

SUBCHAPTER III—ADDITIONAL
AUTHORITIES AND REQUIREMENTS

PART A—EMERGENCY AUTHORITY

§ 3361. Declaration of emergency

(a) Presidential declaration

The President may declare a natural gas supply emergency (or extend a previously declared emergency) if he finds that—

(1) a severe natural gas shortage, endangering the supply of natural gas for high-priority uses, exists or is imminent in the United States or in any region thereof; and

(2) the exercise of authorities under section 3362 or section 3363 of this title is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) Limitation

(1) Expiration

Any declaration of a natural gas supply emergency (or extension thereof) under subsection (a), shall terminate at the earlier of—

(A) the date on which the President finds that any shortage described in subsection (a) does not exist or is not imminent; or

(B) 120 days after the date of such declaration of emergency (or extension thereof).

(2) Extensions

Nothing in this subsection shall prohibit the President from extending, under subsection (a), any emergency (or extension thereof), previously declared under subsection (a), upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

(Pub. L. 95-621, title III, §301, Nov. 9, 1978, 92 Stat. 3381.)

Executive Documents

DELEGATION OF FUNCTIONS

Functions of President under this subchapter, except for authority to declare, extend, and terminate a national gas supply emergency pursuant to this section, delegated to Secretary of Energy, see section 1-101 of Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, set out as a note under section 3364 of this title.

§ 3362. Emergency purchase authority

(a) Presidential authorization

During any natural gas supply emergency declared under section 3361 of this title, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser, as determined by the President) if—

(A) such natural gas is not produced from the Outer Continental Shelf; and

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act [15 U.S.C. 717 et seq.] immediately before the date on which such contract was entered into; or

(2) from any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline or a producer of natural gas).

(b) Contract duration

The duration of any contract authorized under subsection (a) may not exceed 4 months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) a renewal of any contract, previously authorized under such subsection, following the expiration of such contract.

(c) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any contract authorized under subsection (a). The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

(d) Maintenance of adequate records

The Commission shall require any interstate pipeline or local distribution company contracting under the authority of this section for natural gas to maintain and make available full and adequate records concerning transactions under this section, including records of the volumes of natural gas purchased under the authority of this section and the rates and charges for purchase and receipt of such natural gas.

(e) Special limitation

No sale under any emergency purchase contract under this section for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, may take effect unless the court approves.

(Pub. L. 95-621, title III, §302, Nov. 9, 1978, 92 Stat. 3382.)

Editorial Notes

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3363. Emergency allocation authority

(a) In general

In order to assist in meeting natural gas requirements for high-priority uses of natural gas during any natural gas supply emergency declared under section 3361 of this title, the President may, by order, allocate supplies of natural gas under subsections (b), (c), and (d) to—

- (1) any interstate pipeline;
- (2) any local distribution company—
 - (A) which is served by any interstate pipeline;
 - (B) which is providing natural gas only for high-priority uses; and
 - (C) which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and
- (3) any person for meeting requirements of high-priority uses of natural gas.

(b) Allocation of certain boiler fuel gas

(1) Required finding

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

- (A) to the maximum extent practicable, emergency purchase authority under section 3362 of this title has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;
- (B) emergency purchases of natural gas supplies under section 3362 of this title are not likely to satisfy the natural gas requirements for such high-priority uses;
- (C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses; and
- (D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to to¹ the maximum extent practicable to terminate such deliveries.

(2) Allocation authority

Subject to paragraph (1), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas the use of which has been prohibited by the President pursuant to authority under section 717z of this title (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).

(c) Allocation of general pipeline supply

(1) Required findings

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

- (A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;
- (B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;
- (C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;
- (D) any interstate pipeline or local distribution company receiving such natural

gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries;

(E) such allocation will not create, for the interstate pipeline delivering certificated natural gas, a supply shortage which will cause such pipeline to be unable to meet the natural gas requirements for high-priority uses of natural gas served, directly or indirectly, by such pipeline; and

(F) such allocation will not result in a disproportionate share of deliveries and resulting curtailments of natural gas being experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders issued under this subsection applicable to other interstate pipelines (as determined by the President).

(2) Required notification from State

(A)² Notification

The President shall not allocate supplies of natural gas under this subsection unless he is notified by the Governor of any State that—

- (i) a shortage of natural gas supplies available to such State exists or is imminent;
- (ii) such shortage or imminent shortage endangers the supply of natural gas for high-priority uses in such State; and
- (iii) the exercise of authority under State law is inadequate to protect high-priority uses of natural gas in such State from an interruption in natural gas supplies.

(3) Basis of finding

To the maximum extent practicable, the Governor shall submit, together with any notification under subparagraph (A), information upon which he has based his finding under such subparagraph, including—

- (i) volumes of natural gas required to meet the natural gas requirements for high-priority uses of natural gas in such State;
- (ii) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas supplies available to such State;
- (iii) information on the authority under State law which will be exercised to protect high-priority uses; and
- (iv) such other information which the President requests or which the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed by such State.

(4) Allocation authority

Subject to paragraphs (1), (2), and (5), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of certificated natural gas from any interstate pipeline.

¹ So in original.

² So in original. Par. (2) enacted without a subpar. (B).

(5) Consideration of alternative fuel availability

In issuing any order under this subsection the President shall consider the relative availability of alternative fuel to natural gas users supplied by the interstate pipeline ordered to make deliveries pursuant to this subsection.

(d) Allocation of user-owned gas**(1) Required finding**

The President shall not allocate supplies of natural gas under this subsection unless he finds that—

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (c) has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;

(C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;

(D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries; and

(E) such allocation will not create, for the person who owns and would otherwise use such natural gas, a supply shortage which will cause such person to be unable to satisfy such person's natural gas requirements for high-priority uses.

(2) Allocation authority

Subject to paragraphs (1) and (3), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas which would be certificated natural gas but for the second sentence of section 3301(19) of this title.

(3) Consideration of economic feasibility of alternative fuels

In issuing any order under this subsection, the President shall consider the economic feasibility of alternative fuels available to the user which owned the natural gas subject to an order under this subsection.

(e) Limitation

No order may be issued under this section unless the President determines that such order will not require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(f) Industry assistance

The President may request that representatives of pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(g) Compensation**(1) In general**

If the parties to any order issued under subsection (b), (c), (d), or (h) fail to agree upon

the terms of compensation for natural gas deliveries or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting natural gas.

(2) Calculation of compensation for certain boiler fuel natural gas

For purposes of any supplemental order under paragraph (1) with respect to emergency deliveries pursuant to subsection (b), the President shall calculate the amount of compensation—

(A) for supplies of natural gas based upon the amount required to make whole the user subject to the prohibition order, but in no event may such compensation exceed just compensation prescribed in section 717z of this title; and

(B) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President.

(3) Compensation for other natural gas allocated

For the purpose of any supplemental order under paragraph (1), if the party making emergency deliveries pursuant to subsection (c) or (d)—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided as expeditiously as practicable;

(B) indicates a preference for compensation, or the President determines that, notwithstanding paragraph (A) of this subsection, any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation—

(i) for supplies of natural gas, based upon the amount required to make the pipeline and its local distribution companies whole, in the case of any order under subsection (c), or to make the user from whom natural gas is allocated whole, in the case of any order under subsection (d) including any amount actually paid by such pipeline and its local distribution companies or such user for volumes of natural gas or higher cost synthetic gas acquired to replace natural gas subject to an order under subsection (c) or (d); and

(ii) for transportation, storage, delivery, and other services, based upon reasonable costs, as determined by the President. Compensation received by an interstate pipeline under this subsection shall be credited to the account of any local distribution company served by that pipeline to the extent ordered by the President to make such local distribution company whole.

(h) Related transportation and facilities

The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transpor-

tation of natural gas, as he determines necessary to carry out any order under subsection (b), (c), or (d). Compensation for the costs of any construction or transportation ordered under this subsection shall be determined under subsection (g) and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

(i) Monitoring

In order to effect the purposes of this part, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

(j) Commission study

Not later than June 1, 1979, the Commission shall prepare and submit to the Congress a report regarding whether authority to allocate natural gas, which is not otherwise subject to allocation under this part, is likely to be necessary to meet high-priority uses.

(k) "High-priority use" defined

For purposes of this section, the term "high-priority use" means any—

(1) use of natural gas in a residence;

(2) use of natural gas in a commercial establishment in amounts less than 50 Mcf on a peak day; or

(3) any use of natural gas the curtailment of which the President determines would endanger life, health, or maintenance of physical property.

(Pub. L. 95-621, title III, §303, Nov. 9, 1978, 92 Stat. 3383.)

§ 3364. Miscellaneous provisions

(a) Information

(1) Obtaining of information

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

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

(B) 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

(c)¹ secure, upon request, any information from any Federal agency.

(2) Enforcement of subpoenas and orders

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 this subsection, 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.

(b) Reporting of prices and volumes

In issuing any order under section 3362 or 3363 of this title, the President shall require that the

prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

(c) Presidential reports to Congress

The President shall report to the Congress, not later than 90 days following the termination under section 3361(b) of this title of any declaration of a natural gas supply emergency (or extension thereof) under section 3361(a) of this title, respecting the exercise of authority under section 3361, 3362, 3363 of this title, or this section.

(d) Delegation of authorities

The President may delegate all or any portion of the authority granted to him under section 3361, 3362, 3363 of this title, or this section to such Federal officers or agencies as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5, any Federal officer or agency to which authority is delegated or redelegated under this subsection shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

(e) Antitrust protections

(1) Defenses

There shall be available as a defense for any person to civil or criminal action brought for violation of the Federal antitrust laws (or any similar law of any State) with respect to any action taken, or meeting held, pursuant to any order of the President under section 3363(b), (c), (d), or (i) of this title, or any meeting held pursuant to a request of the President under section 3363(g) of this title, if—

(A) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(B) such action was not taken for the purpose of injuring competition; and

(C) any such meeting complied with the requirements of paragraph (2).

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(2) Requirements of meetings

With respect to any meeting held pursuant to a request by the President under section 3363(g) of this title or pursuant to an order under section 3363 of this title—

(A) there shall be present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(B) a full and complete record of such meeting shall be taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(C) the Attorney General and the Federal Trade Commission shall have the oppor-

¹ So in original. Probably should be "(C)".