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

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HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

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

MAY 24, 1977

Serial No. 95–64

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

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

TUESDAY, MAY 24, 1977

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

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

Mr. DINGELL. The subcommittee will come to order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE

WASHINGTON

May 24, 1977

Dear Mr. Chairman:

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

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

Sincerely,

James R. Schlesinger
Assistant to the President

Enclosure

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

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

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

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

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

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

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

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

Senate bill:

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

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

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

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

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

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

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

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

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

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

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

95TH CONGRESS
1ST SESSION

H. R. 6831

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1977

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

A BILL

To establish a comprehensive national energy policy.

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

That this Act may be cited as the "National Energy Act".

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FINDINGS

SEC. 2. The Congress finds that—

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

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

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

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

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

NATIONAL ENERGY GOALS

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

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

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

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

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

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

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

REFERENCES TO FEDERAL POWER COMMISSION AND FEDERAL ENERGY ADMINISTRATION

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

TITLE I—PRICING, REGULATORY AND OTHER NONTAX PROVISIONS

PART A—ENERGY CONSERVATION PROGRAMS FOR EXISTING RESIDENTIAL BUILDINGS

Subpart 1—Utility Program

DEFINITIONS

SEC. 101. As used in this subpart:

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) furnace efficiency modifications limited to—

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

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

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

(C) clock thermostats;

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

(E) hot water heater insulation; and

(F) storm windows.

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

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

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

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

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

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

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

(C) a regulated or nonregulated utility pursuant to

an order of the Administrator issued pursuant to section 105.

RESIDENTIAL ENERGY CONSERVATION PLANS

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

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

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

(2) may include—

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

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

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

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

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

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

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

(2) contains an adequate program for preventing

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

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

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

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

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

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

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

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

UTILITY PROGRAMS

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

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

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

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

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

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

(A) inspect the residential building to deter-

mine and apprise the residential customer of the estimated cost of purchasing and installing each suggested measure;

(B) offer to have the suggested measures installed;

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

(i) the public utility, or

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

(iii) one or more contractors,

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

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

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

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

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

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

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

ALTERNATIVE PROGRAMS

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

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

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

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

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

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

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

(3) such other requirements as the Administrator determines.

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

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

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

FEDERAL STANDBY AUTHORITY

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

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

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

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

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

RELATIONSHIP TO OTHER LAWS

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

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

CONTRACT PROVISIONS

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

RULES

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

AUTHORIZATION OF APPROPRIATIONS

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

Subpart 2—Financing Program

AMENDMENTS TO NATIONAL HOUSING ACT

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

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

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

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

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

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

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

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

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

AMENDMENT TO FEDERAL NATIONAL MORTGAGE ASSOCIATION CHARTER ACT

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

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

AMENDMENT TO ENERGY CONSERVATION AND PRODUCTION ACT

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

"AUTHORIZATION OF APPROPRIATIONS

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

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

Subpart 3—New Building Performance Standards Grants

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

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

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

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

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

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

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

PART B—ENERGY EFFICIENCY STANDARDS FOR CONSUMER PRODUCTS

Subpart 1—Consumer Products Other Than Automobiles

AMENDMENT TO ENERGY POLICY AND CONSERVATION ACT

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

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

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

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

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

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

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

"(3) The Administrator shall not prescribe an energy

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

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

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

"(A) the economic impact of the standard,

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

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

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

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

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

"(G) any other factors he considers relevant.

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

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

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

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

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

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

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

(2) Section 325(d) is deleted.

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

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

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

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

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

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

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

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

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

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

DISCLOSURE IN LABELING

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

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

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

DISCLOSURE IN ADVERTISING

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

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

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

PART C—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

AMENDMENT TO ENERGY POLICY AND CONSERVATION ACT

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

"PART F—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS

"DEFINITIONS

"SEC. 391. For purposes of this part:

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

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

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

"(B) double glazing energy control systems;

"(C) automatic energy control systems;

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

"(E) solar water heating systems;

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

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

"(H) reflective glass coatings;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"GRANT AUTHORIZATION

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

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

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

"STATE PLANS

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

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

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

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

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

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

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

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

"FINANCIAL ASSISTANCE

"SEC. 305. (a) The Administrator shall provide financial assistance from sums appropriated for any fiscal year under this part only upon annual application. The Admin-

istrator shall allocate the sums appropriated for that fiscal year among the several States in the following manner:

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

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

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

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

"APPLICATIONS

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

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

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

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

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

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

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

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

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

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

"ADMINISTRATION

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

"AUTHORIZATION OF APPROPRIATIONS

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

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

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

"NONDISCRIMINATION

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

PART D—NATURAL GAS

FINDINGS AND PURPOSES

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

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

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

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

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

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

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

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

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

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

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

(b) The purposes of this part are—

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

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

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

DEFINITIONS

SEC. 402. (a) As used in this part—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) The term "old natural gas" means natural gas other than new natural gas.

(15) The term "new contract" means a contract entered into after April 20, 1977, or a renewal after April 20, 1977, of a contract entered into on or before April 20, 1977, if such renewal occurs by agreement of both parties to the contract on or after the expiration of a fixed term specified by the contract.

(16) The term "existing contract" means any contract other than a new contract.

(17) The term "current Btu related price" means the most recently published Btu related price.

(18) The term "Btu related price" means the average per barrel crude oil acquisition cost (excluding any amounts attributable to the tax imposed by section 4996 of the Internal Revenue Code of 1954) for re-

fineries in the United States (with respect to all crude oil produced within the United States) for the most recent calendar quarter for which data are available to the President, divided by a factor of 5.8.

(19) The term "United States" includes the Outer Continental Shelf.

(20) The term "inflation adjustment" means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product. Such adjustment shall be computed and published for each calendar quarter by the Department of Commerce.

(b) The President shall have the authority to define, by rule, the terms used in this part in a manner consistent with the purposes of this part.

CALCULATION OF THE CURRENT BTU RELATED PRICE

SEC. 403. As soon as practicable after the date of enactment of this Act, and on a timely basis thereafter as new data become available, the President shall calculate and publish in the Federal Register the current Btu related price.

SALES OF NEW NATURAL GAS

SEC. 404. The President shall, by rule, establish a maximum lawful price applicable to any first sale by a producer of new natural gas delivered in any calendar quarter which

begins on or after the date upon which such rule is promulgated and made effective. Such maximum lawful price shall be a price equal to the current Btu related price (determined as of the date of such delivery).

SALES OF OLD NATURAL GAS UNDER EXISTING CONTRACTS

SEC. 405. The President shall, by rule, establish a maximum lawful price applicable to any first sale by a producer of old natural gas under an existing contract. Such maximum lawful price shall be a price equal to the lesser of—

(1) the contract price; or

(2) the price for sales under such contract which was determined to be just and reasonable by the Commission and was in effect on April 20, 1977 (without regard to any appeal of such determination pending on April 20, 1977), plus the inflation adjustment as defined in section 408(c).

SALES OF OLD NATURAL GAS UNDER NEW CONTRACTS

SEC. 406. (a) The President shall, by rule, establish the maximum lawful price applicable to any first sale by a producer of old natural gas under a new contract.

(b) In the case of old natural gas referred to in subsection (a)(1) which is committed or dedicated to interstate commerce on April 20, 1977 (other than by reason of a limited term certificate of five years or less or a

temporary emergency contract under section 7(c) of the Natural Gas Act), or (2) which is produced from a new well or a new lease, the maximum lawful price under this section shall not exceed $1.45 per Mcf; plus the inflation adjustment as defined in section 402(a)(20). In establishing any maximum lawful price under this subsection, the President shall take into consideration the maximum lawful price of such gas under the prior contract and the price necessary to maintain production of such gas.

(c) In the case of old natural gas referred to in subsection (a) which is not described in subsection (b), the maximum lawful price under this section shall be equal to the current Btu equivalent price (determined as of the date of delivery of such gas).

EFFECTIVE DATES OF RULES WITH RESPECT TO MAXIMUM LAWFUL PRICES

SEC. 407. The President shall promulgate and make effective rules under sections 404 through 406 within thirty days after the date of enactment of this Act. Such rules shall apply to deliveries which take place after the date of enactment of this Act.

SPECIAL PRICING PROVISIONS

SEC. 408. (a) Notwithstanding any maximum lawful price under sections 404 through 406, the President may, by rule, specify a special price under this section in excess

of any such maximum lawful price, which shall be applied for purposes of such sections if the President determines that such special price is necessary to provide incentives for the production of natural gas or the manufacture of synthetic gas in categories which involve high costs, such as production—

(1) in depths of more than 500 feet of water,

(2) more than 15,000 feet below the surface of the Earth, or

(3) from geopressurized brine.

The President may specify such special prices for categories of production or on a national, geographic area, or case-by-case basis in accordance with section 553 of title 5, United States Code.

(b) In the case of a first sale by a producer of any natural gas with respect to which such producer bears all or part of the cost of transportation or liquefaction of such gas, the President, by rule, may adjust the maximum lawful price determined under sections 404 through 406 or the special price under subsection (a) to reflect such cost.

(c) The Commission may not increase any price for any first sale by a producer of natural gas determined prior to April 20, 1977, by the Commission to be just and reasonable, except that the Commission shall, to the extent permitted by the terms of any contract, cause an inflation adjustment in such prices as defined in section 402 (a) (20).

(d) In addition to his authority respecting first sales by a producer of natural gas, the President may, by rule, establish maximum lawful prices applicable to any sales of natural gas by any other person if he determines that such rules are necessary to prevent circumvention of the pricing policies specified in sections 404 through 408. This subsection shall not apply to sales for resale by such other persons if such sales are subject to the Natural Gas Act.

RELATIONSHIP TO THE NATURAL GAS ACT

SEC. 409. (a) For purposes of sections 4 and 5 of the Natural Gas Act, any price for any natural gas which is not in excess of the maximum lawful price (or special price specified under section 408) applicable to such natural gas under the provisions of this part shall be deemed just and reasonable and the Commission may not disallow any rate which is not in excess of such maximum lawful price.

(b) The Commission may not deny a certificate of public convenience and necessity under section 7 of the Natural Gas Act solely on the basis of the price for the first sale of natural gas sought to be transported pursuant to such certificate, if such price is not in excess of the maximum lawful price (or special price) applicable to such natural gas pursuant to this part.

ENFORCEMENT AND DELEGATION

SEC. 410. (a) Any rule promulgated by the President under this part shall be enforceable to the same extent and

in the same manner as a regulation, or rule, promulgated under the Emergency Petroleum Allocation Act of 1973.

(b) The President may delegate all or any part of the authority granted to him under this part to such officers, departments, or agencies of the United States (including the Commission or any member thereof) as he determines appropriate.

(c) In order to obtain information to carry out his authority under this part, the President may—

(1) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(2) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

(3) secure, upon request, any information from any Federal department or executive agency.

(d) The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpoena, or order of the President issued under subsection (c) issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(e) The President may not exercise authority under subsection (c) (3) with respect to information in possession of a Federal agency the disclosure of which to another Federal agency is expressly prohibited by law.

EMERGENCY SALES

SEC. 411. Nothing in this part shall apply to any price for the sale of natural gas which is allowed under section 4 of the Emergency Natural Gas Act of 1977.

SPECIAL RULES

SEC. 412. (a) The Commission may grant abandonment under section 7 (b) of the Natural Gas Act at any time prior to the committing or dedication of natural gas for interstate commerce.

(b) Any contractual provision—

(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or

(2) terminating, or granting any party the option to terminate, any obligation under any such contract as a result of such sale or commingling,

is hereby declared against public policy and unenforceable with respect to the sale of any natural gas.

(c) The price of any natural gas determined under this part shall not be taken into account for purposes of any contractual provision which determines the price of any

natural gas (or terminates, or permits renegotiation of, a contract) on the basis of sales of other natural gas.

COVERAGE

SEC. 413. Sections 402 through 412 shall apply only to the sale of any natural gas produced within the United States.

INCREMENTAL PRICING OF NATURAL GAS

SEC. 414. (a) Not later than ninety days after the date of enactment of this Act, the President shall, by rule, provide that, to the maximum extent practicable, any portion of the average cost of natural gas delivered after the date of enactment of this Act to any pipeline company which exceeds the average cost of natural gas to such company during the most recent twelve-calendar-month period ending before the date of enactment of this Act (plus an inflation adjustment as defined in section 402(a)(20)), shall be fully allocated in the rates and charges of such company to low priority uses; except that such rules may not require that such portion be fully allocated for such uses if such allocation would result in rates or charges for such uses equal to an amount no greater than the reasonable price (as determined by the President) of substitute fuels.

(b) For purposes of this section:

(1) The term "low priority use" means a use other than a high priority use.

(2) The term "high priority use" means:

(A) use of natural gas in a residence; or

(B) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day.

(3) The term "pipeline company" means any person (including a governmental agency) who is engaged in the business of transporting natural gas by pipeline and who sells natural gas for ultimate consumption.

(c) If any pipeline company sells natural gas in violation of rules promulgated by the President under subsection (a), such pipepline company shall be fined not more than $10,000 for each sale made in violation of such rules.

SYNTHETIC GAS

SEC. 415. The Natural Gas Act is amended by redesignating section 24 as section 25, and by inserting after section 23 the following new section:

"COMMISSION JURISDICTION OVER SYNTHETIC

"SEC. 24. (a) (1) Subject to the provisions of paragraph (2), the provisions of this Act shall apply to—

"(A) any facility constructed or operated by a natural-gas company or an affiliate thereof for the manufacture of pipeline-quality gas for the purposes of transportation in interstate commerce or sale in interstate commerce for resale for ultimate public consumption,

"(B) to such transportation or sale by a natural-gas company or affiliate thereof, and

"(C) to natural-gas companies or their affiliates engaged in such manufacture, transportation, or sale.

"(2) The provisions of this Act shall not apply to the mining, production, transportation, sale, delivery, or any other activity related to the furnishing of hydrocarbon-containing material (other than natural gas) to a natural-gas company or its affiliate for the production of such pipeline-quality gas.

"(b) If, prior to the date of enactment of this section, any natural-gas company was engaged in the manufacture of pipeline-quality gas from hydrocarbon-containing material or transportation or sale for resale of such pipeline-quality gas, subject to the jurisdiction of the Commission, or if a certificate of public convenience and necessity has been issued by the Commission authorizing the transportation or sale for resale of such pipeline-quality gas by a natural-gas company, the Commission shall issue a certificate for such manufacture, transportation, or sale for resale of such pipeline-quality gas without requiring further proof that the public convenience and necessity will be served by such operation, and without further proceedings pursuant to the Natural Gas Act or any other provision of law, if application for a certificate is made to the Commission within 90 days after such date of enact-

ment. Pending the determination of any such application, the continuance of such operation shall be lawful.

"(c) For purposes of this section, the term 'pipeline-quality gas' shall mean gas the principal ingredient of which is methane and which is interchangeable and compatible with natural gas as determined by rule by the Commission.".

AMENDMENTS TO THE EMERGENCY NATURAL GAS ACT OF 1977

SEC. 416. The Emergency Natural Gas Act of 1977 is amended—

(1) in section 2, by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) The term 'pipeline' means any person engaged in the transportation of natural gas.";

(2) in section 2, by redesignating paragraphs (5), (6), and (7) as (3), (4), and (5), respectively;

(3) in section 4(a)(1), by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) any pipeline to make emergency deliveries of, or to transport, natural gas to any other pipeline or to any local distribution com-

pany for purposes of meeting such requirements; or";

(4) in section 4(a)(1), by redesignating subparagraph (C) thereof as subparagraph (B);

(5) in section 4(a)(1), by striking out "April 30, 1977" and inserting in lieu thereof "April 30, 1979";

(6) in section 4(a)(2), strike out "interstate" wherever it appears;

(7) in section 4(d), strike out "interstate pipeline, intrastate";

(8) in section 4(f)(2)(A), strike out "by August 1, 1977, to the maximum extent practicable" and insert in lieu thereof "as expeditiously as practicable,";

(9) in section 7, strike out "interstate" wherever it appears; and

(10) in section 2(b), after "October 1, 1977,", insert "October 1, 1978, and June 1, 1979,".

PART E—PUBLIC UTILITY REGULATORY POLICIES

Subpart 1—General Provisions

FINDING AND PURPOSES

SEC. 501. (a) The Congress hereby finds that the generation, transmission, and sale of electric energy and the transportation and sale of natural gas affect interstate commerce, and that adequate and reliable supplies of electric

energy and natural gas are necessary for the general welfare and national security.

(b) The purposes of this part are—

(1) to establish national policies with respect to electric utility ratemaking which—

(A) encourage economic efficiency,

(B) insure that electric utility rates are designed to minimize consumption of oil, gas, and other energy resources and to reduce the need for new generating capacity,

(C) provide for fair and reasonable rates to electric consumers, and

(D) assure that States which implement rate reforms are not placed at a relative economic disadvantage in attracting and retaining industry by reason of the failure of other States to implement such reforms;

(2) to provide a mechanism to establish similar policies for gas utilities; and

(3) to increase the efficiency of energy resource use in the generation and transmission of electric power, and the reliability of electric service, through greater use of interconnection, wheeling, economic dispatch, and cogeneration.

DEFINITIONS

SEC. 502. (a) As used in this part:

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

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

(3) The term "electric consumer" means any person, State agency, or Federal agency, to which electric energy is sold other than for purposes of resale.

(4) The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

(5) (A) The term "State regulated electric utility" means any electric utility other than a nonregulated utility.

(B) The term "nonregulated utility" means—

(i) an electric utility which is a State agency or Federal agency unless a State regulatory authority has the same ratemaking authority respecting the rates of such utility as such authority has with respect to other electric utilities subject to its jurisdiction, or

(ii) a private cooperatively organized electric utility unless a State regulatory authority has the same ratemaking authority respecting the rates of such utility as such authority has with respect to other electric utilities subject to its jurisdiction.

Such term does not include an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority.

(6) The term "Federal agency" means an executive agency (as defined in section 105 of title 5, United States Code).

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

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

(9) The term "rate schedule" means a schedule of rates which an electric utility charges electric consumers.

(10) The term "sale" includes an exchange of, or a charge for transmission of, electric energy.

(11) The term "State" means a State, the District of Columbia, or Puerto Rico.

(12) The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(13) The term "State regulatory authority" means any State agency which has ratemaking authority with respect

to the sale of electric energy by any electric utility (other than by such State agency); except that with respect to an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

(14) The term "evidentiary hearing" means (A) in the case of a State agency, a proceeding (i) which includes notice to, and an opportunity for, participants to present direct and rebuttal evidence and to cross-examine witnesses and which results in a written decision based upon evidence appearing in a written record of the proceeding, and (ii) which is subject to judicial review; and (B) in the case of a Federal agency, a proceeding conducted in accordance with section 556 of title 5 of the United States Code.

(b) Section 3 of the Federal Power Act is amended by inserting "(a)" after "SEC. 3" and by adding the following at the end thereof:

"(b) For purposes of this Act, the terms 'electric utility', 'evidentiary hearing', and 'Federal agency' have the same meaning as when used in part E of title I of the National Energy Act".

ANTITRUST LAWS

SEC. 503. Nothing in this part shall affect the applicability of the antitrust laws (as defined in section 3(9) of the

Energy Policy and Conservation Act) to electric utilities or gas utilities.

Subpart 2—National Electric Rate Design Policies

COVERAGE

SEC. 511. The requirements of this subpart (other than section 516(d)) apply only to sales of electric energy by an electric utility for purposes other than resale, except that such requirements shall not apply to an electric utility in any calendar year unless such sales of electric energy by such utility during the second preceding calendar year (or any prior year after 1975) exceeded seven hundred and fifty million kilowatt-hours.

METHODS FOR DETERMINING COST OF PROVIDING ELECTRIC SERVICE

SEC. 512. (a) Each State regulatory authority shall prescribe one or more methods for determining costs associated with providing electric service to electric consumers (and classes thereof) by each electric utility over which it has ratemaking authority. If such authority fails to prescribe such methods within two years after the date of enactment of this Act, the Administrator shall prescribe such methods for each such utility with respect to which such methods have not been so prescribed, which methods shall remain applicable until such time as the Administrator determines that such authority has prescribed such methods.

(b) Such methods shall, to the maximum extent practicable and consistent with section 513 (c), reflect differences in cost-incurrence, for each electric consumer (or class thereof), attributable to daily and seasonal time of use of service. In prescribing such methods, there shall be taken into account the extent to which total costs to an electric utility are likely to change if such consumer (or class) causes—

(1) additional capacity to be added to meet an electric consumer's kilowatt demand during system peak periods,

(2) additional kilowatt-hours of electric energy to be delivered to electric consumers, and

(3) additional electric consumers to be connected to the electric utility.

NATIONAL ELECTRIC RATE DESIGN AND REGULATORY POLICIES

SEC. 513. (a) Each State regulatory authority which has enforcement responsibility under section 516 (a) (1) shall take such action as may be necessary to assure that each State regulated electric utility will in making sales of electric energy subject to this part, comply with the following national policies:

(1) (A) Except as otherwise provided in subsections (b) and (c), rates for providing electric service

to each electric consumer (or class thereof) shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such consumer (or class).

(B) A rate shall not be considered as meeting the requirements of subparagraph (A) if the rate per kilowatt-hour, for electric energy during any period to any electric consumer (or class thereof) decreases as kilowatt-hour consumption by such consumer increases.

(2) (A) Each electric utility shall offer each electric consumer—

(i) a time-of-day rate which reflects costs of providing service to such consumer, if such consumer is willing to pay the reasonable costs of metering necessary to utilize such rate, or

(ii) opportunity to install a load management system appropriate to such consumer and to receive a rate which reflects any decrease in cost of service which is associated with the use of such system.

For purposes of this subparagraph, the term "load management system" means any system to reduce maximum kilowatt demand on the electric utility. Such systems may include ripple, radio, or other control mechanisms, or interruptible electrical services, and customer-owned energy storage or load-limiting devices.

(B) Each electric utility shall offer each electric consumer a seasonal rate which shall reflect seasonal differences in the cost of providing service to such consumer.

(C) Each electric utility shall offer each industrial or large commercial electric consumer (as defined in rules under subparagraph (D)) an interruptible rate which reflects the cost of providing interruptible service to such customers.

(D) The Administrator may prescribe rules (i) respecting the terms and conditions of any rate offered under subparagraphs (A) (i), (B), and (C) of this paragraph, and the types of load management systems and terms and conditions of rates offered under subparagraph (A) (ii); and (ii) permitting any State regulatory authority to exempt any electric utility from any requirement of this paragraph if such authority determines in an evidentiary hearing that no significant number of electric consumers will use the rate required to be offered.

(3) For purposes of this section, costs of providing service shall be determined in accordance with methods prescribed in section 512.

(4) Except as otherwise provided by rules of the Administrator, no electric utility may provide electric

service to a building which is metered by a bulk or master meter if the construction of such building commenced more than one year after the date of enactment of this Act. The Administrator may define bulk or master meter.

(b) (1) No provisions of this subpart shall prevent an electric utility, a State regulatory authority, or other State agency from fixing, approving, or allowing to go into effect a rate for electric energy applicable to all residential electric consumers (as defined by the State regulatory authority) which is lower than otherwise required by subsection (a) (1) (A). Nothing in this subsection shall authorize a rate which does not comply with subsection (a) (1) (B).

(2) A State regulatory authority which has enforcement responsibility may, upon application of any electric consumer, prescribe a temporary exception pursuant to which an electric utility rate schedule which does not comply with the requirements of this subpart will be fixed, approved, or allowed to go into effect, with respect to such consumer. Any such exception shall comply with the following requirements:

(A) such exception may apply only to the type of use and amount of use of electric energy as does not exceed the amount the electric consumer used prior to the date of enactment of this Act;

(B) the electric consumer who applies for such exception demonstrates to such State regulatory authority in an evidentiary hearing that such exception is necessary to avoid extreme economic hardship to such consumer; and

(C) such exception does not remain in effect more than five years after the date of enactment of this Act.

(c) Nothing in this subpart shall be construed as authorizing or requiring the recovery by an electric utility of revenues, or of a rate of return, in excess of the amount of revenues or a rate of return determined to be lawful under otherwise applicable State or Federal law.

INFORMATION AND REPORTS

SEC. 514. (a) Each electric utility shall gather information under such rules promulgated by the Administrator as the Administrator determines necessary to allow State regulatory authorities (and other persons) to determine the costs associated with providing electric service, including information with respect to—

(1) the factors which cause changes in the daily and seasonal peak loads of such utility and of the electric consumer classes serviced by such utility; and

(2) the costs of serving each electric consumer class and of serving different consumption patterns

within such class, based on voltage level, time of use, and other factors.

(b) The Administrator, by rule, within 180 days after the date of enactment of this Act, shall prescribe the methods, procedure, and format to be employed by each electric utility in gathering the information described in subsection (a). The Administrator may, by rule, exempt an electric utility from gathering all or part of such information, if the Administrator finds (and so states in such rule) that gathering such information is not likely to further the purposes of this part.

(c) Not later than two years after the date of enactment of this Act, and every two years thereafter, each electric utility shall file with the Administrator and any State regulatory authority which has ratemaking authority for such utility the information gathered pursuant to this section (if such information is not otherwise required to be filed with such authority), and publish or otherwise make such information available to the public, in such form and manner as the Administrator shall prescribe.

NONREGULATED UTILITIES

SEC. 515. (a) (1) Each nonregulated utility shall prescribe methods for determining costs associated with providing electric service to its electric consumers (and classes thereof). If such utility fails to prescribe such methods within

two years after the date of enactment of this Act, the Administrator shall prescribe such methods for each such utility.

(2) Such methods shall be prescribed in accordance with section 512 (b).

(b) Each nonregulated utility shall comply with the national policies specified in section 513 in making sales of electric energy subject to this subpart.

IMPLEMENTATION OF NATIONAL RATE DESIGN AND REGULATORY POLICIES

SEC. 516. (a) (1) For purposes of this subpart, a State regulatory authority shall (except as otherwise provided in paragraph (2) (A)) be considered to have enforcement responsibility for a period for which it has notified the Administrator (in such manner as the Administrator shall prescribe by rule) that it will assume responsibility for implementing this subpart with respect to electric utilities with respect to which it has ratemaking authority.

(2) (A) Not later than two years after the date of enactment of this Act (and every two years thereafter), each State regulatory authority which has enforcement responsibility shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such authority has implemented the national policies specified in section 513. If the Administrator determines (after notice

and opportunity for presentation of views) that such authority has not implemented such policies and if he has not granted an extension under paragraph (3), then effective six months after such determination, such authority shall be considered as not having enforcement responsibility until such time as he determines (after notice and opportunity for presentation of views) that such authority has implemented such policies.

(B) Not later than two years after the date of enactment of this Act (and every two years thereafter), each utility (other than a utility with respect to which a State regulatory authority which has enforcement responsibility has ratemaking authority) shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such utility has implemented the national policies specified in section 513. If the Administrator determines (after notice and opportunity for presentation of views) that such utility has not implemented such policies and if he has not granted an extension under paragraph (3), then effective six months after such determination, he shall exercise his authority under subsection (b) with respect to such electric utility until such time as he determines (after notice and opportunity for presentation of views) that such utility has implemented such policies.

(3) Upon application in the first report submitted under paragraph (2) by a State regulatory authority or an electric utility, the Administrator may allow such authority or utility not more than three years after the date of enactment of this Act to implement the policies specified in section 513, if he finds that—

(A) it is not practicable to implement such policies within two years, and

(B) such authority or utility will make such reports and comply with such terms and conditions as he may prescribe.

The Administrator may grant one or more additional one-year extensions under this paragraph if he makes the findings under subparagraphs (A) and (B) and if he finds that such authority or utility is unable to implement such policies, despite good faith efforts, solely by reason of a judicial stay of such authority's order implementing such policies.

(b) (1) During any period during which the Administrator is required by subsection (a) (2) (B) to exercise authority under this subsection with respect to any electric utility, such utility may not increase any rate at which it sells electric energy unless the Administrator determines, after such rate is proposed and before it takes effect, in an evidentiary hearing, that such rates meet the national policies specified in section 513. Such proceeding shall be initiated

by the Administrator not later than thirty days after application by such utility for a determination under this paragraph. Such application may be made at any time after such utility gives notice of such proposed increase.

(2) The Administrator may prescribe rules which provide that paragraph (1) shall not apply—

(A) to a rate increase pursuant to a fuel adjustment clause,

(B) in the case of a State regulated utility, to an interim rate increase during any period that such increase is in effect subject to a requirement that it be refunded in whole or part, with interest, if the State regulatory authority subsequently determines it is unlawful, or

(C) another class of rate increase identified in such rules,

if the Administrator, under paragraph (1), has determined not earlier than two years prior to the effective date of such rate increase that such utility's rate meets the requirements of section 513.

(c) Upon request of the Administrator, the Attorney General shall seek to enjoin, in the appropriate district court of the United States, any electric utility from violating subsection (b), and in any such action, the court may enjoin such electric utility from such violation, and may issue a man-

datory injunction requiring compliance with the policies under section 513.

(d) No contract between a Federal agency and an electric utility for sale of electric energy by such Federal agency for purposes of resale may contain any provisions inconsistent with the provisions of section 513.

AUTHORIZATION OF APPROPRIATIONS

SEC. 517. (a) There are authorized to be appropriated to the Administrator to carry out this part such sums as may be necessary for the fiscal year ending September 30, 1978, and each of the two succeeding fiscal years.

(b) Section 207 of the Energy Conservation and Production Act is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 207. There are authorized to be appropriated to carry out this title such sums as may be necessary for the fiscal year ending September 30, 1977, and each of the two succeeding fiscal years.".

Subpart 3—Bulk Power Supply

INTERCONNECTION AND WHEELING

SEC. 521. (a) Section 202 (b) of the Federal Power Act is amended to read as follows:

"(b) (1) Whenever the Commission, on its own motion, or upon application of any State commission or of any

electric utility or any qualifying cogenerator (as defined in section 522 (b) (2) of the Public Utility Act of 1977), and after notice to each State commission and electric utility affected and after evidentiary hearing, finds such action necessary or appropriate in the public interest, it shall by order direct an electric utility (other than a Federal agency)—

"(A) to establish physical connection of its transmission facilities with the facilities of any other electric utility or qualifying cogenerator, or

"(B) (i) to sell or deliver energy to, (ii) exchange energy with, (iii) transmit energy for, (iv) provide pooling, wheeling, or other transmission services for, or (v) otherwise coordinate with, such utility or cogenerator.

"(3) The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any order under this subsection, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

"(4) The Commission shall have no authority under this subsection to compel the enlargement of generating facilities for purposes of this subsection, nor to compel an electric utility to sell or exchange energy if to do so would

unreasonably impair its ability to render adequate service to its customers.".

(b) (1) Section 202 (a) of the Federal Power Act is amended by striking the word "voluntary" from the first sentence.

(2) The first sentence of section 201 (b) is amended by inserting "(other than 202 (b))" after "Part" and by adding the following at the end thereof: "The provisions of section 202 (b) shall apply to the electric utilities and other persons specified therein.".

(3) Section 201 (e) is amended by inserting "(other than facilities subject to such jurisdiction solely by reason of section 202 (b))" before the period at the end thereof.

COGENERATION

SEC. 522. (a) Not later than one year after the date of enactment of this Act, the Administrator shall, after consultation with representatives of State regulatory authorities, prescribe rules requiring electric utilities to offer to sell electric energy to any qualifying cogenerator and to offer to purchase electric energy from such cogenerators. Such rules shall insure that rates for such sales and purchases do not discriminate against such cogenerators, and may, in order to carry out the purposes of this Act, include provisions exempting qualifying cogenerators in whole or part from the

Federal Power Act, the Public Utility Holding Company Act, and from State laws and regulations respecting electric utility regulation, if the Administrator determines such exemption is necessary to carry out the purposes of this part.

(b) For purposes of this section:

(1) The term "cogeneration facility" means a facility owned by a person not primarily engaged in the generation or sale of electric power, which facility produces (A) electric energy and (B) other forms of useful energy (such as steam or heat) which is, or will be used for industrial, commercial, or space heating purposes.

(2) The term "qualifying cogeneration facility" means a cogeneration facility which the Administrator determines—

(A) meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Administrator, by rule, prescribes; and

(B) the owner or operator of which offered (at such time and in such manner as the Administrator may prescribe by rule) each electric utility to which such facility is, or will be, directly connected an opportunity to operate such facility on terms which are agreed upon by the parties.

(3) The term "qualifying cogenerator" means any person who is, or will be, the owner or operator of a qualifying cogeneration facility.

(c) For purposes of enforcement of this section, a rule under this section shall be treated as a rule under the Federal Power Act; except that, for such purposes, any reference in sections 309, 314, 315, and 316 of the Federal Power Act to the Commission shall be deemed to be a reference to the Administrator.

(d) The Administrator may delegate (on such terms and conditions as he determines appropriate) any part of his authority under this section respecting any electric utility (other than a Federal agency) to any State regulatory authority which he determines has the capability of effectively exercising such authority with respect to such utility.

Subpart 4—Natural Gas Rate Design Policies

DEFINITIONS

SEC. 541. (a) As used in this subpart:

(1) The term "gas consumer" means any person, State agency, or Federal agency, to which natural gas is sold other than for purposes of resale.

(2) The term "gas utility" means any person, Federal agency, or State agency which sells natural gas.

(3) The term "natural gas" shall have the same

meaning as such term has under section 2 of the Natural Gas Act.

(4) The terms "State regulated gas utility", "nonregulated utility", "nonregulated public system", "nonregulated cooperative", "rate", "rate schedule", "sale", and "State regulatory authority" shall have the same meaning as such terms have under section 502; except that the term "gas" shall be substituted for "electric" and "electric energy" wherever those terms appear in section 502.

COVERAGE

SEC. 542. The requirements of this subpart apply only to sales of natural gas by a gas utility for purposes other than resale; except that such requirements shall not apply to a gas utility in any calendar year unless such sales by such utility during the second preceding calendar year (or any prior year after 1975) exceeded ten billion cubic feet of gas.

NATURAL GAS RATE DESIGN AND REGULATORY POLICIES

SEC. 543. (a) Each State regulatory authority which has enforcement responsibility shall take such action as may be necessary to assure that—

(1) no State regulated gas utility will make sales of natural gas subject to this subpart under a rate schedule under which the rate per thousand cubic feet

for natural gas during any period to any gas consumer (or class thereof) decreases as natural gas consumption by such consumer increases, and

(2) each State regulated gas utility will in making sales of natural gas subject to this subpart comply with rules promulgated by the Administrator under section 545.

GAS UTILITY RATE DESIGN PROPOSALS

SEC. 544. (a) The Administrator shall develop proposals to improve gas utility rate design. Such proposals shall be designed to encourage energy conservation, and shall include (but not be limited to) proposals with respect to:

(1) Summer-winter rate differentials.

(2) Rates for interruptible service.

(3) Master metering.

(b) The proposals prepared under subsection (a) shall be published not later than twelve months after the date of enactment of this Act. Such proposals shall be accompanied by an analysis of—

(1) the projected savings (if any) in consumption of natural gas, and other energy resources, and

(2) changes (if any) in the cost of natural gas to consumers, which are likely to result from the implementation nationally of each of the proposals published under this subsection.

PROMULGATION OF GAS RATE DESIGN AND REGULATORY RULES

SEC. 545. (a) (1) The Administrator shall, within eighteen months after the date of enactment of this Act, propose rate design and regulatory rules for gas utilities. Such rules shall (subject to subsection (b)) be promulgated not later than six months thereafter, and may include only those rate design and regulatory proposals published in a report issued pursuant to section 544. Such rules shall take effect, for purposes of section 548, not earlier than two years after their promulgation.

(b) Any rule promulgated pursuant to this section shall set out those rate design and regulatory rules which the Administrator determines are necessary for each gas utility to implement in order to conserve natural gas supplies and may include such requirements, terms, and conditions as the Administrator determines appropriate.

INFORMATION

SEC. 546. (a) Each gas utility shall gather information under such rules promulgated by the Administrator as the Administrator determines necessary to allow State regulatory authorities (and other persons) to determine the costs associated with providing gas.

(b) The Administrator, by rule, within one hundred and eighty days after the date of enactment of this Act, shall

prescribe the methods, procedure, and format to be employed by each gas utility in gathering the information described in subsection (a). The Administrator may, by rule, exempt a utility from gathering all or part of such information, if the Administrator finds (and so states in such rule) that gathering such information is not likely to further the purposes of this subpart.

(c) Each gas utility shall, every two years, file with the Administrator and any State regulatory authority which has ratemaking authority for such utility the information gathered pursuant to this section (if such information is not otherwise required to be filed with such authority), and publish or otherwise make such information available to the public in such form and manner as the Administrator shall prescribe.

NONREGULATED UTILITIES

SEC. 547. (a) Each nonregulated utility shall comply with the national policies specified in section 573 in making sales of gas subject to this subpart.

IMPLEMENTATION

SEC. 548. (a) (1) For purposes of this subpart, a State regulatory authority shall (except as otherwise provided in paragraph (2) (A)) be considered to have enforcement responsibility for a period for which it has notified the Administrator (in such manner as the Administrator shall

prescribe by rule) that it will assume responsibility for implementing this subpart with respect to gas utilities with respect to which it has ratemaking authority.

(2) (A) Not later than two years after the date of enactment of this Act (and every two years thereafter), each State regulatory authority which has enforcement responsibility shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such authority has implemented the national policies specified in section 543 and the requirements of the rules promulgated pursuant to section 545. If the Administrator determines (after notice and opportunity for presentation of views) that such authority has not implemented such policies and requirements and if he has not granted an extension under paragraph (3), then effective six months after such determination, such authority shall be considered as not having enforcement responsibility until such time as he determines (after notice and opportunity for presentation of views) that such authority has implemented such policies and requirements.

(B) Not later than two years after the date of enactment of this Act (and every two years thereafter), each gas utility (other than a utility with respect to which a State regulatory authority which has enforcement responsibility

has ratemaking authority) shall submit to the Administrator a report (containing such information as the Administrator by rule may require), describing the extent to which such utility has implemented the national policies specified in section 543 and the requirements of the rules promulgated pursuant to section 545. If the Administrator determines (after notice and opportunity for presentation of views) that such utility has not implemented such policies and requirements and if he has not granted an extension under paragraph (3), then effective six months after such determination, he shall exercise his authority under subsection (b) with respect to such gas utility until such time as he determines (after notice and opportunity for presentation of views) that such utility has implemented such policies and requirements.

(3) Upon application in the first report submitted under paragraph (1) by a State regulatory authority or a gas utility, the Administrator may allow such authority or utility not more than three years after the date of enactment of this Act to implement the policies specified in section 543 and the rules promulgated pursuant to section 545, if he finds that—

(A) it is not practicable to implement such policies and requirements within two years, and

(B) such authority or utility will make such

reports and comply with such terms and conditions as he may prescribe.

The Administrator may grant one or more additional one-year extensions under this paragraph if he makes the findings under subparagraphs (A) and (B) and if he finds that such authority or utility is unable to implement such policies and requirements, despite good faith efforts, solely by reason of a judicial stay of such authority's order implementing such policies or requirements.

(b) (1) During any period during which the Administrator is required by subsection (a) (2) (B) to exercise authority under this subsection with respect to any gas utility, such utility may not increase any rate at which it sells natural gas unless the Administrator determines, after such rate is proposed and before it takes effect, in an evidentiary hearing, that such rates meet the national policies specified in section 543 and the requirements of the rules promulgated pursuant to section 545. Such proceeding shall be initiated by the Administrator not later than thirty days after application by such utility for a determination under this paragraph. Such application may be made at any time after such utility gives notice of such proposed increase.

(2) The Administrator may prescribe rules which provide that paragraph (1) shall not apply—

(A) to a rate increase pursuant to a fuel adjustment clause,

(B) in the case of a State regulated utility, to an interim rate increase during any period that such increase is in effect subject to a requirement that it be refunded in whole or part, with interest, if the State regulatory authority subsequently determines it is unlawful, or

(C) another class of rate increase identified in such rules,

if the Administrator, under paragraph (1), has determined not earlier than two years prior to the effective date of such rate increase that such utility's rate meet the policies under section 543 and the requirements promulgated pursuant to section 545.

(c) Upon request of the Administrator, the Attorney General shall seek to enjoin, in the appropriate district court of the United States, any gas utility from violating subsection (b), and in any such action, the court may enjoin such gas utility from such violation, and may issue a mandatory injunction requiring compliance with the policies and rules under sections 543 and 545.

(d) No contract between a Federal agency and a gas utility for sale of natural gas by such Federal agency for purposes of resale may contain any provisions inconsistent

with the policies found in section 543 and the rules promulgated pursuant to section 545.

PART F—AMENDMENTS TO THE ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

REVISION OF COAL CONVERSION PROGRAM

SEC. 601. The Energy Supply and Environmental Coordination Act of 1974 is amended by striking out the table of contents and all that follows down through and including section 2, and inserting in lieu thereof the following:

"TABLE OF CONTENTS

"TITLE I—CONVERSION TO COAL AND OTHER FUELS

"Sec. 101. Findings and purposes.
"Sec. 102. Definitions.
"Sec. 103. Territorial application.
"Sec. 104. New electric powerplants.
"Sec. 105. Existing electric powerplants.
"Sec. 106. New major fuel-burning installations.
"Sec. 107. Existing major fuel-burning installations.
"Sec. 108. Public interest temporary exception or exemption.
"Sec. 109. Temporary exception or exemption of qualifying cogeneration facilities.
"Sec. 110. Disruption of natural gas contracts.
"Sec. 111. Coal allocation.
"Sec. 112. Enforcement and penalties.
"Sec. 113. Emergency powers.
"Sec. 114. Rules and regulations.

"TITLE II—OTHER PROVISIONS

"Sec. 201. Suspension authority.
"Sec. 202. Implementation plan revisions.
"Sec. 203. Motor vehicle emissions.
"Sec. 204. Conforming amendments.
"Sec. 205. Protection of public health and environment.
"Sec. 206. Energy conservation study.
"Sec. 207. Report.
"Sec. 208. Fuel economy study.
"Sec. 209. Reporting of energy information.
"Sec. 210. Enforcement.
"Sec. 211. Extension of Clean Air Act authorization.
"Sec. 212. Definitions.

FUELS

"FINDINGS AND PURPOSES

"SEC. 101. (a) FINDINGS.—The Congress finds that the protection of public welfare and the preservation of national security require—

"(1) the reduction of national reliance on insecure sources of energy consistent with applicable environmental requirements;

"(2) the capability to use indigenous energy resources of the United States in lieu of imported energy supplies by the use of coal and other fuels in lieu of natural gas and petroleum as an energy source for new electrric powerplants and new fuel-burning installations and for certain existing powerplants and existing fuel-burning installations; and

"(3) the conservation of natural gas and petroleum for uses other than boiler fuel or the generation of electricity, and for which there are no feasible alternative fuels or raw material substitutes.

"(b) PURPOSES.—The purposes of this title are—

"(1) to provide for a means to assist in meeting the essential needs of the United States for energy, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect the environment;

"(2) to foster the greater use of coal and other fuels in lieu of natural gas and petroleum as energy sources for electric powerplants and fuel-burning installations;

"(3) to require that any new electric powerplant and any new major fuel-burning installation which proposes to use fossil energy resources as an energy source use coal or other fuel other than natural gas or petroleum except in those circumstances provided for herein;

"(4) to reduce the United States vulnerability to energy supply interruptions; and

"(5) to regulate interstate commerce and for other purposes.

"DEFINITIONS

"SEC. 102. For the purposes of this title:

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

"(2) The term 'person' includes (A) any individual; (B) any corporation, company, partnership, association, firm, society, trust, joint venture, or joint stock company; (C) any State or political subdivision thereof (including the District of Columbia), or any agency or instrumentality of either.

"(3) The term 'natural gas' means natural gas as defined in the Natural Gas Act, including synthetic

natural gas derived from petroleum and liquid petroleum gas, but excluding natural gas produced from a well at the site of use by the user, in commercially unmarketable quantities, as determined by the Administrator, and excluding synthetic natural gas which is derived from coal and (A) which has a British thermal unit content below five hundred British thermal units per thousand cubic feet, or (B) (i) which is owned by the user when it enters a pipeline for transportation to the user, and (ii) which has been approved by the Administrtator for use by an electric powerplant or major fuel-burning installation.

"(4) The term 'petroleum' includes crude oil, residual fuel oil, and refined petroleum products other than liquid petroleum gas and synthetic natural gas derived from petroleum; but does not include process waste gases and waste gas and liquid and solid byproducts of refinery operations within the United States, which are commercially unmarketable, as determined by the Administrator.

"(5) The term 'coal or other fuel' means coal and any fuel other than natural gas or petroleum.

"(6) The term 'electric powerplant' or 'powerplant' means a fossil-fuel-fired electric generating unit,

including a gas turbine unit or a combined cycle unit, that produces electric power for the purpose of sale or exchange which—

"(A) is by design capable of consuming fuel at a fuel heat input rate of one hundred million British thermal units per hour or greater, or

"(B) is a combination of more than one fossil-fuel-fired electric generating unit (excluding any such unit not capable by design of consuming fuel at a fuel heat input rate in excess of a level determined by rule by the Administrator for that type of unit) at the same site which in the aggregate is by design capable of consuming fuel at a fuel heat input rate of two hundred and fifty million British thermal units per hour or greater.

"(7) The term 'major fuel-burning installation' or 'installation' means an installation other than an electric powerplant, consisting of a fossil-fuel-fired boiler or other combustor, a gas turbine unit, combined cycle unit, or internal combusion engine which—

"(A) is by design capable of consuming fuel at a fuel heat input rate of one hundred million British thermal units per hour or greater, or

"(B) is a combination of more than one such installation (excluding installations not capable by

design of consuming fuel at a fuel heat input rate in excess of a level determined by rule by the Administrator for that type of installation) at the same site which in the aggregate is by design capable of consuming fuel at a fuel heat input rate of two hundred and fifty million British thermal units per hour or greater, or

"(C) is designated by the Administrator by rule as included in such term, if he determines that such inclusion is necessary to carry out the purposes of this title.

"(8) The terms 'new electric powerplant' and 'new major fuel-burning installation' mean an electric powerplant or a major fuel-burning installation—

"(A) with respect to which an order was issued pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974, as in effect prior to the effective date of this title, or

"(B) which is not beyond the planning process on the effective date of this title.

"(9) The term 'planning process' means that period ending when the electric powerplant or major fuel-burning installation can no longer reasonably be designed and constructed so as to be capable of using coal as its energy source without incurring significant financial or

operational detriment, as determined by rule by the Administrator.

"(10) The terms 'existing electric powerplant' and 'existing major fuel-burning installation' mean an electric powerplant or a major fuel-burning installation which is not a new electric powerplant or new major fuel-burning installation as defined in paragraph (8) of this section.

"(11) The term 'energy source' means the fuel or fuels used by an electric powerplant or a major fuel-burning installation except for amounts of fuel required for start-up, testing, flame stabilization, and control uses.

"(12) The term 'applicable environmental requirement' includes any Federal, State, or local government standard, limitation, or other requirement applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the combustion of coal or other fuels or operation of air pollution control equipment, and includes any standard, limitation, or other requirement established pursuant to the Clean Air Act, the Federal Water Pollution Control Act, or the Solid Waste Disposal Act.

"(13) The term 'peakload powerplant' means a powerplant which operates less than one thousand five hundred full-load hours per consecutive twelve-month period.

"(14) The term 'cost' means total costs (both operating and capital) incurred over the estimated useful life of a new electric powerplant or new major fuel-burning installation, discounted to present value as determined by the Administrator. Useful life shall not necessarily be determined by depreciable life or other tax-related time periods. In the case of an electric powerplant, cost shall take into account any change in the use of existing electric powerplants in the relevant dispatching system and other economic factors that are included in planning for the production, transmission, and distribution of electric power within such system.

"(15) The term 'qualifying cogeneration facility' means qualifying cogeneration facility as defined in section 522(b)(2) of the National Energy Act.

"TERRITORIAL APPLICATION

"SEC. 103. The provisions of this Act shall apply in the contiguous forty-eight States, Alaska, and the District of Columbia.

"NEW ELECTRIC POWERPLANTS

"SEC. 104. (a) PROHIBITION.—Except as provided in subsection (b) of this section, no new electric powerplant may use natural gas or petroleum as an energy source.

"(b) TEMPORARY EXCEPTION AND EXEMPTION.—

"(1) TEMPORARY EXCEPTION.—The Administrator,

upon application by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petroleum as an energy source, may grant a temporary exception with respect to petroleum from the prohibitions of subsection (a) of this section for a period of up to five years, or as determined by the Administrator, if such person demonstrates to the satisfaction of the Administrator that during the proposed period of the temporary exception—

"(A) (i) despite diligent good faith efforts, an adequate and reliable supply of coal or other fuel is not expected to be available; or (ii) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibitions of subsection (a) of this section because of site specific limitations, such as access to coal or coal transportation facilities; and

"(B) there is no alternative supply of power which can be obtained from another source without impairing reliability of service.

"(2) GENERAL EXEMPTION.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petroleum as an energy source,

may grant an exemption with respect to petroleum from the prohibitions of subsection (a) of this section if such person demonstrates to the satisfaction of the Administrator that there is no site at which—

"(A) despite diligent good faith efforts, an adequate and reliable supply of coal or other fuel is expected to be available for use during a majority of the useful life of the powerplant and can be used at a cost that does not substantially exceed the cost of using imported petroleum; or

"(B) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant do not preclude compliance with the prohibitions of subsection (a) of this section because of site specific limitations, such as access to coal or coal transportation facilities; or

"(C) the use of coal or other fuel is financially feasible, and

"(D) there is an alternative supply of power which can be obtained from another source without impairing reliability of service.

"(3) EXEMPTION FOR PEAKLOAD ELECTRIC POWERPLANTS.—The Administrator, upon notice by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petro-

leum as an energy source, shall grant an exemption for such powerplant from the prohibition of subsection (a) of this section with respect to petroleum if such person certifies that such powerplant is to be constructed or operated solely as a peakload powerplant.

"(4) TEMPORARY EXCEPTION OR EXEMPTION FOR RELIABILITY.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new electric powerplant proposing to use petroluem as an energy source, may grant a temporary exception or an exemption with respect to petroleum from the prohibitions of subsection (a) of this section if such person demonstrates to the satisfaction of the Administrator that the temporary exception or exemption is necessary to prevent impairment of reliability of service.

"(c) DENIAL OF APPLICATION FOR TEMPORARY EXCEPTION OR EXEMPTION.—A denial of an application for temporary exception or exemption from the prohibitions of subsection (a) of this section shall not be deemed to be a major Federal action for purposes of section 102 of the National Environmental Policy Act of 1969 except when such denial relates to a new electric powerplant for which no entity other than the Federal Energy Administration is responsible for carrying out the provisions of such section.

"EXISTING ELECTRIC POWERPLANTS

"SEC. 105. (a) PROHIBITIONS.—

"(1) NATURAL GAS PROHIBITION.—(A) Except as provided in subections (d) and (e) of this section, effective January 1, 1990, no existing electric powerplant may use natural gas as an energy source.

"(B) Except as provided in subsection (d) (2) of this section, no existing electric powerplant using petroleum as its energy source as of April 20, 1977, may thereafter use natural gas as an energy source.

"(C) Except as provided in subsection (d) (2) of this section, no existing electric powerplant may use natural gas as an energy source in greater proportions than the average yearly proportion of natural gas that it used as an energy source in calendar years 1974 through 1976, or in the case of a powerplant beginning operation after January 1, 1974, than the average yearly proportion of natural gas that it used as an energy source during the first two calendar years of its operation.

"(2) NATURAL GAS AND PETROLEUM PROHIBITIONS.—

"(A) CATEGORIES.—The Administrator may by rule identify categories of existing powerplants, including a category consisting of electric powerplants with

the capability to use coal or other fuel which were issued orders pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974, as in effect prior to the effective date of this title, which, except as provided in subsections (d) and (e) of this section, shall be prohibited from using natural gas prior to January 1, 1990, or petroleum, or both, as an energy source. In identifying other categories of existing electric powerplants pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such powerplants that will be subject to the prohibition.

"(B) INDIVIDUAL POWERPLANTS.—Subject to the provisions of subparagraph (C) of this paragraph, and of subsections (b), (d), and (e) of this section, the Administrator may, by order, prohibit an existing electric powerplant with the capability to use coal or other fuel as an energy source from using natural gas effective prior to January 1, 1990, or petroleum, or both, as an energy source.

"(C) CRITERIA.—The Administrator may issue an order pursuant to subparagraph (B) if he determines that—

"(i) the existing electric powerplant on June 22, 1974, had or thereafter acquired or is designed with

the capability to use coal or other fuel as an energy source;

"(ii) that the use of coal or other fuel by the powerplant in lieu of natural gas or petroleum is financially feasible; and

"(iii) that the prohibition under subsection (a) (2) (B) will not impair the reliability of service in the dispatching system of the powerplant;

unless the person owning or operating the electric powerplant can demonstrate that an adequate and reliable supply of coal or other fuel will not be available at the site of the powerplant.

"(3) NATURAL GAS AND PETROLEUM PROHIBITION: MIXTURES AND COMBINATIONS OF FUELS.—Subject to the provisions of subsections (d) and (e) of this section, the Administrator may, by order, prohibit an existing electric powerplant in which it is feasible to use a mixture of coal and petroleum as an energy source, or to use a combination of coal and natural gas or petroleum as an energy source from using natural gas or petroleum in greater amounts than is feasible unless the reliability of service in the dispatching system will thereby be impaired.

"(b) OTHER PROVISIONS.—(1) The Administrator may rescind or modify any order issued pursuant to subsection (a) (2) (B) if he determines that any requirement

described in subsection (a) (2) (C) is no longer met, and that such order, as modified, complies with such requirements.

"(2) Before issuing, modifying, or rescinding an order issued under subsection (a) (2) (B) the Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

"(3) An order (or modification thereof) issued under subsection (a) (2) (B) shall not be effective (A) until the Administrator of the Environmental Protection Agency notifies the Administrator under section 119 (d) (1) (B) of the Clean Air Act, or (B) if such notification is not given until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119 (d) (1) (B) of such Act is the earliest date that the powerplant will be able to comply with all applicable requirements of section 119. The order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 119 (d) (3) (B) of such Act. Notice or certification pursuant to this paragraph shall be provided within two hundred and seventy days of the date the Administrator of the Environmental Protection Agency receives notice of the issuance of an order under subsection (a) (2) (B).

"(c) PERMIT TO USE PETROLEUM.—(1) The Admin-

istrator shall by rule require that no existing electric powerplant which, on or after April 20, 1977, uses coal, may increase its use of petroleum as an energy source unless it first obtains a permit to authorize such increased use of petroleum. Such a permit shall be issued only if the appropriate State certifies to the Administrator that the increased use of petroleum by the powerplant is necessary to permit the powerplant to comply with the applicable implementation plan, as defined in section 110(d) of the Clean Air Act, and if such person demonstrates why it cannot comply with the applicable implementation plan without the issuance of a permit and establishes the duration of its need for increased petroleum to comply with such plan.

"(2) The Administrator shall by rule provide that an existing electric powerplant which, on April 20, 1977, used natural gas as an energy source, or pursuant to subsection (d) or (e) of this section, may not use petroleum unless it first obtains a permit to authorize such use of petroleum. Such a permit shall be issued only if the person owning or operating the electric powerplant demonstrates why it cannot use coal or other fuel instead of petroleum, and in the case of a powerplant the rates of which are regulated by a State agency, documents that its proposed use of petroleum is approved by such State agency.

"(d) TEMPORARY EXCEPTIONS.—

"(1) SYNTHETIC FUELS EXCEPTION.—(A) The Administrator, upon application by a person owning or operating an existing electric powerplant subject to the prohibitions of subsection (a) of this section, proposing to use natural gas as an energy source, may grant a temporary exception from such prohibition if he determines that the person has demonstrated that—

"(i) the powerplant will comply with the prohibition within five years of its effective date by the use of synthetic fuels derived from coal or by innovative techniques for using coal or other fuel; and

"(ii) that the intention so to comply with the prohibition and the anticipated compliance date are evidenced by the existence of binding contracts for fuels or facilities that would enable the applicant to comply with the prohibition.

"(B) A temporary exception under this subsection may be granted for a period of up to five years beyond the effective date of the prohibition, but not beyond the anticipated compliance date.

"(2) The Administrator, upon application by a person owning or operating an existing electric powerplant subject to the prohibition of subsection (a) (1) (B) or (C) of this section proposing to use natural gas or to increase its

use of natural gas as an energy source, grant a temporary exception from such prohibition if the appropriate State certifies to the Administrator that such use of natural gas is necessary to permit the powerplant to comply with the applicable implementation plan, as defined in section 110(d) of the Clean Air Act, and if such person demonstrates why the powerplant cannot comply with the applicable implementation plan without the temporary exception and establishes the duration of its need for such natural gas to comply with such plan.

"(3) The Administrator, upon application by a person owning or operating an existing electric powerplant proposing to use petroleum as an energy source, may grant a temporary exception of up to five years from the effective date of the prohibition or as determined by the Administrator, from the prohibitions of subsection (a)(2) with respect to petroleum if such person demonstrates to the satisfaction of the Administrator that—

"(A) despite diligent good faith efforts an adequate and reliable supply of coal or other fuel is not expected to be available; or

"(B) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance

with the prohibitions of subsection (a) (2) because of site specific limitations, such as access to coal or coal transportation facilities.

"(e) EXEMPTIONS.—

"(1) GENERAL EXEMPTION.—The Administrator, upon application by a person owning or operating an existing electric powerplant subject to a prohibition of subsection (a) proposing to use natural gas or petroleum as an energy source, may grant an exemption from such prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(A) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with a prohibition of subsection (a) because of site specific limitations such as access to coal or coal transportation facilities; or

"(B) the cost of using coal or other fuel substantially exceeds the cost of using imported petroleum; and

"(C) there is no alternative supply of power which can be obtained without impairing reliability of service.

"(2) EXEMPTION FOR RESALE PURCHASERS.—The Administrator, upon application by a person owning or operating an existing electric powerplant subject to the prohibition of subsection (a) (1), proposing to use natural

gas as an energy source, may grant an exemption for such powerplant from the prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(A) the powerplant is operated solely as a peak-load powerplant; and

"(B) the electricity generated by the powerplant is a substantial portion of the total generating capacity of the applicant; and

"(C) (i) a denial of the application for exemption is likely to result in an impairment of reliability or adequacy of service; or

"(ii) modification of the powerplant to permit compliance with the prohibition is technically infeasible; or

"(iii) such modification would result in an unreasonable cost to the applicant's customers.

"NEW MAJOR FUEL-BURNING INSTALLATIONS

"SEC. 106. (a) PROHIBITIONS.—

"(1) BOILERS.—Except as provided in subsection (b), no new major fuel-burning installation boiler may use natural gas or petroleum as an energy source.

"(2) NONBOILERS—CATEGORIES.—The Administrator may by rule identify categories of new major fuel-burning installations other than boilers which, except as provided in subsection (b), shall be prohibited from using natural

gas or petroleum, or both, as an energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such installations that will be subject to the prohibition.

"(3) NONBOILERS—INDIVIDUAL INSTALLATIONS.—Subject to the provisions of subsection (b) of this section, the Administrator may, by order, prohibit a new major fuel-burning installation other than a boiler and not subject to paragraph (2) of this subsection, from using natural gas or petroleum, or both, as an energy source.

"(b) TEMPORARY EXCEPTION AND EXEMPTION.—

"(1) TEMPORARY EXCEPTION.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new major fuel-burning installation proposing to use petroleum as an energy source, may grant a temporary exception with respect to petroleum from the prohibitions of subsection (a) of this section for a period of up to five years, or as determined by the Administrator, if such person demonstrates to the satisfaction of the Administrator that during the proposed period of the temporary exemption—

"(A) despite diligent good faith efforts, an adequate

and reliable supply of coal or other fuel is not expected to be available, or

"(B) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibitions of subsection (a) of this section because of site specific limitations such as access to coal or coal transportation facilities.

"(2) EXEMPTION.—The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a new major fuel-burning installation subject to the prohibition of subsection (a) (1) or in a category identified by rule to be subject to the prohibition of subsection (a) (2), proposing to use natural gas or petroleum as an energy source, may grant an exemption from the prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(1) (A) despite diligent good faith efforts an adequate and reliable supply of coal or other fuel is not expected to be available for use during a majority of the useful life of the installation and cannot be used except at a cost that substantially exceeds the cost of using imported petroleum; or

"(B) physical and environmental factors which

cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibition because of site specific limitations, such as access to coal or coal transportation facilities; or

"(2) (A) the use of an energy source other than natural gas or petroleum is technically infeasible in direct firing use due to contamination of product or inability to maintain satisfactory combustion control; and

"(B) substitution of steam for direct heat is not possible due to process requirements.

"(c) DENIAL OF APPLICATION FOR TEMPORARY EXCEPTION OR EXEMPTION.—A denial of an application for temporary exception or exemption from the prohibitions of subsection (a) (1) or (2) shall not be deemed to be a major Federal action for purposes of section 102 of the National Environmental Policy Act of 1969 except when such denial relates to a new major fuel-burning installation for which no entity other than the Federal Energy Administration is responsible for carrying out the provisions of such section.

"EXISTING MAJOR FUEL-BURNING INSTALLATIONS

"SEC. 107. (a) PROHIBITIONS.—

"(1) NATURAL GAS AND PETROLEUM PROHIBITIONS—CATEGORIES.—The Administrator may by rule iden-

tify categories of existing major fuel-burning installations with the capability to use coal or other fuel as an energy source including a category consisting of existing major fuel-burning installation which were issued pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 as in effect prior to the effective date of this title, which shall be prohibited from using natural gas or petroleum, or both, as their energy source. In identifying categories of existing major fuel-burning installations pursuant to this paragraph, the Administrator shall take into account any special circumstances or characteristics of the category of such installations that will be subject to the prohibition.

"(2) NATURAL GAS AND PETROLEUM PROHIBITION—INDIVIDUAL INSTALLATIONS.—(A) Subject to the provisions of subparagraph (B) of this paragraph and of subsection (b) of this section, the Administrator may, by order, prohibit an existing major fuel-burning installation not subject to paragraph (1) of this subsection with the capability to use coal or other fuel as an energy source from using natural gas or petroleum, or both, as an energy source.

"(B) The Administrator may issue an order pursuant to this paragraph if he determines that—

"(i) the existing installation on June 22, 1974, had or thereafter acquired or is designed with the capa-

bility to use coal or other fuel as an energy source; and

"(ii) that the use of coal or other fuel by the installation in lieu of natural gas or petroleum products is financially feasible;

unless the person owning or operating the installation demonstrates that an adequate and reliable supply of coal will not be available.

"(3) NATURAL GAS AND PETROLEUM PROHIBITION—MIXTURES AND COMBINATION OF FUELS.—Subject to the provisions of subsection (b) of this section, the Administrator may, by order, prohibit an existing major fuel-burning installation in which it is feasible to use a mixture of coal and petroleum as an energy source or to use a combination of coal and petroleum or natural gas as an energy source from using natural gas or petroleum in greater amounts than is feasible unless the reliability of service in the dispatching system will thereby be impaired.

"(4) NATURAL GAS PROHIBITION—CATEGORIES.—The Administrator may by rule identify categories of existing major fuel-burning installations with no capability to use coal which shall be prohibited from using natural gas as an energy source. In identifying categories of existing major fuel-burning installations pursuant to this paragraph, the Administrator shall take into account any special circum-

stances or characteristics of the category of such installations that will be subject to the prohibition.

"(5) NATURAL GAS PROHIBITION—INDIVIDUAL INSTALLATIONS.—(A) Subject to the provisions of subparagraph (B) of this paragraph and of subsection (b) of this section, the Administrator may, by order, prohibit an existing major fuel-burning installation not subject to paragraph (4) of this subsection with no capability to use coal from using natural gas as an energy source.

"(B) The Administrator may issue an order pursuant to this paragraph if he determines that the use of petroleum in lieu of natural gas is financially feasible.

"(b) OTHER PROVISIONS.—(1) The Administrator may rescind or modify any order issued pursuant to subsection (a) (2) or (5) if he determines that any requirement described in subsections (a) (2) (B) or (a) (5) (B), respectively, is no longer met, and that the order as modified complies with such requirement.

"(2) Before issuing, modifying, or rescinding an order under subsection (a) (2) or (5) the Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

"(3) An order (or modification or rescission thereof)

under subsection (a) (2) or (5) shall not be effective (A) until the Administrator of the Environmental Protection Agency notifies the Administrator under section 119 (d) (1) (B) of the Clean Air Act, or (B) if such notification is not given until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 119 (d) (1) (B) of such Act is the earliest date that the installation will be able to comply with all applicable requirements of section 119. The order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 119 (d) (3) (B) of such Act. Notice or certification pursuant to this paragraph shall be provided within two hundred and seventy days of the date the Administrator of the Environmental Protection Agency receives notice of the issuance of an order subsection (a) (2) (B).

"(c) TEMPORARY EXEMPTION.—The Administrator, upon application by a person owning or operating an existing major fuel-burning installation in a category identified by rule to be subject to the prohibition of subsection (a) (1), proposing to use natural gas or petroleum as an energy source, or to the prohibition of subsection (a) (4), proposing to use natural gas as an energy source, may grant a temporary exemption from such prohibitions for a period of up to five years from the effective date of the prohibition, or as

determined by the Administrator, if such person demonstrates to the satisfaction of the Administrator that—

"(1) despite diligent good faith efforts an adequate and reliable supply of coal or other fuel is not expected to be available, or

"(2) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibitions of subsection (a) (1) or (a) (4) because of site specific limitations, such as access to coal or coal transportation facilities.

"(d) EXEMPTION.—The Administrator, upon application by a person owning or operating an existing major fuel-burning installation in a category identified by rule to be subject to the prohibition of subsection (a) (1), proposing to use natural gas or petroleum as an energy source, or to the prohibition of subsection (a) (4) proposing to use natural gas as an energy source, may grant an exemption from the prohibition if such person demonstrates to the satisfaction of the Administrator that—

"(1) physical or environmental factors which cannot reasonably be expected to be overcome by diligent good faith efforts by the applicant preclude compliance with the prohibition because of site specific limitations, such as access to coal or coal transportation facilities; or

"(2) with respect to the prohibition under subsection (a) (1), the cost of using coal or other fuel substantially exceeds the cost of using imported petroleum; or

"(3) (A) the use of an energy source other than natural gas or petroleum is technically infeasible in direct firing use due to contamination of product or inability to maintain satisfactory combustion control; and

"(B) substitution of steam for direct heat is not possible due to process requirements.

"(e) The Administrator may, with respect to existing major fuel-burning installations subject to a prohibition of subsection (a) of this section, prescribe rules limiting or prohibiting the use by such installations of electrical resistance heating in order to compy with such prohibition.

"GENERAL TEMPORARY EXCEPTION OR EXEMPTION AUTHORITY

"SEC. 108. The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate an electric powerplant or a major fuel-burning installation requesting a temporary exception or exemption from any prohibition of this Act, may grant a temporary exception or exemption from the prohibition if he finds that the applicant has demonstrated that compliance with the prohibition is not consistent with the purposes of this Act.

"TEMPORARY EXCEPTION OR EXEMPTION OF QUALIFYING COGENERATION FACILITIES

"SEC. 109. The Administrator, upon application by a person owning, operating, constructing, or proposing to construct or operate a qualifying cogeneration facility requesting an exemption or temporary exception from any prohibition of this title, may grant an exemption or temporary exception from the prohibition if he finds that the applicant has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas may be used in such facility.

"DISRUPTION OF NATURAL GAS CONTRACTS

"SEC. 110. (a) Whenever the provisions of section 105 or 107 of this title, or an order issued pursuant thereto, prohibit the use by an existing electric powerplant or existing major fuel-burning installation of natural gas to which, but for the operation of such section or order, the powerplant or installation would be entitled by contract in effect on April 20, 1977, such powerplant or installation may sell, exchange, or otherwise transfer its rights under such contract, notwithstanding the provisions of the Public Utility Holding Company Act or any law of any State, or a force majeure clause or other clause of such contract. The price charged in such sale, exchange, or other transfer shall not exceed the maximum lawful price for such natural gas pur-

suant to the Natural Gas Act of 1977, plus an amount to be paid under subsection (b) of this section.

"(b) A powerplant or installation which sells, exchanges, or otherwise transfers its rights to natural gas under a contract referred to in subsection (a), which contract provides that a pipeline or distribution company, but for the provisions of section 105 or 107 of this title, or an order issued pursuant thereto, would have transported such natural gas, such powerplant or installation shall be liable to such pipeline or distribution company in accordance with any term in such contract providing a measure of damages to such pipeline or distribution company in the event of termination of the contract prior to performance, or in the absence of such provision, for reasonable losses incurred as a result of the termination.

"COAL ALLOCATION

"SEC. 111. (a) In the event the President declares a severe energy supply interruption, as defined in section 3 (8) of the Energy Policy and Conservation Act, or determines that a situation similar to such supply interruption exists on a regional basis, the Administrator may, by rule or order, allocate coal to any person to the extent necessary.

"(b) Whenever a person owning, operating, constructing, or proposing to construct or operate an electric powerplant or major fuel-burning installation demonstrates in con-

nection with an application for an exemption from any prohibition of this title that despite diligent good faith efforts an adequate and reliable supply of coal is not expected to be available, the Administrator may, by rule or order, allocate coal to such person in lieu of granting the requested exemption.

"ENFORCEMENT AND PENALTIES

"SEC. 112. (a) (1) Any person who violates any provision of this title, or rule or order issued thereunder, shall be subject to a civil penalty of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

"(2) Any person who willfully violates any provision of this title, or rule or order issued thereunder, shall be subject to a fine of not more than $50,000 or by imprisonment for not more than one year, or both, for each violation. Each day of violation constitutes a separate violation.

"(3) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation described in paragraphs (1) and (2) of this subsection, shall be subject to penalties under this subsection without regard to any penalties to which the corporation may be subject under paragraphs (1) and (2) except that no such individual director, officer, or

agent shall be subject to imprisonment under paragraphs (1) and (2), unless he also knows, or reasonably should have known, of noncompliance by the corporation.

"(4) Whenever it appears to the Administrator that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of the provisions of this Act or any rule or order issued thereunder, the Administrator may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision of this Act or any rule or order issued thereunder.

"(b) Any person owning or operating an electric powerplant granted an exemption under section 104(b)(4) or 105(e) as a peakload electric powerplant which, for any consecutive twelve-month period operates in excess of one thousand five hundred hours, shall be liable for a civil penalty of up to $10 per barrel of oil or $3 per thousand cubic feet of natural gas used in excess of one thousand five hundred hours, except where such person can demonstrate that operation in excess of one thousand five hundred hours was necessary to meet peak load demand and that other peakload

electric powerplants within the system were unavailable for service due to unit or system outages.

"EMERGENCY POWERS

"SEC. 113. (a) (1) In the event the President declares a severe energy supply interruption, as defined in section 3 (8) of the Energy Policy and Conservation Act, the Administrator may, by order, prohibit an electric powerplant or major fuel-burning installation using natural gas or petroleum as an energy source from so using natural gas or petroleum for the duration of such interruption, notwithstanding applicable implementation plans as defined in section 110 (b) of the Clean Air Act or other State or local government standard, limitation, or other requirement, so long as such prohibitions are not likely to result in a violation of primary air quality standards.

"(2) In the event the President determines that such supply interruption is likely to be of sufficiently grave scope and duration that, in his judgment, it is necessary to issue orders under paragraph (1) of this subsection which are likely to result in a violation of primary air quality standards, the President may issue such orders but may not delegate the authority to do so.

"(b) The Administrator may stay or otherwise exempt

for such period as the Administrator deems appropriate, the application of any provisions of this title—

"(1) in the event of national, regional, or system-wide shortages of coal or other fuel supplies or of coal transportation facilities or other necessary facilities which may affect reliability of service of electric power plants subject to such provisions; or

"(2) otherwise as necessary to alleviate or prevent any emergencies directly affecting the public health, safety, or welfare, which would result from electrical power outages.

"(c) The Administrator may stay the application of any provisions of this title for such periods as necessary to implement enforceable air pollution requirements.

"RULES AND REGULATIONS

"SEC. 114. The Administrator shall promulgate such rules, regulations, and procedures as may be necessary to carry out the functions and powers vested in the Administrator by this title.".

CONFORMING AMENDMENTS

SEC. 602. (a) The Energy Supply and Environmental Coordination Act of 1974 is amended—

(1) by redesignating sections 3 through 14 (and all references thereto) as sections 201 through 212, respectively, and

(2) by inserting before section 201 (as so redesignated) the following:

"TITLE II—OTHER PROVISIONS".

(b) The Energy Supply and Environmental Coordination Act of 1974 is amended—

(1) by deleting paragraph (2) of subsection (g) of section 210 (as redesignated), and

(2) redesignating paragraph (1) of subsection (g) as subsection (g).

(c) The Energy Supply and Environmental Coordination Act of 1974 is amended in section 212 (as redesignated) by striking wherever it appears the word "Act" following the phrase "for purposes of this" and inserting in lieu thereof the word "title".

EFFECTIVE DATES

SEC. 603. The amendments to the Energy Supply and Environmental Coordination Act of 1974 made by this part shall take effect one hundred and eighty days after enactment, except that the Administrator is authorized to issue rules pursuant to title I of the Energy Supply and Environmental Coordination Act of 1974 at any time after enactment of this part, which rules may take effect no earlier than one hundred and eighty days after enactment of this part.

PART G—FEDERAL ENERGY INITIATIVES

Subpart 1—Federal Van Pooling Program

SEC. 701. Section 381 of the Energy Policy and Conservation Act is hereby amended by—

(1) inserting "and subsection (c)" before the colon in subsection (b) (2);

(2) redesignating subsection (c) as subsection (d); and

(3) inserting after subsection (b) the following new subsection:

"(c) (1) The Administrator may, by rule, after consultation with the Administrator of the General Services Administration, provide for the establishment of a program or programs pursuant to which van pooling arrangements are offered and provided to officers and employees of the Federal Government. Any such program may be phased over a period of years, and may be limited by the Administrator to one or more reasonable categories of officers and employees determined by the Administrator, including, without limitation, categories determined by such factors as location of residence, location of place of business or regular hours of work. The number or vans in use in van pooling arrangements authorized under this subsection shall at no time exceed six thousand.

"(2) In order to establish, maintain, and operate any

program authorized to be established by the Administrator under paragraph (1) of this subsection, the Administrator of the General Services Administration, in consultation with the Administrator, shall be authorized to—

"(A) acquire vans by purchase, lease, or other arrangement;

"(B) establish and operate training programs for operators of vans;

"(C) establish and maintain, or require departments and agencies to establish and maintain, lists of officers and employees participating, or desiring to participate, in van pooling arrangements;

"(D) permit any person authorized to operate a van pursuant to a van pooling arrangement to—

"(i) operate the van for personal use (other than for use on vacation trips and trips over extended distance, as defined by the Administrator of the General Services Administration), with or without a charge for such personal use as determined by the Administrator of the General Services Administration, and subject to the provisions of paragraph (3) (C) (iv) of this subsection; and

"(ii) retain a portion of the rider charges paid by officers and employees participating in such van pooling arrangements if the Administrator of

the General Services Administration determines that such retention will promote full use of van capacity; and

"(E) exercise such other powers now or hereafter vested in him as he determines to be necessary or appropriate.

"(3) Any program established pursuant to paragraph (1) of this subsection shall include—

"(A) a requirement that officers and employees participating in van pooling arrangements authorized under such program pay a rider charge, including an actuarially determined sum for Government self-insurance against liability which may be imposed on the Federal Government due to van pooling use, in such amount and at such intervals as the Administrator of the General Services Administration may determine, except that the Administrator of the General Services Administration may provide that a person authorized to operate a van pursuant to a van pooling arrangement may not be required to pay a rider charge;

"(B) a requirement designed to assure that van pooling arrangements authorized under such program will insure that, not later than eight years from commencement of the program, all costs and expenses, including estimated administrative expenses, incurred by

the Federal Government in connection with the establishment, maintenance, and operation of such a program, will be repaid from rider charges paid by participating officers and employees; and

"(C) requirements to insure that each person operating a van pursuant to a van pooling arrangement authorized thereunder—

"(i) shall be a regular, full-time Government officer or employee;

"(ii) shall maintain the van in good and safe working order;

"(iii) shall be by law entitled to operate the van in his place of residence, except that nothing in this subparagraph shall be deemed to require that such person be licensed to operate the van for hire; and

"(iv) shall, in the event that such person is authorized to operate and operates the van for personal use, secure and maintain at such person's expense insurance against such risks as the Administrator of the General Services Administration deems necessary to assure payment of any claim that may arise other than in van pooling use.

"(4) For the purposes of section 5 of the Act of July 16, 1914 (chapter 141, 38 Stat. 508, as amended; 31

U.S.C. 638a), and section 601 of Public Law 94–91 (89 Stat. 458; 31 U.S.C. 638c), a van obtained for the purpose of, and operated pursuant to, a van pooling arrangement established pursuant to this subsection shall not be deemed to be a passenger motor vehicle.

"(5) Neither the offering of a van pooling arrangement pursuant to this subsection nor the operation of a van pursuant to such an arrangement shall subject any person to regulation as a motor carrier under part II of the Interstate Commerce Act (49 U.S.C. 303 et seq.), or to any similar regulation under the laws of the District of Columbia or any State or political subdivision thereof.

"(6) Sections 1346(b) and 2679 of title 28, United States Code, shall apply to suits arising from van pooling use.

"(7) The operation of a van pursuant to a van pooling arrangement established pursuant to this subsection shall not be deemed to be operation of a motor vehicle for hire for purposes of any law of the District of Columbia or any State or political subdivision thereof relating to the licensing of operators of motor vehicles for hire.

"(8) Time spent traveling in van pooling arrangements shall not be considered Federal employment for the purpose of any law administered by the Civil Service Commission or by the Department of Labor pursuant to chapter 81 of title

5, United States Code, and rider charges paid the operator of a van pool shall be deemed fees paid to and received by individuals in their private capacity.

"(9) The Administrator of the General Services Administration, with the approval of the Administrator, is hereby authorized to delegate to the heads of Federal departments and agencies whose officers and employees are authorized to participate in van pooling arrangements established pursuant to this subsection such of his functions, powers, and duties as he deems necessary or appropriate to establish, maintain, or operate van pooling programs authorized by this subsection.

"(10) For purposes of this subsection, the term 'van pooling use' means operation or maintenance of a van by an officer or employee of the United States in the course of or incidental to a van pooling arrangement authorized under this subsection, excluding any personal use permitted under paragraph (2) (D) (i).

"(11) All rider charges and other receipts from the operation of vanpooling arrangements established pursuant to this subsection received by the Administrator of the General Services Administration or by the head of any Department or agency exercising authority delegated pursuant to paragraph (9) of this subsection shall be deposited in the general fund of the Treasury of the United States.

"(12) There are authorized to be appropriated to the Administrator such sums as may be necessary to carry out all provisions of this subsection. The Administrator shall be authorized, with the approval of the Director of the Office of Management and Budget, to transfer to the Administrator of the General Services Administration such amounts from the sums so appropriated as may be necessary to carry out the functions, duties and responsibilities assigned to the Administrator of the General Services Administration by this subsection.".

Subpart 2—Amendment to Section 381 of EPCA

SEC. 721. Section 381 of the Energy Policy and Conservation Act is amended by adding at the end thereof the following new subsections:

"(e) The plan developed by the President pursuant to subsection (a) (2) shall be applicable to Executive agencies as defined in section 105 of title 5, United States Code, and to the United States Postal Service.

"(f) In addition to funds authorized in any other law, there are authorized to be appropriated to each executive agency, as defined in section 105 of title 5, United States Code, and to the United States Postal Service, for each fiscal year of the eight fiscal year period ending September 30, 1985, such sums as may be necessary to carry out the purposes of subsection (a) (2).".

Subpart 3—Demonstration of Solar Heating and Cooling in Federal Buildings

DEFINITIONS

SEC. 741. As used in this subpart—

(1) The term "agency" means—

(A) an Executive agency as defined in section 105 of title 5, United States Code; and

(B) each entity enumerated in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5, United States Code.

(2) The term "building" means any structure (other than a residential dwelling) owned by the United States or any agency, including any such structure occupied by an agency under a lease-acquisition agreement under which the United States or an agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term "solar heating" means with respect to any building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water (where its remaining heating needs are met by other methods).

(4) The term "solar heating and cooling" means with respect to any building, the use of solar energy to provide all or part of the heating needs of such building (including

hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water (where its remaining heating needs are met by other methods) and all or part of the cooling needs of such building.

(5) The term "solar energy equipment" means equipment for solar heating and solar heating and cooling.

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

FEDERAL SOLAR PROGRAM

SEC. 742. The Administrator shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

DUTIES OF ADMINISTRATOR

SEC. 743. (a) In exercising the authority provided by section 742, the Administrator shall—

(1) solicit and consider proposals by any agency to apply solar heating and solar heating and cooling technology to any existing or proposed building;

(2) promulgate, by rule, criteria by which such proposals will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value of the costs and benefits of the proposal to the agency, and for the demonstration, to the

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maximum extent practicable of innovative and diverse applications to a variety of type of buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(3) evaluate each such proposal pursuant to the criteria promulgated pursuant to subsection (a) (2);

(4) provide assistance by interagency agreement for the cost of implementing a proposal (which costs shall be limited to design, acquisition, construction, and installation of solar energy equipment); and

(5) provide, by rule, that agencies report to the Administrator periodically such information as they acquire respecting maintenance and operation of solar equipment.

(b) In carrying out the responsibilities, pursuant to paragraphs (2) and (3) of subsection (a), the Administrator shall provide an opportunity for consultation to the Administrator of the General Services Administration and the Administrator of the Energy Research and Development Administration.

TRANSFER OF APPROPRIATIONS

SEC. 744. In carrying out a proposal for which the Administrator has provided assistance, any agency may use

funds transferred to it by the Administrator to enter into such contracts as may be necessary to complete the project described in that proposal.

SUBMISSION OF PROPOSALS

SEC. 745. (a) Each agency responsible for the construction of new buildings or operation of existing buildings shall, within one hundred and eighty days after publication of criteria under section 743 (a) (2), submit initial proposals to the Administrator for installation of solar energy systems on selected buildings under its control.

(b) Such initial proposal shall include a list of the specific buildings proposed to be provided with solar energy systems, the funds required for the system, the proposed implementation schedule, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Administrator.

(c) Thereafter, each agency may submit proposals to the Administrator for additional solar energy systems for buildings under their control on a schedule established by the Administrator but not greater than two-year intervals.

AUTHORIZATION

SEC. 746. There are authorized to be appropriated to the Administrator through fiscal year 1980 to carry out the purposes of this subpart not to exceed $100,000,000.

TITLE II—TAX PROVISIONS

SEC. 1001. AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

SEC. 1002. NONAPPLICATION TO GOVERNMENTS OF AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS.—The provisions of this title shall not apply to American Samoa, Guam, and the Virgin Islands.

PART A—RESIDENTIAL ENERGY TAX CREDIT

SEC. 1101. RESIDENTIAL ENERGY CREDIT.

(a) GENERAL RULE.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowable) is amended by inserting immediately before section 45 the following new section:

"SEC. 44B. RESIDENTIAL ENERGY CREDIT.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) in the case of qualified energy conservation expenditures paid or incurred by the taxpayer during

the taxable year with respect to the taxpayer's principal residence, the lesser of $410, or—

"(A) 25 percent of so much of such expenditures as does not exceed $800; plus

"(B) 15 percent of the amount of such expenditures as exceeds $800; and

"(2) in the case of qualified solar expenditures made by the taxpayer with respect to the taxpayer's principal residence—

"(A) during the taxable years ending in 1977, 1978, or 1979, the lesser of $2,000 or—

"(i) 40 percent of so much of such expenditures as does not exceed $1,000, plus,

"(ii) 25 percent of so much of such expenditures as exceeds $1,000;

"(B) during the taxable years ending in 1980 or 1981, the lesser of $1,580 or—

"(i) 30 percent of so much of such expenditures as does not exceed $1,000, plus

"(ii) 20 percent of so much of such expenditures as exceeds $1,000; and

"(C) during the taxable years ending in 1982, 1983, and 1984, the lesser of $1,210 or—

"(i) 25 percent of so much of such expenditures as does not exceed $1,000, plus

"(ii) 15 percent of so much of such expenditures as exceed $1,000.

"(b) LIMITATIONS.—

"(1) APPLICATIONS WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under—

"(A) section 42 (relating to general tax credit),

"(B) section 44A (relating to household and dependent care services),

"(C) section 37 (relating to retirement income),

"(D) section 44 (relating to purchase of new principal residence),

"(E) section 33 (relating to foreign tax credit),

"(F) section 38 (relating to investment in certain depreciable property),

"(G) section 40 (relating to expenses of work incentive programs), and

"(H) section 41 (relating to contributions to candidates for public office).

"(2) PRIOR EXPENDITURES TAKEN INTO ACCOUNT.—

"(A) If the taxpayer made qualified energy conservation expenditures in any prior taxable year with respect to the same principal residence which were taken into account in determining the amount of a credit under this section for such prior taxable year, then subsection (a) (1) (A) shall be applied for the taxable year by reducing the dollar amounts of expenditures specified in such subsection by the amount of expenditures for which credit was allowed in such prior taxable years. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (1) with respect to the same principal residence during the taxable years ending in 1977 through 1984 exceed $410.

"(B) If the taxpayer made qualified solar energy expenditures in a prior taxable year with respect to the same principal residence which were taken into account in determining the amount of a credit under this section for such prior taxable year, then—

"(1) for taxable years ending in 1977, 1978, and 1979 subsection (a) (2) (A) (i), and

"(2) for taxable years ending in 1980 and 1981 subsection (a) (2) (B) (i), and

"(3) for taxable years ending in 1982, 1983, and 1984 subsection (a) (2) (C) (i),

shall be applied in those taxable years by reducing the dollar amounts of expenditures specified in such subsections by the total amount of expenditures for which credit was allowed in prior taxable years. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (2) with respect to the same principal residence during the taxable years 1977 through 1979 exceed $2,000. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (2) with respect to the same principal residence during the taxable years 1977 through 1981 exceed $1,580, unless such credits were allowed only in the taxable years 1977 through 1979, in which case the total amount allowed shall be $2,000. In no case shall the total amount of the credit allowed against the tax of any individual under subsection (a) (2) with respect to the same principal residence during the taxable years 1977 through 1984 exceed $1,210, unless

such credits were allowed only in the taxable years 1977 through 1981, in which case the rule in the preceding sentence applies.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED ENERGY CONSERVATION EXPENDITURES.—The term 'qualified energy conservation expenditures' means any amount paid or incurred by an individual for insulation and other energy-conserving components (including amounts for the original installation of such insulation) installed after April 20, 1977, and before January 1, 1985, in a dwelling unit located in the United States which is—

"(A) used by the taxpayer as his principal residence (within the meaning of section 1034), and

"(B) in existence on April 20, 1977.

"(2) QUALIFIED SOLAR ENERGY EXPENDITURES.—The term 'qualified solar energy expenditures' means any amount expended by an individual for the purchase and installation of solar energy property which occurs after April 20, 1977, and before January 1, 1985, in any dwelling unit located in the United States which is—

"(A) used by the individual at the time of such installation as his principal residence (within the meaning of section 1034), or

"(B) part of the purchase price of a newly constructed dwelling unit purchased by an individual for use as his principal residence, but only to the extent that such expenditures are specifically for (i) materials and equipment and (ii) the labor costs associated with onsite assembly or construction of the energy storage medium (excluding swimming pools used as a storage medium), onsite glazing of solar collector units, and onsite assembly of solar collectors, if not shipped preassembled for the solar energy property, as determined in accordance with rules prescribed by the Secretary.

"(3) INSULATION.—The term 'insulation' means any insulation identified by the Secretary by rule—

"(A) which is specifically and primarily designed to reduce, when installed in or on a building (including installations on floors, walls, ceilings, and water heaters), the heat loss or gain of such building,

"(B) the original use of which commences with the taxpayer, and

"(C) which has a useful life of at least 3 years.

"(4) OTHER ENERGY-CONSERVING COMPONENT.—The term 'other energy-conserving component' means—

"(A) a replacement burner for a furnace, which burner is designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(B) a device for modifying flue openings which will increase the efficiency of operation of the heating system,

"(C) an electrical or mechanical furnace ignition system which replaces a standing gas pilot light,

"(D) a storm or thermal window,

"(E) a clock thermostat, and

"(F) caulking and weatherstripping of exterior doors and windows, but only if installed in conjunction with insulation or at least one other energy-conserving component,

which has a useful life of at least 3 years, and the original use of which commences with the taxpayer.

"(5) SOLAR ENERGY PROPERTY.—The term 'solar energy property' means equipment or mechanical or electrical systems which—

"(A) are of a type identified in regulations

prescribed by the Secretary after consultation with the Federal Energy Administrator;

"(B) when installed in or on, or when connected to, a building, use solar energy to heat or cool such building or to heat water for use within such buildings;

"(C) the original use of which commences with the taxpayer; and

"(D) which have a useful life of at least 5 years.

"(6) The Secretary may amend by rule the terms 'insulation', 'other energy conserving component', and 'solar energy property', upon request of the Administrator of the Federal Energy Administration, to add devices or measures which the Secretary determines, when installed in or on a dwelling unit—

"(A) are likely to improve the energy efficiency of the heating, cooling, or water heating systems of the dwelling unit, or reduce the heat loss or gain of such dwelling unit; and

"(B) have a useful life of at least 3 years; and

"(C) are generally safe and effective.

"(7) The Secretary may amend by rule the terms

'insulation', 'other energy conserving component', and 'solar energy property', in consultation with the Administrator of the Federal Energy Administration and such other agencies as he deems appropriate, to exclude specific measures or devices if the Secretary determines that such measures are not generally safe and effective.

"(8) TENANT STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who holds stock as a tenant stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual—

"(A) shall be treated as owning the dwelling unit which he is entitled to occupy as such stockholder; and

"(B) shall be treated as having expended his tenant stockholder's proportionate share (as defined in section 216(b)(3)) of any qualified energy conservation expenditures, or qualified solar energy expenditures, paid or incurred by such corporation.

"(C) The basis of any property shall be reduced, for purposes of this subtitle, by an amount equal to the amount of any credit allowed by this section for qualified energy conservation expenditures or qualified solar energy expenditures with respect to such property.".

(b) The amendments made by this section shall apply to amounts expended after April 20, 1977, in taxable years ending after such date and before January 1, 1985.

(c) (1) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following new item:

"Sec. 44B. Residential energy property credit.".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by striking out the period at the end of paragraph (23) and inserting in lieu thereof a semicolon and by inserting after paragraph (23) the following new paragraph:

"(24) to the extent provided in section 44A (c), in the case of property with respect to which a credit has been allowed under section 44B.".

(3) Section 6096 (b) (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44A" and inserting in lieu thereof "44A, and 44B".

PART B—TRANSPORTATION

Subpart 1—Fuel Efficiency Incentive Tax

SEC. 1201. FUEL INEFFICIENCY TAX.

(a) GENERAL RULE.—Part I of subchapter A of chapter 32 (relating to motor vehicle excise taxes) is amended by adding at the end thereof the following new section:

"SEC. 4064. FUEL INEFFICIENCY TAX.

"(a) IMPOSITION OF TAX.—Except as provided in subsection (b), a tax is hereby imposed on the sale by the manufacturer of each automobile, determined in accordance with the following tables:

"(1) In the case of a 1978 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 18	0
At least 17 but less than 18	$52
At least 16 but less than 17	112
At least 15 but less than 16	179
At least 14 but less than 15	256
At least 13 but less than 14	345
Less than 13	449

"(2) In the case of a 1979 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 19	0
At least 18 but less than 19	$52
At least 17 but less than 18	111
At least 16 but less than 17	178
At least 15 but less than 16	258
At least 14 but less than 15	339
At least 13 but less than 14	438
Less than 13	553

"(3) In the case of a 1980 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 20	0
At least 19 but less than 20	$52
At least 18 but less than 19	111
At least 17 but less than 18	176
At least 16 but less than 17	249
At least 15 but less than 16	333
At least 14 but less than 15	428
At least 13 but less than 14	538
Less than 13	666

"(4) In the case of a 1981 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 21.5	0
At least 20.5 but less than 21.5	$52
At least 19.5 but less than 20.5	110
At least 18.5 but less than 19.5	174
At least 17.5 but less than 18.5	245
At least 16.5 but less than 17.5	325
At least 15.5 but less than 16.5	416
At least 14.5 but less than 15.5	519
At least 13.5 but less than 14.5	637
At least 12.5 but less than 13.5	774
Less than 12.5	935

"(5) In the case of a 1982 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 23	0
At least 22 but less than 23	$57
At least 21 but less than 22	120
At least 20 but less than 21	189
At least 19 but less than 20	266
At least 18 but less than 19	351
At least 17 but less than 18	446
At least 16 but less than 17	553
At least 15 but less than 16	674
At least 14 but less than 15	812
At least 13 but less than 14	972
Less than 13	1,159

"(6) In the case of a 1983 model automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 24.5	0
At least 23.5 but less than 24.5	$57
At least 22.5 but less than 23.5	119
At least 21.5 but less than 22.5	188
At least 20.5 but less than 21.5	262
At least 19.5 but less than 20.5	345
At least 18.5 but less than 19.5	437
At least 17.5 but less than 18.5	539
At least 16.5 but less than 17.5	653
At least 15.5 but less than 16.7	782
At least 14.5 but less than 15.5	929
At least 13.5 but less than 14.5	1,098
At least 12.5 but less than 13.5	1,294
Less than 12.5	1,524

"(7) In the case of a 1984 model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 26	0
At least 25 but less than 26	$62
At least 24 but less than 25	129
At least 23 but less than 24	203
At least 22 but less than 23	283
At least 21 but less than 22	371
At least 20 but less than 21	467
At least 19 but less than 20	574
At least 18 but less than 19	693
At least 17 but less than 18	825
At least 16 but less than 17	974
At least 15 but less than 16	1,143
At least 14 but less than 15	1,336
At least 13 but less than 14	1,559
Less than 13	1,819

"(8) In the case of a 1985 or later model year automobile:

"If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 27.5	0
At least 26.5 but less than 27.5	$67
At least 25.5 but less than 26.5	140
At least 24.5 but less than 25.5	219
At least 23.5 but less than 24.5	304
At least 22.5 but less than 23.5	397
At least 21.5 but less than 22.5	499
At least 20.5 but less than 21.5	610
At least 19.5 but less than 20.5	733
At least 18.5 but less than 19.5	869
At least 17.5 but less than 18.5	1,021
At least 16.5 but less than 17.5	1,192
At least 15.5 but less than 16.5	1,384
At least 14.5 but less than 15.5	1,603
At least 13.5 but less than 14.5	1,854
At least 12.5 but less than 13.5	2,146
Less than 12.5	2,488

"(b) ALTERNATIVE TAX.—If the average fuel economy standard prescribed under section 502 o fthe Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of automobiles differs from the lowest

fuel economy level for which no tax is imposed under subsection (a) for the model year, then the tax imposed with respect to such class by subsection (a) for the model year shall be determined in accordance with a table prescribed for such year by the Secretary. Such table shall take the same general form as that in subsection (a) except that no tax shall be imposed at or above the level of fuel economy which is equal to the average fuel economy standard prescribed for that class of automobile for the model year. The tax for each whole mile per gallon below the level at which no tax is imposed shall be determined by multiplying the tax correction factor for the year by the difference between a fraction created by dividing 100,000 by the fuel economy for which the tax is to be imposed, and a fraction created by dividing 100,000 by the average fuel economy standard. The maximum tax prescribed by the Secretary for any class of automobiles for any model year may not exceed the maximum tax prescribed in subsection (a) for that model year. The Secretary shall prescribe such table prior to the beginning of the model year.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AUTOMOBILE, ETC.—The terms 'automobile', 'passenger automobile', 'fuel economy', 'average fuel economy standard', 'model type', and 'model year' have

the same meaning as such terms have under section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001).

"(2) MANUFACTURER.—The term 'manufacturer' includes a producer or importer.

"(3) TAX CORRECTION FACTOR.—For purposes of the alternative tax on subsection (b) of this section, the tax correction factor for each model year is as follows:

"1978	16.16 cents
1979	18.04 cents
1980	20.00 cents
1981	23.10 cents
1982	29.08 cents
1983	33.00 cents
1984	40.55 cents
1985 and thereafter	49.14 cents.".

(b) DENIAL OF CERTAIN EXEMPTIONS AND REFUNDS.—

(1) TAX-FREE SALES.—Subsection (a) of section 4221 (relating to certain tax-free sales) is amended by adding a new sentence at the end thereof to read as follows: "Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064.".

(2) DENIAL OF REFUNDS FOR CERTAIN USES.—Paragraph (2) of section 6416(b) (relating to tax payments considered overpayments in the case of specified uses and resales) is amended by adding a new sentence at the end thereof to read as follows: "Sub-

paragraphs (C) and (D) shall not apply in the case of any tax paid under section 4064.".

(c) PAYMENT OF TAX IN CASE OF LEASED AUTOMOBILES.—Section 4217 (relating to leases) is amended by adding at the end thereof the following new subsection:

"(e) LEASES OF CERTAIN AUTOMOBILES.—

"(1) IN GENERAL.—In the case of an initial lease of an automobile by a manufacturer taxable under section 4064, there shall be paid by the manufacturer upon each lease payment that portion of the total fuel inefficiency tax which bears the same ratio to such total fuel inefficiency tax as such payment bears to the total amount to be paid under such initial lease. In any case where an automobile which has been leased is sold or otherwise disposed of before the total fuel inefficiency tax has been paid, there shall be paid by the manufacturer upon such sale or disposition the difference between the tax paid on the lease payments and the total fuel inefficiency tax.

"(2) LEASE OTHER THAN INITIAL LEASE NOT CONSIDERED AS SALE.—Any lease of an automobile by the manufacturer, producer, or importer, other than the initial lease of such automobile, shall not be considered under subsection (a) as a sale of such automobile.

"(3) SALE AFTER TOTAL FUEL INEFFICIENCY TAX PAID.—If an automobile taxable under section 4064 is sold after the total fuel inefficiency tax is paid, no tax shall be imposed under this chapter on such sale.

"(4) TOTAL FUEL INEFFICIENCY TAX DEFINED.—For purposes of this subsection, the term 'total fuel inefficiency tax' means the tax imposed by section 4064 computed at the rate in effect on the date of the initial lease.".

(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter A of chapter 32 is amended by adding at the end thereof the following new item:

"Sec. 4064. Fuel Inefficiency Tax.".

SEC. 1202. FUEL EFFICIENCY REBATE.

(a) GENERAL RULE.—Subchapter B of chapter 65 (relating to rules of special application in the case of abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6429. FUEL EFFICIENCY REBATE.

"(a) IN GENERAL.—An amount shall be paid or credited to the manufacturer with respect to the sale of—

"(1) each 1977 passenger automobile and each 1978 or later model year automobile which is domestically manufactured and which is sold by the manufacturer after May 1, 1977;

"(2) each 1977 model year passenger automobile which is not manufactured domestically, and which is sold by the manufacturer after May 1, 1977, but only to the extent provided in an executive agreement applicable to such automobile which is entered into after April 30, 1977, and before May 1, 1978, and which, pursuant to such agreement, is to be effective for the time during which such passenger automobile is sold; and

"(3) each 1978 and later model year automobile which is not manufactured domestically, and which is sold by the manufacturer after May 1, 1977, but only to the extent provided in an executive agreement applicable to such automobile which takes effect after May 1, 1977.

Such amount shall be equal to the lesser of $500 or the amount determined by multiplying the base rebate determined under subsection (b) or (c) by the rebate coefficient determined in accordance with subsection (e). Any executive agreement entered into with any country to provide for a payment or credit under this section shall be designed to assure that manufacturers of domestically manufactured automobiles are not disadvantaged by the system of taxes and rebates under section 4064 and this section.

"(b) BASE REBATE.—(1) Except as provided in paragraphs (2) and (3), the base rebate is an amount determined as follows:

"(1) In the case of a 1977 or 1978 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 18 but less than 19	0
At least 19 but less than 20	$47
At least 20 but less than 21	89
At least 21 but less than 22	128
At least 22 but less than 23	163
At least 23 but less than 24	195
At least 24 but less than 25	224
At least 25 but less than 26	251
At least 26 but less than 27	276
At least 27 but less than 28	299
At least 28 but less than 29	321
At least 29 but less than 30	341
At least 30 but less than 31	359
At least 31 but less than 32	377
At least 32 but less than 33	393
At least 33 but less than 34	408
At least 34 but less than 35	423
At least 35 but less than 36	436
At least 36 but less than 37	449
At least 37 but less than 38	461
At least 38 but less than 39	473
More than 39	473

"(2) In the case of a 1979 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 19 but less than 20	0
At least 20 but less than 21	$47
At least 21 but less than 22	90
At least 22 but less than 23	129
At least 23 but less than 24	165
At least 24 but less than 25	197
At least 25 but less than 26	227
At least 26 but less than 27	255
At least 27 but less than 28	281
At least 28 but less than 29	305
At least 29 but less than 30	327
At least 30 but less than 31	348
At least 31 but less than 32	367
At least 32 but less than 33	385
At least 33 but less than 34	402
At least 34 but less than 35	416
At least 35 but less than 36	433
At least 36 but less than 37	448
At least 37 but less than 38	461
At least 38 but less than 39	474
More than 39	474

"(3) In the case of a 1980 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 20 but less than 21	0
At least 21 but less than 22	$47
At least 22 but less than 23	90
At least 23 but less than 24	130
At least 24 but less than 25	166
At least 25 but less than 26	199
At least 26 but less than 27	230
At least 27 but less than 28	259
At least 28 but less than 29	285
At least 29 but less than 30	310
At least 30 but less than 31	333
At least 31 but less than 32	354
At least 32 but less than 33	374
At least 33 but less than 34	393
At least 34 but less than 35	411
At least 35 but less than 36	428
At least 36 but less than 37	444
At least 37 but less than 38	459
At least 38 but less than 39	473
More than 39	473

"(4) In the case of a 1981 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 21.5 but less than 22.5	0
At least 22.5 but less than 23.5	$47
At least 23.5 but less than 24.5	91
At least 24.5 but less than 25.5	131
At least 25.5 but less than 26.5	168
At least 26.5 but less than 27.5	202
At least 27.5 but less than 28.5	234
At least 28.5 but less than 29.5	264
At least 29.5 but less than 30.5	291
At least 30.5 but less than 31.5	317
At least 31.5 but less than 32.5	340
At least 32.5 but less than 33.5	363
At least 33.5 but less than 34.5	385
At least 34.5 but less than 35.5	405
At least 35.5 but less than 36.5	423
At least 36.5 but less than 37.5	441
At least 37.5 but less than 38.5	458
At least 38.5 but less than 39.5	474
More than 39.5	474

"(5) In the case of a 1982 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 23 but less than 24	0
At least 24 but less than 25	$52
At least 25 but less than 26	101
At least 26 but less than 27	145
At least 27 but less than 28	187
At least 28 but less than 29	225
At least 29 but less than 30	261
At least 30 but less than 31	295
At least 31 but less than 32	326
At least 32 but less than 33	355
At least 33 but less than 34	383
At least 34 but less than 35	409
At least 35 but less than 36	433
At least 36 but less than 37	456
At least 37 but less than 38	478
At least 38 but less than 39	499
More than 39	499

"(6) In the case of a 1983 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 24.5 but less than 25.5	0
At least 25.5 but less than 26.5	$52
At least 26.5 but less than 27.5	101
At least 27.5 but less than 28.5	147
At least 28.5 but less than 29.5	189
At least 29.5 but less than 30.5	228
At least 30.5 but less than 31.5	265
At least 31.5 but less than 32.5	299
At least 32.5 but less than 33.5	331
At least 33.5 but less than 34.5	361
At least 34.5 but less than 35.5	390
At least 35.5 but less than 36.5	417
At least 36.5 but less than 37.5	442
At least 37.5 but less than 38.5	467
More than 38.5	490

"(7) In the case of a 1984 model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 26 but less than 27	0
At least 27 but less than 28	$57
At least 28 but less than 29	111
At least 29 but less than 30	161
At least 30 but less than 31	207
At least 31 but less than 32	251
At least 32 but less than 33	292
At least 33 but less than 34	330
At least 34 but less than 35	366
At least 35 but less than 36	400
At least 36 but less than 37	433
At least 37 but less than 38	463
At least 38 but less than 39	492
More than 39	492

"(8) In the case of a 1985 or later model year passenger automobile:

"If the fuel economy of the model type in which the automobile falls is:	The base rebate is:
At least 27.5 but less than 28.5	0
At least 28.5 but less than 29.5	$62
At least 29.5 but less than 30.5	121
At least 30.5 but less than 31.5	176
At least 31.5 but less than 32.5	227
At least 32.5 but less than 33.5	275
At least 33.5 but less than 34.5	320
At least 34.5 but less than 35.5	362
At least 35.5 but less than 36.5	403
At least 36.5 but less than 37.5	440
At least 37.5 but less than 38.5	476
At least 38.5 but less than 39.5	493
More than 39.5	500

"(c) In the case of an electric automobile, the payment or credit is equal to the highest payment or credit available for passenger automobiles of that model year.

"(d) SOURCE OF PAYMENT.—The payment of credit

described in subsection (a) shall be made from the General Fund of the Treasury from funds not otherwise appropriated.

"(e) REBATE COEFFICIENT. (A) A rebate coefficient shall be determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, for the automobiles manufactured in model years 1977 and 1978, and for each subsequent model year thereafter. The Secretary shall publish the rebate coefficient in the Federal Register no later than 30 days after date of enactment in the case of the 1977 and 1978 model years and, in the case of each subsequent model year, no later than the end of the preceding model year. Rebate coefficients for automobiles with respect to which payments are required to be paid under subsection (a) shall be determined so that the aggregate amount for the model years 1977 and 1978, or for any subsequent model year, paid or credited under this section with respect to such automobiles approximates, as closely as possible, an estimate made by the Secretary, prior to the beginning of the model year, of the amount of tax to be collected under section 4064 with respect to sales of model year automobiles, less the expenses of administration of the requirements of this subpart.

"(B) For purposes of this section, section 503 (b) (2) (E) of the Motor Vehicle Information and Cost Savings Act

(15 U.S.C. 2003) shall apply in determining if an automobile is manufactured domestically.

"(f) If the average fuel economy standard prescribed under section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of passenger automobiles for a model year differs from the highest fuel economy for which no base rebate is prescribed under subsection (b) for the model year, then the base rebate with respect to such class for the model year shall be determined in accordance with a table prescribed for such year by the Secretary. Such a table shall take the same general form as that in subsection (b) except that no base rebate shall be prescribed at or below the level of the average fuel economy standard prescribed for passenger automobiles for the model year. The base rebate for each whole mile per gallon above the level at which no base rebate is prescribed shall be determined by multiplying the base rebate correction factor for the year by the difference between a fraction created by dividing 100,000 by the fuel economy for which the base rebate is to be prescribed, and a fraction created by dividing 100,000 by the average fuel economy standard. No base rebate shall be prescribed which exceeds the maximum base rebate specified in the table for the model year under subsection (b). The Secretary shall prescribe the table each year prior to the beginning of the model year.

"(g) If the average fuel economy standard prescribed under section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of nonpassenger automobiles for a model year is higher than the average fuel economy standard for passenger automobiles for that model year, then the base rebate with respect to such class for the model year shall be determined in accordance with a table prescribed for such year by the Secretary. Such a table shall take the same general form as that in subsection (b) except that no base rebate shall be prescribed at or below the level of the average fuel economy standard prescribed for such class of nonpassenger automobiles for the model year. The base rebate for each whole mile per gallon above the level at which no base rebate is prescribed shall be determined by multiplying the base rebate correction factor for the model year by the difference between a fraction created by dividing 100,000 by the fuel economy for which the base rebate is to be prescribed, and a fraction created by dividing 100,000 by the average fuel economy standard. No base rebate shall be prescribed which exceeds the base rebate specified in the table for the model year under subsection (b). The Secretary shall prescribe the table each year prior to the beginning of the model year.

"(h) If the average fuel economy standard prescribed under section 502 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2002) applicable to any class of automobiles is below the average fuel economy standard for passenger automobiles for the model year, then the base rebate with respect to such class for the model year shall be determined in the same manner as that for passenger automobiles for the model year.

"(i) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) AUTOMOBILE, ETC.—The terms 'automobile', 'passenger automobile', 'fuel economy', 'model type', 'average fuel economy standard' and 'model year' have the meaning prescribed by section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001).

"(2) ELECTRIC AUTOMOBILE.—The term 'electric automobile' means an automobile which is powered primarily by an electric motor drawing current from rechargeable storage batteries or other portable sources of electric current.

"(3) MANUFACTURER.—The term 'manufacturer' has the meaning prescribed by section 4064(c)(2).

"(4) BASE REBATE CORRECTION FACTOR.—The

term 'base rebate correction factor' for each model year has the same meaning as the term 'tax correction factor' used in section 1201 4064 (c) (3).

"(j) LEASE CONSIDERED SALE.—For purposes of this section, the initial lease of an automobile by the manufacturer shall be considered a sale. Any lease other than an initial lease shall not be considered a sale.

"(k) CREDIT ON RETURNS.—Any manufacturer entitled to a payment under this section may, instead of filing a claim for refund, take credit therefor against taxes imposed by chapter 31 or 32 due on any subsequent return.

"(l) DISALLOWANCE OF PAYMENT OR CREDIT.—Notwithstanding any other provisions of this section:

"(1) No amount shall be paid or credited under this section with respect to the sale of any automobile by the manufacturer for export (by any person).

"(2) No amount shall be paid or credited under this section with respect to the sale by the manufacturer of any automobile after May 1, 1977, unless such manufacturer has paid such amount to the ultimate purchaser of such automobile and has in his possession evidence of such payment as may be required by regulations prescribed by the Secretary under this subsection.".

(b) CLERICAL AMENDMENT. The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6429. Fuel Efficiency Rebate.".

SEC. 1203. FUEL INEFFICIENCY TAX RECEIPTS AND REBATE PAYMENTS.

(a) The Treasury of the United States shall record as receipts to the General Fund amounts collected under section 4064 of the Internal Revenue Code of 1954 (relating to fuel inefficiency tax), reduced by the amounts credited or refunded as overpayments of amounts so collected.

(b) The Treasury of the United States shall record as outlays the amounts required to be paid by section 6429 of the Internal Revenue Code of 1954 (relating to fuel efficiency rebates).

(c) APPROPRIATION AUTHORIZATION.—There are authorized to be appropriated such amounts as may be necessary for payment of the fuel efficiency rebates.

SEC. 1204. EFFECTIVE DATES.

The amendments made by sections 1201 and 1202 shall apply in the case of sales by the manufacturer after the date of enactment of this Act, except as otherwise specified therein.

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Subpart 2—Gasoline Conservation Program

SEC. 1221. STANDBY GASOLINE TAX.

(a) GENERAL RULE. Part III of subchapter A of chapter 32 (relating to petroleum products) is amended by redesignating subparts B and C as subparts C and D, respectively, and by inserting after subpart A the following new subpart:

"Subpart B—Standby Gasoline Tax

"Sec. 4086. Imposition of tax.
"Sec. 4087. Cross reference.

"SEC. 4086. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—In addition to any tax imposed by section 4081, there is hereby imposed on gasoline sold during any gasoline tax year by the producer or importer thereof, or by any producer of gasoline, a tax of 5 cents a gallon for each full percentage point that domestic consumption of gasoline in the preceding determination year exceeded the annual national gasoline consumption target for such preceding determination year, except that—

"(1) the tax imposed under this subsection for any gasoline tax year cannot increase or decrease more than 5 cents a gallon from the tax imposed in the preceding gasoline tax year, and

"(2) the total under this subsection shall not exceed a tax of more than 50 cents per gallon.

"(b) DETERMINATION OF DOMESTIC CONSUMPTION.—Not later than November 15 of each calendar year, the Administrator of the Federal Energy Administration shall make and publish in the Federal Register a determination of whether the domestic consumption of gasoline for the 12-month period ending on September 30 of such calendar year (referred to in this section as the 'determination year') exceeded the annual national gasoline consumption target level specified in section (c) for such determination year. If the domestic consumption of gasoline for such determination year exceeded by a full percentage point or more the annual national gasoline consumption target for that year, then on January 1 following such determination year, the rate of tax as determined in subsection (a) will be effective.

"(c) ANNUAL NATIONAL GASOLINE CONSUMPTION TARGET LEVELS.—The annual national gasoline consumption target levels are—

"12-month period ending September 30 of determination year:	Million barrels average daily consumption:
1978	7.350
1979	7.400
1980	7.450
1981	7.400
1982	7.200
1983	7.000
1984	6.800
1985	6.600
1986	6.550
1987, and thereafter	6.500

"(d) DOMESTIC CONSUMPTION DEFINED.—For purposes of this section, the term 'domestic consumption of gasoline' for any determination year means the average daily usage of gasoline for such determination year within the United States as determined by the Administrator.

"SEC. 4087. CROSS REFERENCE.

"For provisions relating to credit for standby gasoline tax, see section 6430.".

(b) FLOOR STOCKS TAXES.—Subchapter G of chapter 32 is amended by inserting after section 4225 the following new section:

"SEC. 4226. FLOOR STOCK TAXES.

"(a) IN GENERAL.—

(1) STANDBY GASOLINE TAX.—

"(A) IMPOSITION OF TAX.—On gasoline (as defined in section 4082(b)) which, on a gasoline tax increase date, is held by a dealer for sale, there is hereby imposed a floor stocks tax at a rate equal to the difference between (i) the tax (if any) imposed by section 4086 on the sale of such gasoline by the producer or importer, and (ii) the tax which would have been imposed by such section on such sale if that sale had occurred on such gasoline tax increase date. The tax imposed by this subpara-

graph shall not apply to gasoline in retail stock held at the place where intended to be sold at retail.

"(b) DUE DATES OF TAXES.—Any tax imposed by subsection (a) (1) shall be paid at such time as may be prescribed by the Secretary but not sooner than 90 days after the gasoline tax increase date in respect of which such tax was imposed.".

(c) DENIAL OF CERTAIN EXEMPTIONS AND REFUNDS.—

(1) TAX-FREE SALES.—Subsection (a) of section 4221 (relating to certain tax-free sales) is amended by adding at the end thereof the following new sentence: "Paragraphs (4) and (5) shall not apply to the tax imposed by section 4086.".

(2) USE IN FURTHER MANUFACTURE.—Paragraph (6) (C) of section 4221 (d) (relating to use in further manufacture) and paragraph (3) (f) of section 6416 (b) (relating to tax-paid articles used for further manufacture, etc.) are each amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086.".

(3) DENIAL OF REFUNDS FOR CERTAIN USES.—Paragraph (2) of section 6416 (b) (relating to tax payments considered overpayments in the case of specified uses and resales) is amended by adding a new sentence

at the end thereof to read as follows: "Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4086.".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The table of subparts for part III of subchapter A of chapter 32 is amended by striking out the last two items and inserting in lieu thereof the following:

"Subpart B. Standby Gasoline Tax.
"Subpart C. Lubricating oil.
"Subpart D. Special provisions applicable to petroleum products."

(2) The subpart heading for subpart C of such part III (as redesignated by subsection (a)) is amended to read as follows:

"Subpart C—Lubricating Oil"

(3) The subpart heading for subpart D of such part III (as redesignated by subsection (a)) is amended to read as follows:

"Subpart D—Special Provisions Applicable to Petroleum Products"

(4) Subsections (a) and (b) of section 4082 are each amended by striking out "in this subpart" and inserting in lieu thereof "in this subpart and subpart B.".

(5) Section 4083 is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086".

(6) Section 4101 is amended by striking out "section 4081 or section 4091" and inserting in lieu thereof "section 4081, 4086, or 4091".

(7) Section 6412 (relating to floor stock refunds) is amended by redesignating paragraph (2) of subsection (a) as paragraph (3) and adding a new paragraph (2) to read as follows:

"(2) STANDBY GASOLINE TAX.—Whenever gasoline subject to the tax imposed by section 4086 has been sold by the producer or importer thereof before a gasoline tax decrease date and on such date is held by a dealer and is intended for sale, there shall be credited or refunded (without interest) to the producer or importer an amount equal to the difference between the tax under section 4086 paid by such producer or importer on his sale of the gasoline and the amount of the tax under section 4086 made applicable to such gasoline on or after the tax decrease date, if (A) a claim for such credit or refund is filed with the Secretary on or before the end of the 10-month period beginning with the month following the tax decrease date, such claim shall be based on a request submitted to the producer or importer before the end of the 7-month period beginning with the month following the tax decrease date, by the dealer who held the gasoline in respect of which the credit or refund is

claimed, and (B) on or before the end of said 10-month period beginning with the tax decrease date, reimbursement has been made to such dealer by the producer or importer for the tax reduction on such gasoline or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline. For purposes of this paragraph, the term 'gasoline tax decrease date' means any day on which the rate imposed by section 4086 is less than the rate of such tax in effect on the preceding day.".

(8) Paragraph (a) (2) of section 6420 is amended by striking out "section 4081" and inserting in lieu thereof "sections 4081 and 4086".

(9) Section 6420(d) is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086".

(10) Paragraph (e) (1) of section 6420 is amended by striking out "section 4081" and inserting in lieu thereof "section 4081 or 4086".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1977.

SEC. 1222. PER CAPITA PAYMENT OF STANDBY GASOLINE TAX RECEIPTS.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6430. PER CAPITA PAYMENT OF STANDBY GASOLINE TAX RECEIPTS.

"(a) GENERAL RULE.—Each individual shall be treated as having made a payment against the tax imposed by chapter 1 for the taxable year in which there is a tax imposed under section 4086 equal to the gasoline tax rebate, multiplied by each exemption provided by subsections (b) and (e) of section 151 for which the taxpayer is allowed a deduction for such taxable year.

"(b) TAX REBATE.—The Secretary, in consultation with the Administrator of the Federal Energy Administration, shall publish in the Federal Register the amount of the per capita payment for the succeeding gasoline tax year not later than November 15 of each year. The Secretary shall determine the per capita payment based on estimated revenues to be derived from the tax imposed under section 4086 during the taxable year reduced by the anticipated revenue loss from business deductions for the tax imposed by section 4086 allowable under the Internal Revenue Code of 1954.

The per capita payment shall reflect the administrative costs incurred in connection with the per capita payment.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount treated as paid by reason of this section shall not exceed the amount of the taxpayer's liability for tax imposed by chapter 1 (unreduced by any credits) for the taxable year.

"(2) REFUND MADE TO CERTAIN TAXPAYERS.—Paragraph (1) shall not apply to any individual who—

"(A) is entitled to a credit under section 43 (relating to credit for earned income), or

"(B) (i) has a dependent child who lived with such individual,

"(ii) has earned income, and

"(iii) if married, filed a joint return.

For purposes of subparagraph (B) (ii), the term 'earned income' has the meaning given to such term by section 43 (c) (2), except that 'self-employment income (as defined in section 1402 (b))' shall be substituted for 'net earnings from self-employment' in clause (ii) of section 43 (c) (2) (A).

"(d) DATE PAYMENT DEEMED MADE.—The payment provided by this section shall be deemed made on whichever of the following dates is the later:

"(1) the date prescribed by law (determined

without extensions) for filing the return of tax under chapter 1 for the taxable year, or

"(2) the date on which the taxpayer files his return of tax under chapter 1 for the taxable year.

"(e) CERTAIN PERSONS NOT ELIGIBLE.—This section shall not apply to any estate or trust, nor shall it apply to any nonresident alien individual.".

(b) TECHNICAL AMENDMENT.—Subpart A of Part IV of chapter 1 (relating to credits allowable) is amended by inserting after section 33 the following new section:

"SEC. 34. FOR CREDIT AGAINST THE TAX IMPOSED BY THIS CHAPTER ALLOWED FOR STANDBY GASOLINE TAX, SEE SECTION 6430.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6430. Per capita payment of standby gasoline tax receipts.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1977.

SEC. 1223. ENERGY PAYMENTS.

Payments in an amount equal to the per capita payment of standby gasoline tax receipts determined under section 6430 shall be made to recipients of benefits under certain retirement and survivor benefit programs in accordance with

section 1404 of the National Energy Act, recipients of aid to families with dependent children under approved State plans in accordance with section 1405 of such Act, and certain individuals in accordance with section 1406 of such Act.

Subpart 3—Motorboat Gasoline and Fuels for General Aviation

AMENDMENT OF MOTORBOAT AND GENERAL AVIATION FUEL PROVISIONS

SEC. 1231. (a) (1) Section 4041 (b) (relating to special motor fuels) is amended by inserting "a motorboat or in" before "a highway vehicle" the first time that the words appear in the second and third sentence of such subsection.

(2) Section 4041 (c) (relating to noncommercial aviation) is amended by deleting "7" in paragraph (1) and inserting "11" in lieu thereof, by substituting "7" and "9½" respectively for "3" and "5½", respectively in paragraph 3 and by deleting paragraph 5.

(b) Section 6421 (a) is amended by inserting "a motorboat or in" before "a highway vehicle" the first time that it appears.

AIRPORT AND AIRWAY TRUST FUND AMENDMENTS

SEC. 1232. Section 208 of the Airport and Airway Revenue Act of 1970 (49 U.S.C. 1742) is amended—

(1) by adding at the end of subsection (b) the

following new sentence: "After September 30, 1977, the amounts appropriated by paragraph (1) with respect to the taxes under subsections (c) and (d) of section 4041 shall be based on a tax rate of 7 cents a gallon and paragraph (2) shall not apply.", and

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

"(4) The amounts referred to in paragraphs (2) and (3) shall be reduced in appropriate amount to reflect the reduction in amounts transferred to the Trust Fund after September 30, 1977, as provided for by section 208(b).".

LAND AND WATER CONSERVATION FUND AMENDMENTS

SEC. 1233. Section 201(b) of the Land and Water Conservation Fund Act of 1965 is amended by deleting all that follows "equivalent to" and inserting "the amounts paid before July 1, 1978, under section 6421 of Title 26 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes or by local transit systems) with respect to gasoline used after December 31, 1964, in motorboats, on the basis of claims filed for the period ending before October 1, 1979.".

HIGHWAY TRUST FUND AMENDMENTS

SEC. 1234. Section 209 of the Highway Revenue Act of 1956 (as amended) (23 U.S.C. 120 note) is amended by

adding at the end of subsection (c) (5) the following new sentence: After September 30, 1977, the amounts described in paragraph (1) (A) and 3 (A) (before the application of this subsection) shall be further reduced by appropriate amounts to reflect the amount of taxes under subsections (c) and (d) of section 4041 (taxes on aviation fuel) and under section 4081, with respect to gasoline used in aircraft, which are not required to be transferred to the Airport and Airway Trust Fund.".

EFFECTIVE DATE

SEC. 1235. The amendments made by this part shall take effect on October 1, 1977.

Subpart 4—Removal of Excise Tax on Buses

SEC. 1241. REMOVAL OF EXCISE TAX ON BUSES.

(a) GENERAL RULE.—Section 4063 (relating to exemptions from tax on trucks, etc.) is amended by revising paragraph 6 of subsection (a) to read as follows:

"(6) BUSES.—The tax imposed under section 4061 (a) shall not apply in the case of automobile bus chassis or automobile bus bodies.".

(b) FLOOR STOCK REFUNDS.—

(1) IN GENERAL.—Where, before the day after the date of the enactment of this Act, any tax-repealed article (as defined in subsection (e)) has been sold by the manufacturer, producer, or importer and on such

day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article, if—

(A) claim for such credit or refund is filed with the Secretary before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act based upon a request submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the dealer who held the article in respect of which the credit or refund is claimed; and

(B) on or before the first day of such 10th calendar month reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1)

unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary under this subsection.

(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061(a) shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

(c) REFUNDS WITH RESPECT TO CERTAIN CONSUMER PURCHASES.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (2), where after April 20, 1977, with respect to any article which was subject to the tax imposed by section 4061(a)(1) (as in effect on the before the date of the enactment of this Act), and on or before such date of enactment, a tax-repealed article (as defined in subsection (e)) has been sold to an ultimate purchaser, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer of such article an amount equal to the tax paid

by such manufacturer, producer, or importer on his sale of the article.

(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to a credit or refund under paragraph (1) with respect to an article unless—

(A) he has in his possession such evidence of the sale of the article to an ultimate purchaser, and of the reimbursement of the tax to such purchaser, as may be required by regulation prescribed by the Secretary under this subsection;

(B) claim for such credit or refund is filed with the Secretary before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act based upon information submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the person who sold the article (in respect of which the credit or refund is claimed) to the ultimate purchaser; and

(C) on or before the first day of such 10th calendar month reimbursement has been made to the ultimate purchaser in an amount equal to the tax paid on the article.

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(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061 (a) shall, insofar as applicable and not inconsistent with paragraph (1) or (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

(d) CERTAIN USES BY MANUFACTURER, ETC.—Any tax paid by reason of section 4218 (a) (relating to use by manufacturer or importer considered sale) shall be deemed an overpayment of such tax with respect to any article which was subject to the tax imposed by section 4061 (a) (1) as in effect on the day before the date of the enactment of this Act if the tax was imposed on such article by reason of such section 4218 (a) after April 20, 1977.

(e) DEFINITIONS.—For purposes of this section—

(1) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(2) An article shall be considered as "held by a dealer" if title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

(3) The term "tax-repealed article" means an article on which a tax was imposed by section 4061 (a) as in effect on the day before the date of the enactment of this Act and is exempted from such tax by section 4063 (a) (6) as in effect on the effective date of this Act.

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 4221 (e) (relating to special rules for tax free sales) is amended by deleting paragraph 5.

(2) Section 6416 (b) (2) (I) is deleted.

(g) EFFECTIVE DATE.—

"(1) The amendments made by this section shall apply with respect to articles sold after April 20, 1977.

(2) For purposes of paragraph (1), an article shall not be considered sold on or before April 20, 1977, unless possession or right to possession passes to the purchaser before such day.

(3) In the case of—

(A) a lease,

(B) a contract for the sale of an article where it is provided that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

(C) a conditional sale, or

(D) a chattel mortgage arrangement wherein it is provided that the sale price shall be paid in installments,

entered into on or before April 20, 1977, payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold on or before April 20, 1977.

PART C—BUSINESS ENERGY TAX CREDIT

SEC. 1301. BUSINESS ENERGY CREDIT.

(a) ALLOWANCE OF CREDIT.—Section 46(a)(2) (relating to amount of investment credit for the current taxable year) is amended as follows:

(1) Subparagraph (A) is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B), (E), and (F)".

(2) Subparagraph (B) is amended by striking out "the amount of the credit" and inserting in lieu thereof "except as otherwise provided in subparagraphs (E) and (F) the amount of the credit".

(3) Subparagraph (C) is amended by striking out "In the case of property" and inserting in lieu thereof "Except as otherwise provided in subparagraphs (E) and (F), in the case of property".

(4) New subparagraphs (E), (F), and (G) are added to read as follows:

"(E) BUSINESS ENERGY PROPERTY.—In the case of a property that is business energy property (as defined in section 48(l)(1)), other than special business energy property, the amount of credit determined under this paragraph for the taxable year shall be the amount equal to—

"(i) except as provided in clause (ii), in the case of such property described in subparagraph (D), 20 percent of the qualified investment (as determined under subsections (c) and (d));

"(ii) in the case of property described in subparagraph (D) and a corporation to which subparagraph (B) applies, the amount which would be determined under subparagraph (B)

with respect to qualified investment in such property (except that the figure "21 percent" shall be substituted for "11 percent" in applying subparagraph (B) (i)); and

"(iii) in the case of property not described in subparagraph (D), an amount equal to 17 percent of the qualified investment (as determined under subsections (c) and (d)).

In the case of cogeneration property (as defined in section 48 (l) (4) or alternative energy property (as defined in section 48 (l) (5)) to which this subparagraph applies, the figure "20 percent" shall be substituted for "17 percent" in applying clause (iii).

"(F) SPECIAL BUSINESS ENERGY PROPERTY.—Except as otherwise provided in this subparagraph, in the case of property that is a special business energy property (as defined in section 48 (l) (3)), the amount of the credit determined under this paragraph for the taxable year shall be an amount equal to 10 percent of the qualified investment (as determined under subsections (c) and (d)). In the case of a property described in the preceding sentence that is either cogeneration property (as defined in subsection 48 (l) (4)) or alternative energy property (as defined in section 48 (l)

(5)) the figure "20 percent" shall be substituted for "10 percent". In the case of property to which subparagraph (D) applies and a corporation to which subparagraph (B) applies, the amount of the credit determined under this paragraph for the taxable year shall be an amount equal to the amount which would be determined under subparagraph (B) with respect to qualified investment in such property, except that if the property is cogeneration property or alternative energy property, the figure "21 percent" shall be substituted for "11 percent" in applying subparagraph (B) (i).

"(G) LIMITATION WITH RESPECT TO BUSINESS ENERGY PROPERTY.—The provisions of subparagraphs (E) and (F) shall apply only to—

"(i) property to which subsection (d) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer after April 20, 1977, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after April 20, 1977, and before January 1, 1983,

"(ii) property to which subsection (d) does not apply, acquired by the taxpayer after April 20, 1977, and before January 1, 1983,

and placed in service by the taxpayer before January 1, 1983, and

"(iii) property to which subsection (d) applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d)) with respect to qualified progress expenditures made after April 20, 1977, and before January 1, 1983.

In the case of property to which subsection (d) does not apply, subparagraphs (E) and (F) shall apply only with respect to new section 38 property. In the case of property to which subsection (d) applies, subparagraphs (E) and (F) shall apply only to property which, at the later of the dates specified in subsection (d) (2) (A), it is reasonable to believe will be, in the case of subparagraph (E), business energy property other than special business energy property, or in the case of subparagraph (F), special business energy property, when placed in service.".

(b) DEFINITIONS.—Section 48 (relating to definitions and special rules) is amended as follows:

(1) Paragraph (1) of subsection (a) is amended by striking out the period at the end of subparagraph

(C) and inserting ", or" in lieu threeof, and by adding a new subparagraph (D), to read as follows:

"(D) Special business energy property, as defined in subsection (l) (3) but only if the credit allowed by section 38 with respect to such property is determined under section 46 (a) (2) (F).".

(2) Paragraph (3) of subsection (a) is amended by striking out "and" at the end of subparagraph (B), by inserting a comma in lieu of the period at the end of subparagraph (C), and adding a new subparagraph (D), to read as follows:

"(D) Business energy property, as defined in subsection (l) (1), but only if the credit allowable by section 38 with respect to such property is determined under section 46 (a) (2) (E) or (F).".

(3) Subsection (l) is redesignated as subsection (m) and a new subsection (l) is added to read as follows:

"(l) (1) BUSINESS ENERGY PROPERTY.—Except as otherwise provided in paragraph (2), the term "business energy property" means property which is an integral part of, or used in connection with, a building or other structure located in the United States that has been substantially completed on or before April 20, 1977, and which is either—

"(A) cogeneration property (as defined in paragraph (4)),

"(B) alternative energy property (as defined in paragraph (5)),

"(C) solar equipment (as defined in paragraph (6)), or

"(D) of a class identified by regulations of the Secretary as having as its principal purpose reducing the amount of energy consumed—

"(i) to heat or cool the building or other structure, or

"(ii) to carry on any manufacturing or production process in the building or structure.

In prescribing the regulations under this paragraph, the Secretary shall consult with the Federal Energy Administrator. The Secretary shall not identify any class of property under subparagraph (D) (ii) unless the property is a new identifiable property which does not significantly alter the manufacturing or production process.

"(2) EXCEPTION FOR CERTAIN PROPERTY.—Property shall not be business energy property where—

"(A) any portion of the cost of such property to any person is treated, by reason of section 6431 (a), as being

a payment against any tax imposed by chapter 45 (relating to oil and gas conservation taxes), or

"(B) the property is used to carry on any manufacturing or production process which is first carried on in the building or other structure described in paragraph (1) after April 20, 1977.

"(3) SPECIAL BUSINESS ENERGY PROPERTY.—The term 'special business energy property' means business energy property which is property other than property described in subparagraph (A), (B), or (C) of subsection (a) (1).

"(4) COGENERATION PROPERTY.—The term 'cogeneration property' means property which produces steam, heat, or other forms of useful energy other than electric energy which is, or will be, used for industrial, commercial, or space heating purposes which together with such production, generates electric energy, and which property meets such requirements respecting minimum fuel efficiency as the Secretary by regulations prescribes, after consultation with the Federal Energy Administrator.

"(5) ALTERNATIVE ENERGY PROPERTY.—The term 'alternative energy property' means property which is—

"(A) a coal fired boiler,

"(B) a coal fired combustor other than a boiler,

"(C) a facility for the conversion of coal into syn-

thetic gas which has a heat content of 500 British thermal units or less per standard cubic foot,

"(D) a facility where coal is used as a feedstock for manufacture of chemicals or other products (other than coke),

"(E) equipment used for the unloading, transfer, storage, reclaiming from storage, or preparation (including washing, crushing, drying, and weighing at the point of use) of coal for use in, or with respect to, a boiler, combustor, or facility described in subparagraph (A), (B), (C), or (D),

"(F) a boiler (including a boiler fueled by waste materials or waste heat), the primary fuel for which is not petroleum, natural gas, or products derived from petroleum or natural gas,

"(G) equipment for the burning of coal in combustors other than boilers, but only a burner and such equipment that is used to supply coal to a burner, or

"(H) pollution control equipment required by Federal, State, or local regulations to be installed on, or with respect to, any property described in subparagraph (A), (B), (C), (D), (E), (F), or (G).

For purposes of this paragraph the terms 'facility' and 'equipment' do not include a building or other structure.

"(6) SOLAR ENERGY EQUIPMENT.—The term 'solar energy equipment' means equipment which is a type identified in regulations prescribed by the Secretary after consultation with the Federal Energy Administrator which, when installed in or on, or when connected to a building uses solar energy to heat or cool a building or any part thereof, or to heat water or to provide process heat.

"(7) ITEMS TO BE INCLUDED.—In prescribing the regulations under paragraph (1), the Secretary, in consultation with the Federal Energy Administrator, shall include the following items:

"(A) recuperators,

"(B) heat wheels,

"(C) regenerators,

"(D) heat exchangers,

"(E) waste heat boilers,

"(F) heat pipes,

"(G) insulation,

"(H) double glazing,

"(I) heat pumps,

"(J) reflective glass coatings,

"(K) automatic energy control systems,

"(L) turbulators,

"(M) preheaters,

"(N) combustible gas recovery systems, and

"(O) economizers.

However, in the event that the Secretary, after consultation with the Federal Energy Administrator, determines that any class of property described in subparagraphs (A) through (O) does not meet the criteria set forth in paragraph (1)(D), the Secretary is not required to identify such class of property in the regulations prescribed under paragraph (1)."

(c) RECAPTURE.—Subsection (a) of section 47 (relating to certain dispositions etc., of section 38 property) is amended by striking out "paragraph (2)" in paragraph (4) and inserting in lieu thereof "paragraph (2) or (8)" and by adding a new paragraph (8) at the end thereof to read as follows:

"(8) CHANGE IN BUSINESS ENERGY PROPERTY.—If during the taxable year any property taken into account as business energy property in computing the credit under section 38—

"(A) Becomes property that is not business energy property before the close of the useful life which was taken into account in computing the credit under section 38, or before expiration of 7 years from the date the property was placed in service, whichever is less, or

"(B) With respect to property which was taken into account under section 46(d), ceases (by reason of sale or other disposition, cancellation, or abandonment of contract, or otherwise) to be property, which when placed in service, will be business energy property,

then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted solely from treating the property, for purposes of computing the credit under section 38, as property other than business energy property, after giving due regard to the period before the change in use. If this paragraph applies to a change in use to which paragraph (2) applies, or if the application of this paragraph to any property is followed by the application of paragraph (1), (2), or (3) to such property, proper adjustment shall be made in applying paragraph (1), (2), or (3). Similar rules shall apply if business energy property which was taken into account as cogeneration property, or as alternative energy property, becomes business energy property that is not cogeneration property or alternative energy property, or ceases to be property, which, when placed in service, will be business energy property that is cogen-

eration property or alternative energy property. This paragraph shall not apply to a cessation to which paragraph (1) or (3) applies.".

(d) SPECIAL RULE FOR POLLUTION CONTROL FACILITIES.—Section 46(c)(5) (relating to applicable percentage of qualified investment in the case of certain pollution control facilities) is amended to read as follows:

"(5) APPLICABLE PERCENTAGE IN THE CASE OF CERTAIN POLLUTION CONTROL FACILITIES.—

"(A) GENERAL RULE.—Notwithstanding subsection (c)(2), in the case of property—

"(i) with respect to which an election under section 169 applies, and

"(ii) the useful life of which (determined without regard to section 169) is not less than 5 years,

50 percent shall be the applicable percentage for purposes of applying paragraph (1) with respect to so much of the adjusted basis of the property as (after the application of section 169(f)) constitutes the amortizable basis for purposes of section 169.

"(B) SPECIAL RULE FOR CERTAIN BUSINESS ENERGY PROPERTY.—In the case of any property described in subparagraph (A) which is—

"(i) business energy property (as defined in section 48(l)), and

"(ii) any part of the cost of which is financed by the proceeds of an obligation issued by a State, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia, the interest on which is excluded from gross income under section 103, the figure '25 percent' shall be substituted for '50 percent' in applying subparagraph (A).".

(e) EFFECTIVE DATE.—(1) The amendments made by subsections (a), (b), and (c) shall apply to taxable years ending after April 20, 1977, and to credit carrybacks from such years.

(2) Section 46(c)(5)(A) of the Internal Revenue Code of 1954, as added by subsection (d), shall apply to property acquired by the taxpayer after December 31, 1976, and to property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1976 (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date), in taxable years beginning after such date. Section 46(c)(5)(B) of the Internal Revenue Code of 1954, as added by subsection (d), shall apply to property acquired by the tax-

payer after April 20, 1977, and before April 1, 1983, and placed in service by the taxpayer before January 1, 1983, and to property the construction, reconstruction, or erection of which is completed by the taxpayer after April 20, 1977, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection after April 20, 1977, and before January 1, 1983.

PART D—CRUDE OIL TAX

SEC. 1401. CRUDE OIL EQUALIZATION TAX.

(a) Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 46—CRUDE OIL EQUALIZATION TAX

"SEC. 4996. CRUDE OIL EQUALIZATION TAX.

"(a) IMPOSITION OF 1978 INTERIM TAX.—A tax is hereby imposed on the delivery to the refinery or other place of first use after December 31, 1977, and before January 1, 1979, of crude oil classified as first tier (refinery) crude oil in an amount per barrel equal to $3.50.

"(b) IMPOSITION OF 1979 INTERIM TAX.—A tax is hereby imposed on the delivery to the refinery or other place of first use in each calendar month beginning after December 31, 1978, and before January 1, 1980, of crude

oil classified as first tier (refinery) crude oil in an amount per barrel equal to the difference for such month (if any) between the national weighted average cost of all such crude oil and the national weighted average cost of all crude oil classified as second tier (refinery) crude oil.

"(c) IMPOSITION OF PERMANENT TAX.—A tax is hereby imposed on the delivery to the refinery or other place of first use in each calendar month beginning after December 31, 1979, of controlled crude oil of each classification (other than crude oil classified as uncontrolled (refinery) crude oil) in an amount per barrel equal to the difference for such month (if any) between the national weighted average cost of all crude oil of the same classification and the national weighted average cost to domestic refineries of crude oil exclusive of any tariffs or import fees.

"(d) PRESIDENTIAL AUTHORITY TO SUSPEND INCREASE OF TAX.—The President, by Executive order, may suspend for such period as he prescribes any increase in the crude oil equalization tax if he finds such suspension is necessary to protect the domestic economy from increases in the average cost to domestic refineries of imported crude oil which significantly exceed the inflation adjustment (as defined in section 402(a)(20) of the National Energy Act).

"(e) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by the refiner.

"(f) DEFINITIONS.—For purposes of this section:

"(1) FIRST TIER.—The term 'first tier (refinery) crude oil' means crude oil (other than uncontrolled (refinery) crude oil) delivered to a refinery which oil is certified as having been sold pursuant to the lower tier ceiling price rule of section 212.73 of title 10, Code of Federal Regulations (as in effect on April 20, 1977 or thereafter).

"(2) SECOND TIER.—The term 'second tier (refinery) crude oil' means crude oil (other than uncontrolled (refinery) crude oil) delivered to a refinery, which oil is certified as having been sold pursuant to the upper tier ceiling price rule of section 212.74 of title 10, Code of Federal Regulations (as in effect on April 20, 1977 or thereafter).

"(3) UNCONTROLLED.—The term 'uncontrolled (refinery) crude oil' means crude oil delivered to a refinery, which oil is either not subject to any first sale ceiling price rule or, if subject to such first sale ceiling price rule, such rule does not have the effect of reducing the cost of such crude oil to a refiner to less than the cost of an equivalent grade and quality of imported crude oil.

"(4) REFINER.—The term 'refiner' means a refiner of crude oil or any other first user of crude oil.

"(5) REFINERY.—The term 'refinery' means a location where refining of crude oil or other first use of crude oil takes place.

"(g) SPECIAL RULES.—The officer or agency to which the President delegates his authorities under the Emergency Petroleum Allocation Act of 1973 shall have authority under this section to—

"(1) prescribe by regulation such different or additional classifications of crude oil with respect to refiner acquisition costs as are deemed necessary or appropriate for purposes of subsection (c) of this section.

"(2) prescribe regulations specifying the application of the crude oil classification regulations to crude oil that is exchanged prior to its delivery to a refinery,

"(3) prescribe regulations whereby the national weighted average cost of each classification of crude oil shall be determined or prescribed, and

"(4) to further define the terms used in this section with respect to crude oil and the classifications and costs thereof, consistent with the purposes of this section.

"(h) TRANSPORTATION OUTSIDE THE UNITED STATES.—The transportation of crude oil outside the United States for refining or ultimate use outside the United States shall be treated as delivery to the refiner, and the person

owning the crude oil at the time of such transportation shall be deemed the refiner of such crude oil.".

(b) EFFECTIVE DATE.—The amendments made by this section apply to deliveries of crude oil to the refinery after December 31, 1977.

SEC. 1402. REFUNDS OF CRUDE OIL EQUALIZATION TAX.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following:

"SEC. 6431. FUEL USED FOR HEATING RESIDENCES.

"(a) (1) PAYMENTS.—Except as provided in subsection (f), if domestically refined distillate fuel oil has been sold and delivered into the tank of a residential structure for use in such structure, the Secretary shall pay (without interest) to the ultimate vendor of such distillate fuel oil an amount per gallon determined as presented in subsection (c).

"(2) PROOF REQUIRED TO QUALIFY FOR PAYMENT.—Payment under paragraph (1) shall be conditional upon the ultimate vendor furnishing evidence, as required under regulations of the Secretary, that he has reduced the price of the distillate fuel oil for which payment is claimed to fully reflect the amount of payment claimed.

"(b) TIME FOR FILING CLAIMS; PERIOD COVERED.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), not more than one claim may be filed under subsection (a) by any person with respect to distillate fuel oil sold during his taxable year. No claim shall be allowed under this paragraph unless filed by such person not later than the time prescribed by law for filing a claim for credit or refunds of overpayment of income tax for such taxable year. For purposes of this subsection, a person's taxable year shall be his taxable year for purposes of subtitle A.

"(2) EXCEPTION.—If $1,000 or more is payable under this section to any person with respect to distillate fuel oil sold during any of the first three quarters of this taxable year, a claim may be filed under this section by such person with respect to distillate fuel oil sold during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

"(c) DETERMINATION OF AMOUNT TO BE CLAIMED.—

"(1) IN GENERAL.—The amount per gallon of distillate fuel oil for which claim may be filed shall be determined by the Federal Energy Administrator. Such Administrator shall determine the average per barrel tax

liability of refiners under section 4996 for each calendar quarter and publish such determination by the end of the second month of the following quarter. The refiner of distillate fuel oil shall include on all invoices of such oil for the quarter following the publication of the average quarterly tax liability by such Administrator a statement of such average amount (converted to a per gallon basis if pertinent). Each subsequent seller of such oil shall include a similar statement of tax on his invoice, except that the ultimate vendor need not include such statement if the oil is not to be delivered into the tank of a residential structure. Vendors subsequent to the refiner of the crude oil shall determine the tax to be included on their invoice by using the first-in first-out inventory method.

"(2) INTERIM DETERMINATION.—For the first two calendar quarters beginning with the quarter of imposition of the tax under section 4996, the amount of tax to be stated on invoices of distillate fuel oil sold by refiners shall be an amount as estimated and published by the Federal Energy Administrator. Such Administrator shall publish the estimate by November 30, 1977, or within 10 days after enactment of this section, whichever comes later.

"(d) APPLICABLE LAWS.—

"(1) IN GENERAL.—All provisions of law, including penalties, applicable in respect of the tax imposed by section 4996 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

"(2) EXAMINATION OF BOOKS AND WITNESSES.—For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

"(e) REGULATIONS.—The Secretary may in the regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

"(f) INCOME TAX CREDIT IN LIEU OF PAYMENT.—

"(1) PERSONS NOT SUBJECT TO INCOME TAX.—Payment shall be made under subsection (a) only to—

"(A) the United States or an agency or instrumentality thereof, a State, a political subdivision

of a State, or an agency or instrumentality of one or more States or political subdivisions, or

"(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

"(2) EXCEPTION.—Paragraph (1) shall not apply to a payment of a claim filed under subsection (b)(2).

"(3) ALLOWANCE OF CREDIT AGAINST INCOME TAX.—For allowance of credit against the tax imposed by subtitle A for distillate fuel oil sold for residential use, see section 39.

"(g) CROSS REFERENCES.—

"(1) For civil penalty for excessive claims under this section, see section 6675.

"(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).".

(b) TECHNICAL AMENDMENT.—Section 39 is amended by:

(1) Changing the heading to read: "**Certain uses of gasoline, special fuels, lubricating oil, and distillate fuel oil.**"

(2) By adding a new paragraph to subsection (a) to read as follows:

"(5) under section 6431 with respect to distillate fuel oil used for heating residences.".

(3) By inserting "6431," after "6427," each place that it appears in subsection (b), and

(4) By deleting "and" after paragraph (3) of subsection (a), deleting the period after paragraph 4 and inserting ", and".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect after December 31, 1977.

SEC. 1403. PER CAPITA PAYMENT OF CRUDE OIL EQUALIZATION TAX RECEIPTS.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application for abatements, credits, and refunds) is amended by adding at the end thereof the following new section:

"SEC. 6432. PER CAPITA PAYMENT OF CRUDE OIL EQUALIZATION TAX RECEIPTS.

"(a) GENERAL RULE.—Each individual shall be treated as having made a payment against the tax imposed by chapter 1 for the taxable year in which there is a tax imposed under section 4996 equal to the crude oil per capita payment, multiplied by each exemption provided by subsections (b) and (e) of section 151 for which the taxpayer is allowed a deduction for such taxable year.

"(b) TAX REBATE.—The Secretary, in consultation with the Federal Energy Administrator, shall publish in the Federal Register the amount of the crude oil per capita pay-

ment for each year. The Secretary shall determine the per capita payment based on estimated revenues to be derived from the tax imposed under section 4996 during the taxable year reduced by (1) the anticipated revenue loss from business deductions for the tax imposed by section 4996 allowable under this title, and (2) anticipated payments under section 6431. The per capita payment shall reflect the administrative costs incurred in connection with the per capita payment.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount treated as paid by reason of this section shall not exceed the amount of the taxpayer's liability for tax imposed by chapter 1 (unreduced by any credits) for the taxable year.

"(2) REFUND MADE TO CERTAIN TAXPAYERS.—Paragraph (1) shall not apply to any individual who—

"(A) is entitled to a credit under section 43 (relating to credit for earned income), or

"(B) (i) has a dependent child who lived with such individual,

"(ii) has earned income, and

"(iii) if married, filed a joint return.

For purposes of subparagraph (B) (ii), the term 'earned income' has the meaning given to such term by section 43 (c) (2), except that 'self-employment income (as defined

in section 1402 (b))' shall be substituted for 'net earnings from self-employment' in clause (ii) of section 43 (c) (2) (A).

"(d) DATE PAYMENT DEEMED MADE.—The payment provided by this section shall be deemed made on whichever of the following dates is the later:

"(1) the date prescribed by law (determined without extensions) for filing the return of tax under chapter 1 for the taxable year, or

"(2) the date on which the taxpayer files his return of tax under chapter 1 for the taxable year.

"(e) CERTAIN PERSONS NOT ELIGIBLE.—This section shall not apply to any estate or trust, nor shall it apply to any nonresident alien individual."

(b) TECHNICAL AMENDMENT.—Subpart A of part IV of chapter 1 (relating to credits allowable) is amended by inserting after section 33 the following new section:

"SEC. 34. For credit against the tax imposed by this chapter allowed for crude oil equalization tax, see section 6432."

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6432. Per Capita Payment of Crude Oil Equalization Tax Receipts."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1978.

SEC. 1404. ENERGY PAYMENT TO RECIPIENTS OF BENEFITS UNDER CERTAIN RETIREMENT AND SURVIVOR BENEFIT PROGRAMS.

(a) PAYMENT.—In the month of September 1979, and in each successive September, the Secretary of the Treasury shall make an energy payment in an amount equal to the per capita payment of crude oil equalization tax receipts determined under section 6432 (relating to per capita payment of crude oil equalization tax receipts) and under section 6430 (relating to per capita payment of standby gasoline tax receipts) if applicable. The per capita payment is to be made to each individual who—

(1) is a resident of the United States, and for the immediately preceding June, was entitled (without regard to sections 202(j)(1) and 223(b) of the Social Security Act, and section 5(a)(ii) of the Railroad Retirement Act of 1974) to a benefit (other than a lump sum death payment) payable by the United States under title II or title XVI of the Social Security Act, the Railroad Retirement Acts of 1935, 1937, or 1974;

(2) to whom a check was issued as payment of such benefit prior to September 1, 1979, with respect to calendar year 1979, and prior to each succeeding

September 1 with respect to each calendar year succeeding calendar year 1979; and

(3) who, by reason of insufficient taxable income, is unable to claim any portion of the energy payment credit (as provided by section 1222 of the National Energy Act) for his most recent taxable year ending prior to January 1 preceding such month of entitlement.

(b) For the purpose of facilitating the energy payment provided by subsection (a), the Secretary of Health, Education, and Welfare shall, prior to July 30, 1979, with respect to calendar year 1979, and prior to each succeeding July 30 with respect to each calendar year succeeding calendar year 1979, provide to the Secretary of the Treasury the name, address, and social security number of each individual who was entitled to receive, with respect to the immediately preceding month, a benefit payable by the United States described in subsection (a). The Secretary of the Treasury shall reimburse the Secretary of Health, Education, and Welfare for his administrative costs under this subsection.

SEC. 1405. ENERGY PAYMENT TO RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN UNDER APPROVED STATE PLANS.

(a) PAYMENT.—Every State (as defined in section 1101(a) of the Social Security Act) which has in effect a plan for aid and services to needy families with children

approved under section 402(a) of such Act, shall, at the earliest practicable date, beginning in 1979 and each year thereafter make an energy payment in amount equal to the per capita payment of crude oil equalization tax receipts determined under section 6432 (relating to per capita payment of crude oil equalization tax receipts) and under section 6430 (relating to per capita payment of standby gasoline tax receipts) if applicable, to each individual who is a resident of the United States and who received aid to families with dependent children as a child or relative under such plan prior to September 1, 1979, with respect to calendar year 1979, and prior to each succeeding September 1 with respect to each calendar year succeeding calendar year 1979.

(b) FULL FEDERAL REIMBURSEMENT OF STATE COSTS.—The Secretary of the Treasury shall pay to each State by way of reimbursement the full amount of all payments made by such State under subsection (a), plus an additional sum, as compensation for the administrative costs incurred in connection with such payment, equal to the product of 75 cents multiplied by the number of people receiving payments.

SEC. 1406. SPECIAL ENERGY PAYMENTS.

(a) PAYMENTS.—Every State (or the District of Columbia) at the earliest practicable date beginning in 1979 and each year thereafter make an energy payment in an

amount equal to the per capita payment of crude oil equalization tax receipts determined under section 6432 (relating to per capita payment of crude oil equalization tax receipts) and under section 6430(b) (relating to per capita payment of standby gasoline tax receipts) if applicable, to each individual who is a resident of the United States and his dependents if such individual filed with the appropriate agency after September 30 of such year a form stating that such individual—

(A) did not receive a payment during the year pursuant to section 1405 of the National Energy Act,

(B) did not have taxable income in such year, and

(C) was not claimed as a dependent by another taxpayer (in the case of a student, the social security number of the parents is to be provided).

Such individual shall also indicate on such form the names of the dependents (and their social security numbers) claimed by him. The Governor of each State, and the Mayor in the case of the District of Columbia, shall designate the agency responsible for making such payments.

(b) FULL FEDERAL REIMBURSEMENT OF STATE COSTS.—The Secretary of the Treasury shall pay to each State by way of reimbursement the full amount of all payments made by such State under subsection (a), plus an

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additional sum, as compensation for the administrative costs incurred in connection with such payment, equal to the product of 75 cents multiplied by the number of people receiving payments.

SEC. 1407. PER CAPITA REBATE DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS.

Any payment considered to have been made by any individual by reason of section 6430 (relating to per capita payment of standby gasoline tax receipts) and section 6432 (relating to per capita payment of crude oil equalization tax receipts), and payments made by reason of sections 1404, 1405, and 1406 of the National Energy Act shall not be regarded as income of such individual (or of the family of which he is a member) for purposes of any Federal, State, or local program which undertakes to furnish aid or assistance to individuals or families, where eligibility to receive such aid or assistance (or the amount of such aid or assistance) under such program is based on the need therefor of the individual or family involved. The requirement imposed by the preceding sentence shall be treated as a condition for Federal financial participation in any such State or local program of aid or assistance.

SEC. 1408. PER CAPITA REBATE NOT TO BE CONSIDERED INCOME OR A REDUCTION IN FEDERAL INCOME TAXES UNDER STATE LAW.

Payments considered to have been made by reason of section 6430 (relating to per capita payment of standby gasoline tax receipts) and section 6432 (relating to per capita payment of crude oil equalization tax receipts) and payments made by reason of sections 1404, 1405, and 1406 of the National Energy Act shall not be considered as gross income for purposes of such Code, and shall not be considered as income or a reduction in tax imposed by subtitle A of such Code for purposes of any law of any State (or the District of Columbia) relating to the taxation of income.

SEC. 1409. WITHHOLDING TAX.

Subsection (a) of section 3401 (relating to income tax collected at source) is amended to read as follows:

"(a) REQUIREMENT OF WITHHOLDING.—Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976, except that such tables will be

modified to the extent necessary to reflect the amendment made by section 1403 of the National Energy Act (relating to per capita payment of crude oil equalization tax receipts) and further modified if a payment under section 1222 of such Act (relating to per capita payment of standby gasoline tax receipts) is required. For purposes of applying such tables, the term 'amount of wages' means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table prescribed under subsection (b) (1).".

PART E—OIL AND GAS CONSUMPTION TAXES

SEC. 1501. OIL AND GAS CONSUMPTION TAXES.

(a) GENERAL RULE.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 45—OIL AND GAS CONSUMPTION TAXES

"Sec. 4991. Oil consumption tax.
"Sec. 4992. Natural gas consumption tax.
"Sec. 4993. Exemptions.

"SEC. 4991. OIL CONSUMPTION TAX.

"(a) IMPOSITION OF TAX ON UTILITY USE.—A tax is hereby imposed on any taxable electric utility use of petroleum during each calendar year after calendar year 1982 of 25 cents per million British thermal units (hereafter in

this section referred to as 'Btu') used, plus the inflation adjustment pursuant to subsection (c) (5) as applied by the Secretary for the last calendar quarter preceding the year in which the tax liability is incurred.

"(b) IMPOSITION OF TAX ON OTHER USES.—A tax is hereby imposed on any taxable use of petroleum (other than a taxable electric utility use) during each calendar year after 1978 in an amount per million Btu's used, determined in accordance with the following table and increased by the inflation adjustment pursuant to subsection (c) (5):

"If the taxable use occurs—	Tax in dollars per million Btu's is:
In 1979	$0.15
In 1980	.30
In 1981	.30
In 1982	.35
In 1983	.40
In 1984	.45
In 1985	.50
After 1985	.50

"(c) DEFINITIONS.—For purposes of this section—

"(1) TAXABLE USE.—(A) The term 'taxable use' means any use of petroleum or petroleum and natural gas by a person in any trade or business during

the calendar year determined in accordance with the following table:

"If total petroleum and natural gas use (in billions of Btu's) is—	Taxable use (in billions of Btu's) is—
Not more than 500	0.
At least 500 but not more than 600	0, plus 60% of use over 500.
At least 600 but not more than 700	60, plus 80% of use over 600.
At least 700 but not more than 800	140, plus 100% of use over 700.
At least 800 but not more than 900	240, plus 120% of use over 800.
At least 900 but not more than 1,000	360, plus 140% of use over 900.
At least 1,000 but not more than 1,100	500, plus 160% of use over 1,000.
At least 1,100 but not more than 1,200	660, plus 180% of use over 1,100.
At least 1,200 but not more than 1,300	840, plus 200% of use over 1,200.
At least 1,300 but not more than 1,400	1,040, plus 220% of use over 1,300.
At least 1,400 but not more than 1,500	1,260, plus 240% of use over 1,400.
At least 1,500 or more	All use.

"(B) For purposes of determining taxable use under this paragraph, a component member of a controlled group shall be treated as using the petroleum and natural gas used by all component members of such controlled group. The term 'controlled group' for purposes of this paragraph has the meaning by section 1563 except that in applying such section '50 percent' shall be used in lieu of '80 percent'.

"(C) In the case of a user of both natural gas and petroleum, only that portion of taxable use (as determined under subparagraph (A)) which bears the same ratio to taxable use as such user's total use of petroleum bears to his total petroleum and natural gas use shall be subject to the tax imposed by this section.

"(2) TAXABLE ELECTRIC UTILITY USE.—The term 'taxable electric utility use' means taxable use of petroleum by an electric utility for the purpose of generating electric energy.

"(3) PETROLEUM.—The term 'petroleum' means crude oil, residual fuel oil, refined petroleum products and natural gas liquids (other than lubricating oils, greases, waxes, petroleum coke, pitch, asphalt, and related products as described in regulations prescribed by the Secretary, and natural gas as defined in section 4992(c)(2)).

"(4) ELECTRIC UTILITY.—The term 'electric utility' means any person engaged in the business of sale or exchange of electric energy, or a qualifying cogenerator (as defined in section 522(b)(3) of the National Energy Act).

"(5) INFLATION ADJUSTMENT.—The term 'inflation adjustment' means the first revision of the quarterly percent change, seasonally adjusted at annual rates, of

the most recent implicit price deflator for the gross national product. Such adjustment shall be computed and published for each calendar quarter by the Department of Commerce.

"(d) NO DEDUCTION.—No deduction shall be allowed under this title for any amount of tax imposed by this section which is treated as having been paid under section 6431(a).

"(e) BTU CONTENT.—The Secretary shall by regulation establish standard Btu content per barrel for the various types and grades of petroleum.

"SEC. 4992. NATURAL GAS CONSUMPTION TAX.

"(a) IMPOSITION OF TAX.—A tax is hereby imposed on any taxable use of natural gas during each calendar year after 1982 in the case of any taxable use by an electric utility, and after 1978 in the case of any other taxable use, in an amount per million British thermal units (hereinafter in this section referred to as 'Btu') used during such year equal to the excess, if any, of—

"(1) the natural gas target price for the calendar year, over

"(2) the user acquisition cost for the calendar year.

"(b) NATURAL GAS TARGET PRICE.—The natural gas target price for the calendar year is an amount equal to the Btu equivalency price for the calendar year adjusted by

subtracting the amount (if any) specified in the following tables less the inflation adjustment pursuant to subsection (e) (5) as applied by the Secretary for the last calendar quarter preceding the year in which the tax liability is incurred.

"Adjustments for Taxable Use by an Electric Utility (in dollars per million Btu's)

"If the taxable use occurs in calendar year—	The amount subtracted is—
1983	$0.50
1984	.50
1985	.50
1986	.25
1987	.25
1988	0
After calendar year 1988	0

"Adjustments for Any Other Taxable Use (in dollars per million Btu's)

"If the taxable use occurs—	The amount subtracted is—
In 1979	$1.05
In 1980	.40
In 1981	.35
In 1982	.25
In 1983	.20
In 1984	.15
In 1985	0
After calendar year 1985	0

"(c) USER ACQUISITION COST.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the user acquisition cost for the calendar year is the aggregate amount paid by a person for natural gas for a taxable use during the calendar year divided by the number of Btu's so used.

"(2) SPECIAL RULES FOR CERTAIN USES.—In the case of natural gas used by the producer thereof or by any person who is a member of the same affiliated group (within the meaning of section 1504) as such producer, the user acquisition cost shall be deemed to be an amount equal to the maximum lawful price (or special price) applicable to such natural gas under part D of title II of the National Energy Act (or which would be applicable if such natural gas were sold, in the case of natural gas which is not sold by the producer thereof) including reasonable transportation costs, if any.

"(d) LIABILITY FOR TAX.—The tax imposed by this section shall be paid on or before June 30 of the succeeding calendar year by the natural gas user.

"(e) DEFINITIONS.—For purposes of this section—

"(1) TAXABLE USE.—(A) The term 'taxable use' means any use of natural gas or natural gas and petroleum by a person in any trade or business during

the preceding calendar year determined in accordance with the following table:

"If total petroleum and natural gas use (in billions of Btu's) is—	Taxable use (in billions of Btu's) is—
Not more than 500	0.
At least 500 but not more than 600	0, plus 60% of use over 500.
At least 600 but not more than 700	60, plus 80% of use over 600.
At least 700 but not more than 800	140, plus 100% of use over 700.
At least 800 but not more than 900	240, plus 120% of use over 800.
At least 900 but not more than 1,000	360, plus 140% of use over 900.
At least 1,000 but not more than 1,100	500, plus 160% of use over 1,000.
At least 1,100 but not more than 1,200	660, plus 180% of use over 1,100.
At least 1,200 but not more than 1,300	840, plus 200% of use over 1,200.
At least 1,300 but not more than 1,400	1,040, plus 220% of use over 1,300.
At least 1,400 but not more than 1,500	1,260, plus 240% of use over 1,400.
At least 1,500 or more	All use.

"(B) For purposes of determining taxable use under this paragraph, a component member of a controlled group shall be treated as using the natural gas and petroleum used by all component members of such controlled group. The term 'controlled group' for purposes of this paragraph has the meaning provided by section 1563 except that in applying such section '50 percent' shall be used in lieu of '80 percent'.

"(C) In the case of a user of both natural gas and petroleum, only that portion of taxable use (as deter-

mined under subparagraph (A)) which bears the same ratio to taxable use as such user's total use of natural gas bears to his total petroleum and natural gas use shall be subject to the tax imposed by this section.

"(2) NATURAL GAS.—The term 'natural gas' means all petroleum or natural gas or products thereof, with API gravity of 110 or more and heat content of 500 Btu's or more per standard cubic foot.

"(3) BTU EQUIVALENCY PRICE.—The term 'Btu equivalency price' for the calendar year means, in the case of a taxable use of natural gas, the average regional price according to Petroleum Administration for Defense Districts of all numbered 2 grade distillate oil sold for all taxable use (as defined in section 4991(c)(1)) in the District in which such gas is used during the calendar year, as determined by March 31 of the succeeding calendar year by the Administrator of the Federal Energy Administration. Such price shall be determined without regard to tax paid under section 4991.

"(4) ELECTRIC UTILITY.—The term 'electric utility' means any person engaged in the business of sale or exchange of electric energy, or a qualifying cogenerator (as defined in section 522(b)(3) of the National Energy Act).

"(5) INFLATION ADJUSTMENT.—The term 'inflation adjustment' means the first version of the quarterly percent seasonally adjusted at annual rates, of the most recent implicit price deflator for the gross national product. Such adjustment shall be computed and published for each calendar quarter by the Department of Commerce.

"(f) NO DEDUCTION.—No deduction shall be allowed under this title for any amount of tax imposed by this section which is treated as having been paid under section 6431(a).

"SEC. 4993. EXEMPTIONS.

"(a) EXEMPTED FUELS.—The taxes imposed by this chapter shall not apply—

"(1) to any petroleum taxable under chapter 31 or 32, or

"(2) to any petroleum which would be taxed under either such chapter but for section 4221(a)(3).

"(b) EXEMPTED USES.—The taxes imposed by this chapter shall not apply to—

"(1) use in any aircraft,

"(2) use for purposes of rail or water transportation,

"(3) use on a farm for farming purposes (within

the meaning of section 6420(c)), and any drying of grains and feed grasses or irrigation pumping,

"(4) use for production of anhydrous ammonia or ammonia liquor (except use of natural gas as fuel),

"(5) use of petroleum or natural gas (other than as a fuel) by a refinery or natural gas processing plant to produce refined petroleum products, or

"(6) natural gas reinjected for repressuring or cycling use, natural gas used at the point of consumption which is not practically marketable.".

(b) CONFORMING AMENDMENT.—Section 162 (relating to trade or business expenses) is amended by adding a new subparagraph (3) at the end of subsection (h), to read as follows:

"(3) For special rule relating to amounts treated as payment of a tax imposed by chapter 45, see sections 4991 and 4992.".

(c) CLERICAL AMENDMENT.—The table of sections for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER. 45. Oil and Natural Gas Consumption Taxes.
"Sec. 4991. Oil consumption tax.
"Sec. 4992. Natural gas consumption tax.
"Sec. 4993. Exemptions.".

(d) EFFECTIVE DATE.—The amendments made by this section apply to taxable uses after December 31, 1977.

SEC. 1502. INDUSTRIAL OIL AND GAS CONSERVATION REBATE.

(a) GENERAL RULE.—Subchapter B of chapter 65 (relating to rules and special application in the case of abatements, credits and refunds) is amended by adding at the end thereof the following section:

"SEC. 6431. INDUSTRIAL OIL AND GAS CONSERVATION REBATE.

"(a) IN GENERAL.—If this section applies, any person other than an electric utility shall be treated as having made a payment against the taxes imposed by chapter 45 for the calendar year in an amount equal to its investment made after December 31, 1977, during the calendar year in alternative energy property. For purposes of this subsection, an investment in alternative energy property by a component member of a controlled group shall be treated as an investment by all of the component members of such controlled group. The term 'controlled group' for purposes of this subsection has the meaning provided by section 1563 except that in applying such section, '50 percent' shall be used in lieu of '80 percent'.

"(b) ELECTION OF REBATE.—This section shall apply if an election is made at the time the person first credits against the tax expenditures for alternative energy property under regulations prescribed by the Secretary.

"(c) INVESTMENT CARRYOVER.—The excess, if any, of the amount of an investment during the calendar year made by a person other than an electric utility over the taxes imposed by chapter 45 on such person for the calendar year shall be carried over to the next succeeding calendar year. An amount so carried over shall be treated as an investment made by such person in alternative energy property during such succeeding calendar year.

"(d) DEFINITIONS.—For purposes of this section—

"(1) ELECTRIC UTILITY.—The term 'electric utility' has the meaning prescribed by section 4991 (c) (4).

"(2) ALTERNATIVE ENERGY PROPERTY.—The term 'alternative energy property' means the following property—

"(A) coal-fired boilers;

"(B) boilers whose primary fuels will not be petroleum or natural gas;

"(C) facilities for the conversion of coal into synthetic natural gas having a heat content of 500 Btu's per standard cubic foot or less;

"(D) equipment for the burning of coal in combustors other than boilers including only equipment used to supply coal to a burner, and the burner;

"(E) pollution control equipment required to be installed on equipment (described in subparagraph (D)) by local, State, or Federal regulations, except equipment required to be installed under regulations in effect on April 20, 1977, relating to combustors currently using coal; and

"(F) equipment used for the unloading, transfer, storage, reclaiming from storage, and preparation of coal, including washing, crushing, drying, and weighing at the point of use for use for installations described in this paragraph and at facilities where coal is used as a feedstock for manufacture of chemicals or other products except coke.

For purposes of this paragraph, costs of buildings which house such equipment, costs of preparing plans and designs for equipment and facilities except as described in subparagraphs (A) through (F), and costs of preparing sites for facilities, such as demolition and grading, shall not be allowable costs under this section.

"(3) INVESTMENT.—The term 'investment' means the costs paid or incurred by a person in installing alternative energy property including the costs of engineering and designing, purchasing or manufacturing for own use, transporting, assembling, and installing such equipment.

"(e) DATE PAYMENT DEEMED MADE.—The payment provided by this section shall be deemed made on whichever of the following dates is the later:

"(1) the date prescribed by law (determined without extensions) for filing the return of taxes imposed by chapter 45 for the taxable year, or

"(2) the date on which such return of tax is actually filed for the taxable year.".

(b) CONFORMING AMENDMENTS.—

(1) Section 46(d)(3) (relating to the definition of qualified progress expenditures) is amended by striking out "In the case" in subparagraphs (A) and (B) and inserting in lieu thereof "Except as provided in subparagraph (C), in the case" and by adding a new subparagraph (C) to read as follows:

"(C) If an amount described in subparagraph (A) or (B) is treated, by reason of section 6431(a), as being a payment of any tax imposed by chapter 45, only 50 percent of such amount shall be a qualified progress expenditure.".

(2) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by inserting a semicolon in lieu of the period at the end of paragraph (23)

and by adding a new paragraph (24) to read as follows:

"(24) to the extent provided in section 6431 (f) in the case of property to which an election under subsection (b) of section 6431 (relating to oil and gas conservation rebates) applies.".

(c) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by adding at the end thereof the following new item:

"Sec. 6431. Industrial oil and gas conservation rebate."

(d) EFFECTIVE DATE.—The amendments made by this section apply for calendar years ending after December 31, 1977.

SEC. 1503. UTILITY OIL AND GAS CONSERVATION REBATE.

(a) GENERAL RULE.—Subchapter B of chapter 65 (relating to rules and special application in the case of abatements, credits and refunds) is amended by adding at the end thereof the following section:

"SEC. 6432. UTILITY OIL AND GAS CONSERVATION REBATE.

"(a) IN GENERAL.—There shall be credited against the tax imposed pursuant to sections 4991 (a) and 4992 (a) expenditures by an electric utility for qualified replacement investments made after April 20, 1977.

"(b) ELECTION OF REBATE.—This section shall apply if an election is made at the time the electric utility first credits against the tax expenditures for qualified replacement investments under regulations prescribed by the Secretary.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELECTRIC UTILITY.—The term 'electric utility' has the meaning provided in section 4991(c)(4).

"(2) QUALIFIED REPLACEMENT INVESTMENTS.—The term 'qualified replacement investment' means the costs paid or incurred by an electric utility for engineering, designing, purchasing, transporting, assembling and installing electrical generating property with a capacity for using coal or other fuel to replace electrical generation property with a capacity for using petroleum or natural gas (other than for startup, testing and flame stabilization). In prescribing the regulations under this paragraph, the Secretary shall consult with the Administrator of the Federal Energy Administration.

"(3) COAL OR OTHER FUEL.—The term 'coal or other fuel' has the meaning provided by section 102(5) of the Energy Supply and Environmental Coordination Act of 1974 as amended by the National Energy Act.".

PART F—ENERGY DEVELOPMENT TAX INCENTIVES

SEC. 1601. GEOTHERMAL TAX INCENTIVE.

(a) Section 263 (c) (relating to deduction for intangible drilling and development costs in the case of oil and gas wells) is amended—

(1) by adding at the end thereof the following new sentence: "Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for geothermal steam and geothermal resources, as defined in section 2 (c) of the Geothermal Steam Act of 1970 (30 U.S.C. 1001), to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.", and

(2) by amending the caption of such section to read as follows:

"(c) INTANGIBLE DRILLING AND DEVELOPMENT COSTS IN THE CASE OF OIL AND GAS WELLS AND GEOTHERMAL WELLS.—".

(b) The amendments made by subsection (a) shall apply with respect to wells commenced after April 20, 1977.

SEC. 1602. GAIN FROM DISPOSITION OF INTEREST IN GEOTHERMAL WELLS.

(a) GENERAL RULE.—Section 1254 (relating to gain from disposition of interest in oil or gas property) is amended—

(1) by striking out the caption and inserting in lieu thereof

"SEC. 1254. GAIN FROM DISPOSITION OF INTEREST IN OIL, GAS, OR GEOTHERMAL PROPERTY.";

(2) by striking out the caption "GENERAL RULE.—" in subsection (a) and inserting in lieu thereof "GENERAL RULE FOR OIL OR GAS PROPERTY.—";

(3) by redesignating subsection (b) as subsection (c); and

(4) by adding the following new subsection at the end of subsection (a):

"(b) GENERAL RULE FOR GEOTHERMAL WELLS.—

"(1) ORDINARY INCOME.—If a geothermal well is disposed of after April 20, 1977, the lower of—

"(A) the aggregate amount of expenditures after December 31, 1976, which are allocable to such well and which have been deducted as intan-

gible drilling and development costs under section 263(c) by the taxpayer or any other person and which (but for being so deducted) would be reflected in the adjusted basis of such property, adjusted as provided in paragraph (4), or

"(B) the excess of—

"(i) the amount realized (in the case of a sale, exchange of involuntary conversion), or the fair market value of the interest (in the case of any other disposition), over

"(ii) the adjusted basis of such interest,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

"(2) DISPOSITION OF PORTION OF WELL.—For purposes of paragraph (1)—

"(A) In the case of the disposition of a portion of a geothermal well (other than an undivided interest), the entire amount of the aggregate expenditures described in paragraph (1)(A) with respect to such well shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

"(B) In the case of the disposition of an undivided interest in a geothermal well (or a por-

tion thereof), a proportionate part of the expenditures described in paragraph (1) (A) with respect to such well shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

"(3) GEOTHERMAL WELL.—The term 'geothermal well' means any well (within the meaning of section 263(c)) with respect to which any expenditures described in paragraph (1) (A) are properly chargeable.

"(4) SPECIAL RULE FOR PARAGRAPH (1)(A).—In applying paragraph (1) (A), the amount deducted for intangible drilling and development costs and allocable to the interest disposed of shall be reduced by the amount (if any) by which the deduction, had such costs paid or incurred (after April 20, 1977) been capitalized and ratably amortized over the 120-month period beginning with the month in which production from such well begins, would have been increased had such costs been charged to capital account rather than deducted under section 263(c).".

(b) TECHNICAL AMENDMENTS.—

(1) Section 751 (c) (relating to definition of unrealized receivables) is amended by striking out "and an oil or gas property (described in section 1254)" and inserting in lieu thereof "and an oil, gas, or geothermal property (described in section 1254)", and by striking out "or 1254 (a)" and inserting in lieu thereof "or 1254 (a) or (b)".

(2) Section (c) (3) of section 205 of the Tax Reform Act of 1976 is amended by striking out "section 163 (d) (3) (A) (iii)" and inserting in lieu thereof "section 163 (d) (3) (B) (iii)".

(c) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter P of chapter 1 is amended by striking out the item relating to section 1254 and inserting in lieu thereof the following new item:

"Sec. 1254. Gain from disposition of interest in oil, gas, or geothermal property.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply with respect to taxable years ending after April 20, 1977. The amendment made by subsection (b) shall apply with respect to taxable years ending after December 31, 1975.

SEC. 1603. MINIMUM TAX TREATMENT OF INTANGIBLE DRILLING EXPENSES RELATING TO OIL AND GAS WELLS.

(a) Section 57 (a) (11) (relating to items of tax preference) is amended to read as follows:

"(11) INTANGIBLE DRILLING COSTS RELATING TO OIL AND GAS WELLS.—With respect to all interest of the taxpayer in oil and gas wells, the excess of—

"(A) the excess of the intangible drilling and development costs described in section 263 (c) paid or incurred in connection with oil and gas wells (other than costs incurred in drilling a nonproductive well) allowable under this chapter for the taxable year over the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (d)) had been used with respect to such costs, over

"(B) the aggregate amount of net income received or accrued by the taxpayer during such taxable year attributable to such interests. For purposes of this subparagraph, the term 'net income' means

the excess of the aggregate amount of gross income from oil and gas properties over the sum of—

"(i) the amount of any deductions (other than the amount of any excess intangible drilling and development costs, as determined under subparagraph (A), allowable for such taxable year) allocable to such properties, and

"(ii) the amount of taxes imposed under this section (determined without regard to this part) allocable to such properties.".

(b) The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1976.

SEC. 1604. MINIMUM TAX TREATMENT OF INTANGIBLE DRILLING EXPENSES RELATING TO GEOTHERMAL WELLS.

(a) Section 57 (a) (relating to items of tax preference) is amended by striking out the matter after paragraph (11) and inserting thereof the following:

"(12) INTANGIBLE DRILLING COSTS RELATING TO GEOTHERMAL WELLS.—With respect to all interest of the taxpayer in geothermal wells, the excess of—

"(A) the excess of the intangible drilling and development costs described in section 263 (c) paid or incurred in connection with geothermal wells (other than costs incurred in drilling a nonproduc-

tive well) allowable under this chapter for the taxable year which exceeds the amount which would have been allowable for the taxable year if such costs had been capitalized and ratably amortized over the 120-month period beginning with the month in which production from such well begins, over

"(B) the aggregate amount of net income received or accrued by the taxpayer during such taxable year attributable to such interests. For purposes of this subparagraph, the term "net income" means the excess of the aggregate amount of income from geothermal properties over the sum of—

"(i) the amount of any deductions (other than the amount of any excess intangible drilling and development costs, as determined under subparagraph (A), allowable for such taxable year) allocable to such properties, and

"(ii) the amount of taxes imposed under this section (determined without regard to this part) allocable to such properties.

Paragraphs (1), (3), (11), and (12) shall not apply to a corporation.".

(b) The amendment made by subsection (a) shall apply to expenses paid or incurred after April 20, 1977.

Union Calendar No. 193

95TH CONGRESS
1ST SESSION

H. R. 6804

[Report No. 95–346, Part I, Part II]

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1977

Mr. BROOKS (for himself, Mr. FASCELL, Mr. MOORHEAD of Pennsylvania, Mr. ROSENTHAL, Mr. FUQUA, Mr. HARRINGTON, Mr. HORTON, Mr. ERLENBORN, and Mr. PRITCHARD) introduced the following bill; which was referred to the Committee on Government Operations

MAY 16, 1977

Reported with an amendment, referred to the Committee on Post Office and Civil Service for a period ending not later than May 26, 1977, for consideration of such portions of the bill as fall within that committee's jurisdiction under clause 1(o)(5), rule X, and ordered to be printed

MAY 24, 1977

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in boldface roman]

A BILL

To establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

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

~~TITLE I—DECLARATION OF FINDINGS, POLICY, AND PURPOSES~~

~~SEC. 101. (a) The Congress of the United States finds that—~~

~~(1) the United States and the world face an increasing shortage of nonrenewable energy resources;~~

~~(2) this energy shortage presents a serious threat to the national security of the United States and to the health, safety, and welfare of its citizens;~~

~~(3) a strong national energy program is needed to increase the efficiency of energy use and availability of energy resources, particularly renewable energy resources;~~

~~(4) responsibility for energy policy execution, regulation, and research, development, and demonstration is presently vested in many agencies and departments, and this fragmentation hinders development of an effective Federal response to the energy shortage; and~~

~~(5) formulation and implementation of a national energy program require the integration of certain Federal energy functions into a single department in the executive branch.~~

~~(b) It is the policy of the United States that—~~

~~(1) energy conservation shall enjoy the highest priority in any national energy program, and shall be~~

~~carefully considered as an adjunct to programs to increase energy supply and as an option to programs that may present health, safety, or other environmental hazards;~~

~~(2) emphasis shall also be given to the development and commercial use of technologies utilizing renewable energy resources;~~

~~(3) the environmental and social consequences of any national energy program shall be analyzed and considered in evaluation of the program's potential; and~~

~~(4) public participation in the development and enforcement of any national energy program shall be provided for, encouraged, and assisted.~~

~~SEC. 102. The purposes of this Act are (1) to establish a permanent Department of Energy in the executive branch, (2) to vest in the Secretary of Energy such functions as are vested in or transferred to him by this Act, (3) to achieve, through the Department, effective management of energy functions of the Federal Government, (4) to provide the mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long-term energy problems of the Nation, (5) to safeguard and conserve our natural resources and environment, and (6) to promote the interest of consumers.~~

~~TITLE II—ESTABLISHMENT OF DEPARTMENT~~

~~SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy (hereinafter in this Act referred to as the "Department"). There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary") who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.~~

~~SEC. 202. There shall be in the Department a Deputy Secretary, nine Assistant Secretaries, and a General Counsel, each of whom shall be appointed by the President by and with the advice and consent of the Senate, and who shall perform such functions as the Secretary shall prescribe from time to time. The Assistant Secretaries shall be designated as follows:~~

~~(1) Assistant Secretary for Public, Congressional, and Intergovernmental Relations;~~

~~(2) Assistant Secretary for Conservation;~~

~~(3) Assistant Secretary for Defense Programs;~~

~~(4) Assistant Secretary for Environment;~~

~~(5) Assistant Secretary for Fossil and Nuclear Energy Technologies;~~

~~(6) Assistant Secretary for International Programs;~~

~~(7) Assistant Secretary for Competition and Consumer Affairs;~~

~~(8) Assistant Secretary for Resource Applications; and~~

~~(9) Assistant Secretary for Solar and Geothermal Energy Technologies.~~

~~SEC. 203. The Deputy Secretary shall act for, and exercise the functions of, the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Assistant Secretaries, General Counsel, and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.~~

~~SEC. 204. (a) There shall be within the Department an Energy Information Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Administrator shall be a person who, by reason of professional background and experience, is especially qualified to manage an energy information system. There shall be trans-~~

~~ferred to and vested in the Administrator (on a nonexclusive basis as the Secretary may determine) all functions and authorities transferred to and vested in the Secretary under this Act relating to collection, analysis, and dissemination of energy information and data. The Administrator shall be subject to all duties and responsibilities established under part B of the Federal Energy Administration Act of 1974.~~

~~(b) In the performance of his professional functions in connection with collecting, analyzing, and disseminating energy information, the Administrator shall not be responsible to, or subject to, the direction of any officer, employee, or agent of the Department.~~

~~(c) The Administrator shall, upon request, promptly provide any information or analysis in his possession to any other administration, commission, or office within the Department relating to the functions of such administration, commission, or office.~~

~~SEC. 205. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President by and with the advice and consent of the Senate. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to or vested in the Administration.~~

~~(b) The Secretary shall utilize the Economic Regulatory Administration to administer—~~

~~(1) any function which may be delegated to the Secretary under the Emergency Petroleum Allocation Act of 1973;~~

~~(2) any function transferred to the Secretary by section 301(b) of this Act which relates to establishment of rates and charges under the Federal Power Act and the Natural Gas Act (subject to the provisions of section 401); and~~

~~(3) such other functions as the Secretary may consider appropriate.~~

~~(c) The Administrator shall insure an adequate opportunity for public participation, including an opportunity for hearings, in issuing any rules, regulations, or orders under this section.~~

~~SEC. 206. (a) (1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but~~

~~shall not be under the control of, or subject to supervision by, any other officer of the Department.~~

~~(2) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.~~

~~(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.~~

~~(4) The Inspector General and the Deputy shall each be subject to the provisions of subchapter III of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.~~

~~(5) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.~~

~~(b) It shall be the duty and responsibility of the Inspector General~~

~~(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;~~

~~(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;~~

~~(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse; and~~

~~(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and opera-~~

~~tions administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.~~

~~(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to——~~

~~(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;~~

~~(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);~~

~~(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and~~

~~(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.~~

~~Reports concerning the Federal Energy Regulatory Commission shall be submitted to the Chairman thereof.~~

~~(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.~~

~~(e) The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.~~

~~(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide~~

~~copies of the reports required under subsection (c) to the Secretary sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.~~

~~(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—~~

~~(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;~~

~~(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and~~

~~(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this section.~~

~~(h) For purposes of this section, the term "Department"~~

~~includes any component thereof, including the Federal Energy Regulatory Commission.~~

~~TITLE III—TRANSFERS OF FUNCTIONS~~

~~SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.~~

~~(b) Except as provided in section 401, there are hereby transferred to, and vested in, the Secretary the functions of the Federal Power Commission, or of the members, officers, or components thereof—~~

~~(1) in prescribing, issuing, making, amending, and rescinding rules, regulations, and statements of policy, pursuant to section 309 of the Federal Power Act and section 16 of the Natural Gas Act, which are of general applicability;~~

~~(2) relating to energy information, subject to subsection (c) of this section, under sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act;~~

~~(3) under section 202(a) of the Federal Power Act (relating to establishment of regional districts);~~

~~(4) under section 202 (c) and (d) of the Federal Power Act (relating to emergency interconnections);~~

~~(5) under section 202(e) of the Federal Power Act (relating to regulation of exports of electric energy);~~

~~(6) under (A) section 3 of the Natural Gas Act, and (B) section 7 of such Act (to the extent such section is applicable to the regulation of exports and imports of natural gas);~~

~~(7) under sections 4, 5, and 7 of the Natural Gas Act (to the extent that such sections relate to the establishment and review of priorities for curtailments of natural gas); and~~

~~(8) relating to regulations of general applicability with respect to the sale of natural gas to a natural gas company for resale in interstate commerce under the Natural Gas Act.~~

~~(c) The Secretary and the Federal Energy Regulatory Commission shall, to the extent necessary to carry out their respective functions, utilize the data-gathering authorities of sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act. The Secretary and the~~

~~Commission shall coordinate their data-gathering activities to avoid duplication and undue burden on any person.~~

~~SEC. 302. There are hereby transferred to, and vested in, the Secretary:~~

~~(a) All functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department, to the extent such functions relate to or are utilized by the Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration. The authority for the functions so transferred includes, but is not limited to, section 5 of the Flood Control Act of 1944, the Bonneville Project Act of 1937, and the Federal Columbia River Transmission System Act.~~

~~(b) Such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department as relate to, or are utilized by, the Alaska Power Administration for the transmission and disposition (including acquisition by purchase or exchange) of electric power and energy and by the Bureau of Reclamation for the disposition (including acquisition by purchase or exchange) of electric power and energy, except that the authority for, and function of, operating the dams constructed pursuant to the Eklutna Project Act and section 204 of the Flood Control Act of 1962 shall remain in the~~

~~Secretary of the Interior. The authority for the functions so transferred includes, but is not limited to, the Eklutna Project Act, section 204 of the Flood Control Act of 1962, the Reclamation Act of 1902, and Acts amendatory thereof and supplementary thereto, including but not limited to the authority for the sale of electric power or lease of power privileges under section 9(c) of the Reclamation Project Act of 1939, and the authority under section 303 of the Colorado River Basin Project Act.~~

~~(c) All the authority of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department for the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects constructed on the Rio Grande pursuant to the Act of June 19, 1954, as amended by the Act of December 23, 1963.~~

~~(d) (1) The authority of the Secretary of the Interior to prescribe regulations under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act, which relate to the (A) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures), (B) implementation of alternative bidding systems~~

~~authorized for the award of Federal leases, (C) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements), (D) setting rates of production for Federal leases, and (E) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, except that such regulations shall be promulgated by the Secretary only after consultation with the Secretary of the Interior.~~

~~(2) The Secretary in accordance with this subsection is hereby authorized to promulgate regulations under the following statutory provisions, to the fullest extent to which the Secretary of the Interior could have promulgated such regulations immediately prior to the enactment of this Act:~~

~~(A) Section 5(a)(1) of the Outer Continental Shelf Lands Act, insofar as it authorizes the promulgation of regulations:~~

~~(i) (I) specifying procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind under the last sentence of such section 5(a)(1) and under sections 6(a)(8), 8(a), and 8(b) of such Act;~~

~~(II) implementing competitive bidding and alternative bidding systems under sections 8(a) and 8(c) of such Act;~~

~~(III) establishing diligence requirements and setting rates of production under section 5(a)(1) (insofar as it provides for the suspension of operations and production), section 6(a)(10) (insofar as it requires production or operations or drilling), and section 8(b) (insofar as it requires production in paying quantities, drilling, or well reworking) of such Act; and~~

~~(IV) promoting development and production by the reduction of rentals and royalties under the last sentence of such section 5(a)(1);~~

~~and, in addition, as section 5(a)(1) of such Act relates to economic terms and conditions of leases reflected in—~~

~~(ii)(I) fostering competition for Federal leases including, but not limited to, (a) prohibition on bidding for development rights by certain joint ventures; (b) setting rates on royalty and other types of receipts from leases; (c) procedures to enhance competition at lease sales;~~

~~(II) implementing alternative bidding systems authorized for award of Federal leases including, but not limited to, experiments on bidding systems;~~

~~(III) establishing diligence requirements for operations conducted on Federal leases (including unitized leases) including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspensions of operations or production or the cancellation of leases as they relate to such diligence requirements;~~

~~(IV) setting rates of production for Federal leases (including unitized leases) including, but not limited to, establishing procedures for requiring a lessee to produce at a specified rate, and establishing rates of minimum production; and~~

~~(V) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind.~~

~~(B) Sections 17, 21, and 32 of the Mineral Lands Leasing Act, insofar as they authorize the promulgation of regulations—~~

~~(i) (I) implementing competitive bidding systems, including the creation of alternative bidding systems, under section 2(a)(1) (insofar as it authorizes the awarding of leases by competitive bidding), section 7(a) (insofar as it provides for setting royalty rates), and section 17(b) (insofar~~

~~as it authorizes leasing by competitive bidding and the setting of royalty rates) of such Act;~~

~~(II) limiting the number of leases and the amount of acreage under lease under sections 21, 27(a)(1), and 27(d), (e), and (f) of such Act;~~

~~(III) setting rates of production under section 2(d)(2), section 7(b) (insofar as it relates to the condition of continued operation), sections 17(e) and (f) (insofar as they relate to the condition of production in paying quantities) of such Act;~~

~~(IV) limiting leasing by common carriers under section 2(e) of such Act;~~

~~(V) consulting with and considering the advice of the Attorney General concerning the issuance of regulations and the issuance, renewal, or readjustment of leases under section 27(1) of such Act;~~

~~(VI) establishing diligence requirements under section 2(a)(2)(A), section 2(d)(2), section 7(a) (insofar as it requires production in commercial quantities), section 7(b) (insofar as it requires diligent development), section 17(e) (insofar as it requires drilling operations), section 17(f) (insofar as it provides for reworking or drilling operations),~~

and section 21 (insofar as it relates to productive development) of such Act;

(VII) for the purpose of encouraging the greatest ultimate recovery, waiving, suspending, or reducing the rentals or minimum royalties, or reducing the royalties, in order to promote development or the successful operation of leases under section 39 of such Act;

(VIII) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind under sections 17 (b) and (c), and section 32 of such Act;

and, in addition, as section 17, 21, and 32 relate to economic terms and conditions of leases reflected in:

(ii) the regulatory authorities enumerated in subparagraph (A) (ii).

(C) Section 10 of the Mineral Leasing Act for Acquired Lands insofar as it authorizes the promulgation of regulations described in subparagraph (B).

(D) Sections 4 and 24 of the Geothermal Steam Act of 1970 insofar as they authorize the promulgation of regulations—

(i) (I) implementing competitive bidding and

~~alternative bidding systems under section 4 of such Act;~~

~~(II) limiting the amount of acreage under lease under the second and third sentences of section 7 of such Act;~~

~~(III) establishing diligence requirements under the first sentence of section 6(c) (insofar as it requires actual drilling operations), sections 11 and 24(c) (insofar as they provide for suspension of operations and production upon application by the lessee), and section 24(h) (insofar as it provides for maintenance by the lessee of an active development program) of such Act;~~

~~(IV) setting rates of production under section 6 (insofar as it requires production or utilization in commercial quantities) of such Act;~~

~~(V) to encourage the greatest ultimate recovery, waiving, suspending, or reducing rentals or royalties, to promote development or successful operation of leases under sections 13 and 24(c) of such Act;~~

~~and in addition, as sections 4 and 24 relate to economic terms and conditions of leases reflected in:~~

~~(ii) the regulatory authorities enumerated in subparagraph (A)(ii).~~

~~(E) Sections 105 and 106 of the Energy Policy and Conservation Act.~~

~~(3) The Secretary of the Interior shall retain any authorities not transferred by paragraph (1) of this subsection and shall be solely responsible for the issuance and supervision of leases and the enforcement of all regulations applicable to the leasing of mineral resources, including, but not limited to, lease terms and conditions and production rates. No regulation issued by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under this paragraph with respect to the issuance or supervision of leases. Nothing in this subsection shall be construed to affect Indian lands and resources or to transfer any responsibilities of the Secretary of the Interior concerning such lands and resources.~~

~~(c) Those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 16, 1910, and other authorities. exercised by the Bureau of Mines, but limited to —~~

~~(1) fuel supply and demand analysis and data gathering,~~

~~(2) research and development relating to increased efficiency of production technology of solid fuel minerals: *Provided*, That research relating to mine health and~~

~~safety and research relating to the environmental and leasing consequences of solid fuel mining shall remain in the Department of the Interior, and~~

~~(3) coal and analysis.~~

~~(f) The functions of the Secretary of the Interior to establish production rates for all Federal leases.~~

~~SEC. 303. The Secretary of the Interior shall afford the Secretary a reasonable opportunity, prior to the execution of a Federal lease, to disapprove any term or condition of such Federal lease which relates to the matters with respect to which the Secretary has authority to prescribe regulations under section 302(d). No such term or condition may be included in such a lease if it is disapproved by the Secretary.~~

~~SEC. 304. As used in sections 302 and 303 of this Act, "Federal lease" means an agreement which, for any consideration, including, but not limited to, bonuses, rents, or royalties conferred and convenants to be observed, authorizes any person to explore for, develop, or produce (or to do any or all of these), oil and gas, coal, oil shale, tar sands, or geothermal resources in public, acquired, or submerged lands or interests therein under Federal jurisdiction.~~

~~SEC. 305. All functions vested by law in the Director of the Office of Energy Information and Analysis or in the Administrator of the Federal Energy Administration by part B of the Federal Energy Administration Act of 1974 are~~

~~hereby transferred to the Administrator of the Energy Information Administration.~~

~~SEC. 306. There are hereby transferred to and vested in the Secretary all of the functions vested in the Secretary of Housing and Urban Development by the Energy Conservation Standards for New Buildings Act of 1976 (title III of the Energy Conservation and Production Act).~~

~~SEC. 307. There are hereby transferred to and vested in the Secretary such functions as are set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.~~

~~SEC. 308. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of, and there is hereby transferred to and vested in the Secretary jurisdiction over—~~

~~(1) Naval Petroleum Reserve Numbered 1 (Elk Hills) located in Kern County, California, established by Executive order of the President, dated September 2, 1912;~~

~~(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;~~

~~(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome) located in Wyoming, established by Executive order of the President, dated April 30, 1915;~~

~~(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order of the President dated June 12, 1919;~~

~~(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and~~

~~(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1974.~~

~~The surface management of such reserves shall be carried out by the Secretary of the Interior under applicable laws, including the Federal Land Policy and Management Act of 1976, administered by such Secretary.~~

~~SEC. 309. There are hereby transferred to and vested in the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.~~

~~TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION~~

~~SEC. 401. (a) (1) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission (hereinafter referred to in this title as the "Commission").~~

~~(2) There are hereby transferred to, and vested in, the Commission (A) all functions and authority of the Federal Power Commission under the Federal Power Act and the Natural Gas Act which are not specifically transferred to, and vested in, the Secretary pursuant to section 301 (b) of this Act and (B) all other functions transferred by title III of this Act which involve an agency determination required by law to be made on the record after opportunity for an agency hearing.~~

~~(3) Notwithstanding section 301 (b) (1), the Commission shall have the authority to prescribe, issue, make, amend, and rescind rules, regulations, and statements of policy under section 309 of the Federal Power Act and section 16 of the National Gas Act, and in exercising such authority shall coordinate its actions with the Secretary.~~

~~(4) The Secretary may assign to the Commission, by rule, any other functions vested in or delegated to him.~~

~~(b) The Commission shall be comprised of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.~~

~~(c) (1) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment of such hearing examiners as he deems necessary to assist in the performance~~

of the Commission's functions and to fix their compensation in accordance with the provisions of title 5, United States Code, except that assignment, removal and compensation of such hearing examiners shall be in accordance with sections 3105, 3314, 5302, and 7521 of title 5, United States Code, (2) the selection, appointment, and supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (3) the distribution of business among personnel and among administrative units of the Commission, and (4) the use and expenditure of funds appropriated for Commission functions. The Secretary shall provide to the Commission such support and facilities as the Commission may need to carry out its functions.

(2) The hearing examiners appointed pursuant to this section shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code.

(d) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary pre-

~~sentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits any legislative recommendation or testimony, or comments on legislation, to the Secretary, the President, or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the appropriate committees of Congress.~~

~~(e) In the performance of their functions, the members of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of the Department.~~

~~(f) A decision of the Commission shall be a final agency action within the meaning of section 704 of title 5, United States Code, with respect to matters within the Commission's jurisdiction and shall not be subject to further review by the Secretary or any officer or employee of the Department.~~

~~(g) The Chairman of the Commission may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be deter-~~

~~mined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.~~

~~(h) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, the rules of the Federal Power Commission shall continue in effect.~~

~~(i) In carrying out all its functions, the Commission shall have the powers authorized by the Federal Power Act and the Natural Gas Act to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions.~~

~~SEC. 402. No person in the employ of, or holding any official relation to, any person, firm, association, or corporation engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum, petroleum products, natural gas, coal, nuclear material, synthetic fuels, or energy from renewable resources, wastes, or geothermal steam, or in energy research or development, or owning stock or bonds thereof, or who has a pecuniary interest therein, shall enter upon the duties of, or hold the office of~~

~~Commission member. Members shall not engage in any other business, vocation, or employment while members of the Commission.~~

~~SEC. 403. The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held; but the Commission may sit anywhere in the United States.~~

~~SEC. 404. The Secretary, each officer of the Department, and each Federal agency, subject to applicable provisions of law, shall cooperate with the Commission in providing, upon request, such information as it may require.~~

~~SEC. 405. Nothing in this title shall be construed in any way to limit the functions of the Secretary relating to activities within the jurisdiction of the Secretary, including any shared with the Commission.~~

~~SEC. 406. The Secretary may as of right intervene or otherwise participate in any adjudicatory proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the~~

~~obligation of the Commission to assure procedural fairness to all participants.~~

~~SEC. 407. For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency.~~

~~TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW~~

~~SEC. 501. (a) Subject to the other requirements of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with its terms to any rule, regulation, or order issued pursuant to authority vested by law in or delegated to the Secretary or any officer, employee, or component of the Department, including any such rule, regulation, or order of a State or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary.~~

~~(b) In addition to the requirements of subsection (a), notice of any proposed rule, regulation, or order shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this subsection as to time of notice and opportunity to comment may be waived where strict compliance is found to cause~~

~~serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency shall be achieved by publication of such rules or regulations in at least two newspapers of statewide circulation, except that if such publication is not practicable, notice of any rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will assure wide public notice.~~

~~(c) In addition to the requirements of subsection (b), if any rule, regulation, or order described in subsection (a) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.~~

~~(d) The Secretary or any officer authorized to issue rules, regulations, or orders under the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environ-~~

~~mental Coordination Act of 1974, or the Energy Policy and Conservation Act shall provide for the making of such adjustments, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rule, regulation or order.~~

~~(e) (1) With respect to any rule, regulation, or order of the Secretary the effects of which, except for indirect effects of an inconsequential nature, are confined to—~~

~~(A) a single unit of local government or the residents thereof;~~

~~(B) a single geographic area within a State or the residents thereof; or~~

~~(C) a single State or the residents thereof;~~

~~the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in subparagraphs (A) through (C), as the case may be.~~

~~(2) For purposes of this subsection—~~

~~(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and~~

~~(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.~~

~~(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section.~~

~~(f) (1) Judicial review of agency action taken under any law, the functions of which are transferred by this Act, shall, notwithstanding such transfer, be made in the manner specified in such law.~~

~~(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this Act, or under rules, regulations, or orders issued exclusively thereunder, except any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on~~

~~the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the amount in controversy, the district courts of the United States.~~

~~(3) The Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of section 501, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) a reasonable time before taking the action.~~

~~(4) Notwithstanding any other law, the litigation of~~

~~the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28, United States Code. This paragraph shall not apply to the Federal Energy Regulatory Commission.~~

~~TITLE VI—ADMINISTRATIVE PROVISIONS~~

~~SEC. 601. (a) For the purposes of this section, the following officers or employees of the Department are supervisory employees—~~

~~(1) an individual compensated at the rate provided for grade of GS–16 or above under section 5332 of title 5, United States Code; or~~

~~(2) any other individual who, in the judgment of the Secretary, exercises sufficient decisionmaking authority so that the provisions of this section should apply to such individual;~~

~~(3) the Director, or Deputy Director of any State, regional, district, local, or other field office;~~

~~(4) an individual serving within the Energy Information Administration or the Economic Regulatory Administration or an employee of the Federal Energy Regulatory Commission classified as GS–16 or above under section 5322 of title 5 of the United States Code; or~~

~~(5) an employee or officer who has responsibility with respect to the award, review, modification, or~~

~~termination of any grant, contract, reward, or fund transfer within the authority of the Secretary.~~

~~(b) (1) No supervisory employee shall receive compensation from, or hold any official relation to, any person, firm, association, or corporation significantly engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum or petroleum products, synthetic fuels, natural gas, coal, or energy from renewable resources, wastes, or geothermal steam, or in nuclear technology, equipment or material, minerals, or other energy related source or resource, or own stocks or bonds thereof, or have any pecuniary interest therein.~~

~~(2) Personnel transferred to the Department pursuant to section 801 of this Act shall have six months to comply with the provisions of paragraph (1) of this subsection with respect to prohibited property holdings. Any person transferred pursuant to section 801 shall notify the Secretary of all circumstances which would be violative of the restrictions described in subsection (b) (1) not later than fifteen days after the date of such transfer as determined by the United States Civil Service Commission.~~

~~(3) Where exceptional hardship would result, or where the interest is vested, the Secretary is authorized to waive the requirements of this subsection with respect to any person covered. Such waiver shall:~~

~~(A) be published in the Federal Register;~~

~~(B) contain a finding by the Secretary that exceptional hardship would result; and~~

~~(C) indicate the steps taken by the Secretary to minimize conflict of interest and the appearance of conflict of interest.~~

~~Such waiver shall in no instance constitute a waiver of the requirements of section 208 of title 18, United States Code.~~

~~SEC. 602. (a) Each officer or employee of the Department, including the Federal Energy Regulatory Commission, who has any known financial interest—~~

~~(1) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any Act, the administration of which is transferred pursuant to this Act;~~

~~(2) in property from which coal, natural gas, crude oil, or nuclear material is commercially produced;~~

~~(3) in any person engaged in the production, generation, transmission, distribution or sale of electric power; or~~

~~(4) in any person engaged in production, sale, or distribution of nuclear materials;~~

~~shall, beginning on February 1, 1978, annually file with the Secretary a written statement disclosing all such interests held by such officer or employee during the preceding calendar year. Such statement shall be subject to examination, and available for copying, by the public upon request.~~

~~(b) The Secretary shall—~~

~~(1) act, within ninety days after the effective date of this Act, by rule—~~

~~(A) to define the term "known financial interest" for purposes of subsection (a); and~~

~~(B) to establish the methods by which the requirement to file written statements specified in subsection (a) will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and~~

~~(2) include, as part of the report made pursuant to section 621, a report with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.~~

~~(c) In the rules prescribed in subsection (b), the Secretary may identify specific positions, or classes thereof, within the Department and the Commission which are of a~~

~~nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.~~

~~(d) Any officer or employee who is subject to, and knowingly violates, subsection (a) shall be fined not more than $2,500 or imprisoned not more than one year, or both.~~

~~SEC. 603. The Secretary is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in him.~~

~~SEC. 604. Except as otherwise expressly prohibited by law, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.~~

~~SEC. 605. The Secretary is authorized to establish, alter, consolidate, or discontinue and to maintain such State, regional, district, local, or other field offices as he may deem to be necessary to carry out functions now or hereafter vested in him.~~

~~SEC. 606. The Secretary may, from time to time, establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem~~

~~to be necessary or appropriate, except that such authority shall not extend to the abolition of organizational units or components established by this Act.~~

~~SEC. 607. In the performance of functions transferred and vested in the Secretary or any officer or component of the Department, other than the Commission, the Secretary is authorized to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code, except that to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint, without regard to such laws, not more than the number of scientific, engineering, and professional personnel authorized, pursuant to appropriations Acts for fiscal year 1977, to be so appointed to the Energy Research and Development Administration, under other provisions of law, and may fix the compensation of such personnel not in excess of the rate for grade 18 of the General Schedule specified in section 5332 of title 5, United States Code.~~

~~SEC. 608. (a) There shall be within the Department not more than fourteen additional officers in positions authorized by sections 5315 and 5316 of title 5, United States Code, who shall be appointed by the Secretary and who~~

~~shall perform such functions as the Secretary shall prescribe from time to time.~~

~~(b) In addition to the authority provided in section 607, there shall be within the Department a number of permanent nonexempt positions in grades 16, 17, and 18 of the General Schedule not to exceed the number of such positions authorized, pursuant to appropriations Acts for fiscal year 1977, to be appointed in such grades for functions which are transferred to the Department under this Act.~~

~~SEC. 609. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code, for persons in Government service employed intermittently.~~

~~SEC. 610. Section 17 of the Federal Energy Administration Act of 1974 shall be applicable to advisory committees chartered by the Department.~~

~~SEC. 611. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions performed on the date of enactment of this Act in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as said term is~~

~~defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.~~

~~(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, prerequisite, right, privilege, or benefit incident to or arising out of such status, office, rank, or grade, nor shall any member so detailed be charged against any statutory or other limitation on strengths applicable to the Armed Forces or the Department. A member so detailed shall not be subject to direction or control by his Armed Force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.~~

~~SEC. 612. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, services, equipment, personnel, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government in carrying out any function now or hereafter vested in him.~~

~~(b) The Secretary may, with or without reimbursement, provide research, service, equipment, personnel, and~~

facilities to any agency or instrumentality of the United States or any State, territory, the Commonwealth of Puerto Rico, the District of Columbia, or political subdivision thereof, or to any foreign government whenever he deems such action to be necessary and appropriate to the performance of functions now or hereafter vested in him.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the services, equipment, personnel, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use for providing the services, equipment, personnel, or facilities involved.

SEC. 613. The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reim-

bursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

SEC. 614. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, such other real and personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

SEC. 615. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) messing facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and

~~other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;~~

~~(6) living and working quarters and facilities; and~~

~~(7) transportation of school age dependents of employees to the nearest appropriate educational facilities.~~

~~(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.~~

~~(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary: *Provided*, That such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.~~

~~SEC. 616. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:~~

~~(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;~~

~~(2) licenses under copyrights, patents, and applications for patents; and~~

~~(3) releases, before suit is brought, for past infringement of patents or copyrights.~~

~~SEC. 617. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.~~

~~SEC. 618. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.~~

~~SEC. 619. The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and opera-~~

~~tion of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund in such amounts as may be necessary to provide additional working capital are authorized. The working capital fund shall recover from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.~~

~~SEC. 620. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.~~

~~SEC. 621. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Con-~~

~~gress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:~~

~~(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation;~~

~~(2) an estimate of the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives;~~

~~(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources~~

~~and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;~~

~~(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, and to encourage conservation practices, and shall include recommendations for developing technologies capable of improving the quality of the environment and increasing efficiency;~~

~~(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of this Act.~~

~~SEC. 622. The Secretary, when authorized in an appropriation act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section more than 5 per centum of the appropriation for such fiscal year.~~

~~SEC. 623. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.~~

~~TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS~~

~~SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the personnel positions, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are hereby transferred to the Secretary for appropriate allocation.~~

~~(b) Positions expressly specified by statute or reorganization plan, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at level I, II, III, IV, or V of the Executive Schedule (5 U.S.C. 5312-5316) on the effective date of this Act shall be subject to the provisions of section 705 of this Act.~~

~~SEC. 702. Except as otherwise provided in this Act, the transfer of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act.~~

~~SEC. 703. Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department or the Commission to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.~~

~~SEC. 704. Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred and twenty days from the effective date of this Act.~~

~~SEC. 705. Except as otherwise provided in this Act, whenever all of the functions vested by law in an agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized~~

~~by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316) shall terminate.~~

~~SEC. 706. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.~~

~~SEC. 707. All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—~~

~~(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act or by~~

~~Executive order to the Department or the Commission after the date of enactment of this Act, and~~

~~(2) which are in effect at the time this Act takes effect,~~

~~shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Secretary, the Federal Energy Regulation Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.~~

~~SEC. 708. (a) (1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof functions of which are transferred by this Act; but such proceedings and applications to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions~~

~~and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.~~

~~(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.~~

~~(b) Except as provided in subsection (d)—~~

~~(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,~~

~~(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as this Act had not been enacted.~~

~~(c) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.~~

~~(d) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall~~

~~be continued with the Secretary or other official, as the case may be, substituted.~~

~~SEC. 709. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.~~

~~SEC. 710. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary or other official or component of the Department in which this Act vests such functions.~~

~~SEC. 711. Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.~~

~~SEC. 712. (a) The Federal Energy Administration Act of 1974, is hereby amended as follows:~~

~~(1) By repealing sections 4 (except subsections (i) and (j)), 7 (except subsections (c), (i) (2) (A), and (k)), 9, 28, and 30;~~

~~(2) Section 52(a) is amended by deleting the word "and" in paragraph (2), by deleting the period at the end of paragraph (3), and by adding at the end of the subsection: "; and (4) the States to the extent required by the Natural Gas Act and the Federal Power Act,"; and~~

~~(3) Section 55(b) is amended by striking out "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission."~~.

~~(b) The Energy Reorganization Act of 1974 is hereby amended by repealing section 108.~~

~~(c) The Atomic Energy Act of 1954 is hereby amended as follows:~~

~~(1) By repealing section 26; and~~

~~(2) By repealing section 161(d) as it relates to functions transferred by this Act.~~

~~(d) Section 502 of the Motor Vehicle Information and Cost Savings Act is amended by adding at the end thereof the following:~~

~~"(g) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section."~~.

~~(e) The Energy Conservation Standards for New Buildings Act of 1976 is hereby amended as follows:~~

~~(1) In section 304 by adding "the Secretary of~~

~~Housing and Urban Development" to the list of those with whom consultation is required; and~~

~~(2) In section 310 by adding "the Secretary of Housing and Urban Development" to the list of those with whom the Secretary shall act in cooperation.~~

~~(f) The Rural Electrification Act of 1936 is hereby amended by adding a new section 16 to title I thereof to read as follows:~~

~~"SEC. 16. In order to insure coordination of electric generation and transmission financing under this Act with the national energy policy, the Administrator in making or guaranteeing loans for the construction, operation or enlargement of generating plants or electric transmission lines or systems, shall consider such general criteria consistent with the provisions of this Act as may be published by the Secretary of Energy.".~~

~~SEC. 713. Section 19 (d) of title 3, United States Code, is amended by inserting immediately before the period at the end thereof the following: "Secretary of Energy".~~

~~SEC. 714. (a) Section 101 of title 5, United States Code is amended by adding at the end thereof the following: "The Department of Energy.".~~

~~(b) Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:~~

~~"(14) Secretary of Energy.".~~

~~(c) Paragraph (22) of section 5313 of title 5, United States Code, is amended to read as follows:~~

~~"(22) Deputy Secretary of Energy.".~~

~~(d) Section 5314 of title 5, United States Code, is amended by deleting "(21) Chairman, Federal Power Commission," and by inserting in lieu thereof "(21) Chairman, Federal Energy Regulatory Commission.", by deleting "(60) Deputy Administrator, Energy Research and Development Administration," and inserting in lieu thereof "(60) Administrator of the Economic Regulatory Administration, Department of Energy.".~~

~~(e) Section 5315 of title 5, United States Code, is amended by deleting "(60) Members, Federal Power Commission" and inserting in lieu thereof "(60) Members, Federal Energy Regulatory Commission 4.", by deleting "(102) Assistant Administrators, Energy Research and Development Administration (6).", and by adding at the end of the section the following:~~

~~"(114) Assistant Secretaries of Energy (9).~~

~~"(115) General Counsel of the Department of Energy.~~

~~"(116) Administrator of Energy Information Administration, Department of Energy.~~

~~"(117) Inspector General, Department of Energy.~~

~~"(118) Additional Officers, Department of Energy (4).".~~

(f) Section 5316 of title 5, United States Code, is amended by deleting "(8) Administrator, Bonneville Power Administration, Department of the Interior.", by deleting "(135) General Counsel, Energy Research and Development Administration.", by deleting "(136) Additional Officers, Energy Research and Development Administration (8).", and inserting in lieu thereof the following:

"(135) Deputy Inspector General, Department of Energy.

"(136) Additional Officers, Department of Energy (10).".

SEC. 715. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

SEC. 716. The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.

SEC. 717. As used in this Act—(1) references to "function" or "functions" shall be deemed to include reference to duty, obligation, power, authority, responsibility,

right, privilege, and activity, or the plural thereof, as the case may be; and (2) references to "perform" when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

TITLE VIII—EFFECTIVE DATE AND INTERIM APPOINTMENTS

SEC. 801. (a) The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary may promulgate regulations pursuant to section 708(a)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(b) In the event that one or more officers required by this Act to be appointed by and with the advice and

~~consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.~~

That this Act may be cited as the "Department of Energy Organization Act".

TITLE I—DECLARATION OF FINDINGS, POLICY, AND PURPOSES

SEC. 101. (a) The Congress of the United States finds that—

(1) the United States and the world face an increasing shortage of nonrenewable energy resources;

(2) this energy shortage presents a serious threat to the national security of the United States and to the health, safety, and welfare of its citizens;

(3) a strong national energy program is needed to increase the efficiency of energy use and availability of energy resources, particularly renewable energy resources;

(4) responsibility for energy policy execution, regulation, and research, development, and demonstration is presently vested in many agencies and departments, and this fragmentation hinders development of an effective Federal response to the energy shortage; and

(5) formulation and implementation of a national energy program require the integration of certain Federal energy functions into a single department in the executive branch.

(b) It is the policy of the United States that—

(1) energy conservation shall enjoy the highest priority in any national energy program, and shall be carefully considered as an adjunct to programs to increase energy supply and as an option to programs that may present health, safety, or other environmental hazards;

(2) major emphasis shall also be given to the development and commercial use of solar, thermal, recycling, and other technologies utilizing renewable energy resources;

(3) the environmental and social consequences of any national energy program shall be analyzed and considered in evaluation of the program's potential; and

(4) public participation in the development and enforcement of any national energy program shall be provided for, encouraged, and assisted.

SEC. 102. The purposes of this Act are (1) to establish a permanent Department of Energy in the executive branch, (2) to vest in the Secretary of Energy such functions as are vested in, or transferred to, him by this Act, (3) to achieve, through the Department, effective management of energy functions of the Federal Government, (4) to provide the mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid-, and long-term energy problems of the Nation, (5) to safeguard and conserve our natural resources and environment, and (6) to promote the interest of consumers.

TITLE II—ESTABLISHMENT OF DEPARTMENT

SEC. 201. There is hereby established at the seat of government an executive department to be known as the Department of Energy (hereinafter in this Act referred to as the "Department"). There shall be at the head of the Department a Secretary of Energy (hereinafter in this Act referred to as the "Secretary") who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.

SEC. 202. There shall be in the Department a Deputy Secretary, nine Assistant Secretaries, and a General Counsel, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions as the Secretary shall prescribe from time to time. The Assistant Secretaries shall be designated as follows:

(1) Assistant Secretary for Public, Congressional, and Intergovernmental Relations;

(2) Assistant Secretary for Conservation;

(3) Assistant Secretary for Defense Programs;

(4) Assistant Secretary for Environment;

(5) Assistant Secretary for Fossil and Nuclear Energy Technologies;

(6) Assistant Secretary for Policy, Evaluation, and International Programs;

(7) Assistant Secretary for Competition;

(8) Assistant Secretary for Resource Applications; and

(9) Assistant Secretary for Solar, Geothermal, Recycling, and Other Energy Technologies.

SEC. 203. The Deputy Secretary shall act for, and exercise the functions of, the Secretary during the absence or disability of the Secretary or in the event the office of

Secretary becomes vacant. The Secretary shall designate the order in which the Assistant Secretaries, General Counsel, and other officials shall act for, and perform the functions of, the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

SEC. 204. (a) There shall be within the Department an Energy Information Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Administrator shall be a person who, by reason of professional background and experience, is especially qualified to manage an energy information system. There shall be transferred to and vested in the Administrator (on a nonexclusive basis as the Secretary may determine) all functions and authorities transferred to, and vested in, the Secretary under this Act relating to collection, analysis, and dissemination of energy information and data. The Administrator shall be subject to all duties and responsibilities established under part B of the Federal Energy Administration Act of 1974.

(b) In the performance of his professional functions in connection with collecting, analyzing, and disseminating energy information, the Administrator shall not be responsible to, or subject to, the direction of any officer, employee, or agent of the Department.

(c) The Administrator shall, upon request, promptly provide any information or analysis in his possession to any other administration, commission, or office within the Department relating to the functions of such administration, commission, or office.

SEC. 205. (a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to or vested in the Administration.

(b) The Secretary shall utilize the Economic Regulatory Administration to administer—

(1) any function which may be delegated to the Secretary under the Emergency Petroleum Allocation Act of 1973;

(2) any function transferred to the Secretary by section 301(b) of this Act which relates to establishment of rates and charges under the Federal Power Act and the Natural Gas Act (subject to the provisions of section 401); and

(3) such other functions as the Secretary may consider appropriate.

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(c) The Administrator shall insure an adequate opportunity for public participation, including an opportunity for hearings, in issuing any rules or regulations under this section.

SEC. 206. (a)(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

(2) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

(3) The Inspector General or the Deputy may be removed from office by the President. The President shall

communicate the reasons for any such removal to both Houses of Congress.

~~*(4) The Inspector General and the Deputy shall each be subject to the provisions of subchapter II of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.*~~

~~*(5)*~~ (4) *The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.*

(b) It shall be the duty and responsibility of the Inspector General—

(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local

governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse; and

(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary, to the Federal Energy Regulatory Commission, and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

(1) an identification and description of significant problems, abuses, and deficiencies relating to the admin-

istration of programs and operations of the Department disclosed by such activities;

(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiences.

(e) The Inspector General (1) may make such additional investigations and reports relating to the administra-

tion of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to

programs and operations with respect to which the Inspector General has responsibilities under this section;

(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this section.

(h) For purposes of this section, the term "Department" includes any component thereof, including the Federal Energy Regulatory Commission.

TITLE III—TRANSFERS OF FUNCTIONS

SEC. 301. (a) Except as otherwise provided in this Act, there are hereby transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested

by law in the officers and components of either such Administration.

(b) Except as provided in section 401, there are hereby transferred to, and vested in, the Secretary the functions of the Federal Power Commission, or of the members, officers, or components thereof—

(1) in prescribing, issuing, making, amending, and rescinding rules, regulations, and statements of policy, pursuant to the Federal Power Act and the Natural Gas Act, which are of general applicability;

(2) relating to energy information, subject to subsection (c) of this section, under sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act;

(3) under section 202(a) of the Federal Power Act (relating to establishment of regional districts);

(4) under section 202 (c) and (d) of the Federal Power Act (relating to emergency interconnections);

(5) under section 202(e) of the Federal Power Act (relating to regulation of exports of electric energy);

(6) under (A) section 3 of the Natural Gas Act, and (B) section 7 of such Act (to the extent such section is applicable to the regulation of exports and imports of natural gas);

(7) under sections 4, 5, and 7 of the Natural Gas

Act (to the extent that such sections relate to the establishment and review of priorities for curtailments of natural gas deliveries); and

(8) relating to regulations of general applicability with respect to the rates and charges at which natural gas is first sold to any natural gas company for resale in interstate commerce under the Natural Gas Act.

(c) The Secretary and the Federal Energy Regulatory Commission shall, to the extent necessary to carry out their respective functions, utilize the data-gathering authorities of sections 304 and 311 of the Federal Power Act and sections 10 and 11 of the Natural Gas Act. The Secretary and the Commission shall coordinate their data-gathering activities to avoid duplication and undue burden on any person.

SEC. 302. There are hereby transferred to, and vested in, the Secretary:

(a) All functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department, to the extent such functions relate to or are utilized by the Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration. The authority for the functions so transferred includes, but is not limited to, section 5 of the Flood Control Act of 1944, the Bonneville Project Act of 1937, and the Federal Columbia River Transmission System

Act. Notwithstanding sections 606 and 705 of this Act, each of the three such Power Administrations shall be maintained as a distinct entity within the Department.

(b) Such functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department as relate to, or are utilized by, the Alaska Power Administration for the transmission and disposition (including acquisition by purchase or exchange) of electric power and energy and by the Bureau of Reclamation for the disposition (including acquisition by purchase or exchange) of electric power and energy, except that the authority for, and function of, operating the dams constructed pursuant to the Eklutna Project Act and section 204 of the Flood Control Act of 1962 shall remain in the Secretary of the Interior. The authority for the functions so transferred includes, but is not limited to, the Eklutna Project Act, section 204 of the Flood Control Act of 1962, the Reclamation Act of 1902, and Acts amendatory thereof and supplementary thereto, including, but not limited to, the authority for the sale of electric power or lease of power privileges under section 9(c) of the Reclamation Project Act of 1939, and the authority under section 303 of the Colorado River Basin Project Act.

(c) All the authority of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department for the transmission and disposition of

the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects constructed on the Rio Grande pursuant to the Act of June 19, 1954, as amended by the Act of December 23, 1963.

(d)(1) The authority of the Secretary of the Interior to prescribe regulations under the Outer Continental Shelf Lands Act, the Mineral Lands Leasing Act, the Mineral Leasing Act for Acquired Lands, the Geothermal Steam Act of 1970, and the Energy Policy and Conservation Act, which relate to the—

(A) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures);

(B) implementation of alternative bidding systems authorized for the award of Federal leases;

(C) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements;

(D) setting rates of production for Federal leases; and

(E) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind,

except that such regulations shall be promulgated by the Secretary only after consultation with the Secretary of the Interior.

(2) The Secretary of the Interior shall retain any authorities not transferred by paragraph (1) of this subsection and shall be solely responsible for the issuance and supervision of leases and the enforcement of all regulations applicable to the leasing of mineral resources, including, but not limited to, lease terms and conditions and production rates. No regulation issued by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under this paragraph with respect to the issuance or supervision of leases. Nothing in this subsection shall be construed to affect Indian lands and resources or to transfer any responsibilities of the Secretary of the Interior concerning such lands and resources.

(e) Those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 16, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals,

other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining, which shall remain in the Department of the Interior; and

(3) coal preparation and analysis.

(f) The functions of the Secretary of the Interior to establish production rates for all Federal leases.

SEC. 303. The Secretary of the Interior shall afford the Secretary a reasonable opportunity, prior to the execution of a Federal lease, to disapprove any term or condition of such Federal lease which relates to the matters with respect to which the Secretary has authority to prescribe regulations under section 302(d). No such term or condition may be included in such a lease if it is disapproved by the Secretary.

SEC. 304. As used in sections 302 and 303 of this Act, "Federal lease" means an agreement which, for any consideration, including, but not limited to, bonuses, rents, or royalties conferred and convenants to be observed, authorizes any person to explore for, develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, or geothermal resources in public, acquired, or submerged lands or interests therein under Federal jurisdiction.

SEC. 305. All functions vested by law in the Director of the Office of Energy Information and Analysis by part B of the Federal Energy Administration Act of 1974 are

hereby transferred to the Administrator of the Energy Information Administration.

SEC. 306. There are hereby transferred to and vested in the Secretary all of the functions vested in the Secretary of Housing and Urban Development by the Energy Conservation Standards for New Buildings Act of 1976 (title III of the Energy Conservation and Production Act).

SEC. 307. There are hereby transferred to and vested in the Secretary such functions as are set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

SEC. 308. There are hereby transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, United States Code, in the Secretary of the Navy as they relate to the administration of, and there is hereby transferred to, and vested in, the Secretary jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills) located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome) located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order of the President, dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1974.

The surface management of such reserves shall be carried out by the Secretary of the Interior under applicable laws, including the Federal Land Policy and Management Act of 1976, administered by such Secretary.

SEC. 309. There are hereby transferred to and vested in the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

SEC. 310. (a) The Division of Naval Reactors, established pursuant to section 25 of the Atomic Energy Act of

1954, as amended (42 U.S.C. 2035), and responsible for research, design, development, health and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs, is transferred to the Department under the Assistant Secretary for Fossil and Nuclear Energy Technologies and shall be deemed to be an organizational unit established by this Act.

(b) The Division of Military Application, established by section 25 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2035), and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 27 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2037), are transferred to the Department under the Assistant Secretary for Defense Programs and such organizational units shall be deemed to be an organizational unit established by this Act.

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

SEC. 401. (a)(1) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission (hereinafter referred to in this title as the "Commission").

(2) There are hereby transferred to, and vested in, the Commission (A) all functions and authority of the Federal Power Commission under the Federal Power Act and the

Natural Gas Act which are not specifically transferred to, and vested in, the Secretary pursuant to section 301(b) of this Act, and (B) all other functions transferred by title III of this Act which involve an agency determination required by law to be made on the record after opportunity for an agency hearing.

(3) Except as provided in section 301(b)(1), the Commission shall have the authority to prescribe, issue, make, amend, and rescind rules, regulations, and statements of policy under the Federal Power Act and the Natural Gas Act, and, in exercising such authority, shall coordinate its actions with the Secretary.

(4) The Secretary may assign to the Commission, by rule, any other functions vested in or delegated to him.

(b) The Commission shall be comprised of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the

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same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of this term until his successor has taken office, except that he may not so continue to serve more than one year after the date on which his term would otherwise expire under this subsection.

(c)~~(1)~~ The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) ~~the appointment of such hearing examiners as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of title 5, United States Code, except that assignment, removal and compensation of such hearing examiners shall be in accordance with sections 3105, 3314, 5302, and 7521 of title 5, United States Code,~~ **the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code,** *(2) the selection, appointment, and supervision of personnel employed by or assigned to the Commission, except that (2) the selection, appointment, and supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise*

personnel for his personal staff, (3) the distribution of business among personnel and among administrative units of the Commission, and (4) the use and expenditure of funds appropriated for Commission functions. The Secretary shall provide to the Commission such support and facilities as the Commission may need to carry out its functions.

~~*(2) The hearing examiners appointed pursuant to this section shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code.*~~

(d) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits any legislative recommendation or testimony, or comments on legislation, to the Secretary, the President, or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(e) In the performance of their functions, the members of the Commission shall not be responsible to, or subject to

the supervision or direction of, any officer, employee, or agent of the Department.

(f) A decision of the Commission shall be a final agency action within the meaning of section 704 of title 5, United States Code, with respect to matters within the Commission's jurisdiction and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(g) The Chairman of the Commission may from time to time designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(h) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, such rules of the Federal Power Commission shall continue in effect.

(i) In carrying out all its functions, the Commission

shall have the powers authorized by the Federal Power Act and the Natural Gas Act to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions.

SEC. 402. No person in the employ of, or holding any official relation to, any person engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum, petroleum products, natural gas, coal, nuclear material, synthetic fuels, or energy from renewable resources, wastes, or geothermal steam, or in energy research or development, or owning stock or bonds thereof, or having a pecuniary interest therein, shall enter upon the duties of, or hold the office of Commission member. Members shall not engage in any other business, vocation, or employment while members of the Commission.

SEC. 403. The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held; but the Commission may sit anywhere in the United States.

SEC. 404. The Secretary, each officer of the Department, and each Federal agency, subject to applicable pro-

visions of law, shall cooperate with the Commission in providing, upon request, such information as it may require.

SEC. 405. Nothing in this title shall be construed in any way to limit the functions of the Secretary relating to activities within the jurisdiction of the Secretary, including any function shared with the Commission.

SEC. 406. The Secretary may as of right intervene or otherwise participate in any adjudicatory proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedural fairness to all participants.

SEC. 407. For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency.

TITLE V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SEC. 501. (a) Subject to the other requirements of this section, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply in accordance with

its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551 (4) of title 5, United States Code), issued pursuant to authority vested by law in or delegated to the Secretary or any officer, employee, or component of the Department, including any such rule, regulation, or order of a State or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary.

(b) In addition to the requirements of subsection (a), notice of any proposed rule, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this subsection as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In addition, public notice of all rules, regulations, or orders described in subsection (a) which are promulgated by officers of a State or local government agency shall be achieved by publication of such rules, regulations, or orders in at least two newspapers of statewide circulation, except that, if such publication is not practicable, notice of any rule, regulation, or order shall be given by such

other means as the officer promulgating such rule, regulation, or order determines will assure wide public notice.

(c) In addition to the requirements of subsection (b), if any rule, regulation, or order described in subsection (a) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(d) The Secretary or any officer authorized to issue rules, regulations, or orders under the Emergency Petroleum Allocation Act of 1973, the Energy Supply and Environmental Coordination Act of 1974, or the Energy Policy and Conservation Act shall provide for the making of such adjustments, consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from, such rule, regulation or order.

(e)(1) With respect to any rule or regulation of the

Secretary the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in subparagraphs (A) through (C), as the case may be.

(2) For purposes of this subsection—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section.

(f)(1) Judicial review of agency action taken under

any law, the functions of which are transferred by this Act, shall, notwithstanding such transfer, be made in the manner specified in such law.

(2) Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising under this Act, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this Act, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this Act or the validity of action taken by any agency under this Act). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this Act or the validity of agency action under this Act, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (1) any appropriate State court, or (2) without regard to the

amount in controversy, the district courts of the United States.

(3) The Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of section 501, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) a reasonable time before taking the action.

(4) Notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28 United States Code. This paragraph shall not apply to the Federal Energy Regulatory Commission.

TITLE VI—ADMINISTRATIVE PROVISIONS

SEC. 601. (a) For purposes of this section—

(1) the term "Department" includes any agency, administration, commission, or other component thereof;

(2) the term "Department proceeding" includes any Department hearing, application, rulemaking or other determination, contract, grant, reward, fund transfer, claim, controversy, charge, accusation, or arrest;

(3) the term "employee" means any person holding a position in the Department;

(4) the term "employment" means employment with an energy concern and includes employment as a consultant, agent, attorney, or otherwise and includes voluntary employment;

(5) the term "energy concern" means any person significantly engaged in the production, generation, transmission, distribution, or sale of electric power, petroleum or petroleum products, synthetic fuels, energy from renewable resources, wastes, or geothermal steam, nuclear energy, natural gas, coal, solar energy, or other energy-related source or resource, or in any research or development significantly related to such production, generation, transmission, distribution, or sale;

(6) the term "participate" includes participation by way of decision, approval, disapproval, recommendation, the rendering of advice, or investigation; and

(7) the term "supervisory employee" means any of the following officers or employees of the Department—

(A) an individual compensated at the rate provided for grade of GS–16 or above under section 5332 of title 5, United States Code;

(B) any other individual who, in the judgment of the Secretary, exercises sufficient decisionmaking

authority so that the provisions of this section should apply to such individual;

(C) the Director or Deputy Director of any State, regional, district, local, or other field office; or

(D) an employee or officer who has responsibility with respect to the award, review, modification, or termination of any grant, contract, reward, or fund transfer within the authority of the Secretary.

(b)(1) No supervisory employee shall knowingly receive compensation from, or hold any official relation to, any energy concern, or own stocks or bonds thereof, or have any pecuniary interest therein.

(2) Personnel transferred to the Department pursuant to section 701 of this Act shall have six months to comply with the provisions of paragraph (1) of this subsection with respect to prohibited property holdings. Any person transferred pursuant to section 701 shall notify the Secretary of all circumstances which would be violative of the restrictions described in subsection (b)(1) not later than fifteen days after the date of such transfer as determined by the United States Civil Service Commission.

(3) Where exceptional hardship would result, or where the interest is vested, the Secretary is authorized to waive

the requirements of this subsection with respect to any person covered. Such waiver shall:

(A) be published in the Federal Register;

(B) contain a finding by the Secretary that exceptional hardship would result; and

(C) indicate the steps taken by the Secretary to minimize conflict of interest and the appearance of conflict of interest.

Such waiver shall in no instance constitute a waiver of the requirements of section 208 of title 18, United States Code.

(c)(1) Each supervisory employee shall file with the Secretary, in such form and manner as the Secretary shall prescribe, a report describing all previous employment with any energy concern.

(2) Each former supervisory employee of the Department shall file with the Secretary, in such form and manner as the Secretary shall prescribe, not later than the November 15 of—

(A) the fiscal year following the fiscal year in which such person ceased to be an employee of the Department, and

(B) each of the succeeding two fiscal years,

a report describing any employment with any energy concern during the fiscal year to which such report relates.

(3) Each report filed pursuant to paragraphs (1) and (2) shall contain the name and address of the person filing the report, the name and address of the energy concern with which he held employment, a brief description of his duties and work for the energy concern, the dates of his employment, and such other pertinent information as the Secretary may require.

(4) The Secretary shall maintain a file containing the reports filed with him pursuant to paragraphs (1) and (2). All such reports shall be available for public inspection and copying at all times during regular working hours.

(d)(1)(A) For a period of two years after terminating any employment with any energy concern, no supervisory employee shall knowingly participate in any Department proceeding in which his former employer is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns.

(B) While an employee of the Department, no supervisory employee shall knowingly participate in any Department proceeding for which he had direct responsibility, or in which he participated substantially or personally, while in the employment of any energy concern.

(C) No supervisory employee who solicits, negotiates, or arranges for employment with any energy concern shall

participate in any Department proceeding in which such energy concern is substantially, directly, or materially involved.

(2)(A) For a period of two years after ceasing to be an employee of the Department, no supervisory employee shall, in any professional capacity for anyone other than the United States, appear or attend before, or make any oral or written communication or submission to, or filing with, the Department or any officer or employee of the Department in connection with any Department proceeding which was directly or indirectly under his official responsibility while a supervisory employee.

(B) For a period of five years after ceasing to be an employee of the Department, no supervisory employee shall, in any professional capacity for anyone other than the United States, appear or attend before, or make any oral or written communication to, or filing with, the Department or any officer or employee of the Department in connection with any Department proceeding in which he participated substantially or personally while a supervisory employee.

(3) Notwithstanding any penalty imposed under subsection (e), any violation of this subsection shall be taken into consideration in deciding the outcome of any Department

proceeding in connection with which the prohibited appearance, attendance, communication, or submission was made.

(4) Whenever the Secretary makes a written finding as to a particular supervisory employee that the application of a particular restriction or requirement imposed by paragraph (1) or (2) of this subsection in a particular circumstance would work an exceptional hardship upon such supervisory employee or would be contrary to the national interest, the Secretary may waive in writing such restriction or requirement as to such supervisory employee. The Secretary shall maintain a file containing all findings and waivers made by him pursuant to this paragraph, and all such findings and waivers shall be available for public inspection and copying at all times during regular working hours. Any waiver made by the Secretary of a restriction imposed under paragraph (2) of this subsection shall also be filed with any record of the Department proceeding as to which the waiver for purposes of participation is granted. No such waiver shall in any instance constitute a waiver of the requirements of section 207 of title 18, United States Code.

(e) Any person who violates subsections (b), (c), or (d), taking into account any waiver under subsection (b)(3) or (d)(4), shall be subject to a civil penalty, assessed by the Secretary, not to exceed $10,000 for each violation.

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(f) Nothing in this section shall be deemed to limit the operation of section 207 or section 208 of title 18, United States Code.

SEC. 602. (a) Each officer or employee of the Department, including the Federal Energy Regulatory Commission, who has any known financial interest—

(1) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any Act, the administration of which is transferred pursuant to this Act;

(2) in property from which coal, natural gas, crude oil, or nuclear material is commercially produced;

(3) in any person engaged in the production, generation, transmission, distribution, or sale of electric power; or

(4) in any person engaged in production, sale, or distribution of nuclear materials;

shall, beginning on February 1, 1978, annually file with the Secretary a written statement disclosing all such interests held by such officer or employee during the preceding calen-

dar year. Such statement shall be subject to examination, and available for copying, by the public upon request.

(b) The Secretary shall—

(1) act, within ninety days after the effective date of this Act, by rule—

(A) to define the term "known financial interest" for purposes of subsection (a); and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) include, as part of the report made pursuant to section 621, a report with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b), the Secretary may identify specific positions, or classes thereof, within the Department and the Commission which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, subsection (a) shall be fined not more

than $2,500 or imprisoned not more than one year, or both.

SEC. 603. The Secretary is authorized to prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in him.

SEC. 604. Except as otherwise expressly prohibited by law, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions as he may deem to be necessary or appropriate.

SEC. 605. The Secretary is authorized to establish, alter, consolidate, or discontinue and to maintain such State, regional, district, local, or other field offices as he may deem to be necessary to carry out functions now or hereafter vested in him.

SEC. 606. The Secretary may, from time to time, establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate, except that such authority shall not extend to the abolition of organizational units or components established by this Act.

SEC. 607. In the performance of functions transferred to, and vested in, the Secretary or any officer or component of

the Department, other than the Commission, the Secretary is authorized to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5, United States Code, except that to the extent the Secretary deems such action necessary to the discharge of his functions, ~~*he may appoint, without regard to such laws, not more than the number of scientific, engineering, and professional personnel who are—*~~

~~*(1) authorized, in accordance with appropriations Acts for fiscal year 1977, to receive compensation at a rate not less than the minimum provided for grade 16 nor more than the maximum provided for grade 18 of the General Schedule; and*~~

~~*(2) authorized, under other provisions of law, to be appointed, without regard to the civil service laws, to the Energy Research and Development Administration,*~~

~~*and may fix the compensation of such personnel not in excess of the rate for grade 18 of the General Schedule specified in section 5332 of title 5, United States Code.*~~ **he may establish scientific or professional positions within the Department as provided in section 3104 of title 5, United States Code.**

SEC. 608. (a) There shall be within the Department

not more than fourteen additional officers in positions authorized by sections 5315 and 5316 of title 5, United States Code, who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

~~*(b) In addition to the number of positions which may be placed in grades 16, 17, and 18 of the General Schedule under section 5108 of title 5, United States Code, or under section 607 of this Act, not to exceed one hundred and five positions may be placed in such grades to carry out functions under this Act, except that positions established under this subsection shall be subject to standards and procedures under chapter 51 of such title 5.*~~

(b)(1) Subject to the provisions of chapter 51 of title 5, United States Code, but notwithstanding the last two sentences of section 5108(a) of such title, the Secreary may place at GS–16, GS–17, and GS–18, not to exceed three hundred and fifty positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) Any position placed at GS–16, GS–17, or GS–18 under the authority of paragraph (1) may be filled only by a person who is transferred in connection with a transfer of function under this Act and who, immediately before the effective date of this Act, held a position having duties

comparable to those of such position. Appointments under this paragraph may be made without regard to the provisions of section 3324 of title 5, United States Code, relating to the approval by the Civil Service Commission of appointments to GS–16, GS–17, and GS–18.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person appointed to fill such position under paragraph (2) leaves such position.

SEC. 609. The Secretary may obtain services as authorized by section 3109 of title 5, United States Code, at rates not to exceed the daily rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code, for persons in Government service employed intermittently.

SEC. 610. Section 17 of the Federal Energy Administration Act of 1974 shall be applicable to advisory committees chartered by the Department.

SEC. 611. (a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions performed, on the date of enactment of this Act, in the Energy Research and Development Administration and under chapter 641 of title 10, United States Code. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as said term is

defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade, nor shall any member so detailed be charged against any statutory or other limitation on strengths applicable to the Armed Forces or the Department. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

SEC. 612. (a) With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, ~~services,~~ equipment, ~~personnel,~~ and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) The Secretary may, with or without reimburse-

ment, provide research, ~~service,~~ equipment, ~~personnel,~~ and facilities to any agency or instrumentality of the United States or any State, territory, the Commonwealth of Puerto Rico, the District of Columbia, or any political subdivision thereof, or to any foreign government, whenever he deems such action to be necessary and appropriate to the performance of functions now or hereafter vested in him.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the ~~services,~~ equipment, ~~personnel,~~ or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use for providing the ~~services,~~ equipment, ~~personnel,~~ or facilities involved.

SEC. 613. The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in

lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

SEC. 614. The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, such personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

SEC. 615. (a) As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) messing facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and

other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation of school age dependents of employees to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary: Provided, That such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 619 of this Act, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

SEC. 616. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

SEC. 617. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

SEC. 618. The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

SEC. 619. The Secretary is authorized to establish a working capital fund, to be available without fiscal-year limitation, for expenses necessary for the maintenance and opera-

tion of such common administrative services as he shall find to be desirable in the interests of economy and efficiency. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund in such amounts as may be necessary to provide additional working capital are authorized. The working capital fund shall recover from the appropriations and funds for which services are performed, either in advance or by way of reimbursement, amounts which will approximate the costs incurred, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from the sale or exchange of its property, and receipts in payment for loss or damage to property owned by the fund.

SEC. 620. To the extent necessary or appropriate to perform any function transferred by this Act, the Secretary may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

SEC. 621. The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following the effective date of this Act, make a report to the President for submission to the Con-

gress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department, and progress made in coordination of its functions with other departments and agencies of the Federal Government. In addition, such report shall include the information required by section 15 of the Federal Energy Administration Act of 1974, section 307 of the Energy Reorganization Act of 1974, and section 15 of the Federal Nonnuclear Energy Research and Development Act of 1974, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium,

hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, and to encourage conservation practices, and shall include recommendations for developing technologies capable of improving the quality of the environment and increasing efficiency;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of this Act.

SEC. 622. The Secretary, when authorized in an appropriation act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section more than 5 per centum of the appropriation for such fiscal year.

SEC. 623. Appropriations to carry out the provisions of this Act shall be subject to annual authorization.

TITLE VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

SEC. 701. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the ~~personnel~~ ~~positions~~, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, are hereby transferred to the Secretary for appropriate allocation.

(b) Positions expressly specified by statute or reorganization plan, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation at the rate prescribed for offices and positions at level I, II, III, IV, or V of the Executive Schedule (5 U.S.C. 5312–5316) on the effective date of this Act shall be subject to the provisions of section 705 of this Act.

SEC. 702. Except as otherwise provided in this Act, the transfer of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this title shall not cause any such em-

ployee to be separated or reduced in grade or compensation for one year after the date of enactment of this Act.

SEC. 703. Any person who, on the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department or the Commission to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

SEC. 704. Employees transferred to the Department holding reemployment rights acquired under section 28 of the Federal Energy Administration Act of 1974 or any other provision of law or regulation may exercise such rights only within one hundred and twenty days from the effective date of this Act.

SEC. 705. Except as otherwise provided in this Act, whenever all of the functions vested by law in an agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this Act, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component

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thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313–5316), shall terminate.

SEC. 706. The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this Act, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this Act as he may deem necessary to accomplish the purposes of this Act.

SEC. 707. All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of

functions which are transferred under this Act to the Department or the Commission after the date of enactment of this Act, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

SEC. 708. (a)(1) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time this Act takes effect before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of

any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued if this Act had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(b) Except as provided in subsection (d)—

(1) the provisions of this Act shall not affect suits commenced prior to the date this Act takes effect, and,

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(c) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this Act.

(d) If, before the date on which this Act takes effect, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall

be continued with the Secretary or other official, as the case may be, substituted.

SEC. 709. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

SEC. 710. With respect to any functions transferred by this Act and exercised after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this Act vests such functions.

SEC. 711. Nothing contained in this Act shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before the effective date of this Act; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

SEC. 712. (a) The Federal Energy Administration Act of 1974 is hereby amended as follows:

(1) in section 4—

(A) by striking out the heading of such section and inserting in lieu thereof "Conflicts of Interest";

(B) by striking out subsections (a) through (h) of such section and redesignating subsections (i) and (j) as subsections (a) and (b), respectively; and

(C) by striking out, in the subsection redesignated as subsection (b), "holding any of the positions described in subsections (a), (c), (d), and (e) of this section" and inserting in lieu thereof "who is compensated at level II, III, or IV of the Executive Schedule and who is assigned principal responsibility for any program under this Act";

(2) in section 7—

(A) by striking out subsections (a) and (b) and redesignating subsection (c) as subsection (a);

(B) by striking out subsections (d), (e), (f), (g), and (h);

(C) by striking out "(i)(1)" and by striking out subparagraphs (A), (B), (C), (E), and (F) of subsection (i)(1) and redesignating subparagraph (D) of such subsection as subsection (b);

(D) by striking out, in the matter redesignated as subsection (b), "the rules, regulations, or orders described in paragraph (A)" and inserting in

lieu thereof "any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, pursuant to this Act";

(E) by striking out, in such subsection, "paragraph (2) of this subsection" and inserting in lieu thereof "subsection (c)";

(F) by redesignating paragraph (2)(A) of subsection (i) as subsection (c) and by striking out subparagraph (B) of subsection (i)(2); and

(G) by striking out paragraph (3) of subsection (i) and by striking out subsections (j) and (k);

(3) by repealing sections 9, 28, and 30;

(4) in section 52(a)—

(A) by striking out "and" at the end of paragraph (2);

(B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(C) by adding after such paragraph (3) the following new paragraph:

"(4) the States to the extent required by the Natural Gas Act and the Federal Power Act."; and

(5) in section 55(b)—

(A) by striking out "seven" and inserting in lieu thereof "six";

(B) by inserting "and" after "Federal Trade Commission;"; and

(C) by striking out "one shall be designated by the Chairman of the Federal Power Commission; and".

(b) The Energy Reorganization Act of 1974 is hereby amended by repealing section 108.

(c)(1) The Atomic Energy Act of 1954 is hereby amended by repealing section 26.

(2) Section 161(d) of the Atomic Energy Act of 1954 shall not apply to functions transferred by this Act.

(d) Section 502 of the Motor Vehicle Information and Cost Savings Act is amended by adding at the end thereof the following:

"(h) The Secretary shall consult with the Secretary of Energy in carrying out his responsibilities under this section.".

(e) The Energy Conservation Standards for New Buildings Act of 1976 is hereby amended as follows:

(1) in section 303(11), strike out "Secretary of Housing and Urban Development" and insert in lieu thereof "Secretary of Energy";

(2) in section 304(c), by inserting "the Secretary of Housing and Urban Development," after "the Administrator,"; and

(3) in section 310, by inserting "Secretary of Housing and Urban Development," after "the Administrator,".

(f) The Rural Electrification Act of 1936 is hereby amended by adding a new section 16 to title I thereof to read as follows:

"SEC. 16. In order to insure coordination of electric generation and transmission financing under this Act with the national energy policy, the Administrator in making or guaranteeing loans for the construction, operation, or enlargement of generating plants or electric transmission lines or systems, shall consider such general criteria consistent with the provisions of this Act as may be published by the Secretary of Energy.".

SEC. 713. Section 19(d)(1) of title 3, United States Code, is amended by inserting immediately before the period at the end thereof the following: ", Secretary of Energy".

SEC. 714. (a) Section 101 of title 5, United States Code is amended by adding at the end thereof the following:

"The Department of Energy.".

(b) Subsection (a) of section 3104 of title 5, United States Code, is amended by inserting after paragraph (4) the following new paragraph:

"(5) Department of Energy—not more than 200."

(c) Subsection (a) of section 5108 of title 5, United States Code, is amended by strining out "an aggregate of 2,754" and inserting in lieu thereof "an aggregate of 3,104".

(b) **(d)** *Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following:*

"(14) Secretary of Energy.".

~~*(c)*~~ **(e)** *Paragraph (22) of section 5313 of title 5, United States Code, is amended to read as follows:*

"(22) Deputy Secretary of Energy.".

~~*(d)*~~ **(f)** *Section 5314 of title 5, United States Code, is amended by striking out, in paragraph (21), "Federal Power Commission" and by inserting in lieu thereof "Federal Energy Regulatory Commission", and by amending paragraph (60) to read as follows:*

"(60) Administrator, Economic Regulatory Administration, Department of Energy.".

~~*(e)*~~ **(g)** *Section 5315 of title 5, United States Code, is amended by striking out, in paragraph (60), "Federal Power Commission" and inserting in lieu thereof "Federal Energy Regulatory Commission", by striking out paragraph 102, and by adding at the end of the section the following:*

"(114) Assistant Secretaries of Energy (9).

"(115) General Counsel of the Department of Energy.

"(116) Administrator, Energy Information Administration, Department of Energy.

"(117) Inspector General, Department of Energy.

"(118) Additional Officers, Department of Energy (4).".

~~(f)~~ **(h)** *Paragraphs (135) and (136) of section 5316 of title 5, United States Code, are amended to read as follows:*

"(135) Deputy Inspector General, Department of Energy.

"(136) Additional Officers, Department of Energy (10).".

SEC. 715. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this Act.

SEC. 716. The Civil Service Commission shall, as soon as practicable but not later than one year after the effective date of this Act, prepare and transmit to the Congress

a report on the effects on employees of the reorganization under this Act, which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;

(2) a statement of the number of employees entitled to pay savings by reason of the reorganization under this Act;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Commission considers necessary.

~~SEC. 716.~~ **SEC. 717.** *The transfer of functions under titles III and IV of this Act shall not affect the validity of any draft environmental impact statement published before the effective date of this Act.*

~~SEC. 717.~~ **SEC. 718.** *As used in this Act (1) references to*

"function" or "functions" shall be deemed to include reference to duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) references to "perform" when used in relation to functions, shall be deemed to include the exercise of power, authority, rights, and privileges.

TITLE VIII—EFFECTIVE DATE AND INTERIM APPOINTMENTS

SEC. 801. (a) The provisions of this Act shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after the date of enactment of this Act, (1) any of the officers provided for in title II and title IV of this Act may be nominated and appointed, as provided in those titles, and (2) the Secretary may promulgate regulations pursuant to section 708(a)(2) of this Act at any time after the date of enactment of this Act. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this Act, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

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(b) In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act, the President may designate any officer, whose appointment was required to be made by and with the advice and consent of the Senate and who was such an officer immediately prior to the effective date of the Act, to act in such office until the office is filled as provided in this Act. While so acting such persons shall receive compensation at the rates provided by this Act for the respective offices in which they act.

Mr. DINGELL. The Chair recognizes Mr. Brown for a brief statement.

Mr. BROWN. The minority has no formal statement prepared other than to concur in many of the points made by the chairman with reference to concerns he has expressed with the rather broad powers extended to the Secretary of the Department of Energy—anticipated Secretary of the Department of Energy, and the anticipated Department the way the legislation was originally drawn and the way it also is prepared to go to the House from the Government Operations Committee. I happen to serve both on the Government Operations Committee and on the Interstate and Foreign Commerce Committee and also, as the chairman did, testified about my concerns over these powers. I suppose it would be possible for us to suggest that if the policy is approved, that we might not be concerned about the power expressed by the person exercising that approved policy. However, the minority necessarily is always interested in trying to protect the interests of those with different opinions from the people in power and by the minorities and it seems to me in the shift of responsibility now in the legislation in the Federal Power Commission to the Secretary, not only are certain rights of persons to express their views and get certain proper procedures for the viewpoint which they hold brought to light limited, but also certain of those rights disappear entirely because of the loss of precedence established under the way the Federal Power Commission has operated over the last several years.

I think it is worthwhile for us to have this hearing and to make a determination as to just what the powers of the Secretary with reference to the Federal Power Commission, the Federal Energy Administration, existing agencies, will be and also perhaps to explore some of the powers which are granted the Secretary under the proposed National Energy Act.

For that reason I think it is worthwhile that this hearing be conducted and a full exploration of those powers be made. I think were it a different Secretary and a different administration, my position would not be vastly different. I also have great respect for Mr. Schlesinger. I am obliged to. His wife owns a farm in my district. So, therefore, in a mild way he is a constituent. But, never mind that respect and never mind that degree of personal affection. I would be concerned no matter what administration or what person would hold this office and have these powers.

Mr. DINGELL. The Chair thanks the gentleman. the Chair advises that our witnesses tonight are Hon. John F. O'Leary, Administrator of the Federal Energy Administration and Hon. Richard L. Dunham, Chairman of the Federal Power Commission.

Gentlemen, we welcome you and your associates.

STATEMENTS OF HON. JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION, ACCOMPANIED BY ERIC J. FYGI, ACTING GENERAL COUNSEL; AND HON. RICHARD L. DUNHAM, CHAIRMAN, FEDERAL POWER COMMISSION, ACCOMPANIED BY DREXEL D. JOURNEY, GENERAL COUNSEL

Mr. DINGELL. Before we recognize you, Mr. O'Leary, the Chair had requested that Mr. Schlesinger appear here to discuss these matters since he would be, as we all understand, the next Secretary. It being the case, however, that he is not able to be with us, you are appearing by his direction in his stead, am I correct?

Mr. O'LEARY. That is correct.

Mr. DINGELL. I understand you bear with you full powers to speak on behalf of the administration on matters before the committee?

Mr. O'LEARY. I will do my best to do that, Mr. Chairman.

Mr. DINGELL. We will, therefore, allow you small room for retreat in the event you feel you cannot.

Mr. O'LEARY. Thank you for that small room, Mr. Chairman.

Mr. DINGELL. I assure you it will be very small.

We will now recognize you for your statement, Mr. O'Leary.

Mr. O'LEARY. Mr. Chairman, I welcome to the opportunity to appear before you and the members of the subcommittee to discuss the relationship of the Department of Energy legislation to the President's National Energy Act.

The Department of Energy bill—H.R. 6804—recently reported by the Committee on Government Operations, transfers to the Department the functions of the Federal Energy Administration, the Federal Power Commission and the Energy Research and Development Administration. It also transfers certain energy-related functions of the Department of the Interior, Department of Housing and Urban Development, Department of Commerce, and the Interstate Commerce Commission. The Secretary will have consultation rights with certain other Federal agencies on energy-related programs.

This legislation will bring together the existing energy functions of the Federal Government and will provide the mechanism through which to carry out many of the programs contained in the National Energy Act. The bill itself, however, does not grant new substantive authority to the Secretary of Energy in any of the areas with which you have indicated particular concern, Mr. Chairman.

I would like to briefly discuss each of these issues which you have identified as areas of particular concern.

The committee-reported bill in the House, H.R. 6804, transfers rulemaking authority to both the Secretary and the Federal Energy Regulatory Commission. The Secretary's rulemaking authority would extend to the issuance of rules, regulations, and policy statements of general applicability, under the Natural Gas and Federal Power Acts. The Commission's rulemaking authority would encompass all other rules not inconsistent with the rules of the Secretary. These provisions contain no new substantive grant of authority. They authorize the Secretary and the Commission to exercise rulemaking power only to the extent that the Federal Power Commission could exercise such power on the date of enactment of H.R. 6804. As such, the rulemaking authority contained in H.R. 6804 would have no substantive effect on the provisions of the National Energy Act.

Similarly, the authority currently vested in the Federal Power Commission with regard to emergency interconnections under section 202(c) of the Federal Power Act would be vested in the Secretary pursuant to H.R. 6804. I should point out that authority under section 202(b), in the committee-reported bill, relating to interconnection authorities generally would remain vested in the Commission, subject to the general rulemaking authority of the Secretary. Thus the provisions of the National Energy Act dealing with the interconnection (section 521 of subpart 3 of part E of title I) would not be affected in allowing the Commission established within the Department pursuant to H.R. 6804 to continue to exercise its authorities regarding such interconnections. The Secretry—just as the Federal Power Commission presently could do—would be able to prescribe general rules relating to this interconnection function, but the Commission would retain full power with regard to individual cases handled under those general rules.

Similarly, with regard to establishment of priorities for curtailments of natural gas, the Secretary would be empowered to issue policy statements, as the FPC presently has in effect, or a rule of general applicability, if such a rule could be issued under applicable judicial precedent, outlining curtailment priorities. Once again, however, the Commission could retain authority to decide individual curtailment cases.

With regard to the authorities regarding emergency interconnections and curtailment priorities, the administration believes that it is proper to grant these essentially executive branch shortage management functions to the Secretary of Energy in order to facilitate interfuel tradeoffs in time of shortages. Further, we believe that the division of responsibility between the Secretary and the Commission in these areas will have no substantive effect on the National Energy Plan. The National Energy Plan, in section 416

of part D of title I does extend the basic authority granted the President by the Emergency Natural Gas Act of 1977 for 2 additional years. This authority, however, would not be impacted by H.R. 6804 as reported.

Finally, with regard to wellhead pricing of natural gas, H.R. 6804 would give to the Secretary of Energy the authority to set rates and charges for sale of natural gas for resale in interstate commerce. We believe that this authority should be vested in the Secretary, in order to assure that pricing decisions relating to major fuels such as natural gas can be better coordinated with overall energy policy objectives, as mandated by the Congress.

In that connection, part D of title I of the National Energy Act would alter the natural gas pricing system currently in effect. We believe that there is a consistent approach between H.R. 6804 as reported and the National Energy Act provisions in this regard. By establishing statutory criteria for wellhead pricing of natural gas, and vesting that authority in the President, the National Energy Act would seek to assure continuity in the pricing of oil and natural gas. Similarly, by vesting authority under current law in the Secretary to determine wellhead pricing of natural gas, the same objective of a more rational pricing policy is recognized. The approach of H.R. 6804, quite clearly, reflects the state of the law as it now is. The approach of H.R. 6831, the National Energy Act, reflects the state of the law which the administration believes would best serve the national interest with regard to pricing of natural gas.

Mr. Chairman, we believe that the administration and the House Government Operations Committee have been careful in avoiding the granting of new authority in the Department of Energy Organization Act. Surely, some of the provisions of that legislation may change the locus of responsibility for carrying out a variety of functions, among them functions now exercised by the Federal Power Commission. This change in locus of authority, however, should have no substantive effect on the provisions of the National Energy Act.

Thank you. That concludes my prepared statement.

Mr. DINGELL. Thank you, Mr. O'Leary.

The Chair recognizes now Mr. Dunham.

STATEMENT OF HON. RICHARD L. DUNHAM

Mr. DUNHAM. Mr. Chairman, I offer my prepared remarks for inclusion in the record.

Mr. DINGELL. Without objection, Mr. Dunham's prepared remarks will appear in the record in full.

Mr. DUNHAM. One comment. We were able to get a copy of the House bill just this afternoon so most of my comments listed in my prepared statement relate to my interpretation relating primarily to the Senate bill and the pages of H.R. 6804 enclosed with your May 17th letter.

Mr. DINGELL. We want your comments on the House bill and on the Senate bill. We will keep the record open so you can give us additional comments after you have had a chance to read the new House legislation. We will do likewise for you, Mr. O'Leary.

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Mr. O'LEARY. I just received it this afternoon myself.

Mr. DINGELL. It is with regret that I find we again address our business with haste because of the pressures of the process. If you can get it to us before the end of the week, it would be much appreciated.

Mr. DUNHAM. I understand both the House and Senate bill refer to changes or divisions of responsibility essentially between the rule-making authorities and the adjudicatory bases. If I may, to use just a few figures here will give some indication of the dimensions of FPC workloads, I realize that statistics are not indicative necessarily of the future significance, but they do give some feeling.

In 1976 the rulemaking proceedings initiated before the Federal Power Commission during that year number about 34—initiated by the Commission, 27; by petition, 6. We disposed of 17 of those rulemaking proceedings.

In regard to the nonrulemaking dockets, again to give you some feel of the dimensions of the workload and the extent to which that reflects upon the proposed redivision or reassignment in the President's bill and both the House and the Senate bills at the beginning of the year we had 4,999 cases pending. We disposed in total during the year of 3,617 and had pending at the end of the year 4,446. This does not, of course, include a number of filings and applications, numbering some 15,000 which were disposed of summarily, without docketing. What we are dealing with in volume is a flow of about 8,000 cases, something in that neighborhood in terms of the total volume during the year. This case volume contrasts with the rulemaking proceedings of the Federal Power Commission last year of some 34. Thirty-four were initiated and 17 were disposed of.

I believe the rest of my testimony, which has been introduced into the record, answers your specific questions. I will conclude my statement at this time.

[Mr. Dunham's prepared statement follows:]

STATEMENT OF
RICHARD L. DUNHAM
CHAIRMAN, FEDERAL POWER COMMISSION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

MAY 24, 1977

Mr. Chairman and Members of the Subcommittee, I support the fundamental concepts underlying the creation of the Department of Energy.

In my April 11th report to Chairman Jack Brooks of the House Government Operations Committee, I emphasized two basic concerns supporting the need for an administrative mechanism such as the proposed Department, as follows:

> * * *the system of energy management and regulation we need to meet the Nation's needs for energy now and in the future requires greater accountability to Congress and to the President than is provided by the traditional independent regulatory Commission.
>
> * * *the responsibility for dealing with the Nation's energy resources, the development of those resources, and the delivery of those resources to consumers is now fragmented among many agencies in government. [1/]

The May 17th letter of the Subcommittee Chairman poses a number of questions directed to H.R. 6804, Titles III, IV and

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1/ On March 9, I testified before the Senate Government Operations Committee in support of the proposed Department.

and V.[2] My statement addresses the questions in the order stated.[3]

Q. 1. What effect will the provisions of sections 301(b) and (c) and 401(a)(3) have on the provisions of H.R. 6831, insofar as that bill amends the Federal Power and Natural Gas Acts?

Answer: H.R. 6804 is an organizational bill not a substantive bill. The effects which I foresee upon H.R. 6831 are limited to matters of work assignments between the Secretary and the Federal Energy Regulatory Commission (Energy Commission). I cannot predict the precise resolution of the duties assigned to each. That will depend upon final terms of a bill at the time of passage. S. 826 is an organizational bill, also.

Q. 2. Section 301(b)(1) authorizes the DOE Secretary to issue, etc., rules, regulations and Statements of Policy, pursuant to the above Acts "which are of general applicability."

(a) Please identify those functions of the FPC under each Act that could, under this provision, be administered by the Secretary of DOE and not the new regulatory Commission.

Answer: As I interpret H.R. 6804, any of the functions of the FPC which are not otherwise specifically delegated, e.g., to the Secretary, would be administered by the Energy Commission. The Secretary's rulemaking authority would be governed essentially by the provisions of the

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2/ In preparing this statement, it should be noted that I was not able to secure a copy of H.R. 6804 (print of May 16th, as reported by the Government Operations Committee). I had a copy of S. 826 as passed by the Senate May 18th. Accordingly, my comments are directed at pages of H.R. 6804 enclosed with Chairman Dingell's letter of May 17th.

3/ See also my letter to Chairman Dingell dated May 2, 1977 addressing earlier similar questions. It is requested that the Subcommittee accept this statement which utilizes single-spaced format, in part.

Administrative Procedure Act, 5 U.S.C. 551(4). That law defines, and states the nature of the general rulemaking authority of administrative bodies. It is the law which the Commission now utilizes in the areas of substantive regulation when the FPC is acting under the Federal Power Act and the Natural Gas Act. The APA definition states as follows:

> "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor, or of valuations, cost, or accounting, or practices bearing on any of the foregoing;

S. 826 makes particular assignments as between the Secretary and the Energy Regulatory Board (Board). In addition to general rulemaking authority as referred to above, that bill prescribes specific procedures for interactions among the President, the Congress, the Secretary and the Board in matters of natural gas wellhead pricing regulation and energy actions.

(b) When the FPC exercises any of the functions identified in (a), please state the procedures used, in detail, by the FPC and indicate how they will differ from those followed by the DOE Secretary under H.R. 6804.

Answer: Sec. 501(a) of H.R. 6804 refers to and specifies procedures of 5 U.S.C. 551(4) for use by the Secretary or any component of the proposed Department. The bill implements due process-type steps in rulemakings which the FPC has found appropriate in its use of APA authority heretofore.

S. 826 specifies procedures as referred to in Answer 2(a) supra.

Q. 2. Please indicate how the FPC currently
sic Q. 3. administers sections 301(b)(3) thru (8) of H.R. 6804 and state the procedures used by the FPC in administering those functions.

Answer: The procedures and practices by which these functions are now administered by the FPC are set forth in 18 Code of Federal Regulations.

(3) - 18 CFR 2.11
(4) - 18 CFR Part 32
(5) - 18 CFR Part 32
(6) - 18 CFR Part 153
18 CFR Part 157
(7) - 18 CFR 2.78
18 CFR Part 154
(8) - 18 CFR 2.56
18 CFR Part 154

Q. 3(a) Under H.R. 6831, (sic) who would administer each of the functions set forth in 301(b)(2) thru (8)? * * *section 521 of H.R. 6831 would give the FPC authority over interconnection under Section 202(b)* * *while H.R. 6804 places emergency interconnection authority under Section 202(c) and (d) of that Act, in the Secretary. We would appreciate your views and comments on that division, including comments on what staffing will be required to carry out these two functions.

Answer: As I interpret H.R. 6804, functions specifically transferred to the Department and not specifically reserved to the Secretary or some other named entity within the Department, would be administered by or under the supervision of the Energy Commission. Functions listed in 301(b)(2) - (8) are specifically designated as transferred to Secretarial administration. H.R. 6831 provides for the possibility of termination of the FPC in advance of the passage of that bill. See Sec. 4 of H.R. 6831 for the transitional connection to the Secretary or Energy Commission from the FPC, as appropriate. Insofar as staffing is concerned, that would depend upon work load which may be generated. I have no way of foretelling what it might be.

S. 1469 is the Senate version of Title I of H.R. 6831. S. 1472 is the Senate version of Title II.

Q. 4(a) What curtailment functions of the new Commission will be affected by Section 301(b)(7) of H.R. 6804?

Answer: As I interpret the bill, the Secretary will establish the general practices and procedures governing curtailment, and provide for the overall administration of the natural gas curtailment program. The Energy Commission would handle individual case adjudications where its procedures may be needed, due to conflicts and controversies among specifically affected individuals or parties.

S. 826 contemplates that the Secretary will administer the curtailment program and may, if he chooses, assign specific curtailment functions to the Board.

(b) Under H.R. 6831, would the Secretary or the Commission establish and review priorities for curtailment of natural gas?

Answer: As I interpret H.R. 6804 and 6831, the Secretary would do so. S. 826 would yield a similar result. See Answers 3, 3(a) and 4(a) supra.

(c) What procedures does the FPC follow in establishing and reviewing priorities for curtailments? What procedures will the Secretary follow under H.R. 6804? How do they differ?

Answer: The FPC essentially uses the rulemaking procedures of the APA. Because of Sec. 501 of H.R. 6804, the Secretary presumably will use the same procedures. S. 826 would yield a similar result.

Q. 5(a) Is Section 301(b)(8) limited solely to wellhead pricing of natural gas? Please explain.

Answer: As I interpret the bill, it is directed to the economic regulatory function of price setting for wellhead sales.

(b) What effect will Section 301(b)(8) have on the Commission's functions concerning the sale and resale of natural gas under the Natural Gas Act?

Answer: I assume the Subcommittee's reference is to the Energy Commission. Where wellhead sale pricing might be involved in particular adjudication of pipeline rates falling within the responsibility of the Energy Commission, I interpret H.R. 6804 to mean that the Energy Commission would accept the Secretary's determination of wellhead sale prices.

S. 826 would yield a similar result in pipeline rates set by the Board, although under S. 826, wellhead sale prices would be set in the first instance by the Board, subject to Presidential veto. The respective roles of the President, Secretary and Board are detailed in that bill.

(c) What procedures does the FPC follow in the case of wellhead pricing? What procedure will the Secretary follow under H.R. 6804? How do they differ?

Answer: The FPC essentially uses the rulemaking procedures of the APA. Because of Sec. 501 of H.R. 6804, the Secretary presumably will use the same procedure.

S. 826 specifies rulemaking procedures and additional interactions among the President, the Secretary and the Board. See Answer, Q. 2(a) supra.

Thank you. If the Subcommittee has questions, I shall be pleased to respond.

Mr. DINGELL. That is entirely appropriate due to the hour and the Chair will commence recognizing members for questions. The Chair recognizes the gentleman from Pennsylvania, Mr. Walgren, first.

Mr. WALGREN. Mr. Chairman, I will yield back to you my time at this time in order that I might engage in it at a later point with more knowledge.

Mr. DINGELL. The Chair recognizes the gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Gentlemen, I want to ask you both, and Mr. Fygi in particular as counsel, and the counsel for the Federal Power Commission, if in fact the precedental experiences of the Federal Power Commission—if the experiences of the Federal Power Commission in regulating have not established precedental rates for people appearing before the Federal Power Commission which would disappear if the

authorities in this bill, formerly lodged in the Federal Power Commision, were transferred to the Department of Energy.

Mr. JOURNEY. Congressman Brown, the answer to that question is no. The Power Commission operates basically under the APA. Section 501 of the bill pulls down upon the Department the panoply of the APA procedures, adjudicatory and rulemaking. They are applied to whatever the due-process and procedural requirements are. They relate to individual cases.

Insofar as our adjudicatory work is concerned, whomever does that, whether it be the Administrator or the board, a regulatory commission, I read the bill as saying they would observe the procedures that are in place. We have really not done much more than build on APA procedures.

Mr. DINGELL. Would the gentleman yield very briefly?

Mr. BROWN. I will be happy to yield.

Mr. DINGELL. I observe with some interest there are a whole series of services that are published rather widely. They are published cases and decisions adjudicated by the Federal Power Commission. Are you going to tell me that those citations are going to remain valid and will not cease to exist as valid, suitable authority?

Mr. JOURNEY. As I understand this legislation, the law, as it is now developed, the statutory and case law would continue. Insofar as H.R. 6804 is concerned, cases such as *Hope, Permian,* and Colton would continue to be a good law. All any other cases would be good law.

Mr. DINGELL. I am sure they will be available as being suitable but will the Secretary be bound by them in his rulemaking?

Mr. JOURNEY. As I see it H.R. 6804 is basically a box-shuffling bill versus a substantive revision bill, the answer is, I think, whoever administers these powers would be bound by those precedents the same way as the Power Commission is.

Mr. DINGELL. Do you concur with that, Mr. O'Leary, remembering you are now speaking for the administration?

Mr. O'LEARY. Yes, Mr. Chairman, speaking for the administration, we are in concurrence. This has been aptly described as a box-shuffling enterprise and not an exercise to change substantive law. The existing precedents will continue to apply.

Mr. DINGELL. I thank the gentleman from Ohio.

Mr. BROWN. My concern is that the court will interpret—the court, in its procedures and the Secretary, will determine whether or not the existing precedents will apply and nothing in the legislation requires that they do. I would certainly like to see that that is cleared up in the legislation.

Mr. O'Leary, under the Government Operations reported bill, existing judicial review provisions would remain in effect under the Emergency Petroleum Allocation Act judicial review of FEA Order 1 vested in the temporary emergency Court of Appeals.

I understand that they were designed to handle cases expedited on an emergency basis. Why are we continuing this emergency procedure in a permanent Department of Energy? Isn't it possible we ought to move out of that area?

Mr. FYGI. To have revised the judicial review procedures in this case would have been tantamount to amending the Emergency

Petroleum Allocation Act which would control a provision of substantive law which we felt was beyond the scope and exercise of the proposal to establish the Department.

Mr. BROWN. Are you proposing an amendment in that respect or would you accept an amendment in that respect to set up rather more normal judicial review procedures than those existing in the Emergency Act that was passed at the time of the embargo, now that we have a permanent DOE?

Mr. FYGI. I understand your comment, Mr. Brown.

I think that the issue of addressing the various modes of judicial review in the context of the various authorities to go into the Department might well be considered at some stage in their entirety.

We have, in the various statutes to be transferred, processes of judicial review stemming from statutes enacted at various points in the country's history. It may be fruitful at some future time to reconsider those.

Mr. BROWN. Let me go back to my question with reference to the legislation and the fact it does not automatically carry with it the continuation of precedents established under the Federal Power Commission decisions. Would you be willing to accept, each of you, an amendment to that effect, to clarify the language so as to accomplish what I think you just indicated you would like to see accomplished?

Mr. O'LEARY. Mr. Chairman, I think this is the situation we find ourselves with. These precedents run really to the statute involved. In the one case, the Federal Power Act; in the other case, the Natural Gas Act. Once again, nothing that we are doing here amends those statutes and I would imagine that normal judicial review would say that the statutes are attached, the precedents are attached and so it goes.

Mr. BROWN. But I am not totally confident. My question was, would you accept an amendment to assure that that is the case?

Mr. O'LEARY. We would be glad to review such an amendment, Mr. Brown.

Mr. BROWN. Mr. Dunham, how do you feel about it?

Mr. DUNHAM. I couldn't judge the latter part of the question. A partial answer to your question is yes. This type of a hearing, absent anything else, tends to provide the legislative history which would support the position that the precedents would continue in view of the statements both of general counsel of the FPC and——

Mr. BROWN. I don't think this hearing record will be a part of that bill. In effect, what somebody is going to be obliged to do in making an interpretation—future Secretaries or the court—is to look at the legislation and the debate on the floor of the House if a contest comes up, in a legal sense on that issue, and make a judgment based on that.

I would like to clarify all that by simply putting in a modest little amendment which says previous precedents would continue to apply.

Mr. DUNHAM. The only point I am making here—I think Mr. O'Leary must speak for the administration.

Mr. BROWN. I think I understand that.

At the present time, Mr. O'Leary, FEA must allow only 10 days for comment after proposing a rule. but yet the Administrative Procedure Act generally allows 30 days for other agencies. Why do you want to continue this curtailed timeframe for public comment on decisions that would be made pursuant to the FEA regulations under the new Department of Energy again, now that it is a permanent Department of Energy and we have frozen these positions into place?

Mr. O'LEARY. Mr. Chairman, Mr. Brown, now that is a minimum. Generally speaking, we do provide more extensive notice than the minimum. That is to meet an emergency condition and again the primary reason we are not amending that is that we do not want to go back and amend substantive law. We simply want to change the organizational structure, not the legal structure behind it.

Mr. BROWN. Could you explain to me why you don't want to do that now that you are setting up a permanent body that will have procedural impact on the decisions that are made in this whole energy area? It seems to me that the temporary legislation which we passed in emergency circumstances at the time of the embargo is one thing—and I supported that, as I am sure you are aware, and felt that we needed some kind of extra power in that ability. Now we are freezing into an apparent permanent law—and I can think of nothing more permanent than a new cabinet level department—we are setting up a new permanent law, a new permanent department and we are in the process of freezing that, I guess, into shape for all time, because I can't think of any cabinet position that has ever been abolished—we have consolidated some—and it seems to me that we ought to use the general framework which has been applicable to previous departments, rather than go back and say, "We had an emergency bill, and in this Department we are going to set up emergency procedures, which are not as broad in terms of defending the right of an individual person to appeal the decisions of the Secretary."

Mr. O'LEARY. May we answer that in two parts?

Mr. BROWN. Surely.

Mr. FYGI. The first part of the question that you pose suggests that the rulemaking provisions in the Department of Energy bill which frankly are patterned after the FEA Act provisions, somehow afford less procedural safegurds than is the case from section 4 of the Administrative Procedure Act which was enacted into positive law with the rest of title V, as 5 U.S.C, 553, and while that provision may speak in terms of 30 days, it is the fact that section 4 of the APA provides agencies considerably more latitude to short-circuit the process than is the case with respect to section 501 of the Department bill. That is in two major respects, first, in the vast preponderance of rulemaking that would be produced in the course of economic regulation, the rulemaking process must include an opportunity for a legislative-type oral hearing.

Secondly, the circumstances under which the notice-and-comment period may be waived are severely more curtailed in the case of 501 and the FEA Act than is the case with section 4 of the APA.

Mr. DINGELL. The time of the gentleman has expired.

I would like to comment briefly on section 501. Now is 501 the same as section 107 of the Economic Stabilization Act?

Mr. FYGI. It is not, sir.

Mr. DINGELL. Doesn't that indicate, then, that you are changing substantive law?

Mr. FYGI. No, sir, because what 501 is similar to is section 7 of the FEA Act, and we have consistently construed the FEA Act provisions regarding rulemakings as having been intended directly to affect the way FEA would carry out the allocation act authority. And indeed in every instance——

Mr. DINGELL. You have said it is similar to. You have not said it is the same as.

Mr. FYGI. In one of the pieces of correspondence which were associated with the development and consideration by the House of the Department bill, I believe we identified those, and they include distinctions, for example, such as the section 7 of the FEA Act requirement that rules promulgated by State and local entities delegated authority under any of the statutes administered by the FEA or the Department must be preceded by written notice in virtually all the newspapers of statewide circulation. The kind of alterations we made were to say significant number of newspapers of statewide circulation to decrease somewhat the degree of rigidity now contained in section 7 of the FEA Act.

However, they were nearly identical. I believe a close reading of the two as well as the materials we previously provided would make that quite clear.

Mr. GORE. Would the gentleman yield briefly?

Mr. DINGELL. I would be glad to.

Mr. GORE. I think the point is well taken. It has been pursued now, but looking at section 501, lines 22 and 23, you say that this is issued pursuant to authority vested by law in or delegated to the Secretary or any officer, employee, et cetera, but in section 7(i)(1)(A), you say issued pursuant to this act. The words "or delegated to" are missing, and it has a domino effect and the procedural safeguards contained in one act are not carried over to the other act, and people who litigated their rights with procedural safeguards in the past no longer have the benefit of those procedural safeguards and have to litigate issues according to an entirely different set of rules, and the fine line between procedural rights and substantive rights has been crossed. It is not a question of shuffling boxes around, but a question of changing procedure.

Mr. FYGI. May I respond to that, sir?

Mr. GORE. Yes.

Mr. FYGI. It is necessary to look not only at section 7 of the FEA Act, but section 5 in which it is said that one of the purposes of that act is to provide the framework under which any authority delegated to the Administrator of the FEA regarding petroleum allocation, for example, would be carried out.

Now bear in mind, please, what we are talking about in the case of the comparison between section 207 of the Stabilization Act procedure regarding rulemaking and section 501 is that the latter affords greater procedural safeguards than the original section 207 of the Stabilization Act.

It has been our interpretation in FEA that the intent of the Congress was very clear when the FEA Act was originally passed by

the Congress to provide those additional safeguards over and above those assured by section 207 of the Stabilization Act.

Mr. BROWN. Would the gentleman yield?

Mr. DINGELL. I have the floor, and I would be glad to yield to the gentleman from Ohio because he was very gracious to me.

Mr. BROWN. I have tried to follow this in response to my questions, and the questions asked by the gentleman from Tennessee, Mr. Gore, and apparently it hinges on whether or not you want to change substantive law in the establishment of the Department of Energy. You are changing substantive law in the establishment of the Department of Energy at least in one regard with which I am familiar, and that is the sunshine legislation that applies to collegial bodies. The decisionmaking process of the Secretary when you terminate a collegial body and move that decision into the single Secretary terminates, under that sunshine legislation that we passed out of the Government Operations Committee, the responsibility of that collegial body. No longer can you get into the Secretary's decisionmaking process and have it exposed to public view.

Mr. DINGELL. If the gentleman would permit, I don't want to quarrel—as a matter of fact, I agree—but I note Mr. O'Leary is nodding yes.

Mr. O'LEARY. No, I am nodding that I understand what you are saying.

Mr. DINGELL. That is a novel approach of an affirmative nod, but I happen to agree with the gentleman from Ohio, and maybe you can help us by telling us then that you disagree by nodding yes, and why.

Mr. O'LEARY. Mr. Chairman, these procedural requirements, of course, are in the rulemaking context, and the Secretary's rulemaking process will be subject to the usual entry, openness rules that are applicable to rulemaking activity in other agencies, so I don't think there we have a substantive change.

Mr. BROWN. I think the argument is so tenuous as to be perhaps better described as sleazy, but I will let it go at that.

Mr. DINGELL. The Chair observes that his time has expired, and the Chair recognizes first the gentleman from Tennessee, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

Mr. Fygi, you said just a second ago that greater procedural safeguards are included in the new bill. Does that hamper administration?

Mr. FYGI. It has been our experience in FEA that it has not hampered administration. It has exerted, in my own judgment, a healthy discipline on the system which I believe has produced more thoroughly examined rulemaking proposals.

Mr. GORE. Isn't that a change in substantive law?

Mr. FYGI. It is consistent with the status quo in FEA, and unless one were to avoid providing a uniform set of ground rules within the Department, there really would be no way one could do so without arguably there being some change in existing law.

Mr. DINGELL. Would the gentleman yield?

Mr. GORE. Yes; let me make one point, first.

I think that you have just made our case. We want to know what those changes are.

I yield.

Mr. DINGELL. Maybe you want to comment on the gentleman's remarks before he yielded to me.

Mr. FYGI. Very well. The Federal Power Commission is today not subject to anything which resembles the section 501 procedures in the way it promulgates rules. Neither, to my knowledge, is the Energy Research and Development Administration. There are other agencies who are subject to such requirements, and they typically involve circumstances where the so-called hybrid type of rulemaking process has become more prevalent in recent years. So when the bill was being designed, we had to consider how best to make a provision in the legislation that would afford some uniform structure with rulemaking procedures while remaining faithful to what we perceived the Congress' later statement on the subject in the context of the FEA Act, and that is why we adopted that approach, as well as our having been persuaded that on the merits these were sound provisions.

Mr. GORE. Mr. O'Leary, I would like to ask you to respond to a statement that I heard in the chairman's introductory remarks. "The administration endorsed the new Senate bill." Has your position changed or modified, or is it still the same?

Mr. O'LEARY. Mr. Chairman, I think this had to do with the administration's acceptance of the regulatory aspects in the new Senate bill. We would prefer the version sent originally to both houses. However, in looking at the overall impact of the Senate action, we are willing to accept that. We would prefer, however, that it come out closer to the original version.

Mr. MOFFETT. Would the gentleman yield on that point for a moment?

Mr. GORE. Yes.

Mr. MOFFETT. One thing that puzzles me is how the administration could at the same moment have one position in the Senate and a different position in the House. It is one thing for you now to state that you would prefer, as I understand it, the House version that came out of Government Operations, on which Mr. Maguire and I are fortunate enough to sit, you would prefer that, you say now, to the Senate bill, but Mr. Maguire and I, I think I can speak for him in this regard, were lobbied to death by the administration saying that it was very important that we not introduce any amendments to change that particular portion of the bill that was before Government Operations, and I found out at that very moment the administration was making a deal with the senior Senator from my State, Senator Ribicoff, on the other side.

That was really very puzzling to me how that could happen, very puzzling and very troubling. I would like to know what kind of games were being played, if games were being played in that instance.

Mr. O'LEARY. I don't think games were being played. I think the administration was involved in the usual give-and-take in an attempt to get acceptable legislation out, and they did that.

Mr. MOFFETT. Does the usual give-and-take mean the senior Senator from Connecticut is more important to much more junior members from——

Mr. O'LEARY. No, not at all. I would say, however, that the House version is, in my judgment, a more acceptable version, although we certainly wouldn't go against the Senate version.

Mr. GORE. That means you wouldn't go against the new House version if it were changed, either.

Let me say, as a general proposition, I think the administration is to be commended for not making more mistakes in the rush to get this thing put together as quickly as possible.

I wanted to ask one final question, Mr. O'Leary. If title V does make substantive changes, then I would like to see them outlined. You have said here it does not. If it does not, then why have it in at all? Each of the substantive laws contain the applicable procedure in them, so if it makes no changes, why have them?

Mr. FYGI. The question, if I understand it correctly, was why have any procedural provision regarding rulemaking at all.

Mr. GORE. No, why have title V, if it makes no substantive changes? Why have it applied to these rules?

Mr. FYGI. The real question is what would have been the alternatives had we not had title V?

Mr. GORE. Silence.

Mr. FYGI. But what would have been the results of silence?

Mr. DINGELL. If the gentleman would yield, each of the procedural provisions are statutes whose administration is being transferred to the agency.

Mr. FYGI. And had we chosen the course of action which retained the FEA Act rulemaking procedures with respect to functions under that statute, it would have been more and more difficult as time went by, and the source of various of the Department's activity in a statutory sense became obscured, to be able to identify within the Department from a management standpoint whether these types of FEA rulemaking procedures were required in a given case or whether only section 4 of the APA procedures were appropriate.

Mr. GORE. I think you can make a good case for having a very small, limited administrative section to take care of those functions in the new Department, but why you have a large thing that just throws everything together in the same container——

Mr. DINGELL. Would the gentleman yield?

Mr. GORE. Yes.

Mr. DINGELL. In the light of what you have just said, we are in the process in this committee at this moment of writing substantive legislation dealing with all manner of energy pricing questions, the Federal Power Act, Natural Gas Act, and the others. Why is it necessary for this to be done in what you tell us is an organizational bill when we are, at the same time, working on a substantive bill, when we are here changing procedures which, as Judge Learned Hand said, "The procedural justice is the essence of liberty."

Mr. FYGI. I would submit, Mr. Chairman, that we are carrying out within the Department the Congress' latest statement when it enacted and reenacted the FEA Act as to how rulemaking should be carried out.

Mr. DINGELL. The Federal Power Commission is not under the FEA Act.

Mr. FYGI. It is not today; that is correct.

Mr. DINGELL. That is right, and this bill would, to a fair degree, put it under the FEA Act, would it not?

Mr. FYGI. I am afraid I didn't hear that.

Mr. DINGELL. Wouldn't section 5 of the bill put the Department under the FEA Act insofar as procedures?

Mr. FYGI. Those rulemaking procedures would be employed throughout the Department with respect to functions——

Mr. DINGELL. That is a striking change insofar as the rights of the parties involved are concerned, is it not?

Mr. FYGI. It is a change in the sense that instead of the Power Commission in its discretion providing an opportunity for oral hearing in connection with the rulemaking, it would have some statutory guidance to the effect that that is the norm, just as the FEA was given that guidance.

Mr. BROWN. Excuse me, Mr. Chairman.

Mr. DINGELL. Mr. Gore has the floor.

Mr. GORE. I yield.

Mr. BROWN. I keep getting lost in the convolutions of this argument. Is the gentleman saying that the title V rights are broader than the rights of the Federal Power Commission?

Mr. FYGI. That is quite correct.

Mr. BROWN. It seems to me that is not accurate in some instances. Again, the 10-day versus 30-day notice and comment period.

Mr. FYGI. That statement, I believe, is a fair characterization based on the last occasion I responded to that question; that is to say, the opportunity for oral hearing provided a more stringent criteria for the waiver of the hearing and comment process.

Mr. BROWN. When you responded to the questions that I asked you previously, you also told me you didn't want to change substantive law, and now I think the argument is you are changing it because the Federal Power Commission law provided those particular procedures, and that is what has me confused.

Mr. FYGI. I think in order to unravel this, and I fully sympathize with your line of query, the procedures applicable to rulemaking stem not just from the Gas Act and the Power Act, but from the Administrative Procedure Act, which was enacted in 1946 and in that sense the Administrative Procedure Act applied to the substantive authorities then extant throughout the government. Really, to the extent there is substantive law being changed or affected, it is the state of administrative law generally and not the laws peculiarly applicable to the Federal Power Commission or Energy Research and Development Administration that are being addressed by section 501.

Mr. BROWN. So you are changing the substantive law with reference to administrative procedures; is that true or not?

Mr. FYGI. If this or similar provision is included in the Department bill, the Congress will be specifying in the context of this Department how rulemaking procedures should be observed.

Mr. BROWN. Up to this point, it is your baby; it is your bill.

Mr. GORE. If I could reclaim my time.

Mr. BROWN. Yes.

Mr. GORE. Please respond to the gentleman's question.

Mr. FYGI. I believe the last question was, was it not within the agency's discretion at this stage?

Mr. BROWN. No, the last question was this bill is your baby; therefore, whoever is changing it, it is your proposal that it be changed; isn't that correct?

Mr. FYGI. It is our proposal that the FEA rulemaking procedures, as the most recent statement by the Congress as to this subject, appeared to us to be the appropriate state of law to be reflected in the Department.

Mr. BROWN. The answer is yes. That means yes; right?

Mr. FYGI. I don't know whether it means yes or no.

Mr. GORE. I would like to end with one brief question.

Mr. DINGELL. The gentleman from Tennessee has the time.

Mr. GORE. One brief question, Mr. O'Leary. If you could tell me in a very succinct statement, I would appreciate it, why do we need title V while we are working out substantive legislation?

Mr. O'LEARY. This is our desire for uniformity, Mr. Gore, and nothing else, and it is to make our way through the maze that Mr. Fygi has discussed with us, of a 1935 Act, 1938 Act, 1946 Act, and finally a 1974 Act.

Mr. GORE. We are going to be going that route, anyway.

Mr. O'LEARY. Yes, in one procedural respect, yes.

Mr. DINGELL. Let me ask you this question. You are suggesting, then, that this is the procedural solution to the procedural problems that have grown up since 1935, 1938, and 1972 or 1973, and 1974 or 1975?

Mr. O'LEARY. No; we are suggesting that this is the last statement of the Congress on this particular aspect of the procedure.

Mr. DINGELL. We have abundant statutes which are different and being rolled into one set of procedures, which is going to be vested in the Secretary, and we are curious whether this is what you really want, or do you want something later, and maybe if you want something later a committee of substantive jurisdiction should write the legislation.

Do you differ with that, Mr. O'Leary?

Mr. O'LEARY. No.

Mr. DINGELL. The Chair has to recognize some colleagues. I have been overusing the time up here.

The Chair now recognizes the gentleman from Connecticut, Mr. Moffett.

Mr. BROWN. Would Mr. Moffett yield for a comment appropriate at this point, briefly?

Mr. MOFFETT. Very briefly, yes.

Mr. BROWN. That is, the Federal Energy Administration legislation was written as emergency legislation at the time of the embargo. It related to oil policy. It did not relate to gas policy or electric power or anything else taken up in this legislation which will be the jurisdiction of the Secretary under the law as it is written, as I understand.

I thank you very much for letting me make that observation.

Mr. MOFFETT. I would like to ask a question of Mr. O'Leary about the OTA report regarding several aspects of the leasing provisions which have become a cause for concern. I will quote the report briefly. I am sure you are familiar with the language. I would like your comments on it.

The split jurisdiction as envisioned is based on a distinction between economic and land management issues which does not exist in practice. The split could result in severe coordination problems and result in delay, inefficiency and adverse environmental, and socioeconomic impacts. The authority gained by the Secretary of Energy does not seem that essential to the Department of Energy while it could cause significant land management problems for the Secretary of the Interior.

Could you comment on that?

Mr. O'LEARY. Yes, this is the classical problem of serving two sets of potentially conflicting objectives, Mr. Chairman. We do have, on the one hand, the charge of the Secretary of Interior to exercise prudent stewardship of land on public domain, including the Outer Continental Shelf, and to be the environmental protector of the lands. These lands also are strategically important from the standpoint of future petroleum supply. We have to find some way to conciliate those two possibly potentially conflicting objectives, and the proposal that is incorporated in the legislation is a useful and effective way to do that without creating delay and safeguarding both sets of interests.

Mr. MOFFETT. If Interior can do a pretty good job of taking into consideration environmental impact, water, and grazing impacts, and so forth, how does that fit in now; how is that going to be done?

Mr. O'LEARY. They will do that under the same sort of procedures that they have used in the past in their general requirement to protect the public domain and to see to it that activities on the public domain are managed in such a way they are not antagonistic to the environment. I think they will do it as in the past.

Mr. MOFFETT. These are two separate decisions. Where does the consulting take place and they come together?

Mr. O'LEARY. There will be extensive discussions at the staff level between the two agencies, as indeed there have been in the past, when that function, the energy function, was incorporated principally within the Secretary of the Interior, where he had, on the one hand, an Assistant Secretary who was responsible for mineral resource development, and another Assistant Secretary who was responsible for public land management.

Mr. MOFFETT. I understand that. What about when they disagree? Where is the jurisdiction then?

Mr. O'LEARY. The jurisdiction on a point of disagreement is in the President. And, of course, it always has been.

Mr. MOFFETT. One more question relating to oil pricing. Are there hearings going on now?

Mr. O'LEARY. There are hearings in this general timeframe on several aspects of it.

Mr. MOFFETT. Aren't there hearings on pricing decisions that have already been made?

Mr. O'LEARY. No, the principal hearings going forward now have to do with the triggering in certain parts of the country of the prices on middle distillate during the winter.

Mr. MOFFETT. How about hearings on Alaskan oil?

Mr. O'LEARY. There are no hearings going on on that at the moment.

Mr. MOFFETT. No hearings, but there are hearings about to go on; right?

Mr. O'LEARY. Mr. Moffett, I am told there may be some scheduled for Alaska.

Mr. MOFFETT. But the President has already made a decision on that, hasn't he?

Mr. O'LEARY. He has made a proposal on that.

Mr. MOFFETT. I am just afraid that we are having hearings on decisions that have already been made; is that not true? I don't want to state that if it is not true. The President has already taken a position. I don't want to see us get into a situation where we are having hearings on positions that have already been taken by the President. What is the purpose of the public input?

Am I misinterpreting that? Correct me if I am.

Mr. O'LEARY. Mr. Moffett, I think probably if these hearings are held at all, and I think there is question as to whether they will be held, they will not be on those principal elements that have been subject to Presidential decision. Certainly that would make a mockery of the whole process if you were to have a decision and then a hearing, and we have no intention of doing that, Mr. Moffett.

Mr. MOFFETT. Okay. Thank you.

Mr. GORE [presiding]. Thank you. The Chair recognizes the gentleman from New Jersey, Mr. Maguire, for 5 minutes.

Mr. MAGUIRE. Thank you, Mr. Chairman. I just have one question of Mr. O'Leary.

On page 4, you refer to the need for a Secretary to have the management functions and decisionmaking authority related to emergency interconnections and curtailment priorities in order to be able to act quickly in an emergency.

Now, my question is, aren't curtailment priorities best established well in advance of an emergency? Presumably they would not be established at the moment.

Mr. O'LEARY. Mr. Maguire, they are indeed established well in advance of emergency. The point that you have to concern yourself with here are decisions within categories. For example, if you are down to the point of cutting two's, who goes first, the agriculture people, or the school, that sort of decision. These sorts of things you have to do more or less in the context of what is going on at the moment, I think, are properly the emergency functions in a Secretary.

You will recall that the Congress, in January, on enactment of the Emergency Natural Gas Act, conferred those authorities on the President, who, in turn, conferred them on Mr. Dunham, not as Chairman of the Federal Power Commission, but as Administrator of that Act. I think that was a signal you did not want that function conducted collegially but done by an Administrator so you could get benefits of a rapid turnaround.

Mr. MAGUIRE. Within the context of a preexisting general curtailment strategy.

Mr. O'LEARY. Of course.

Mr. MAGUIRE. The question could then be who should set that general curtailment strategy, and I don't think in terms of emergency actions of the sort you have described that that would necessarily mean that that had to be done by the Secretary. It could equally well be done by a collegial body.

Mr. O'LEARY. It could be.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. GORE. Thank you, Mr. Maguire.

The Chair recognizes Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman. I yield my time to the gentleman from Ohio, Mr. Brown.

Mr. BROWN. As all of you know, I am not a lawyer. I am trying, however, to understand as best a nonlawyer can, what the distinctions are here in terms of what is covered.

As I read section 501, Mr. Fygi, gentlemen, the language does not require the hearing on the record.

Mr. FYGI. That is correct.

Mr. BROWN. All right. Under the Natural Gas Act a hearing is required.

Mr. FYGI. But not a hearing on the record.

Mr. BROWN. Not a hearing on the record, that is right, but a hearing is required. It is not a formal adjudicatory hearing with cross-examination in the Natural Gas Act; however, Mr. Dunham, isn't it true that since the beginning of the price decision with reference to natural gas those have been formal adjudicatory hearings with cross-examination on the record, for the most part, and the reason for that, as I understand, has been that the effort was made in that way to have such hearings so that the Federal Power Commission would be sustained when you got a judicial review and in order to make a better record for that kind of a judicial challenge. Am I wrong in that?

Mr. JOURNEY. Congressman Brown, under the Natural Gas Act and the Federal Power Act, ratemaking is "rulemaking." The Natural Gas Act and the Federal Power Act provide that in prescribing rates there should be an opportunity for hearing. To be sustained in the courts on judicial review, both acts have "substantial evidence" and "error of law" tests.

Now, how you get to the satisfaction of those latter two tests is a procedural choice. The APA allows ratemaking by rulemaking.

If you will look at Opinion 770(a), the national rate, you will find that we did not have cross-examination. We have been successful in three circuits in sustaining our ability to do ratemaking by rulemaking and informal hearing procedures of the APA.

We allow comment, cross-comment, and, where appropriate, oral argument. There is a full factual development of a record in that sense to sustain the substantial evidence and error of law tests.

When the wellhead pricing regulation started out, it was done in a format of a trial-type hearing. The Commission, after *Permian*, moved away from that in the area rate case 390 U.S. 747. There have been decisions by three circuits sustaining the FPC's rate procedure through rulemaking. That is an issue now before the Court of Appeals for the District of Columbia on opinion 770-A.

Mr. GORE. Will the gentleman yield?

Mr. BROWN. Let me finish my point.

My concern is that section 501 does, in fact, permit that, but nothing in this legislation requires it, that it has become precedence for the Federal Power Commission and the language in this legislation does not provide for carrying that precedence.

Now, are we in substantial disagreement about the facts of that?

Mr. JOURNEY. Congressman Brown, 501 (f)(1) of H.R. 6804 says the judicial review taken under any law of the functions which are transferred will continue.

Mr. BROWN. Where are you reading from?

Mr. JOURNEY. I am reading from H.R. 6804, section 501(f)(1), which says that "Judicial review of an action shall be taken in the manner specified in the law of transfer." What I am saying to you, Congressman Brown—it is on page 93 of the restated H.R. 6804—you are trying to make procedural language the forge by which you arrive at the sustainable end product.

I am suggesting to you that procedure is a means to an end, and the ultimate tests of reviewability are in 19(b) of the Gas Act and 313(b) of the Power Act. They have not been changed.

Mr. BROWN. But your comments are going to judicial review and not procedures, and that is where my concern is.

Mr. JOURNEY. But you have used procedures to meet the ultimate judicial review tests. The procedures are in the 1935 Power Act and the 1938 Natural Gas Act. They are in sections 309 of the Power Act and 16 of the Gas Act as embroidered and assisted by the 1946 Administrative Procedure Act.

Mr. BROWN. And precedents.

Mr. JOURNEY. And precedents. What we have done is develop a regimen of notice, comment, cross-comments and oral argument, where appropriate, to meet procedural due process requirements to get to this happy state of meeting "substantial evidence" and in "error of law."

Mr. GORE. If the gentleman will yield.

Mr. BROWN. That is what you have done, but that is not what this legislation does, in my opinion.

I will be happy to yield.

Mr. GORE. Thank you.

Aren't you addressing section 4 of the Gas Act?

Mr. JOURNEY. Sections 4 and 5 of the Gas Act, because he was talking about wellhead pricing.

Mr. GORE. What about section 7? Isn't a hearing required there?

Mr. JOURNEY. Under section 7 a hearing is required, but not under sections 4 and 5 of the Natural Gas Act. An opportunity for hearing is required, but then the thing left undetermined by the 1938 legislation is what type of hearing.

Mr. GORE. What about in section 7?

Mr. JOURNEY. Under section 7, you have a hearing before a law judge.

Mr. GORE. And it is required, but under section 501 it is not required?

Mr. JOURNEY. Under section 501, you can pull out of the Administrative Procedure Act the tools that are appropriate to the section of the Gas Act you are working with.

Mr. GORE. You can, but you don't have to.

Mr. JOURNEY. I think under section 501, as I read it, 501(a), "Subject to the other requirements of this section, the provisions of subchapter 2 of title V shall apply," I would regard it as sufficient.

Mr. GORE. Doesn't section 553 of the APA apply?

Mr. JOURNEY. Yes, as do all of the parts of subchapter 2, which is the APA. It is 551 through the end of the section.

Mr. BROWN. If I may retrieve my time, as I read section 501, it allows certain options, some of which have been used in the past, but those are not required.

Let me ask you, Mr. Dunham, if I may, a different kind of question.

On page 4, you respond to question 3, indicating that the functions of section 301(b)(3) through (8) are now administered in accordance with section 18 of the Code of Federal Regulations.

What guarantee do we have in this legislation as it is drawn that the Secretary, the new Secretary of the Department of Energy, to whom these functions are transferred, will adopt these same procedures, procedures which have in the past been adopted by the Federal Power Commission?

Mr. DUNHAM. I think as of the point the law becomes effective the existing rules and regulations would automatically be transferred over. At that point, and some point subsequent, of course, these rules and regulations could be changed. They can now be changed by the Federal Power Commission under its existing procedures.

Mr. BROWN. As I understand under the law the Secretary is given the authority to establish those laws. I am not sure where I see that they are automatically moved over and become the laws unless the Secretary wishes to adopt them.

Mr. JOURNEY. In the bill, Congressman Brown—I am working with a copy that I didn't get until 4 o'clock this afternoon——

Mr. BROWN. You are better off than we are. We didn't get it at all.

Mr. JOURNEY. H.R. 6804, section 707, say the in-place functioning regulations of the constituent agencies would keep going.

Mr. DUNHAM. All orders, rules, regulations, licenses, and so forth, shall continue in force until modified, terminated, et cetera, which was the point I was trying to make.

Mr. BROWN. So it is your interpretation that this covers that point; is that correct?

Mr. JOURNEY. That is the way I read it, yes, sir.

Mr. GORE. The gentleman's time has expired.

The Chair recognizes the gentleman from Texas, Mr. Collins.

Mr. COLLINS. I don't have anything to add to what the gentleman from Ohio has said. I will pass.

Mr. GORE. The Chair will now recognize members for another round of questioning, limited to 3 minutes.

The Chair will recognize himself first.

I would like to ask briefly, is title V necessary to do anything that the FEA now presently does, or that the FPC now presently does?

Mr. FYGI. We believe it is necessary in a practical sense in order to provide some uniform guidance to the Department as to the minimum standards of due process to be used in rulemaking activities, which minimum standards conform to those which the FEA has been required recently to adopt by the Congress.

Mr. O'LEARY. I think it is important to note, Mr. Gore, that by going to this uniform standard, we are placing a floor under the

procedures that are guaranteed to the public. If anything, we are raising the overall level in some cases. And I think from the standpoint of protection to the public and observance of due process, this really is an improvement as well as moving in the direction of uniformity.

Mr. GORE. Are there any points where the minimum standards are less than those required by the previous legislation?

Would Mr. Dunham address himself to that?

Mr. DUNHAM. As was pointed out earlier, the procedures under the Federal Power Act and the Natural Gas Act, which were passed in 1935 and 1938, prior to the Administrative Procedure Act, are basically less than the requirements here.

Now, we have, by adoption, generally used the APA; in some cases more stringent rules, if you will, than are in this section. But the basic law is under this standard of criteria in both the Natural Gas Act and the Power Act. Subject to the APA, we could change and revert back to only those requirements under the Power Act and the Natural Gas Act, which are less.

Mr. O'LEARY. Let me repeat the conclusion, that the procedural safeguards that are envisaged in title V are a floor that is an improvement over the floors existing currently under the older authorities in the FPC.

Mr. GORE. The Chair now recognizes the gentleman from Ohio, Mr. Brown.

Mr. BROWN. Mr. Chairman, I would like to move from the technicalities of what the law really says and what it doesn't really say, to the question of the collegial body as opposed to the single decision by the Administrator, and ask if, in fact, that does not reduce the alternative kinds of views that are available to the decisionmaking process?

It seems to me where a collegial body has been established in the law in the past, particularly one that is supposed to be not uniform in its political viewpoints, that it does provide for the insertion of alternate views and, to some extent, a balancing of the process of decisionmaking over a single decision by a single Administrator or Secretary as would be the case under the new Department.

Again, I think the sunshine legislation that covers collegial bodies, not single administrative decisions, but collegial bodies, would open up that discussion process that occurs in the collegial body for full examination, also, of the records kept, whereas a single administrative decisionmaker probably does not have discussions with himself and probably does not keep the same kind of records of those discussions if he does have them that might be kept by a collegial body, and, therefore, afford the public an opportunity to know the arguments and the weight of those arguments would not be as well protected under the single administrative decision.

Now, would you care to comment, either one of you, Mr. O'Leary, or Mr. Dunham?

Mr. O'LEARY. Mr. Chairman, I think that you can probably make a case on either side. My own view is that there are substantial strengths to the single administrator, as witness our reliance on that form of administration generally for the very, very weighty decisions that are made by this government in many economic,

social and political fields. We are, generally speaking, not ruled by collegial bodies. Generally speaking, we rely upon a single executive in this country. Most of the major policy decisions that are made in the conduct of the government's activities are made by a single administrator form of government.

It seems to me that as long as we have the procedural safeguards that are guaranteed by notice, we do get all aspects on the table if it is done right, and I think with the oversight that can be provided by the Congress, as well as the good will of the executive, it can be done right. Consequently, I think what you get out of this is an improved form.

I have had, as you know, experience with both collegial bodies and with single forms of administration. I have noticed both strengths and weaknesses in each. I do not really think that either form guarantees good administration. It is essentially a matter of choosing good people to run the executive agency or to be on the collegial body, as the case may be.

I think probably if you look back on performance over time that you will find that the performance of the single administrator type agency has exceeded that historically over the performance of the agencies that were administered by a collegial body. Just from the standpoint of sheer administration, there is much greater facility in a single administrator decisionmaker than there is in collegial decisionmaking.

So I would opt for the form that is proposed in the administration's proposal.

Mr. DUNHAM. I can comment on that, Mr. Brown, from maybe just a slightly different perspective, having participated in both forms, single administrator and collegial bodies.

In the particular areas that the President's bill proposes to delegate to the single administrator, they run to these generic rules, overall policy rules. Now to me, the significance of those decisions as to the general economy—in the cases in which are involved energy supply—the most important element is accountability. I am not sure you get the same type of policy accountability under a collegial body, that you would have under a single administrator.

Those areas are largely policy. They embrace greater degrees of judgment than an adjudicatory process does, where you are interpreting the rule. It seems to me—and I have testified many times, long before the last year and a half—that the lack of accountability is a problem for independent regulatory commissioners. In any body, in view of the enormous significance and wide-reaching significance of such things as the national rate, the danger is the tendency in a collegial decision to get either a compromise or a modified kind of decision which does not give either the energy decision that somebody needs or the economic decision. In those types of broad far-reaching decisions, and there are many other examples, construction-work-in-progress, that really direct the economy in major ways.

Mr. BROWN. If I can make an observation, it is that under the Natural Gas Act, wellhead natural gas prices are required to be merely just and reasonable. That allows a certain amount of discretion which in turn is balanced by the collegial process.

Under the Federal Energy Administration Act, the criteria by which determinations are made are set in the law. As I recall, there are certain findings required to be made, findings of fact, before one makes a conclusion.

Now, what bothers me is that apparently both of these things move forward to the Secretary and I am trying to determine how the Secretary will be guided by the law, whether it is going to be the breadth of the collegial body now being made by the Secretary and therfore allowing him somewhat more arbitrariness as an individual, or the rather narrow determination of the Federal Energy Administration legislation which requires him to make certain findings and which set certain criteria.

Why did the administration choose to vest natural gas pricing, which has a great deal of discretion associated with it, in a single Secretary and what has happened to the Federal Energy Administration responsibility?

Mr. O'LEARY. Mr. Chairman, I would refer you to the administration's proposals under the energy plan as they deal both with oil and gas. You know a regime is fully spelled out that, if enacted, will provide the same close control or very close to the same control that has been provided for oil pricing by the Congress.

I think that that is a useful symmetry, if we can get to that point. So I would urge you to take a look not simply at this reorganization, the legislation before you at the moment, but at the larger piece of legislation that you are reviewing, that would set forth the way the administration would plan to handle the matter of natural gas pricing over time.

Mr. BROWN. You have taken the natural gas pricing, it seems to me, to one person. Why did you choose to go that way rather than perhaps take the oil pricing to a collegial body?

Mr. O'LEARY. For the reasons we outlined earlier; this is a judgment call, in the judgment of the administration you do get a more efficient result and due process is observed with all the proper protections. I also believe there is a greater degree of accountability by going to a single individual than going to a mixing majority on a collegial body.

Mr. BROWN. Mr. Chairman, I believe my time is up.

Mr. GORE. Thank you. I will now recognize counsel for the majority, Mr. Demarest.

Mr. DEMAREST. Thank you, Mr. Chairman.

Mr. Journey, I would like to return for the moment to the discussion of APA procedures to Natural Gas Act authority which would be referred to the new Department.

Section 501 of H.R. 6804 would apply APA procedures, sections 501 through 507, to any authority vested by law in or delegated to the Secretary.

Now we have already looked at the relationship of those provisions to some aspects of sections 4 and 5 of the Natural Gas Act, but I am particularly concerned about those provisions of section 5 and section 7 of the Gas Act which require a hearing.

Now I would read subchapter 2 of the APA as using section 553 as the basic rulemaking provision, and section 553 does not require an opportunity for presentation of oral views. It does require section

556 and 557 procedures to be used if, and here are the key words, "if the rules are required by statute to be made on the record after an opportunity for agency hearing."

The Gas Act does not use those triggering words. Instead, in the Gas Act, section 7 says, in the second paragraph of subsection (c), "in all other cases the Commission shall set the matter for hearing."

In subsection (f) of section 7 it says "The Commission after a hearing may determine".

In section 5(e) the same language, "The Commission, upon its own initiative, may enter upon a hearing concerning the lawfulness of such rate charge classification or service."

Is your position that a combination of these requirements for a hearing and the judicial review provisions make it tantamount to a statement that this is a requirement by statute for a hearing on the record, for a determination on the record after opportunity for agency hearing?

If not, then does not this slip through the cracks?

Mr. JOURNEY. Mr. Demarest, the Gas Act has a number of provisions in it that say that there should be a hearing. The Gas Act does not say what kind of a hearing. 553, subchapter (c), relating to rulemaking, says an opportunity to participate in the rulemaking through the submission of written data views or arguments, with or without opportunity for oral presentation, after consideration of the relevant matter presented the agency, shall incorporate in the rules, adopted a concise statement of their basis and purpose.

The case law, as it has been interpreted and as we have gone through the various sections of the Gas Act, has articulated various areas where the FPC can use a rulemaking procedure of the 553 type. The case law also shows where we have to have a hearing of the 556 APA type.

I interpret section 501 and the judicial review provisions of the Power and Gas Act, in combination with the APA, to say that "the FPC will use whatever due process constraints—in case law—are appropriate to the section of the act you are working under."

So, if it is an abandonment proceeding under section 7(b) of the Natural Gas Act, you would have a trial-type hearing. If it is a rate proceeding or something that would fall under the procedures of section 553, you can use that kind of a procedure.

Mr. DEMAREST. With all due respect to your interpretation, I believe that the requirement for a hearing that parties before the Commission now enjoy under the Natural Gas Act would no longer be enforceable in the courts. Rather, they could be entitled, at the discretion of the new Secretary or whatever group within the Department was implementing this authority, to a discretionary hearing or an opportunity for presentation of oral data and argument. But I do not believe that we have picked up the requirement in section 5, in section 7, that requires a hearing.

Mr. JOURNEY. Well, Mr. Demarest, that is where I lump it under my reference to judicial review and case law.

I think the new department takes in trail all of that case law and must apply it.

If somebody administering the Gas Act tried to deny someone a hearing to which they were entitled under case law, I think they would be reversed under 19(b) of the Natural Gas Act. All of the rights are folded in. Development of the law, judicially stated, goes into the new Department as well as the statutory law. That is the way I interpret it.

Mr. DEMAREST. Does this not get us back to the problem that in searching for uniformity and doing it through this vehicle, we are using an admittedly convoluted process to reach a result due to limitations on committee jurisdiction, when the same result could be done much more cleanly by direct reference, and we would not have to use this new title V just to cure a problem to obtain uniformity and create other problems and the need for court interpretation?

Mr. JOURNEY. As Mr. Fygi said, this was a drafting choice. It was done with certain concepts and goals in mind. They have been stated. I am not saying you could not draft it in a different way; but I do believe that, convoluted or not, to use your terminology, it gets to the result that I stated. I believe that is what title V says.

Mr. FYGI. May I add an additional point, Mr. Demarest?

It seems to me that the existing aspects of the Gas and Power Acts that Mr. Journey has adverted to—with regard to whether determinations in specific types of cases will still require an adjudication type of process—and to what extent the agency has to rely on case law and the experience of the Commission—that problem will not be cured or that phenomenon will not be affected, irrespective of whether section 501 is in the statute or not.

What section 501 does is provide a common method of general rulemaking, not only for matters involving the Gas and Power Act but for a plethora of other kinds of activity that the department will engage in under current law.

Mr. DINGELL. If counsel will yield, you are going to pick up a number of other authorities in this agency to which we have not yet addressed ourselves. You are going to pick up, for example, powers under the Public Utilities Holding Company Act.

Does title V deal with the rulemaking and other activities under the Public Utilities Holding Company Act?

Mr. FYGI. Well, if the Congress in its action to date on the administration proposal had continued that element of the proposal that would transfer that authority, I would say the result is yes, that rulemakings under that authority would be governed by it. But as a factual matter that provision has not survived.

Mr. DINGELL. That proposal to pick up the Public Utilities Holding Company Act is not here?

Mr. FYGI. That is correct, that has not survived this bill.

Mr. DINGELL. All right. What other powers do you pick up under the legislation before us?

Mr. FYGI. Well, those authorities exercised by the Federal Energy Administration currently.

Mr. DINGELL. All right. All powers of the Federal Energy Administration. Is that allocation too?

Mr. FYGI. It would envision the delegation of the President's allocation authority to the new Department.

Mr. DINGELL. Now what about dam licensing; has that survived in H.R. 6804 as the committee reported it?

Mr. FYGI. The hydrolicensing of the Federal Power Commission? Yes, it would.

Mr. DINGELL. And relicensing?

Mr. FYGI. To the extent licensing can be done by rule, and I am not at all certain about it myself, I do not know that licensing is a type of activity that lends itself to disposition by rule.

Mr. DINGELL. Maybe Mr. Journey would like to give us his help on that.

Mr. BROWN. Would you yield?

Mr. DINGELL. I do not have the floor. Counsel has the floor, but I guess he would not mind too much if I yield.

Mr. Journey.

Mr. JOURNEY. Chairman Dingell, since hydrolicensing is not specifically delegated as one of the authorities which would be under secretarial administration under H.R. 6804, and since section 401 of the bill says that powers not vested in the Secretary are in the board as transferred from the Commission, I would assume that the collegial process would take care of the contested hydrolicensing part and the relicensing part. Under the APA, rulemaking and initial licensing can be done under one set of procedures, whereas relicensing falls under a different set of procedures under certain circumstances.

The answer is that hydrolicensing comes in because it is part I of the Power Act. I regard that as not being one of the denominated functions for the Secretary. So I assume it is within the Federal Energy Regulatory Commission authority and would be administered under the rules as they are now in place for licensing and relicensing.

Mr. DINGELL. You want to remember the board could, even if it were to exercise these powers, do so in a fashion inconsistent with the rules laid down by the Secretary. Am I correct or incorrect on that?

Mr. JOURNEY. I do not know that the rules of the Secretary can change substantive law.

Mr. DINGELL. The rules he issues are substantive law, are they not?

Mr. JOURNEY. Yes, but I do not think that the Secretary, as I read the bill, could issue a regulation and say the comprehensive use of resources test of section 10(a) of the Federal Power Act no longer applies. I do not believe you can elevate procedure above substance to achieve that result.

Mr. BROWN. Would you yield?

Mr. DINGELL. Let me hear from Mr. Fygi first.

Mr. FYGI. I would agree with Mr. Journey's analysis with one further observation. Under the APA, a license is specifically put in the category of an order. So that is consistent with my earlier remarks suggesting that licensing functions by their basic characteristics require an adjudication which would be beyond the scope of section 501.

Mr. DINGELL. The Secretary could, however, lay out the procedural rules for all of these activities, could he not, under his rulemaking procedures?

Mr. FYGI. The Secretary could do so, but he would do so at his peril were his rules to have the effect of negating existing substantive law.

Mr. DINGELL. But he would lay out the substantive procedures under which everybody functions, which might be somewhat different from those under which they serve, under 501 or 500, title V?

Mr. FYGI. I think the only observation I could make is whatever rulemaking the Secretary engaged in would have to be within the authority provided by the Gas and Power Acts, and indeed all the other statutes that would be transferred to the Department.

Mr. DINGELL. And not under title V?

Mr. FYGI. Title V speaks merely to a process, not to the substantive criteria that agency decisionmaking has to consider.

Mr. DINGELL. You understand that I am of the view that the ancient kings went out with the French Revolution. I am reluctant to reinstall any hereabouts. It is for that reason that I am almost as careful of procedural matters as I am of substantive matters. If I wrote the rules in a poker game and were playing poker with you, I would have no doubt who would walk home with the pots.

Mr. FYGI. I do not think I would have any doubt either, sir.

Mr. DINGELL. I yield to Mr. Brown.

Mr. BROWN. Gentlemen, the National Energy Act as presented by the administration perhaps, almost surely I think, assuming passage of the Department of Energy organizations, provides several new authorities to the Federal Energy Administrator in the areas of rate design and natural gas rate design, but both of those specifically have been areas in which the Federal Power Commission has been involved in the past.

It seems to me the policy is to continue enhancing the Secretary's power and grant no further authorities to the new Federal Energy Regulatory Commission except those which are currently limited to the Federal Power Commission.

Is that an accurate judgment of mine or am I seeing things in the dark?

Mr. O'LEARY. I think that we have to go back to the beginnings on this, Mr. Brown. In fact, we are trying to find a way in which we can consolidate under one manager, one administrator, a number of authorities that are diffuse throughout the government. To the degree that that coincides with your characterization, that is quite correct.

We are trying to find ways in which we can find accountability, where we can find much stronger coordination than has been the case heretofore in the development and implementation of energy policy, and that does have the concomitant of investing a certain amount of authority in that person.

Mr. BROWN. Now that you have made that little pitch for centralization of the power and the authority—and I am not altogether opposed to that because I think there is some reason, as I said in my testimony originally on the bill that you presented to the Government Operations Committee, that there is certainly a need for

coordination in a single individual, in a single department. It is more responsive, more efficient, perhaps as you say more accountable. I certainly hope so.

Why is not that well-known collegial body, the Nuclear Regulatory Commission, subsumed into the powers of the Secretary or why is it not even brought into the Department of Energy?

Mr. O'LEARY. Mr. Brown, you and I have gone over this ground a little bit before. I would be glad to repeat the testimony I made on this point some weeks ago before you and other members of this committee.

Mr. BROWN. I might say in view of the fact that we are repeating, in spite of the recommendation of the GAO to this effect, that it should be brought into the Department of Energy.

Mr. O'LEARY. Yes.

Mr. GORE [presiding]. The counsel's time, which has been yielded by a circuitous route to the gentleman from Ohio, has expired.

The witness is recognized for a response to the question.

Mr. O'LEARY. I think we have to note here the dichotomy between economic regulation on the one hand, of course that is the regulation undertaken by FEA in its regulatory function, and FPC and safety regulation on the other.

You will recall a good bit of discussion as to the propriety or impropriety of retaining the licensing function of the Atomic Energy Commission in its promotional role, one that had been characterized throughout its history as a very strong promoter of nuclear energy. The consensus of the conclusion by the public, by the administration and ultimately by the Congress, is that there should be a separation of those functions.

The separation took the form of a new piece of legislation that eliminated AEC and created ERDA on the one hand and NRC on the other. I think the reasons for that remain valid.

If we were to bring ERDA into the new energy agency and bring NRC along with it, it seems to me we would be back at square one, precisely where we were prior to June of 1974, and I think the same set of objections that led to the creation of NRC as a separate entity from the promotional agency that was then AEC would continue to prevail. So I think you can make a very clear case for the continuation of NRC in its present mode and for the roll-in of the Federal Power Commission as an economic regulator into the overall Energy Department.

Mr. GORE. Beauty is always in the eye of the beholder.

The Chair recognizes the gentleman from New Jersey for 3 minutes.

Mr. MAGUIRE. Thank you, Mr. Chairman.

Mr. O'Leary, there has been some confusion in some quarters about the provisions of the energy package that relate to rollover natural gas contracts and I am informed, I assume reliably, by administration representatives that the intention was not that all rollover gas contracts should go to the $1.44 price, but rather that each contract should be evaluated on its merits with respect to cost and other considerations that have been traditionally the basis for decisions by the FPC.

Is that a correct understanding?

Mr. O'LEARY. Mr. Maguire, in this case I am nodding my head because I agree with you. Indeed it is a correct understanding. What the statute would say if enacted in the form that the administration presented it, is that the $1.42 with escalations is a ceiling on the price of rollover gas. This would be a case-by-case determination as to the appropriate price that might be in one instance rising from 52 cents to 60 cents, for example, but it would by no means connote that there is an automatic rise to the $1.42 in each rollover case.

Mr. MAGUIRE. Okay. So it would be considered on an individual case-by-case basis, individual case basis.

Mr. O'LEARY. Yes.

Mr. MAGUIRE. Does that mean then that you would have no objection if an amendment were to be offered to the national energy bill which would say that any pricing decisions with respect to rollover natural gas contracts could not be made under procedures relating to rules of general applicability but rather under procedures dealing with individual cases; would that be a correct inference from what you said that you would not oppose such a clarifying amendment?

Mr. O'LEARY. I think that is where we are now, Mr. Maguire.

Mr. MAGUIRE. So you would be sympathetic to such a specification in the law of that particular distinction and therefore we would be dealing with rollover natural gas contracts not under the general applicability provisions of the Energy Reorganization Act but under the individual case procedures which you have designated for the board; is that correct?

Mr. O'LEARY. Let me repeat where I think we are now with the statute as drafted. I think what I have said to you is this: The $1.42 is a ceiling; we will take a look in each case, or the Administrator will take a look in each case at the appropriate level of price. I think that is the net effect of the statute as drafted. We would be pleased to consider any alternative language, but I think we are already there.

Mr. MAGUIRE. We are already there in the sense that the board rather than the Secretary, according to the conceptualization of the Energy Reorganization Act that you have presented to us, the board rather than the Secretary would make those determinations on a case-by-case basis.

Mr. O'LEARY. The hesitation that I have in going for the affirmative to that is there may be classes of contracts that would be amenable to generic treatment. This is a very complicated business. It deals with a whole set of heterogeneous contracts developed over a long period of time with vastly differing clauses and we would want to look at any amendment to that language along the lines that you suggest, I think, very carefully. But you understand, with precision, what I am telling you, it does not automatically roll over to the $1.42, there will be a decision with regard to the applicable price in most instances, I assume, that would be something under the $1.42.

Mr. MAGUIRE. Okay. I think we had a little bit of slippage but I would want to talk with you further on that.

Mr. GORE. Before recognizing counsel for a second round of questioning, the Chair recognizes the chairman, Chairman Dingell for 3 minutes.

Mr. DINGELL. Thank you.

I have before me here a couple of sections of the bill. Let's go to H.R. 6804 and look at the language: "Except as provided in section 401 there are hereby transferred to, and vested in, the Secretary the functions of the Federal Power Commission, or of the members, officers, or components thereof."

Then he has the authority to write rules of general applicability and then he can do this "relating to regulations of general applicability with respect to the rates and charges at which natural gas is first sold to any natural gas company for resale in interstate commerce under the Natural Gas Act."

Now that relates to the administration's bill on establishment of a comprehensive natural energy policy.

Now I come over here and I look at pricing provisions in section 408. Now I assume that the powers involved here are substantively transferred.

Let me read: "Section 408(a). Notwithstanding any maximum lawful price under sections 404 through 406, the President may, by rule, specify a special price under this section in excess of any such maximum lawful price, which shall be applied for purposes of such sections if the President determines that such special price is necessary to provide incentives for the production of natural gas or the manufacture of synthetic gas in categories which involves high cost"—which incidentally are not specified, and then it continues—"such as production,"—this is inclusive but not exclusive—"(1) in depths of more than 500 feet of water, (2) more than 15,000 feet below the surface of the Earth, or (3) from geopressurized brine."

So the President does this, has absolute authority in the sections relating to pricing. He has absolute authority to set up standards and categories, and so forth, except as otherwise limited.

Then I come down here and I find that at line 10 in H.R. 6831, the President—and I am reading now—"The President may specify such special prices for categories of production or on a national, geographic area, or case-by-case basis in accordance with section 553 of title 5, United States Code."

Now, this is a form of rulemaking—an informal rulemaking. So what you have done in the one bill, you vested yourselves enormous powers to pick and choose your procedures on the thesis that it is necessary that you have that power and yet in the other bill you are given great power with regard to pricing. Then you have set forth the idea that you should again adhere to a different procedure, an informal rulemaking.

Now I got some problems with using informal as opposed to formal rulemaking because of the evidentiary problems that exist. On the other flank, I got problems with the fact that you are getting massive powers to set up the rules of the game. And then I note that by a curious retreat or change you then set forward a specific, although rather restrictive, process under which the action will be done.

So you have gone from the point where you have said"We need power to make rules of general applicability" back to the point where you are going to have almost untrammeled authority to fix prices, and you have then recomplicated your simplified procedures

by setting out a whole new mechanism which is not found in your procedural sections of your restructured bill.

Now can you explain to me this curious anomaly?

Mr. O'LEARY. May I ask Mr. Fygi to address the procedural aspects and I will address the other anomalies, Mr. Chairman, if I may.

Mr. FYGI. All right.

The first anomaly, insofar as the reference to section for rulemaking contained in the passage that you read, suggests nothing more momentous than the fact that in a practical sense development of these two legislative initiatives occurred simultaneously and involved different people, and results in a situation rather similar to that with the Allocation Act administered by FEA where you have the reconciliation of the section 4 standards adverted to in the Allocation Act with somewhat more refined rulemaking standards found in section 7 of the FEA Act. So looking at it as a lawyer I don't think that particular facet of the passage you read would pose any legal problems, and were that authority carried out by the Energy Department, the section 553 procedures as buttressed by section 501 rulemaking procedures would be those employed to carry out that authority.

Mr. DINGELL. You will understand that on the one flank you are saying "We have to have authority to have everything under the same tent;" then in terms of the rulemaking and the procedural aspects, on the other hand, you then say "We should go back and should use section 553."

Now I find the first statement to be inconsistent with the second.

Mr. FYGI. Well, any apparent inconsistency reflects nothing more momentous than the fact that these bills were developed simultaneously by different people and were they both enacted in their current form they would present no particular legal problem in their administration were the President to delegate this authority under the National Energy Act to the Energy Department. The Energy Department would have to employ the rulemaking procedures in section 501.

Mr. DINGELL. I am not disposed to quarrel with what you say as to the substance but I am troubled in that it appears to set forth an apparent inconsistency of policy or an inconsistency with regard to whether or not the broad authorities set out in title V are in fact necessary.

Now am I incorrect in that?

Mr. FYGI. Well, from a lawyer's standpoint I would not necessarily characterize title V as an authority provision as much as guidance that would be given to the Department as to additional procedural safeguards that it would have to provide when it conducted rulemaking proceedings.

Mr. DINGELL. Guidance. In other words, they don't even have to adhere to these guidance provisions.

Mr. FYGI. No, it would be mandatory guidance they would be obliged to observe in order to promulgate a valid rule.

Mr DINGELL. Well, you know the inconsistency I find curious. I must confess that the mixture of authorities given tends to indicate that maybe I ought to have a few cold chills running up and down

my back from the standpoint of the amount of authorities you good folks are going to be exercising with the very breadth of authorities to set procedures and without over much limitation in terms of overview. Maybe you want to comment.

Mr. O'LEARY. Yes, Mr. Chairman, I think I would like to address that aspect of it. You know that the contemplation of relatively high prices for natural gas is limited to those instances in which we think there is a strategic target that is not within reach of the pricing regime laid out in the President's energy plan, which is to say within the $1.75-and-below energy regime. Specifically here we are thinking of the Devonian shales which offer a potentially very large resource, the geopressurized zones in the gulf.

Mr. DINGELL. The section that we are addressing deals with natural gas.

Mr. O'LEARY. Indeed, I am addressing that.

Mr. DINGELL. 15,000 feet below the surface, geopressurized, et cetera. I am not prepared to quarrel with you as to the wisdom. I find this amalgamate of authorities to be rather sweeping and your need to have one single process, as you set out, to be vitiated by the provisions of the last part of the matter which I read.

Mr. O'LEARY. Yes; let me address the substance of that matter. There may be a range of prices necessary to bring in, for example, on the one hand, gas from the Devonian shale; on the other hand, gas from the geopressurized resources of the U.S. gulf. It seems to me that as we begin to explore these we ought to have the tools available in the Administrator—I am sorry—in the Secretary of Energy to apply an appropriate price for an appropriate period of time so we can get some hands-on experience with the technology that is required to achieve these new objectives and bring them into play and that is the substantive reason for that particular provision.

Mr. DINGELL. Let me then come to a little bit else here.

This is an enormous power which is vested in the Secretary, or in the President, depending on which bill you read and it is an enormous amount of power which you vest in one man. Heretofore the Congress has carefully, and I think prudently, vested it in panels of 5, or 7, or 11, or 21 members, depending on which one of the Federal regulatory bodies you took. Yet here we are vesting it in one man, with, I think, rather less than adequate attention to due process, with rather less than adequate attention to the requirements of openness and sunshine and with rather loose standards in terms of definition.

Now please comment.

Mr. O'LEARY. Yes, Mr. Chairman.

I really don't regard this as an enormous power. I think it is a very significant power but I don't believe it is well characterized by the use of the term "enormous." Let's consider what we would be doing. We would be going to a completely pioneer area of natural gas production. We would in all likelihood look upon this as at the outset a contributor in the first few years of its application of a portion of 1 percent or perhaps 1 or 2 percent of the national production of natural gas, if it were successful. It is largely experimental in nature.

The context here is there are—we understand from our discussions with ERDA—some potentially very important resources that are not available within the current price context; we don't want to raise the total price regime to attract these resources into play. How do you deal with it? You deal with it, I think, in this sort of a setting where you can go out after a very limited target with very, very minuscle impacts upon the national natural gas in the bill.

Mr. DINGELL. Not to quarrel with what you are saying, for purposes of our discussion, let me concede them.

First of all, one, once these prices are fixed they become floors, as opposed to a ceiling, you won't go down below them. And, two, these prices will remain for all intents and purposes fixed for all similar categories in that area for at least, any reasonable foreseeable future.

Now do you deny either of those statements?

Mr. O'LEARY. Yes, I think I would disagree with your conclusion there, Mr. Chairman.

Were we, for example, to adopt a price—let's just pick one out of the air—of $4 in terms of 1977 dollars for geopressurized methane and have some experience with that, go in and find that on an accounting basis the cost with a comfortable rate of return, were in the area of $3, it seems to me that we would be driven to reduce the price for future transactions into the cost plus reasonable rate of return basis.

Now that does——

Mr. DINGELL. Mr. O'Leary, you have comforted me greatly. Please tell me where in the bill that is.

Mr. O'LEARY. Mr. Chairman, none of this is in the bill.

Mr. DINGELL. I see.

Mr. O'LEARY. The authority is in the Secretary to set prices.

Mr. DINGELL. I am less comforted. You are asking—I am to take this then on which of the three great virtues: Faith, hope or charity?

Mr. O'LEARY. We are dealing in faith at the moment, a great deal of hope, and, as ever in your case, with some charity.

Mr. DINGELL. I suspect there is very little of the last, possibly some of the second, and practically none of the first.

Mr. O'LEARY. Mr. Chairman, you know the great discipliner in this sort of activity is the very fact that whoever is running this agency would have from time to time to come before you and to explain his actions. I think if he were in the position of having made great gifts to the oil producing industry or the gas—more particularly to the gas producing industry under this authority—that you would pull him up short in short order and knowing that would be the case, he would use great restraint and discipline. I really think—

Mr. DINGELL. Let me recall to you the days before I took this subcommittee, a fellow by the name of Torbert Macdonald, my very special friend. The FEA addressed and very calmly, under the procedures that you set out, gave the industry $1 initially on the old oil prices. They raised it from $4-1/4 to $5-1/4 and Mr. Macdonald literally tore his hair out over this matter. Very fine man, fine chairman. FEA was not moved at all by this.

Now, how am I to assume then that I have this faith, in me, that you were setting forth?

Mr. O'LEARY. Well, Mr. Chairman, let's get back to what we are dealing with.

Mr. DINGELL. That is what we are dealing with, what you are talking about here.

Mr. O'LEARY. Right.

Mr. Chairman, we are dealing with a prospective resource that is not in the picture at the moment; that even with the best luck in the world, couldn't add up to say more than 1 percent if you were to begin now very heavily, 5 years from now. During that period of time, you in the Congress and we in the executive branch would gain a great deal of experience with the sort of price regime that would be necessary in order to optimize the contribution that this resource could make.

Mr. DINGELL. I have always heard it said that education is expensive. And I am satisfied that the kind of education set out here would be very expensive.

Now my problem is we have here today a commission that does in sunshine and debate, with rulemaking, public openness, public anticipation, yet under a rather curious set of rules we are moving this all into the hands and power of one man. As a matter of fact we don't even have it clear we are moving it into the hands of one good citizen.

How does that rhyme with what you are telling me?

Mr. O'LEARY. Yes, Mr. Chairman, I think ultimately one man would make the decision. But we call for better precision, better decisionmaking through better procedures for rulemaking, better public notice, better access to the problem, and equal public attention to the process under these rules as compared to the rules that would apply to the Federal Power Commission currently.

Mr. DINGELL. Mr. O'Leary, I am taking a great deal of the time of the committee. Would you tell us please in a memorandum how that in fact would be so?

Mr. O'LEARY. I surely will.

Mr. BROWN. Would you just yield for an observation, Mr. Chairman?

Mr. DINGELL. Yes, I would be glad to yield.

Mr. BROWN. The bill may not be the moral equivalent of war maybe, but certainly is the power equivalent of war. We seem to be extending great powers here that remind me very much of the wartime powers that we extended to the President in previous years that took us of a whale of a time to get back. I think that is what makes us nervous.

Mr. GORE. The Chair will recognize counsel, Mr. Demarest, for 3 minutes.

Mr. DEMAREST. Thank you, Mr. Chairman.

Mr. Fygi, I would like to review briefly the judicial review provisions, in particular section 501 in which it provides that the judicial review of agency action taken under any law, the functions of which are transferred by this act shall, notwithstanding such transfer, be made in the manner specified in such laws.

I would like to compare that to the language set forth in the FEA Act which says that judical review of administrative rulemaking of general and national applicability done under this act, except that done pursuant to the Emergency Petroleum Allocation Act of 1973, and goes on to set forth the judicial review procedures.

Now, earlier, when we spoke about the incorporation by reference of FEA administrative procedures and their application to EPA rulemaking, we said a similar result would occur under the Department of Energy bill as occurs under the FEA Act, that is, the FEA Act by reason of reference in section 5 to allocation of price control authority under EPA specifically applies to FEA Act procedures to further rulemaking udner the authority of the Allocation Act.

I would think a similar result would obtain with respect to the judicial review except for the fact that the Department of Energy bill states that its functions which are transferred rather than transferred or delegated.

What is the significance of that? What EPA judicial review procedures remain, if any?

Mr. FYGI. There is no particular significance to the way the subsection (f) was drafted. The clear intent I believe was to preserve the existing modes of judicial review and in view of the fact that in the administration's original bill the Allocation Act authority was not transferred in that legislation because of Presidential authority as opposed to authority vested directly by statute in a line agency, the Department of Energy bill was merely silent as to any aspect of the Energy Act directly. And consequently, the manner of judicial review specified in the Allocation Act would continue even after a delegation of the President's authority under that statute to the Department of Energy.

Mr. DEMAREST. I think that result is inconsistent with your earlier statement to the extent that one could argue that these authorities are now in effect vested under this legislation, or not vested, and you get two different results don't you?

Mr. FYGI. I think the reason we have two different results is inherent in the way section 5 of the FEA Act is structured. It is noteworthy in the rulemaking procedures part of section 7 there is no parenthetical excepting Allocation Act functions, whereas there is such exception with respect to judicial review, so that suggests strongly even within section 7 itself that the Congress intended the new administrative procedures to apply to Allocation Act rulemakings as well as all others, but they did not have the same intention with respect to judicial review of Allocation Act rulemaking.

Mr. DEMAREST. Why the different treatment then, why is there not provision made for judicial review of functions not only transferred but vested, particularly in view of (f)(2) which provides that the district court shall have exclusive original jurisdiction of all other cases or controversies arising under this act, in view of your interpretation earlier that the administrative procedures of the FEA Act were made applicable to action taken by FEA under section 5 to administer the allocation act, that being a delegated authority and therefore becoming issuance of rules pursuant to the FEA Act.

Similarly, that same kind of rationale would apply here that the delegation of authority by the President to the Secretary who would then exercise those authorities pursuant to this act would give rise to not judicial review under section (f)(1) but rather under (f)(2).

I think the same rationale applies to that judicial review of cases and controversies under the Emergency Petroleum Application Act, under (f)(2), of one not being applicable.

Mr. FYGI. I would like to make a couple of observations as to our analysis. I think it is very helpful that we are going through this.

First, the comparison between the structure of section 501 of the Department bill to the rest of the bill and with section 7 and 5 of the FEA Act as compared with the allocation act is less than symmetrical because in section 5 of the FEA Act there was a quite differing and quite explicit contemplation expressed by the Congress in that statute, that indeed the Allocation Act authority would be administered by the FEA.

The other aspect is that section 501(f)(2) which provides for U.S. district court review of anything else that is left over, if you will, was not envisioned as applying to any circumstance other than, say, a personnel law issue or something like that where the nature of the complaint and the cause of action was such that it did not rely on a specific authority applicable to the Department that had its own judicial review positions.

The last point I would make is that the allocation act itself provides that initial judicial review shall occur in the district courts just as section 501(f)(2) does, so there is not necessarily a glaring inconsistency.

Mr. DEMAREST. There is a glaring inconsistency with respect to the review. That is a significant issue, is it not?

Mr. FYGI. There is no question but that the intention of the administration's proposal was to have the mode of review with respect to all the substantive authorities to be lodged in the new Department remain the way they now are.

Mr. DEMAREST. Well, it seems to me it would be useful to the committee if you could provide us with some memo explaining specifically why section (f)(2) does not apply to appeals of Emergency Petroleum Allocation Act orders.

Mr. FYGI. We would be happy to do that.

Mr. GORE. Without objection the record will be held open to have that material inserted at this point.

[The following material was received for the record:]

Section 501(f)(2) clearly states that it applies to "cases or controversies arising under this Act or under rules, regulations, or orders issued *exclusively* thereunder . . . " (Emphasis added). This formulation excludes from its scope actions arising under any other statutes, including the Emergency Petroleum Allocation Act (EPAA). Accordingly, judicial review under EPAA would continue to be carried out in the same manner as is now the case.

Mr. GORE. The Chair now recognizes counsel, Mr. Finnegan.

Mr. FINNEGAN. Mr. Fygi, title V does provide for the use of the Administrative Procedure Act, is that not correct?

Mr. FYGI. That is correct.

Mr. FINNEGAN. Now in addition to that, it has a number of subsections, all of which I understand have their origin from section 7 of the Federal Energy Administration Act.

Mr. FYGI. That is correct.

Mr. FINNEGAN. Now those subsections are in fact derived at a time of an emergency and they were emergency provisions put together that differ insofar as informal rulemaking procedures in section 553 of the Administrative Procedure Act is concerned. Is that correct?

Mr. FYGI. I would disagree with that characterization.

Mr. FINNEGAN. Do you have a copy of section 553 presently before you?

Mr. FYGI. I don't have it before me to my knowledge, but section 553 provisions are somewhat more modest. It is a shorter provision.

Mr. FINNEGAN. What is the requirement for rulemaking, the minimum time for rulemaking required under section 553?

Mr. FYGI. 5 U.S.C. 553 as I understand it provides for a period of 30 days before rules may go into effect, before they are adopted.

Mr. FINNEGAN. With the 30-day notice, is that correct?

Mr. FYGI. I would have to go through and read it closely again.

Mr. FINNEGAN. I point out subsection (d), "The requirement of publication of service of subsequent rules shall be made not less than 30 days before the effective date."

There are exceptions, there are waivers. One is that you cannot waive that 30-day requirement on items of policy and interpretation of rules.

Mr. FYGI. I cannot argue with you on that.

Mr. FINNEGAN. This provision authorizes a waiver to the extent it only establishes a minimum of 10 days, isn't that correct?

Mr. FYGI. The administration proposal does establish a minimum of 10 days.

Mr. FINNEGAN. It also allows you to go ahead and promulgate the rules and hold hearings after promulgation, is that correct?

Mr. FYGI. That is correct. To be contrasted with section 553 which contains no hearing requirement whatsoever.

Mr. FINNEGAN. But all of these provisions are established as emergency provisions.

Mr. FYGI. That is the point I want to speak to. The FEA Act procedures were adopted by the Congress in response to some historical aspects of the method in which, first, the Cost of Living Council, and then during the emergency the FEA had promulgated rules. It was designed as a means of limiting the agency's discretion and constraining the circumstances under which notice of comment periods were waived and the imposition of the hearing requirement was a plain reflection of the Congress' intent at that time, which was well after the embargo had terminated, so the emergency, the apprehension of the embargo period were well beyond the country at that juncture and it was felt that there was a necessity to have more elaborate procedures than those of section 553.

Mr. GORE. If counsel will yield, I thought it was passed largely in response to the Arab oil embargo and there was, if I remember correctly, a real feeling of urgency.

Mr. FYGI. I believe that is correct. The House action on the bill finally occurred in December. The Senate action, however, I believe, was not finally concluded until—certainly the conference action—until June of 1974. No, May of 1974, I beg your pardon, and the embargo had been lifted in that spring.

And, even so close to the emergency, we had experienced a good deal of criticism as to the rulemaking procedures employed to carry out the Allocation Act and the section 7 procedures were designed to provide additional safeguards.

Mr. GORE. Final passage may have been at some later time, but the procedures under discussion were enacted in the immediate wake of the embargo period.

Mr. FYGI. The procedures as I recall them were floor amendments that were introduced in the Senate at the behest of members of the Judiciary Committee who were concerned with the manner in which rulemakings had been carried out by the Cost of Living Council and the Federal Energy Administration and they were designed to constrain the degree of latitude the agency would have in waiving the comment period, waiving notice requirements and that sort of thing.

Mr. GORE. They relected the urgency of the legislation itself?

Mr. FYGI. They went in a direction quite different, in my own judgment, from the manner one would expect the Congress to respond to an emergency and they were designed to make more elaborate and provide additional safeguards for the process under which rules were promulgated. It is a so-called hybrid type of procedure.

The administrative scholars would agree that these kinds of rulemaking procedures are becoming more widely adopted and I think they were designed to work adequately in an emergency but provide additional notice and opportunity for public participation in the rulemaking process, more so than that which occurred during the embargo and prior to the FEA Act enactment.

Mr. GORE. As I understand your statement, they could have been more preemptory than they ended up?

Mr. FYGI. Absolutely.

Mr. GORE. That doesn't take away from the urgency that they reflect overall?

Mr. FYGI. I think that is a valid judgment and my own reactions I am recounting now were based in some measure on my personal recollections of the atmosphere that existed at the time and the reasons for those amendments.

Mr. FINNEGAN. The point of the matter is that the procedures you are recounting here were a modification of the Economc Stabilization Act procedures that were being used in connection with the FEA Act, but they did not go back to the APA-type procedures, particularly in connection with the informal rulemaking and the notice requirements and some of the other provisions. And the APA procedures are the ones used by the Federal Power Commission. The Federal Power Commission does not now use these types of procedures. Am I right, Mr. Journey?

Mr. JOURNEY. We have no set of regulations which codify all these steps, but we do insofar as affording due process requirement, we have gone beyond the APA procedures.

Mr. FINNEGAN. As a minimum you start with the APA procedures?

Mr. JOURNEY. Yes.

Mr. BROWN. Would counsel yield?

I don't think the record is getting made here as it should. First came the EPA, and those were rather limited opportunities for hearing and comment and that sort of thing. Then we went to the FEA, which expanded those opportunities but still did not go to the breadth which is contained in the APA and the APA does not have the breadth that the policies used as regular procedure by the FPC have. Is that the fact?

Mr. JOURNEY. Congressman Brown, if you put this in historical context, the APA was passed in 1946. These pieces of legislation Mr. Fygi was speaking about were circa 1970, somewhere in there. The case law that interpreted the APA was largely made by the Federal Power Commission, the Communications Commission and the CAB, in litigating and applying that statute in the 1940's and 1950's.

I don't think you can say that one is built on the other in the sense of being 2 inches broader, or comparisons of that nature——

Mr. BROWN. That is not what I am saying. I am saying that the Federal Power Commission and some of the other agencies which you mention built on the APA and expanded it to some extent in terms of the individual rights of the person who wanted to have his case heard.

But when we came to the EPA in response to the embargo, we restricted those rights in order to deal with the emergency. We expanded them a little when we got to the FEA, but they still have not been expanded to the extent that the Federal Power Commission and other existing agencies in a peacetime context or a nonemergency context have had them expanded based on the APA.

Mr. FYGI. I would disagree with that characterization for this reason, sir: The bedrock as far as rulemaking is concerned, the common denominator that exists throughout the government is section 553 of the APA. That is what every agency in town uses that doesn't have one of the more complicated provisions.

In the FEA case, before there was an FEA, the Economic Stabilization Act and the Allocation Act also used 553, section 4 rulemaking of the APA.

When the FEA Act was enacted, the Congress said: section 553 applies, and in addition all these other provisions must be used.

I would observe, going back to some other questions concerning the 30-day period, if you look carefully at the way section 501 is structured and the way section 7 of the FEA Act is structured, the first premise is, the APA applies. Then the text of each relevant statute says: In addition, here are these other steps. So in response to your earlier question, Mr. Finnegan, about the relevance of the 30-day provision, that is now applicable and would continue to be applicable under the formulation in the Department of Energy legislation because the first line of that is subchapter 2 of title V of the United States Code which shall apply and the other procedures will apply. The latter are an additional set of requirements.

Mr. FINNEGAN. Ten days is not an additional requirement to 30 days.

Mr. FYGI. It is when the statute says that 30 days is waiveable "as otherwise provided by the agency for good cause to be shown." The agencies can waive the 30 days for any reason they feel like it.

Mr. FINNEGAN. Not under APA, where statements of policy pertain.

Mr. FYGI. Yes.

Mr. FINNEGAN. No, read subsection D, above the line above.

Mr. FYGI. With respect to statements of policy, there does not even have to be good cause.

Mr. FINNEGAN. It says they are not waiveable. You cannot waive the 30-day rule as to the three items mentioned. Is that correct?

Mr. FYGI. In subsection D—let's see if we read the same thing. It says, "The required publication or service of a substantive rule shall be made not less than 30 days before its effective date except," and the first category is that a substantive rule that relieves restrictions—in other words, it affords greater leniency than the existing set of rules. There one does not need to observe the 30-day requirement.

Second, interpretive rules and statements of policy. There the 30-day requirement does not apply.

And, third, as otherwise provided by the agency for good cause shown.

Mr. FINNEGAN. I read it differently.

Mr. FYGI. It seems quite clear—and certainly that is consistent with the Cost of Living Council's experience under this regimen which approached the Congress in posing this set of rules.

Mr. FINNEGAN. You feel they have to have a 30-day rule in all cases?

Mr. FYGI. Our interpretation is under section 501 of the Department of Energy legislation this provision including the 30-day requirement, would apply according to its terms.

Mr. FINNEGAN. When would the 10-day apply?

Mr. FYGI. The 10 days is a floor.

Mr. FINNEGAN. You have to have a minimum of 30 and 10 is not a floor.

Mr. FYGI. It is a floor on the amount of time that the rule must be out in the public. It governs the latitude that otherwise would be provided the agency head to waive the 30-day rule for any reason he chose.

Mr. FINNEGAN. Mr. Fygi, 30 days is the notice requirement, the time for the public to have to comment on the rules.

Mr. FYGI. It is not the notice requirement. If you read subsection D, it says, "The required publication or service shall be made not less than 30 days before its effective date."

Mr. FINNEGAN. I don't want to pursue it any further. You and I have to talk about it afterwards.

Mr. FYGI. I will be glad to. It means you can adopt the final rule rolling it out the door the way the Cost of Living Council did and have it effective 30 days down the pike and you are home free and don't even have to waive the provision.

Mr. FINNEGAN. Let me ask one more question before my time is up: The provision in section 7 of the FEA Act, one provision is subsection D that you added, 501-D, having to do with adjustments and hardships.

Did you now, however, pick up all of that particular section of section 7? Can you explain why?

Mr. FYGI. Some of those provisions, as I recall them in section 7, were designed and stem from the Energy Conservation and Production Act and were designed to deal with circumstances involving the way FEA carried out some of its responsibilities at a particular moment that we felt were not necessarily relevant in terms of a permanent organization structure for a Cabinet-level department. Where there is no assurance whatsoever that given the variety of authorities, the kinds of restrictions included in section 7 would be appropriate in the long term.

Mr. FINNEGAN. But they do provide in the case where a hardship is—where adjustment is denied because of hardship, they do provide for appeal procedure. You would strike that appeal procedure and not make it applicable in this case.

Earlier you said the FEA procedural language was the latest word of the Congress in this area, but you haven't taken all of the provisions. You made a decision that some provisions are good and some are not.

Mr. FYGI. We made the judgment that some of the provisions were more timeless than others.

Mr. FINNEGAN. More what?

Mr. FYGI. Timeless.

Mr. FINNEGAN. I am not sure what that means in the context of the statute.

The basic question I raise and that Mr. Gore and others have raised is, if you did not have title V, would any of the functions that are transferred to the Secretary, any of the FEA functions or any of the FPC functions not work? In other words, could you still have procedural requirements?

Mr. FYGI. Never being one to underestimate the skill and resourcefulness of our lawyers, we could make almost anything work I suppose, but I would offer that that is not necessarily the best test of the appropriateness——

Mr. FINNEGAN. You would agree that the procedures under which the Secretary would operate—the policy provisions he would carry out under the Federal Power Act and the Natural Gas Act, they could be carried out under the procedures now being utilized by the Federal Power Commission, namely, the APA; is that correct?

Mr. FYGI. If your question was do I concede that it could be done without section 501 as a technical matter, of course, it could be done.

Mr. O'LEARY. One of the objectives is not to pick up ERDA and transplant it intact and take FEA and the power marketing agencies and transplant them intact, but rather to have a Department that has like functions regrouped around missions and what have you.

It seems to me when you take the tack that you are taking, you place a very, very heavy administrative burden on it. It is quite conceivable to me you could have parallel functions subject to quite divergent rules if you were going to apply the philosophy you are apparently driving at.

I think that is the reason that we took a look at the overall procedural aspects of it and chose what we regard as reasonable rules, 1970's rules, not 1940's rules, to apply to the extent that you

can make this sort of thing apply across the board to the Department.

I think that that is a useful step in light of the homogenization of functions that the Department implies.

Mr. FINNEGAN. By bringing those together as uniform rules, you have made a substantive change.

Mr. O'LEARY. Not on substance but on a procedural matter we are still bound, of course, as has been explained several times now by the statute and, of course, by the ultimate test of being able to go through the courts and prevail in any sort of contest into which we enter.

So I really think we are not dealing with the substantive matter here, we are dealing with a purely procedural matter and I realize the sensitivity of it.

On the other hand, I think what we have done is, we have not gone to the lowest common denominator at all. We have raised the standard as Mr. Fygi pointed out above the raw, bare standards of the Administrative Procedure Act and I think in the process we have provided a higher degree of public protection than would have been afforded if we had stayed literally with the statutes and the procedures that have grown up around those statutes and rolled them into the new Department intact.

Mr. GORE. I think one of the many concerns that surround the assumption that the courts will move back and forth from this act and previous acts is the likelihood that the court may ask why did Congress act—this is after all a subsequent enactment of Congress, and to that extent may cancel out the previous provisions which in some instances are to be applied in order to achieve the consistent result and in some instances are not to be applied. That might conceivably be another difficulty.

Would you like to respond to that?

Mr. FYGI. I think in the context, the matter that we are discussing now, just the manner in which rules are promulgated, that there is almost no probability that that kind of result would obtain because we believe that the bill is so clear that you have to observe both section 553 as buttressed by these procedures, that the agency in promulgating its rules, just as the FEA, is not going to attempt to adopt shortcuts that would tend to run against the evident intent of Congress. There is no percentage in that.

The risk of adverse court decisions is simply too great for any agency to undertake anything of that nature.

Mr. GORE. I would like to say for the record I think you do a marvelous job of making almost anything work and one of the questions for this subcommittee is whether we want to enact into law almost anything, or whether we want to preserve the time necessary to do a more artful job of putting these two functions together in a way that not only promotes the convenience of the Administrator but also preserves all of the procedural rights that the citizens of this country are entitled to.

I want to thank each of the witnesses who have been with us throughout this long evening session and I commend you for your statements. It has been a very productive interchange.

The subcommittee will stand in recess until 9:30 tomorrow morning.

[Whereupon, at 9:45 p.m., the hearing was adjourned.]

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