the regulation under subsection (a) of the Emergency Petroleum Allocation Act of 1973, transmitted to the Congress by the President on   , 19 .", the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled.

(ii) Section 908 and sections 910 through 913 of title 5, United States Code, shall apply to any resolution described in clause (i), and for purposes of the consideration of a resolution under this paragraph, the twenty calendar days specified in section 911 of title 5, United States Code, shall be shortened to five calendar days, any reference to a resolution under section 908 and sections 910 through 913 of title 5, United States Code, shall be deemed a reference to a resolution described in clause (i), and any reference to a reorganization plan shall be deemed a reference to an amendment to which this paragraph applies.

(h)(1)(A) Beginning on the date of enactment of this subsection, except as provided in subparagraph (B) of this paragraph, no amendment to the regulation under subsection (a) which would have the effect of permitting an increase in the national average price of old crude oil above the January 1, 1975, base price may take effect except in accordance with the provisions of subsection (g)(2) of this section.

(B) Subparagraph (A) of this paragraph does not apply to any amendment to the regulation under subsection (a) and such amendment may take effect without regard to the provisions of subsection (g)(2) of this section, if—

(i) the purpose of such amendment is to take into account decline in field production or significant increases in the cost of production of crude oil resulting from the use of secondary or tertiary recovery methods, and

(ii) such amendment would not permit increases in the price of old crude oil or any classification thereof so as to result in a national average price of old crude oil which exceeds by more than 50 cents per barrel the January 1, 1975, base price.

(2) For purposes of subsection (g)(2) of this section, an amendment described in paragraph (1)(A) of this subsection and to which paragraph (1)(B) does not apply shall be considered an amendment described in subsection (g)(2)(A)(ii) of this section.

(3) No amendment described in subparagraph (1)(A) which takes effect after January 1, 1975, and prior to the date of enactment of this subsection, may remain in effect for a period of longer than thirty days after such date of enactment and the President shall rescind any such amendment within such thirty-day period, unless such amendment is transmitted to the Congress within such thirty-day period for review under the provisions of subsection (g)(2) of this section, in which case such amendment may continue in effect unless disapproved under the provisions of subsection (g)(2).

(4) For purposes of this section—

(A) the term "old crude oil" means old crude petroleum as defined pursuant to the regulation under subsection (a) in section 212.72 of title 10, Code of Federal Regulations (as in effect on January 1, 1975); and

(B) the term "January 1, 1975, base price" means the national average price of old crude oil as measured on January 1, 1975.

(i)(1) The President shall support any proposed amendment to the regulation under subsection (a) which is transmitted to the Congress under subsection (g)(2) of this section with a finding that such amendment is consistent with the attainment of the objectives specified in subsection (b) and in the case of—

(A) any proposed exemption of an oil or product pursuant to subsection (g)(2)(A)(i), with a finding that such oil or product is no longer in short supply and that exempting such oil or product will not have an adverse impact on the supply of any other oil or product subject to this Act, and

(B) any proposed exemption of an oil or product pursuant to subsection (g)(2)(A)(ii), with a finding that competition and market forces are adequate to protect industrial and individual consumers from price gouging and to assure that prices of such oil or product will be just and reasonable.

(2) In the case of an amendment described in subsection (g)(2)(A)(ii) of this subsection which would have the effect of permitting an increase in the price of old crude oil, the President shall, in addition to the findings required under paragraph (1) of this subsection, support any such amendment with findings that—

(A) such increase is a necessary factor in enabling producers to meet financial needs for sustained or increased domestic production of crude oil, and

(B) such sustained or increased domestic production of crude oil would not otherwise occur but for such increase in price.

The President shall also report to the Congress at that time on the availability of materials and services necessary for domestic oil exploration and production of crude oil and give his assessment of the marginal increase in domestic production of crude oil, by year for the succeeding five-year period, which he projects as occurring as a result of such price increase.

(3) Any amendment which the President transmits to the Congress under subsection (g)(2) of this section shall be accompanied—

(A) by a statement of the President's views as to the potential economic impacts (if any) of such amendment, which, where practicable, shall include his views as to—

(i) the State and regional impacts of such amendment (including effects on governmental units),

(ii) the effects of such amendment on the availability of consumer goods and services; the gross national product; competition; small business; and the supply and availability of energy resources for use as fuel or as feedstock for industry; and

(iii) the effects on employment and consumer prices; and

(B) in the case of an amendment described in subsection (g) (2)(A)(ii) of this section, by an analysis of the effects of such amendment on the rate of unemployment for the United States, and the consumer price index for the United States.

(4) In any judicial review of any provision of the regulation under subsection (a), the reviewing court may not hold unlawful or set aside any such provision solely on the basis that a grounds for holding unlawful or setting aside agency action specified in subparagraph (A), (D), or (E) of section 706(2) of title 5, United States Code, applies with respect to one or more of the findings or views required to be made by the President under this subsection and submitted to the Congress pursuant to subsection (g)(2)(B) of this section.

* * * * * * *

THE ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT OF 1974

* * * * * * *

SEC. 2. COAL CONVERSION AND ALLOCATION.

(a) * * *.

* * * * * * *

(f)(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, **[**June 30, 1975**]** *December 31, 1975.* Such a rule or order may take effect at any time before January 1, 1979.

* * * * * * *

SEC. 11. REPORTING OF ENERGY INFORMATION.

(a) * * *.

* * * * * * *

(g)(1) The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(2) The provisions of this section expire at midnight, **[**June 30, 1975**]**, *December 31, 1975,* but such expiration shall not affect any administrative or judicial proceeding which relates to any act or failure to act if such act or failure to act was not in compliance with the requirements and authorities of this section and occurred prior to midnight, **[**June 30, 1975**]** *December 31, 1975.*

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APPENDIX I

A. LIBRARY OF CONGRESS CONGRESSIONAL RESEARCH SERVICE'S ANALYSIS OF THE ADMINISTRATION'S ENERGY TAX PROPOSALS AND RELATED MEASURES

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C.

ADMINISTRATION'S ENERGY TAX PROPOSALS AND RELATED MEASURES

(Lawrence Kumins, Analyst in Energy Economics, Economics Division, Jan. 23, 1975)

ADMINISTRATION'S ENERGY TAX PROPOSALS

ISSUE DEFINITION

The President has proposed a package of energy legislation aimed both at curtailing consumption and increasing production so as to make the country less dependent on foreign oil.

The cost and inflationary impact of the proposed package have caused concern. A rough estimate is additional annual cost in the eventual range of $40 to $50 billion, and a 2.7 to 3.3 percentage point increase in the inflation rate.

BACKGROUND

The Arab Oil Embargo in late 1973 and subsequent crude oil price increases caused prices of domestic energy from nearly all sources to increase markedly during 1974. Relaxed controls on domestic oil prices and the price leadership of OPEC oil were the major sources of 1974's energy price inflation. Contributors to energy price inflation were:

(1) Foreign Oil—U.S. oil imports increased from about $4 per barrel (bbl) to over $12.50 in 1974, costing an additional $20.2 billion per annum.

(2) Domestic Oil—Various legislated and administrated price increases in 1974 cost oil fuel users $10.1 billion.

(3) Unregulated Natural Gas—Nearly half of domestic gas production is sold on intra-state markets, and is thus free from price controls. Gas prices have risen from an estimated 55¢ per 1000 cubic feet (Mcf) to (an estimated) $1.00–$1.25. This has cost users about $5.6 billion, during 1974.

(4) Coal—Because of the substitutability of coal for oil, coal prices have risen from $10.01 per ton in December 1973 to an estimated $19.76 one year lear. This increase cost users $5.9 billion per annum.

Taken together these costs contributed directly $42 billion (25 percent) to the total national bill from inflation of $169 billion. Secondary or "ripple effects" emanate from this primary price increase. Energy costs are marked up through layer upon layer of manufacturing, distribution and retailing. Products embodying energy may have their prices raised by more than the increase in energy costs. Many wages and other payments like Social Security are tied to the change in prices, hence compounding the rise in energy prices effect on the general price level. The ripple effect is estimated to be 1.5 to 2.0 times the primary effect, implying that 1974 energy price escalations could have caused 35 percent to 50 percent of our inflation.

ASSUMED SCENARIO NO. 1—CONGRESS PASSES ALL PROPOSALS

(1.1) Crude Oil Excise Tax—Assuming 1975 consumption says relatively constant at 1974 levels, a $2 tax will fall on 17.3 million bbl/day for an annual cost of $12.6 billion.

(1.2) Decontrol of Old Oil—Old oil is currently under price controls Administered by (and at the discretion of) the Executive Branch's FEA. The price is fixed at $5.25, a 23 percent increase from December 1973's $4.25. In 1975 old oil is estimated to be 60 percent of domestic production, and uncontrolled crude to sell at $11.00/bbl. Domestic production, in total, will flow at an estimated 8.7 mil. b/d this year. The lifting of old oil price controls is calculated to cost 8.7 mil/b/d × .60 × ($11.00 − $5.25) = $11.0 billion per annum.

(1.3) Excise Tax on Natural Gas—The President has proposed an excise tax on natural gas proportional to the $2.00 crude tax, since unregulated gas prices will rise to parity with the new oil price. 37¢ per MCF (1000 cu. ft.) is commonly discussed as the natural gas tax proportionate to a $2.00 crude tax. If 1975 gas production is 22.5 trillion cubic feet, the additional to cost will be 22.5 MCF × $.37 = $8.3 billion per annum.

(1.4) Deregulation of New Natural Gas—Until the GAO audit of gas contracts which has been requested is complete, a first-approximation indicates that the various plans would result in projected long run costs to gas users aggregating $17.7 billion each year. Initial cost would be a minimum of $5.4 billion for deregulations first year, but the total annual cost of $17.7 billion would be reached by 1981 or 1982 as interstate gas is released from price binding contracts.

(1.5) Changes in Utility Accounting—The President has proposed legislation which would change the accounting procedure by which state utility regulatory commissions set electric rates in two areas:

(a) Construction work in progress (CWIP) would be included in rate base—

CWIP does not meet the present criterion of rate base investment; i.e. being associated *only with used and useful plant* and equipment actually in service. This accounting change is widely opposed by consumer groups. Based on an FPC Office of Accounting and Finance study, *A Study* of the Electric Utility Industry, which estimates 1975 CWIP at $36.3 billion, we can calculate the cost to rate payers. Assuming a rate of return at 10% (which is less than the cost of new capital) and a 48% marginal tax rate, costs will be $7.0 billion in 1975.

(b) Pollution control equipment would be included in rate base—

Based on the FPC study city above, it is estimated that this will cost ratepayers *$1.0 billion* in 1975 and $22 billion over the 1975–79 period, another expanding cost measure.

(1.6) Coal's Escalation to A Higher Parity Price With Oil—

Just as a $2.00 crude oil tax relates to a 37¢ natural gas tax, the $2.00 levy corresponds roughly to a $8/ton tax on coal. If no taxes are imposed in coal, and coal prices rise $8, 1975 coal production (estimated at 650 million tons) will cost *$5.2 billion* more. This is a conservative estimate because it does not include the effects of old oil decontrol, which would raise the $8.00 figure somewhat.

These measures could cost $50.5 billion in 1975 under this scenario. Given an anticipated 1975 GNP of $1500 billion, they could raise prices by 3 percentage points. From an estimated 6–7 percent to a heightened 9–10 percent inflation rate, even before considering ripple effects. Potentially, this energy package's primary and ripple effects could cause 1974's 12 percent inflation rate to continue into the new year.

ASSUMED SCENARIO NO. 2—CONGRESS REJECTS ALL PROPOSALS

(2.0) Under this scenario it is assumed that the President will take the Executive actions that he has said he will in the event Congress fails to act on his $2/bbl. excise tax legislation.

(2.1) It is assumed that there will be an Executive Order imposing a $3 tax on imports. The price of imported crude will rise from $12.50 to $15.50, costing $7.1 billion yearly at current import rates.

(2.2) Decontrol of old oil would raise prices from $5.25 to $11.00 as described above, and the $3 tax would increase the bill (via market forces responding to imports price leadership) to $14.00 per bbl. for a total yearly cost of $16.7 billion annually if all other factors remain constant at 1974 levels.

(2.3) New, already uncontrolled oil (including stripper well oil) would rise by $3 bbl. also costing $3.8 billion.

(2.4) Uncontrolled natural gas price would rise by the equivalent of the $3 per barrel generalized oil price increase which is 52¢: cost—an estimated $5.7 billion at annual rate.

(2.5) Coal prices would also rise to a new Btu parity price with oil and gas, about $12 per ton of coal. This will cost *$7.2 billion.*

Scenario #2 costs $40.5 billion annually and is slightly less inflationary, raising 1975 prices by 2.7 percent v.s. 3.3 percent for Scenario #1.

Benefits would flow from both Scenarios in terms of increased oil production from "old" wells and reduced consumption because of increased prices. Deregulation of natural gas in Scenario #1 would no doubt increase production although probably not greatly, and no doubt a natural gas excise tax would curtail demand.

Optimistically, measurable benefits would stem from a 350,000 bbl/day increase in old oil production and a 500,000 bbl/day reduction in demand due to higher prices. In all, 850,000 bbls of oil could be saved daily under Scenario #1.

Under Scenario #2, where all oil prices increase my $3/bbl, savings and old well production would be larger. Here production under optimistic assumptions could increase as much as 500,000 bbls and demands could be reduced by 750,000 bbls/day, for total savings of a million and a quarter bbls. Savings of $4–$6 billion would result from these scenarios. This would not only reduce the aggregate cost figures above but the balance of payments as well.

B. Comparison of FEA Figures With the Library of Congress Congressional Research Service's Analysis of the President's Energy Program

TECHNICAL REPORT 75–4, F.E.A.–E.A.T.R.–75.4 FEBRUARY 5, 1975

(Office of Economic Impact, Office of Quantitative Methods, Federal Energy Administration)

Comparison of FEA Figures With the Library of Congress Congressional Research Service Analysis of the President's Energy Program

BACKGROUND

On January 23, 1975, the Congressional Research Service (CRS) of the Library of Congress, issued a critique of President Ford's energy program. This critique estimated that the direct costs to consumers of the President's program were in the range of $40–$50 billion and that the inflationary impact would be a 2.7 to 3.3 percentage-point increase in the inflation rate. This study's assumptions and analysis have been carefully reviewed, and it appears that there is a substantial overestimate of the cost figures and that the change in the Consumer Price Index (CPI) will be less than that stated in the CRS analysis. This paper documents where the Congressional Research Service's assumptions and conclusions differ from those of the FEA analysis.

COMPARISON OF RESULTS

TOTAL COST

The Congressional Research Service estimates that the cost of the President's program could be as high as $50.3 billion in 1975. Table 1 presents the total cost of the program according to the Administration and to the Congressional Research Service. The portion of the total cost that will be paid by consumers is $19.2 billion. A detailed discussion of the underlying assumptions and support for these figures is presented below.

The Treasury Department estimates that $5 billion of this cost increase applies to state and local governments. The FEA analysis of the macroeconomic effects demonstrates that approximately $7.8 billion will flow into capital goods investments or will be absorbed by reduced markups under forecasted market conditions. Therefore, the net first year costs at an annual rate are $19.2 billion for consumers.

TABLE 1.—COMPARISON OF ALTERNATIVE COST ESTIMATES [1]

Action	Congressional research service study	FEA cost analysis
Oil:		
Petroleum fees and excise taxes	$12.6	$11.19
Decontrol of old oil	11.0	13.01
Total	23.6	24.20
Natural gas:		
Excise tax	8.36	7.1
Deregulation of new gas	5.40	.7
Total	13.76	7.8
Coal: Price increase	5.2	
Changes in utility accounting:		
Inclusion of construction work in progress (CWIP) in rate base	6.8	
Inclusion of pollution control equipment in rate base	1.0	
Total	7.8	

[1] Calculations for both studies are contrasted in the section discussing the assumptions of the analyses.

Impact on the Consumer Price Index

The Congressional Research Service study further states that given a cost of $50.3 billion in 1975 and given an anticipated 1975 GNP of $1500 billion, the President's program could raise prices by 3 percentage points. A stage-of-processing model was used by FEA to forecast the effect that energy price changes have upon the Consumer Price Index and components of the CPI. The model requires two inputs: (1) forecasts of wholesale energy prices and (2) forecasts of the general wholesale and retail price indices prior to energy price changes. Price information is combined with historical information on the relationship between the stages-of-processing to forecast the effects that energy price changes will have on the prices of crude wholesale goods, intermediate wholesale goods, finished wholesale products, and finally, retail consumer goods and services.

Using this methodology, it is estimated that the CPI will increase 2 percentage points during the first full year of the program. Given the normal, unencumbered economy, the CPI would rise by approximately 2.5 percentage points during the first full year of the program in addition to the normally expected rise. These estimated increases tend to overestimate the effect of the program for two reasons:

(1) The energy price increases that were used as inputs to the model assume a full pass-through of the taxes and import fees. It is unlikely that this will occur because of the tax rebates to industry and because the economy is generally weak. Thus, excess supply would result if industry attempts to pass-through all of the costs.

(2) The stage-of-processing model is based upon historical markup relationships and these may not hold because of the currently poor market demand conditions. That is, demand is currently at such a low level that companies may not be willing to pass on increased costs for fear of further reducing their markets.

Consumer Cost Impacts

The consumer costs that will actually be incurred by households has been estimated by the Administration to be $19.2 billion for the first year at an annual rate. Table 2 illustrates the range of costs by income class and contrasts these increased costs with estimates of expected tax relief. No total estimate of the impact on consumers is presented on the CRS study.

TABLE 2.—ILLUSTRATIONS OF PERMANENT TAX RELIEF AND INCREASED ENERGY COSTS AT VARIOUS LEVELS OF HOUSEHOLD INCOME

Household income	Total increased energy costs	Permanent tax relief plus $80 special payments for adjusted gross incomes equal to household incomes shown: Single person	Family of 4 persons
$2,000	$85	−$80	−$160
$3,000	110	−120	−160
$5,000	150	−250	−178
$8,000	188	−297	−337
$10,000	228	−254	−349
$12,000	253	−190	−316
$15,000	296	−190	−221
$18,000	318	−190	−210
$25,000	393	−190	−192
$30,000	420	−148	−151

Source: Office of the Secretary of the Treasury, Office of Tax Analysis, Jan. 30, 1975.

DIFFERING ASSUMPTIONS BETWEEN ADMINISTRATION ANALYSIS AND CRS STUDY

There are major differences in some of the assumptions used in each analysis. These are highlighted in this section along with the detail.

Oil

The mix between imported oil and domestic oil is different because our estimates assume that demand reductions and import savings occur. In addition, FEA's inclusion of Natural Gas Liquids is identified separately from aggregate crude oil. However, the total figures are quite similar.

The figures of the Congressional Research Service are repeated as:

	Cost (billions per year)
1. Excise Tax: 17.3 MMBD × 365 × $2	$12.6
2. Presently Controlled Oil: Decontrol: 5.22 MMBD × 365 × $5.75	11.0
Total oil	23.6

The FEA analysis is contrasted as:

	Cost (billions per year)
1. Import Fee: Uses estimate of 5.433 MMBD imports after implementation of President's program, $2×5.433 MMBD×365	$3.966
2. Excise Tax on Domestic Oil:	
Production of 8.7 MMBD, $2×8.7 MMBD×365	6.35
Equivalent tax of $1.43 per barrel of natural gas liquids (NGL) with 1.66 MMBD, $1.43×1.66 MMBD×365	.866
3. Decontrol of Old Oil:	
Assumes 60 percent old oil exclusive of Elk Hills (0.1 MMBD annual average), hence 5.16 MMBD of old oil rising from controlled price of $5.25 to uncontrolled price of $11, $5.75×5.16 MMBD×365	10.83
Assumes NGL price rises equivalent amount of crude oil. Crude increase $4.56 less $1.43 due to NGL tax. $3.13×1.66 MMBD×365	1.896
Adjustment of +$290,000,000 to account for rounding and refinery gain and to balance calculated increase of product prices of $4.10 and average consumption of 16.17 MMBD. ($4.10×16.17 MMBD×365=$24.2 billion)	.29
	24.198

Natural Gas

The Congressional Research Service study assumes that 1975 natural gas production is 22.5 trillion cubic feet (tcf) and that the amount of new gas subject to deregulation in 1975 will be equivalent to a $5.4 billion initial cost for the first year. In fact, this argument overstates the natural gas impacts for the following reasons:

"Approximately 1 trillion cubic feet of contracts for interstate gas would expire and be available for new contracts in 1975, even with decontrol. This is substantially less than that reflected by the CRS study in its $5.4 billion cost for the first year. Without deregulation, very little new gas is going to interstate sales.

The excise tax will be levied on net marketed production and not on total gas production. Hence, only 19.1 tcf will be affected by the excise tax of 37¢. This will result in a much lower total cost attributed to the excise tax.

Deregulation could presumably bring up to .8 tcf of additional gas into the interstate market in 1975. If this occurs, it would tend to replace an equivalent amount of imported oil which would have cost as much, or more, as the new gas prices. The President's program would tend to shift this amount from imports to gas, but would only increase consumer costs by the amount of the excise tax.

The figures of the Congressional Research Service are:

	Cost (billions per year)
1. Excise Tax: 22.5 tcf x .37	$8.3
2. Deregulation of New Gas	5.4
Total	13.7

The FEA analysis is contrasted as:

1. New Interstate Gas: Estimated at 0.91 tcf with equilibrium price of $1.11 compared to average of $.28 on old gas. Excise tax of $0.37 $1.20 x .91 tcf	1.092
2. Old Interstate Gas: Interstate estimated as two-thirds of total gas consumption of 19.1 tcf $0.37 (19.1 x 0.667 − 0.91)	4.376
3. Intrastate Gas: Excise tax on one-third of total consumption. $0.37 x (19.1 x 0.33)	2.322
Total natural gas	7.800

Coal

The Congressional Research Service analysis assumes that coal produced in 1975 will rise in price by an equivalent of $2 per barrel or approximately $8/ton. We estimate that 80 percent of all coal is under long-term contracts, where prices tend to reflect long-run coal production costs, which do not tend to rise in real terms. Further, our current estimate indicates that coal prices are limited by the inability of gas and oil consumers to convert to coal. As a result even the remaining 20 percent of coal sold in spot markets is likely to sell only at prices necessary to cover overtime pay and other costs of getting out the 1975 rate of production (about 35 mmt more than 1974 because of production lost during the strike). Higher prices for oil would add very little to the amount of conversion to coal. Conversions to coal are estimated at 23 million tons in 1975 and 47 in 1976.

The figures of the Congressional Research Service study are:

	Cost (billions per year)
Price Increase: $8 x 650 mmt	$5.2
The FEA analysis is contrasted as: FEA assumes no direct increase in coal due to the President's program (see discussion of assumptions)	.0

Changes in Utility Accounting

The above costs of the President's program as estimated by FEA consisted of the cost of imposing taxes and fees on petroleum and natural gas and the cost of decontrolling the price of old oil. The costs associated with changes in utility accounting procedures were not included for several reasons:

(1) The need for additional funds to finance electric utility expansion will require some form of rate change. This need for a rate change is independent of the President's energy program. Hence, the costs of any proposals, such as changes in the accounting procedures, should not be included in the costs of a program designed to achieve energy independence.

(2) The changes in accounting procedures presented by CRS allow for the addition of one billion dollars worth of pollution control equipment in addition to the expansion of plant and equipment. This clearly is not part of the cost of achieving energy independence and may not even be the appropriate amount of pollution control from a cost-effectiveness standpoint.

(3) The accounting changes are part of the long-term energy program and will have no effect on short-run energy supplies.

In addition to inappropriately including the utility accounting changes, the CRS has incorrectly estimated the impact of these changes. The Congressional Research Service estimates that the additional 1975 costs will be $6.8 billion by including construction work in progress in the rate base. This is based on an FPC/Office of Economic study, *An Analysis of the Electric Utility Industry's Financial Requirements, 1975–79*. This cost is incorrect in that the costs of including construction work in progress in the rate base as estimated using the FPC study are $3.4 billion.

APPENDIX II

Public Law 93-159

93rd Congress, S. 1570

November 27, 1973

AN ACT To authorize and require the President of the United States to allocate crude oil, residual fuel oil, and refined petroleum products to deal with existing or imminent shortages and dislocations in the national distribution system which jeopardize the public health, safety, or welfare; to provide for the delegation of authority; and for other purposes

Emergency Petroleum Allocation Act of 1973.

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 "Emergency Petroleum Allocation Act of 1973".

87 Stat. 627
87 Stat. 628

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress hereby determines that—

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environmental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent;

(2) such shortages have created or will create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods; and

(3) such hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy crisis which is a threat to the public health, safety, and welfare and can be averted or minimized most efficiently and effectively through prompt action by the Executive branch of Government.

(b) The purpose of this Act is to grant the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. The authority granted under this Act shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.

DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term "branded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products pursuant to—

(A) an agreement or contract with a refiner (or a person who controls, is controlled by, or is under common control with such refiner) to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner (or any such person), or

(B) an agreement or contract under which any such person engaged in the marketing or distributing of refined petroleum products is granted authority to occupy premises owned, leased, or in any way controlled by a refiner (or person who controls, is controlled by, or is under common control with such refiner),

but who is not affiliated with, controlled by, or under common control with any refiner (other than by means of a supply contract, or an agreement or contract described in subparagraph (A) or (B)), and who does not control such refiner.

(2) The term "nonbranded independent marketer" means a person who is engaged in the marketing or distributing of refined petroleum products, but who (A) is not a refiner, (B) is not a person who controls, is controlled by, is under common control with, or is affiliated with a refiner (other than by means of a supply contract), and (C) is not a branded independent marketer.

87 Stat. 628
87 Stat. 629

(3) The term "independent refiner" means a refiner who (A) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to the date of enactment of this Act, more than 70 per centum of his refinery input of domestic crude oil (or 70 per centum of his refinery input of domestic and imported crude oil) from producers who do not control, are not controlled by, and are not under common control with, such refiner, and (B) marketed or distributed in such quarter and continues to market or distribute a substantial volume of gasoline refined by him through branded independent marketers or nonbranded independent marketers.

(4) The term "small refiner" means a refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with such refiner) does not exceed 175,000 barrels per day.

(5) The term "refined petroleum product" means gasoline, kerosene, distillates (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel.

(6) The term "LPG" means propane and butane, but not ethane.

(7) The term "United States" when used in the geographic sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

MANDATORY ALLOCATION

Regulation.

SEC. 4. (a) Not later than fifteen days after the date of enactment of this Act, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (f), such regulation shall take effect not later than fifteen days after its promulgation. Except as provided in subsection (e) such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States.

Effective date.

(b)(1) The regulation under subsection (a), to the maximum extent practicable, shall provide for—

(A) protection of public health, safety, and welfare (including maintenance of residential heating, such as individual homes, apartments, and similar occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers; 87 Stat. 630

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users;

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of, fuels, and for required transportation related thereto;

(H) economic efficiency; and

(I) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

(2) In specifying prices (or prescribing the manner for determining them), such regulation shall provide for— Price regulations.

(A) a dollar-for-dollar passthrough of net increases in the cost of crude oil, residual fuel oil, and refined petroleum products to all marketers or distributors at the retail level; and

(B) the use of the same date in the computation of markup, margin, and posted price for all marketers or distributors of crude oil, residual fuel oil and refined petroleum products at all levels of marketing and distribution.

Allocation, consideration for certain persons.

(3) The President in promulgating the regulation under subsection (a) shall give consideration to allocating crude oil, residual fuel oil, and refined petroleum products in a manner which results in making available crude oil, residual fuel oil, or refined petroleum products to any person whose use of fuels other than crude oil, residual fuel oil, and refined petroleum products has been curtailed by, or pursuant to a plan filed in compliance with, a rule or order of a Federal or State agency, or where such person's supply of such other fuels is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

Refined petroleum and crude oil products.

(c)(1) To the extent practicable and consistent with the objectives of subsections (b) and (d), the mandatory allocation program established under the regulation under subsection (a) shall be so structured as to result in the allocation, during each period during which the regulation applies, of each refined petroleum product to each branded independent marketer, each nonbranded independent marketer, each small refiner and each independent refiner, and of crude oil to each small refiner and each independent refiner, in an amount not less than the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972, adjusted to provide—

Pro-rata reductions.

(A) in the case of refined petroleum products, a pro rata reduction in the amount allocated to each person engaged in the marketing or distribution of a refined petroleum product if the aggregate amount of such product produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972; and

87 Stat. 631

(B) in the case of crude oil, a pro rata reduction in the amount of crude oil allocated to each refiner if the aggregate amount produced in and imported into the United States is less than the aggregate amount produced and imported in calendar year 1972.

Presidential report to Congress.

(2)(A) The President shall report to the Congress monthly, beginning not later than January 1, 1974, with respect to any change after calendar year 1972 in—

(i) the aggregate share of nonbranded independent marketers,

(ii) the aggregate share of branded independent marketers, and

(iii) the aggregate share of other persons engaged in the marketing or distributing of refined petroleum products.

of the national market or the regional market in any refined petroleum product (as such regional markets shall be determined by the President).

Allocation adjustment.

(B) If allocation of any increase of the amount of any refined petroleum product produced in or imported into the United States in excess of the amount produced or imported in calendar year 1972 contributes to a significant increase in any market share described in clause (i), (ii), or (iii) of subparagraph (A), the President shall by order require an equitable adjustment in allocations of such product under the regulation under subsection (a).

(3) The President shall, by order, require such adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products established under the regulation under subsection (a) as may reasonably be necessary (A) to accomplish the objectives of subsection (b), or (B) to prevent any person from taking any action which would be inconsistent with such objectives.

(4) The President may, by order, require such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) as he determines may reasonably be necessary—

(A) in the case of refined petroleum products (i) to take into consideration market entry by branded independent marketers and nonbranded independent marketers during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of marketing or distribution facilities of such marketers during or subsequent to calendar year 1972, and

(B) in the case of crude oil (i) to take into consideration market entry by independent refiners and small refiners during or subsequent to calendar year 1972, or (ii) to take into consideration expansion or reduction of refining facilities of such refiners during or subsequent to calendar year 1972.

Any adjustments made under this paragraph may be made only upon a finding that, to the maximum extent practicable, the objectives of subsections (b) and (d) of this section are attained.

LPG allocation.

(5) To the extent practicable and consistent with the objectives of subsections (b) and (d), the mandatory allocation program established under the regulation under subsection (a) shall not provide for allocation of LPG in a manner which denies LPG to any industrial user if no substitute for LPG is available for use by such industrial user.

Oil produced or refined in U.S.

(d) The regulation under subsection (a) shall require that crude oil, residual fuel oil, and all refined petroleum products which are produced or refined within the United States shall be totally allocated for use by ultimate users within the United States, to the extent practicable and necessary to accomplish the objectives of subsection (b).

Crude oil prices at producer level, exemption.

(e) (1) The provisions of the regulation under subsection (a) shall specify (or prescribe a manner for determining) prices of crude oil at the producer level, but, upon a finding by the President that to require allocation at the producer level (on a national, regional, or case-by-case basis) is unnecessary to attain the objectives of subsection (b) (1) (E) or the other objectives of subsections (b), (c), and (d) of this section, such regulation need not require allocation of crude oil at such level. Any finding made pursuant to this subsection shall be transmitted to the Congress in the form of a report setting forth the basis for the President's finding that allocation at such level is not necessary to attain the objectives referred to in the preceding sentence.

87 Stat. 632

Report to Congress.

(2) (A) The regulation promulgated under subsection (a) of this section shall not apply to the first sale of crude oil produced in the United States from any lease whose average daily production of crude oil for the preceding calendar year does not exceed ten barrels per well.

(B) To qualify for the exemption under this paragraph, a lease must be operating at the maximum feasible rate of production and in accord with recognized conservation practices.

(C) Any agency designated by the President under section 5(b) for such purpose is authorized to conduct inspections to insure compliance with this paragraph and shall promulgate and cause to be published regulations implementing the provisions of this paragraph.

Gasoline allocation.

(f) (1) The provisions of the regulation under subsection (a) respecting allocation of gasoline need not take effect until thirty days after the promulgation of such regulation, except that the provisions of such regulation respecting price of gasoline shall take effect not later than fifteen days after its promulgation.

(2) If—

(A) an order or regulation under section 203(a) (3) of the Economic Stabilization Act of 1970 applies to crude oil, residual fuel oil, or a refined petroleum product and has taken effect on or before the fifteenth day after the date of enactment of this Act, and

85 Stat. 743.
12 USC 1904 note.

(B) the President determines that delay in the effective date of provisions of the regulation under subsection (a) relating to such oil or product is in the public interest and is necessary to effectuate the transition from the program under such section 203 (a) (3) to the mandatory allocation program required under this Act,

he may in the regulation promulgated under subsection (a) of this section delay, until not later than thirty days after the date of the promulgation of the regulation, the effective date of the provisions of such regulation insofar as they relate to such oil or product. At the same time the

President promulgates such regulation, he shall report to Congress setting forth his reasons for the action under this paragraph.

Presidential report to Congress.

Termination date.

(g) (1) The regulation promulgated and made effective under subsection (a) shall remain in effect until midnight August 31, 1975, except that (A) the President or his delegate may amend such regulation so long as such regulation, as amended, meets the requirements of this section, and (B) the President may exempt crude oil, residual fuel oil, or any refined petroleum product from such regulation in accordance with paragraph (2) of this subsection. The authority to promulgate and amend the regulation and to issue any order under this section, and to enforce under section 5 such regulation and any such order, expires at midnight August 31, 1975, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight August 31, 1975.

Exemptions.

87 Stat. 633

Regulation amendment.

(2) If any time after the date of enactment of this Act the President finds that application of the regulation under subsection (a) to crude oil, residual fuel oil, or refined petroleum product is not necessary to carry out this Act, that there is no shortage of such oil or product, and that exempting such oil or product from such regulation will not have an adverse impact on the supply of any other oil or refined petroleum products to this Act, he may prescribe an amendment to the regulation under subsection (a) exempting such oil or product from such regulation for a period of not more than ninety days. The President shall submit any such amendment and any such findings to the Congress. An amendment under this paragraph may exempt more than one oil or product. Such an amendment shall take effect on a date specified in the amendment, but in no case sooner than the close of the earliest period which begins after the submission of such amendment to the Congress and which includes at least five days during which the House was in session and at least five days during which the Senate was in session; except that such amendment shall not take effect if before the expiration of such period either House of Congress approves a resolution of that House stating in substance that such House disapproves such amendment.

Effective date.

ADMINISTRATION AND ENFORCEMENT

SEC. 5. (a) (1) Except as provided in paragraph (2), (A) sections 205 through 211 of the Economic Stabilization Act of 1970 (as in effect on the date of enactment of this Act) shall apply to the regulation promulgated under section 4(a), to any order under this Act, and to any action taken by the President (or his delegate) under this Act, as if such regulation had been promulgated, such order had been issued, or such action had been taken

85 Stat. 747, 748.
12 USC 1904 note

under the Economic Stabilization Act of 1970; and (B) section 212 (other than 212(b)) and 213 of such Act shall apply to functions under this Act to the same extent such sections apply to functions under the Economic Stabilization Act of 1970.

(2) The expiration of authority to issue and enforce orders and regulations under section 218 of such Act shall not affect any authority to amend and enforce the regulation or to issue and enforce any order under this Act, and shall not effect any authority under sections 212 and 213 insofar as such authority is made applicable to functions under this Act.

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

EFFECT ON OTHER LAWS AND ACTIONS TAKEN THEREUNDER

SEC. 6. (a) All actions duly taken pursuant to clause (3) of the first sentence of section 203(a) of the Economic Stabilization Act of 1970 in effect immediately prior to the effective date of the regulation promulgated under section 4(a) of this Act, shall continue in effect until modified pursuant to this Act.

(b) The regulation under section 4 and any order issued thereunder shall preempt any provisions of any program for the allocation of crude oil, residual fuel oil, or any refined petroleum product established by any State or local government if such provision is in conflict with such regulation or any such order.

87 Stat. 634
Immunity restrictions.

(c) (1) Except as specifically provided in this subsection, no provisions of this Act shall be deemed to convey to any person subject to this Act immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

"Antitrust laws".

(2) As used in this subsection, the term "antitrust laws" includes—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.);

26 Stat. 209; 69 Stat. 282.

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.);

38 Stat. 730; 49 Stat. 1526.

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

38 Stat. 717; 52 Stat. 111.

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9); and

28 Stat. 570.

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(3) The regulation promulgated under section 4(a) of this Act shall be forwarded on or before the date of its promulgation to the Attorney General and to the Federal Trade Commission, who shall, at least seven days prior to the effective date of such regulation, report to the President with respect to whether such regulation would tend to create or maintain anticompetitive practices or situations inconsistent with the antitrust laws, and propose any alternative which would avoid or overcome such effects while achieving the purposes of this Act.

Report to President.

(4) Whenever it is necessary, in order to comply with the provisions of this Act or the regulation or any orders under section 4 thereof, for owners, directors, officers, agents, employees, or representatives of two or more persons engaged in the business of producing, refining, marketing, or distributing crude oil, residual fuel oil, or any refined petroleum product to meet, confer, or communicate in such a fashion and to such ends that might otherwise be construed to constitute a violation of the antitrust laws, such persons may do so only upon an order of the President (or of an officer or agency of the United States to whom the President has delegated authority under section 5(b) of this Act); which order shall specify and limit the subject matter and objectives of such meeting, conference, or communication. Moreover, such meeting, conference, or communication shall take place only in the presence of a representative of the Antitrust Division of the Department of Justice, and a verbatim transcript of such meeting, conference, or communication shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission, where it shall be made available for public inspection.

Meeting.

(5) There shall be available as a defense to any action brought under the antitrust laws, or for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange crude oil, residual fuel oil, or any refined petroleum product, that such delay or failure was caused solely by compliance with the provisions of this Act or with the regulation or any order under section 4 of this Act.

(6) There shall be available as a defense to any action brought under the antitrust laws arising from any meeting, conference, or communication or agreement resulting therefrom, held or made solely for the purpose of complying with the provisions of this Act or the regulation or any order under section 4 thereof, that such meeting, conference, communication, or agreement was carried out or made in accordance with the requirements of paragraph (4) of this subsection.

MONITORING BY FEDERAL TRADE COMMISSION

Report to President and Congress.

SEC. 7. (a) During the forty-five day period beginning on the effective date on which the regulation under section 4 first takes effect, the Federal Trade Commission shall monitor the program established under such regulation; and, not later than sixty days after such effective date, shall report to the President and to the Congress respecting the effectiveness of this Act and actions taken pursuant thereto.

38 Stat. 721; 84 Stat. 929; 62 Stat. 909. 15 U.S.C. 46, 49, 50.

(b) For purposes of carrying out this section, the Federal Trade Commission's authority, under sections 6, 9, and 10 of the Federal Trade Commission Act to gather and compile information and to require furnishing of information, shall extend to any individual or partnership, and to any common carrier subject to the Acts to regulate commerce (as such Acts are defined in section 4 of the Federal Trade Commission Act).

Approved November 27, 1973.

LEGISLATIVE HISTORY

HOUSE REPORTS: No. 93-531 accompanying H.R. 9681 (Comm. on Interstate and Foreign Commerce) and 93-628 (Comm. of Conference).
SENATE REPORT No. 93-159 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 119 (1973):
May 31, June 1, 4, 5, considered and passed Senate.
Oct. 17, considered and passed House, amended, in lieu of H.R. 9681.
Nov. 13, House agreed to conference report.
Nov. 14, Senate agreed to conference report.

APPENDIX IV

STATEMENT OF MICHAEL EVANS, CHASE ECONOMETRICS ASSOCIATES, INC.

Chase Econometrics Associates, Inc., has prepared an analysis of the effect of the President's energy program under various alternative assumptions about tax reductions. We have prepared three alternative simulations using the Chase Econometrics macroeconomic forecasting model. We first consider our standard forecast which assumes an $8 billion rebate at mid-year and an $8 billion decrease in personal income taxes beginning in the third quarter of 1975. In this run we also assume that there will be no increase in the tariff on imported oil and that the price of old crude oil will not be decontrolled. In the second run we consider the same $16 billion personal income tax cut but also assume that a $3 bbl tariff on imported oil will be phased in by April 1 and that the price of old crude oil will be decontrolled at that time. Under such a scenario the price of oil would be $15.50 bbl which is equal to the $12.50 bbl price of landed imported oil plus the $3.00 bbl tariff. New oil prices would also move up to this level. Under this scenario consumers would not receive any rebates or reductions in taxes as a result of the higher oil prices. In the third scenario we assume that everything occurs as indicated in the second scenario but beginning October 1, 1975, the tax package is passed by Congress which increases corporate income tax payments by $12 billion and reduces personal income tax payments by $19 billion. We have pre-

pared a table showing the effect on the economy of these three alternatives and have shown comparative forecasts for the consumer price index, the rate of unemployment and GNP in constant (1958) prices. We found that the consumer price index would rise by an additional 1.9 percent if the $3 tariff and deregulation of old oil prices were to take place. This would raise the unemployment rate by an additional 0.9 percent in 1976 and reduce the rate of growth next year from 6.4 percent to 4.1 percent. If the $19 billion rebate to consumers were put into effect in 1975.4, the unemployment rate would drop to 8.6 percent next year, still well above the 8.0 percent expected under the standard forecast. Real growth would be 5.4 percent compared to 6.4 percent in the standard forecast. Further details of the comparative statistics are found in the accompanying tables.

TABLE—CHASE ECONOMETRICS, INC

	75:1	75:2	75:3	74:4	76:1	76:2	76:3	76:4	75	76	Fiscal year 1976	Fiscal year 1977
I. Antirecession tax cut, no energy price increase:												
GNP	−6.0	−0.8	4.7	6.7	6.9	7.6	7.5	6.6	−2.7	6.4	6.5	6.1
CPL	7.4	5.8	6.0	6.0	5.7	6.2	6.0	6.7	8.7	6.1	6.0	6.5
VE	8.4	9.1	9.2	9.0	8.6	8.1	7.8	7.4	8.9	8.0	8.7	7.4
II. Antirecession tax cut, $3 tariff decontrol of old oil on Apr. 1:												
GNP	−6.0	−5.3	−2.3	3.3	5.5	6.6	7.9	7.6	−4.6	4.1	3.3	7.2
CPI	7.4	15.0	6.3	6.6	6.1	6.5	5.9	6.7	10.6	7.0	6.4	6.5
VE	8.4	9.1	9.5	9.7	9.5	9.1	8.8	8.4	9.2	8.9	9.5	8.3
III. Antirecession tax cut, $3 tariff, decontrol of old oil on Apr. 1, 1975, windfall profits tax and consumer tax relief on Oct. 1, 1975:												
GNP	−6.0	−5.3	−2.3	4.4	7.4	8.2	9.0	8.2	−4.5	5.4	4.4	7.5
CPI	7.4	15.0	6.3	6.4	6.0	6.4	6.0	6.8	10.6	7.0	6.3	6.7
VE	8.4	9.1	9.5	9.6	9.3	8.9	8.4	8.0	9.2	8.6	9.3	7.9

Note: GNP—percentage change from previous period in real GNP (annual rate). CPI—percentage change from previous period in consumer price index (seasonably adjusted annual rate). VE—unemployment rate (percentage) seasonably adjusted.

APPENDIX III

TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

No. DC-26

CONSUMERS UNION OF UNITED STATES, INC., PLAINTIFF-APPELLANT

v.

JOHN C. SAWHILL, ADMINISTRATOR OF FEDERAL ENERGY ADMINISTRATION, DEFENDANT-APPELLEE

(Peter H. Schuck, Esq., Washington, D.C., for appellant.) (Carla A. Hills, Assistant Attorney General; Stanley D. Rose and C. Max Vassanelli, Attorneys, Department of Justice, Washington, D.C., for appellee.)

Before Tamm, Chief Judge, Anderson, and Johnson, Judges. Anderson, Judge.

Consumers Union of the United States, Inc. (Consumers Union) alleges in this action that regulations, 10 C.F.R. §§ 212.71–74, effective

January 15, 1974, issued by the Federal Energy Office, now the Federal Energy Administration (FEA), violate § 4 of the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751–756 (the Act). Specifically, Consumers Union claims that § 4 of the Act imposes a mandatory duty to establish controls which will ensure "equitable" prices for all domestic crude oil; that FEA, by permitting new and released crude oil to be sold at the free market price violates such statutory duty and has in effect created a massive unauthorized exemption from the Act.

The United States District Court for the District of Columbia denied Consumers Union's motion for declaratory and injunctive relief and granted FEA's cross-motion for summary judgment. It held that the Act does not necessitate price ceilings, and that FEA's decision to let the prices "float" on certain categories of crude oil satisfies the statutory prescription that it specify or prescribe a manner for determining price. The court further ruled that this decision does not result in an invalid exemption from regulation, because all oil remains "subject to" allocation and price controls. Consumers Union has appealed from the decision and order of the district court.

The parties concede that the Act imposes a mandatory duty to "specify" or "determine," i.e. to "regulate" prices for all crude oil. The Act provides that the President of the United States "* * * shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil and each refined petroleum product, in amounts * * * and at prices specified in (or determined in a manner prescribed by) such regulation." Section 4(a), in which this requirement is found, also specifies that the implementing regulation "* * * shall apply to all crude oil * * * produced in or imported into the United States,"[1] with one exception—"stripper well production," essentially the output of low-yield properties.[2] It is further provided that, "* * * to the maximum extent practicable," the regulation secure "* * * [the] preservation of an economically sound and competitive petroleum industry * * * equitable distribution * * * at equitable prices [and] * * * minimization of * * * unnecessary interference with market mechanism." § 4(b)(1)(A–I).[3]

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[1] Section 4(a) provides:

"Not later than fifteen days after the date of enactment of this Act, the President shall promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such regulation. Subject to subsection (f), such regulation shall take effect not later than fifteen days after its promulgation. Except as provided in subsection (e) such regulation shall apply to all crude oil, residual fuel oil, and refined petroleum products produced in or imported into the United States."

[2] Section 4(e)(2)(A) provides:

"The regulation promulgated under subsection (a) of this section shall not apply to the first sale of crude oil produced in the United States from any lease whose average daily production of crude oil for the preceding calendar year does not exceed ten barrels per well."

[3] Section 4(b)(1) provides:

"The regulation under subsection (a), to the maximum extent practicable, shall provide for—

(A) protection of public health, safety, and welfare (including maintenance of residential heating, such as individual homes, apartments, and simular occupied dwelling units), and the national defense;

(B) maintenance of all public services (including facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority, and including transportation facilities and services which serve the public at large);

(C) maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

(D) preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and

To exempt any category of crude oil from the allocation and pricing system, the President must make specific factual findings which, together with the proposed exemption, shall then be submitted to Congress. The exemption takes effect within a specified period thereafter, provided that neither House meanwhile takes any action expressing its disapproval. Any exemption thereby created may remain valid for a period not in excess of 90 days. § 4(g)(2).[4]

The regulations in question establish a "two-tier pricing system," which impose ceilings on certain categories of crude oil while other categories may sell at the market price. Specifically, "old" oil, i.e. oil from properties producing at, or less than, their 1972 levels, cannot be sold at a figure which exceeds the highest posted price for the same grade of crude oil in that particular field on May 15, 1973, plus $1.35. The national average ceiling price for all old crude, which constitutes 60% of domestic production, is approximately $5.35 per barrel.

"New" crude oil, which is the amount of domestic crude oil produced and sold from a property above the amount produced and sold from that property during an equivalent period in 1972, "the base year," may be sold, under the regulations, without regard to the ceiling price, i.e. at the market price, 10 C.F.R. § 212.74(a). If a particular property did not produce at all during the base year, then all of its current yield is new oil and, accordingly, may be sold at the market price. The prevailing national average price for new oil is approximately $10 per barrel.

"Released" oil constitutes that portion of the output of a particular property producing in excess of its 1972 level which is not "new" oil; that is to say, if the 1972 production level for a particular property is presently exceeded for an equivalent period, the current yield up to the base period production level is labeled "released crude" oil and the balance or excess over that level is "new crude" oil. The maximum allowable price for released oil is the lesser of the current market price or the price derived from a formula made up of the base period produc-

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to preserve the competitive viability of independent refiners, small refiners, nonbrand independent marketers, and branded independent marketers;

(E) the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity;

(F) equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent marketers, branded independent marketers, and among all users:

(G) allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of exploration for, and production or extraction of, fuels, and for required transportation related thereto;

(H) economic efficiency; and

(I) minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms."

[4] Section 4(g)(2) provides:

"If at any time after the date of enactment of this Act the President finds that application of the regulation under subsection (a) to crude oil, residual fuel oil, or a refined petroleum product is not necessary to carry out this Act, that there is no shortage of such oil or product, and that exempting such oil or product from such regulation will not have an adverse impact on the supply of any other oil or refined petroleum products subject to this Act, he may prescribe an amendment to the regulation under subsection (a) exempting such oil or product from such regulation for a period of not more than ninety days. The President shall submit any such amendment and any such findings to the Congress. An amendment under this paragraph may not exempt more than one oil or one product: Such an amendment shall take effect on a date specified in the amendment, but in no case sooner than the close of the earliest period which begins after the submission of such amendment to the Congress and which includes at least five days during which the House was in session and at least five days during which the Senate was in session; except that such amendment shall not take effect if before the expiration of such period either House of Congress approves a resolution of that House stating in substance that such House disapproves such amendment."

tion level, the May 15, 1973 posted price, the current market price, and the amount by which present production exceeds base period yield, as delineated in the regulation. 10 C.F.R. § 212.74(b).[5]

As above stated, the parties differ only in their views of the extent and type of governmental activity which will satisfy the prescription for regulating the prices for all crude oil. The questions presented on appeal for resolution are: (1) does retention of the authority to regulate prices in the future fulfill the statutory mandate or does it create an exemption, which is invalid to the extent that the detailed procedure set out in § 4(g) (2) of the Act has not been followed; (2) if the Act requires more than the mere retention of the authority to regulate prices, does the "regulation," provided for new and released crude oil, satisfy such additional requirement; and (3) assuming that 10 C.F.R. §§ 212.74 (a) and (b) provide a valid form of regulation, does reliance upon the market for the establishment of the price of new and released crude oil satisfy the equitable price standard contained in the Act.

The Government argues, and the district court so held, that new and released crude oil have not been exempted from price controls. This court, it is implied, therefore need not decide whether the policy, permitting prices to float to the market level, provides sufficient control to constitute the "regulation" of prices, because FEA has retained the authority to impose more direct controls in the future.

This argument would be valid if the Act merely authorized the regulation of prices when or if the FEA, in its discretion, saw fit to do to, because in such a case, the failure presently to exercise that authority would not preclude the future imposition of controls. If, however, the Act requires that prices be regulated, any failure so to act, no matter how temporary, exempts present prices from the controls to which they should otherwise be subject.

The Act, by the use of such terms as "shall" and "direct," imposes a mandatory, non-discretionary duty to specify, or prescribe a method for fixing prices. *See, e.g. Escoe*, v. *Zerbst*, 295 U.S. 490, 493 (1935); *Richbourg Motor Co.* v. *United States*, 281 U.S. 528, 534 (1930); *National Treasury Employees Union* v. *Nixon*, 492 F. 2d 587, 601 (D.C. Cir. 1974). Section 2(b), for example, provides that "[t]he purpose of [the] Act is to grant to the President * * * and *direct him to exercise*

[5] The formula set out in 10 C.F.R. § 212.74(b) is as follows:

$$“P_{max} = P_c + \frac{C_{pr}}{C_{bpcl}} - 1\ [P_m - P_c]$$

Where:

P_{max} = Maximum price that may be charged for the crude petroleum (other than new crude) purchased from the property (dollars per barrel);

P_c = Ceiling price of the crude petroleum (dollars per barrel);

C_{bpcl} = Base production control level for property (barrels);

C_{pr} = Total amount of crude petroleum produced from the property during the month (barrels), less the number of barrels of new crude petroleum required to be sold during the month at or below the ceiling price pursuant to the second sentence of paragraph (a) of this section; and

P_m = Current free market price of the particular quality and grade of crude petroleum (dollars per barrel).

Application of this formula may be illustrated by the following example:

Example. During September 1973, Firm X produces 8,170 barrels of a single grade of crude petroleum from a particular property. During September 1972, 6,420 barrels of crude petroleum were produced from the same property. The ceiling price for the September 1973 crude petroleum is \$4.10 per barrel and its free market price (i.e., the price X can get on the market for the 1,750 barrels of new crude) is \$4.95 per barrel. The maximum price that X may charge for the 6.420 barrels of other than new crude petroleum (i.e., old plus released crude) produced in September 1973 is:

P_{max} = \$4.10 + (8.170/6.420 − 1) (\$4.95 − \$4.10)
P_{max} = \$4.10 + (.27) (\$0.85)
P_{max} = \$4.10 + \$0.23
P_{max} = \$4.33/barrel."

specific temporary authority to deal with shortages of crude oil * * * [This] authority * * * *shall be exercised* for the purpose of minimizing the adverse impacst of [such] shortages." (Emphasis added.) Section 4(a), moreover, specifies that "the President *shall* promulgate a regulation providing for the mandatory allocation of crude oil * * * at prices specified in (or determined in a manner prescribed by) such regulation * * *" And, § 4(a) further provides that "* * * such regulation *shall* apply to all crude oil * * *" [Emphasis added.]

Congress, moreover, by including the specific and comprehensive requirements of § 4(g) (2) has exhibited a clear policy of restricting and closely controlling the grant of exemptions.

This court, in the face of such legislative intent and the clear and unambiguous meaning of the Act, must reject any interpretations of the Act, such as that proferred by appellee, which would permit the Executive, acting through the FEA, to evade a non-discretionary duty and to enlarge the authority to create exemptions simply by describing as "subject to controls" that which may simply be determined by the forces of an uncontrolled market.

FEA stresses the fact that the regulations at issue do not in precise terms "exempt" the new and released oil from price controls. This literal approach, adopted by the district court, was rejected by the Supreme Court in *Federal Power Commission* v. *Texaco, Inc.*, No. 72–1490 (June 10, 1974). The question is not whether all oil remains "subject to" price controls, but whether the controls mandated by the Act have in fact been imposed. Insofar as FEA has not regulated prices in compliance with the Act, it has created a *de facto* exemption which is invalid to the extent that the detailed procedures set out in § 4(g) (2) have not been followed.[6]

While the Act directs that the prices for all categories of crude oil be regulated, it does not specify a particular method for doing so. Consequently FEA has discretion in devising a regulatory scheme, but it cannot adopt measures which contravene a statutory mandate. *See, e.g. Permian Basin Rate Cases*, 390 U.S. 747, 776–777 (1968); *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294, 309 (1963); *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575 (1942).

We hold that the FEA did not abuse its discretion by promulating 10 C.F.R. § 212.74(d). Nothing in the language of § 4(a) suggests that prices cannot be prescribed or determined in part with reference to or in relation to market prices. The Act only requires that prices be specified in, or determined in a manner ordained by, the implementing regulation. This requirement is satisfied by a plan calling for a ceiling on prices. *See e.g. Permian Basin Rate Cases, supra*, 390 U.S. at 768–790.

The regulation concerning new oil, 10 C.F.R. § 212.74(a) is another matter. The district court held that FEA by permitting the price to be set exclusively by the operation of the free market has complied

[6] Although the court below did not address the issue of compliance with § 4(g) (2), we do not remand because the record unequivocally shows that an exemption, to the extent that one has been granted, is no longer valid. Appellee Sawhill promulgated the regulations at issue on January 15, 1974. Section 4(g) (2) provides that an exemption, even if validly granted, may remain in force for no more than 90 days, a period which has long since expired. To the extent that we hold that 10 C.F.R. § 212.74(a) fails to specify, or prescribe a manner for the determination of price, and that FEA has created a *de facto* exemption, this exemption, even if it is assumed that the other requirements of § 4(g) (2) had been satisfied, is no longer valid.

with the Act. New crude oil however would sell at the market price even in the absence of such administrative regulation. FEA therefore has "permitted" new crude to sell at the market level only in the sense that it has taken no action to compel a different result. If Congress intended that the market could be used as the exclusive regulator of prices, then it could have authorized the President to impose a simple pricing mechanism. Congress, however, has required the promulgation of regulation for all crude oil. And, because Congress will not be presumed to have done a useless, ineffective, or absurd thing, *see, e.g. Pennsylvania* v. *Nelson*, 350 U.S 497, 509-510 (1956), the presumption arises that § 4(a) cannot be satisfied by an administrative scheme which necessarily results in the same price which would prevail in its absence.

The district court concluded that the Act conferred a great deal of discretion upon the President to formulate a pricing mechanism. This derives in part from § 4(b) which requires that the President maximize "to the * * * extent practicable" the various goals set out in that section, many of which conflict with one another. One such goal is the "minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms." § 4(b) (1) (I). The trial court relied upon this statement of objectives to support its holding.

Although the President is afforded wide discretion and must attempt to minimize market interference, it was an error to conclude that the congressional intent and requirement for affirmative and express regulation of all crude oil could be neutralized in whole or in part and that 10 C.F.R. § 212.74(a) could, therefore, be regarded as a valid implementing regulation. This construction would render superfluous various other mandatory provisions of the Act.[7]

The Government, on this appeal, does not stand on the theory adopted by the district court. It concedes that the Act requires some form of active interference with the operation of the free market, but it takes the position that the Act has been satisfied because governmental action causes the *average* price level for all crude oil to vary from that which would prevail under free market conditions. New crude oil, according to the Government, normally constitutes only a portion of the total output of each oil-producing property so that the average of the prices charged by each producer for *all* his oil is lower that it would be in the absence of the regulations at issue and that therefore FEA has in effect regulated the price for all crude oil.

If this theory were to be adopted, then a simple regulation governing the total amount any one producer could receive for his oil, be

[7] For example, as a prerequisite to the grant of an exemption under § 4(g) (2), the President must explicitly find that "* * * application of the [implementing regulation] is not necessary to carry out [the purposes of the Act]." An exemption from 10 C.F.R. § 212.74(a) could only be granted, therefore, if the free operation of the market is no longer necessary to "minimize * * * interference with market mechanisms," one of the purposes of the statute. As an alternative the district court would be forced to conclude that an exemption to 10 C.F.R. § 212.74(a) could never be granted. Similarly, to exempt any crude oil, presently covered by the regulation, from the operation of 10 C.F.R. § 212.74(a) it would be necessary to set prices for such excluded category by some mechanism other than the exclusive operation of the free market. The President's authority, however, to interfere in the free market derives from the Act itself. The theory underlying the decision of the trial court would lead to the conclusion that an exemption could never be granted, because, if the regulation is not necessary to carry out the purposes of the Act, then the Act cannot be cited in support of the price tampering which an exemption would necessitate. Such a result, however, would render superfluous the detailed and comprehensive section of the Act provides an explicit procedure for the grant of exemptions. It would also prevent the President from granting exemptions in an attempt to secure "to the maximum extent practicable" the achievement of the statutory goals in meeting changing developments in the petroleum field.

it "old," "new," "released" or otherwise, would be adequate. But to be permissible, a scheme of indirect regulation must still meet the requirement that the Government affect the price for each category of crude oil and not just that of crude oil taken as a whole. While the provision that FEA specify or prescribe a method for the determination of price does not call for the imposition of price ceilings and can be satisfied by a scheme which affects prices indirectly, * * * we are of the opinion that the ceilings imposed on old and released crude in the present case do not result in governmental regulation of the price of new oil. A requirement to regulate the price of all crude oil, directly or indirectly, is not satisfied by an administrative scheme which affects only the average price of crude oil and not the price of each component category.

Although the Supreme Court upheld a regulation of the Federal Power Commission which indirectly controlled rates charged by natural gas producers, *Federal Power Commission* v. *Texaco, Inc., supra*, that case differed critically from the present case. It came about in this way. The Natural Gas Act, 15 U.S.C. § 717, required that the Government regulate the rates charged by all producers. The administrative regulation, however, failed directly to regulate small producers of natural gas, even though they came within the scope of the Act. The Supreme Court upheld the validity of the regulation because the entire output of these small, non-regulated producers was purchased only by the pipelines and large natural gas companies which would exert pressure to keep the freely floating rates in line with the "just and reasonable" rates to which the regulations compelled the larger producers to adhere. On the other hand, in the present case, the "average weighted price per barrel," is merely a mathematical construct with no mederating effect on the price of new crude oil, which is presently set exclusively by the operation of the "law" of supply and demand. We, therefore, hold that FEA has not specified or prescribed a manner for determining the price of new crude oil and that 10 C.F.R. § 212.74(a) operates to create an invalid exemption.

We also hold that 10 C.F.R. § 212.74(a) is invalid on the separate ground that the use of the market as the sole factor in determining price fails to satisfy the statutory precept that the price of all crude be set at an equitable level.

The Emergency Petroleum Allocation Act was enacted in part in an effort to "* * * *restore* and foster competition in the producing [sector] . . . of the petroleum industry," § 4(b) (1) (D). (Emphasis added.) Congress has also directed that the President—

"* * * in exercising [his] authority, strike an equitable balance between the sometimes conflicting needs of providing adequate inducement for the production of an adequate supply of product and of holding down spiraling consumer costs." Conference Report, 93-628, 93d Cong., 1st Sess. 26 (1973).

In subjecting producers to regulation because of anticompetitive conditions in the industry and because of spiraling consumer prices, it is highly unlikely that Congress assumed that "equitable" prices could be conclusively determined by reference to market price. See, *Federal Power Commission* v. *Texaco, Inc., supra*, at 17.

The Government seeks to rebut this conclusion by arguing that the prices established under the regulation at issue are "equitable" in light of the conflicting concerns of the Act with the moderation of consumer prices and the promotion of the development of new sources of supply. The Natural Gas Act's mandate of "just and reasonable" rates requires, however, as the Supreme Court's opinion in *Texaco* illustrates, precisely the same balancing of the same competing objectives. And the Court there held that a two-tier pricing system under which one tier was determined by the market price exclusively was unlawful because, while the statute may have conflicting goals, Congress did not authorize any exceptions to the requirement that all rates be "fair and reasonable." *Id.* at 17.

It is not the function of this court to determine what the equitable price is, or should be. We merely hold that the President, through the FEA, by permitting the price of new crude oil to float at free market levels has not struck any balance and, as a result, has failed to satisfy the requirement that prices be set at an equitable level.

The judgment of the district court is reversed.

H.R. 4035—Emergency Petroleum Allocation Act Amendments

MINORITY VIEWS OF MR. DEVINE AND MR. COLLINS

The proopsed bill makes the same mistake which has been made over and over again of considering only possible short-term ceilings of price controls and ignoring longer-term costs and benefits. We have a situation today where the landed cost of foreign oil is around $12.50 a barrel but domestic producers of "old" crude receive $5.25 a barrel for their oil. We seem to have no hesitation about paying foreign government more than twice as much for oil as we pay our own domestic producers.

The problem the U.S. is faced with today is that we have become increasingly dependent upon foreign nations for oil. It is evident to all of us that what we need to do is move vigorously to restore energy self-sufficiency so that we will have the energy we need to keep our economy healthy, run our factories, heat our homes and keep our transportation system operating. We need to be in a position to pursue an independent foreign policy and never again be put in a position to be run over by foreign nations who do not agree with our policies and objectives.

Will this bill help to restore energy self-sufficiency? It will not. To the contrary, it will operate in the opposite direction. At a time when we need to decontrol oil and permit domestic prices to reach equilibrium with world prices, this bill will make this more difficult.

Let's look at history to see the results of oil price control. In 1956 the U.S. drilled 58,000 wells whereas in 1972 the U.S. drilled only 28,000 wells. The reason was the price per barrel of crude oil in terms of 1972 dollars had gone down from $4.50 in 1956 to $3.40 in 1972. Producers got a third more and drilled twice as many wells in 1956.

Let's review the profit picture of oil companies. Take the ten years from 1964 to 1973 and compare the profits as a percent of net worth on all manufacturing companies to petroleum companies. All manufacturing received 12.7% to oil companies return of 12.2% which was below average. And these profits were reinvested in drilling. During this period, Oil Companies earned $60.6 billion but went beyond this to invest $86.6 billion in drilling and facility expansion.

How can decontrol of oil prices help? Domestic producers would have additional incentive to increase production of oil, and higher production would compete with foreign oil. Decontrol would allow prices of petroleum products to rise, hereby encouraging larger secondary recoveries. This would mean a reduction in the need for imports. This reduction would reduce the revenue of the OPEC cartel and provide an incentive for some OPEC members to act independently to increase their revenues by reducing the price of their oil.

Price decontrol would allow the market to allocate oil, relieving the FEA of the need to perform this function and making the Emergency Petroleum Allocation Act of 1973 unnecessary. We would be rid of these costly programs and the bureaucracy needed to run them. Individuals would be able to bid for and receive available supplies on the basis of their evaluation of the worth of petroleum. Under price controls such criteria as past consumption levels must be used to allocate products, with the result that some people with little current need can get all they want when supplies are limited, but people with increasing needs can get little or none.

It is difficult to understand why, in the case of natural gas, a lesson was not learned. By attempting to keep the price of this fuel at artificially low levels, allegedly to benefit consumers, the search for natural gas was discouraged. Today we have a severe shortage. We still have people who would keep the price low because it would be a hardship for many to pay the higher price if it was decontrolled. But what about the price being paid by those who cannot get natural gas? How much are they paying for electricity or other alternative fuels? What has been the cost in terms of pollution of our atmosphere resulting from the shortage of natural gas which is a clean-burning fuel badly needed in major cities?

In evaluating the benefits of price controls we need to look at more than just the immediate future. There is nobody in the government, or in industry for that matter, who can tell you exactly how much more oil or gas will be found and produced as a result of a 10¢ or 50¢ or $1.00 increase in the price of either fuel. We do know that the longer the price of old oil is left at $5.25 in the face of rising costs of materials and labor, the greater the disincentive to production. Section 1(b) of this bill, in calling for an assessment of production increases over five years, completely ignores the technology of domestic oil exploration and development. The development of a new oil field can take between 4 and 10 years. Even to find out if secondary and tertiary recovery methods will be effective in boosting production in a particular well or field can take this long.

It is evidently assumed that people who produce "old" oil are somehow not the same as the people who produce "new" oil, and they get their money from some other sources. This is not the case. Capital is badly needed, especially by many small independent companies who are responsible for drilling about 80% of the wells in this country. Higher prices will provide more capital and spur the search for oil and gas, encourage the use of secondary and tertiary recovery methods and—by reducing the differential between the prices of existing fuels and the prices at which it would be economically feasible to begin commercial production of new fuels—accelerate research and development and hasten the day when these new energy sources can supplement our conventional fuel supplies.

The time has come to focus our attention on ways to get rid of costly and inefficient allocation and price controls, not to devise new ways to increase the burden of these controls and make them even more unmanageable and difficult. Why should we continue to allocate fuels; why do these emergency powers need to be extended; and how will the economy benefit by maintaining the huge differential between domestic and world oil prices? Let us look at the cost of continuing these programs, as well as at the possible costs of eliminating them.

We are convinced that, if we look at all of the costs—including short- and long-range costs—we are going to be paying a gigantic bill

if we continue controls. We are not sure, of course, how to put a price tag on the value of having an assured supply of energy for our people. We are not sure how to put a price tag on the value of having the U.S. remain a free nation able to pursue an independent foreign policy. We are not sure what the exact value is of restoring freedom of choice in fuels or of the maintenance of our free enterprise system. We know that these benefits are almost immeasurable.

This bill, in our judgment, does not contribute to the solution of our energy problems—instead it would add to them. For this reason we cannot support it and urge that it be rejected by the House.

Samuel J. Devine,
James M. Collins.

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FOR IMMEDIATE RELEASE July 21, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my approval H.R. 4035, the Petroleum Price Review Act, because it would increase petroleum consumption, cut domestic production, increase reliance on insecure petroleum imports and avoid the issue of phasing out unwieldy price controls.

H.R. 4035 would go counter to the Nation's need to conserve energy and reduce dependence on imported oil. It would increase petroleum imports by about 350,000 barrels per day in 1977, compared to import levels under my phased decontrol plan. It would even increase imports by about 70,000 barrels per day over continuation of the current system of mandatory controls through 1977.

The provisions in this bill to roll back the price of domestic oil not now controlled, to repeal the "stripper well" exemption from price controls and to establish a three-tier price system which would require even more complex regulations would be counterproductive to the achievement of energy independence.

The bill does contain an Administration requested provision which would continue the coal conversion program through December 31st. Since coal conversion authorities authorized last year in the Energy Supply and Environmental Coordination Act expired June 30th, I urge rapid enactment of a simple one year extension of these authorities.

Last Wednesday, July 16, I submitted to Congress a compromise plan to phase out price controls on crude oil over a thirty-month period. Coupled with administratively imposed import fees, this plan will reduce the Nation's imports by 900,000 barrels per day by 1977. It will reduce our vulnerability to another embargo by adding slightly over one cent per gallon to the price of all petroleum products by the end of 1975 and seven cents by 1978.

If Congress acts on this compromise and on other Administration proposed energy taxes, including the "windfall profits" tax and energy tax rebates to consumers, the burden of decontrol will be shared fairly, and our economic recovery will continue.

I veto H.R. 4035, because it increases our vulnerability to unreliable sources of crude oil and does not deal with the need to phase-out rigid price and allocation controls enacted during the embargo. I urge Congress not to disapprove my administrative plan of gradual decontrol. If it is accepted, I will accept a simple extension of price and allocation authorities. If decontrol is not accepted, I will have no choice but to veto the simple six-month extension of these authorities now being considered by Congress.

For too long, the Nation has been without an energy policy, and I cannot approve a drift into greater energy dependence.

GERALD R. FORD

THE WHITE HOUSE,

July 21, 1975.

# # # # #

July 18, 1975

Dear Mr. Director:

The following bills were received at the White House on July 18th:

S. J. Res. 102
H. R. 4035
H. R. 5901

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.