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# EXTENDING THE EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

OCTOBER 8, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

## REPORT

[To accompany H.R. 16757]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 16757) to extend the Emergency Petroleum Allocation Act of 1973 until August 31, 1975, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

### PURPOSE OF THE LEGISLATION

The singular purpose of this legislation is to extend for an additional 6-month period, until August 31, 1975, the existing authorities under the Emergency Petroleum Allocation Act of 1973. Unless extended, that Act would terminate on February 28, 1975—at a time when the focus of the new Congress will undoubtedly be confined to administrative matters. The 6-month extension proposed in this legislation, if enacted, would assure that the important allocation and price control authorities contained in the Act would continue through the ensuing winter and spring and would give the Congress an opportunity which is not now available to it to consider whether the Act should be further extended or whether to make substantive amendments to its terms.

### BASIS FOR THE LEGISLATION

The Emergency Petroleum Allocation Act was enacted on November 27, 1973 at a time when this nation was confronted with unprecedented shortages in crude oil and petroleum products. The self-regulatory laws of supply and demand were clearly not operating in the petroleum market. Voluntary allocation programs had been tried and had failed. The independent sector of the industry was withering as available supplies were curtailed and the economy, as a whole, stood in peril.

Finding no alternative to Federal intervention, the Congresss acted to put into effect a nationwide allocation program to preserve competition and to assure an equitable distribution of critically short supplies. The allocation mechanism was coupled with price control authority designed to afford a protective shield for industrial and individual consumers from artificially inflated prices. Today, the price control authority contained in the Allocation Act stands as the only authority available to the Executive Branch to assure that petroleum prices are rationally based.

In fashioning the original legislation, your Committee did not devise a mandatory allocation or price control program of its own conception. It is generally recognized that the petroleum industry is one of the largest and most complex in the world. To freeze in statutory terms an allocation and price control program for this industry was, in the Committee's opinion, simply not good policy. Administrative flexibility was a prerequisite and, consequently, the Emergency Petroleum Allocation Act was structured so as to assign to the Executive the responsibility for crafting the program pursuant to Congressionally defined objectives. These are set out principally in section 4(b) of the Act. Briefly stated, that section establishes guidelines for the priority uses of fuels covered by the Act and set forth standards for action concerning the competitive structure of the industry and general economic policy to be followed in the establishment of the fuel allocation program.[1] In each case, the Committee attempted to state in clear terms what it believed should be accomplished under a mandatory allocation program.

Most certainly the Allocation Act contributed greatly to this nation's ability to survive the Arab oil embargo. Also, it has in large measure worked well in providing for the equitable distribution of supplies and in forestalling a further erosion of competition in the oil industry. That is not to say that the Act itself and, more particularly, the Executive's administration of it stands without criticism. The Committee is aware of a number of proposed amendments to the fabric of the allocation program. Many of these register dissatisfaction with the implementation of the price control authority under the Congressional mandate that the Executive establish "equitable prices" for petroleum products. Members of your Committee believe that in several important respects the Congressionally defined objectives have been misunderstood, misinterpreted or, in some cases, ignored. The Committee was dissauded, however, from attempting to redefine Congressional intent through substantive amendment to the Act at this time. Instead, it was determined to wait until the next session of Congress when time would permit a more reasoned and detailed evaluation of the program. In this regard, it is noted that the program has been in effect for less than one year. In its short life, the regulations have been undergoing almost constant change. It is the sincere hope and expectation of the Committee that the Federal Energy Administration, to whom the task of administering this program has been delegated, will make the necessary revisions to bring the program in line with the firm intent of the Congress and the requirements of the law.

[1] The Emergency Petroleum Allocation Act of 1973 is printed in its entirety in section of this report titled "Changes in Existing Law made by the Bill, As Reported," at p. 9.



In this regard, the Committee wishes to observe and reemphasize that the Federal Energy Administration is given great administrative flexibility under this Act to respond to situations where the price control and allocation requirements of the Act are producing unintended inequities. Several witnesses in the Committee's proceedings have asked the Committee to consider amendments for these purposes. In particular, a number of States have asked for a specific statutory exemption from FEA price controls for State-owned royalty oil. The Committee makes no judgment as to the merits of this proposal. However, it is the Committee's understanding that the Act embodies sufficient administrative authority to permit the Federal Energy Administration to consider this proposal and, if it finds it meritorious, to develop an administrative solution to the problem. Moreover, the Act includes adequate authority to permit the FEA to institute a system of price equalization applicable to crude oil, residual fuel oil and refined products to eliminate the regional and competitive inequities which result from a dependence upon high-cost imported oils and petroleum products. The FEA's stated commitment to Subcommittee Chairman Macdonald during the hearings on this bill to move promptly on a price equalization program has convinced the Committee that specific amendments to the Act to compel such action may prove to be unnecessary.

## Committee Consideration

The Committee's Subcommittee on Communications and Power to which the bill H.R. 16757 was assigned received testimony from over 20 witnesses on this bill together with a Senate-passed bill, S. 3717, which proposed to extend the act for an additional 4 months. Also under consideration by the Subcommittee were a number of related House bills which proposed various extensions to the Act, some of which ran to 18 months. H.R. 16757 was reported unanimously by the Subcommittee and ordered reported by a voice vote of the full Committee without dissent on October 8. At the time the bill was considered before the full Committee, Chairman Staggers announced that it would be his intention to request that the Committee conduct full oversight hearings of the administration of the Emergency Petroleum Allocation Act in the early part of the first session of the next Congress. At that time, substantive amendments to the Act would be considered and an assessment made of the need for continuance of the Act with a more certain discernment of this Nation's energy supplies and requirements.

## Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–150, 91st Congress), the Committee estimates that the extension of the Emergency Petroleum Allocation Act for an additional six months as proposed in this bill (H.R. 16757) will require expenditures of an additional $28,200,000.

## Agency Reports

Following customary procedure, the Committee requested the views of a number of governmental agencies, including the Federal Energy

Administration, on H.R. 16757 and related bills which proposed extension of the Emergency Petroleum Allocation Act of 1973. As of this date no agency has filed the requested reports. However, the Committee's Subcommittee on Communications and Power did receive testimony from the Honorable John C. Sawhill, Administrator of the Federal Energy Administration, which sets forth the views of the Administration on these various proposals. Mr. Sawhill's statement is printed below:

STATEMENT OF JOHN C. SAWHILL, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND POWER, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES, SEPTEMBER 24, 1974

Mr. Chairman, Congressman Brown, and Members of the Committee: I appreciate this opportunity to appear before you today to discuss H.R. 15905 and S. 3717, two bills which would extend the life of the Emergency Petroleum Allocation Act.

In general, we believe that the Act in its present comprehensive and mandatory form has served its purpose and should be allowed to expire for the reasons discussed below. However, we would agree to a one-time four to six month extension of the Act which would retain the present program through the coming winter when demand for fuel supplies is at its peak. Such a limited extension would be helpful in assuring an orderly phase out of the allocation program and a smooth transition to a free market. At the same time, it would permit Congress and the Administration to assess the supply situation and the possible need for continuation of some limited authority once the status of our oil, coal, and natural gas supplies has been clarified.

As this Committee will recall, the Allocation Act was conceived and enacted primarily to insure the maintenance of essential activities and equitable distribution of limited petroleum supplies during a period of acute shortage, while preserving an economically sound and competitive petroleum industry. The nation was already beginning to experience a serious shortage of petroleum in the latter part of 1973, as domestic production failed to keep pace with increasing levels of consumption. With imposition of the Arab embargo in October, the situation reached crisis proportions. Faced with projected shortfalls in excess of 15% for the first quarter of 1974, the Congress concluded that government intervention in the marketplace was the only way to avoid severe individual hardship and economic dislocation. The objective of the resulting legislation was set forth in the Act's statement of Findings and Purpose:



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

Acting pursuant to this statutory mandate, the Administration immediately implemented a comprehensive system of mandatory allocation and price controls, designed to achieve, to the maximum possible extent, each of the several specific goals enumerated in the Act. While this program has had its problems, I think it has by and large been successful in meeting the short-term problem; the predicted massive dislocations of the economy did not materialize and there was adequate fuel for the purposes to which the Congress had given priority. As imperfect as it was and is, the allocation program helped bring the country through a period of serious shortage without massive unemployment, significant loss of residential heat or essential public services, or the need to resort to gasoline rationing.

It seems to us an inescapable fact, however, that the supply crisis with which the Act was designed to deal is now over. The Arab embargo, thankfully, is behind us, and our volume of imports has returned to near pre-embargo levels. We now face perhaps the most difficult and challenging phase of any "temporary" exercise in regulation: the process of disengagement. Already there are those for whom the program has become a sort of "security blanket," and, quite understandably, they will be reluctant to give it up. Nevertheless, the time has come to examine the degree to which the shortage situation to which the Act was directed has been alleviated and whether the massive dose market regulation prescribed by the Act is likely to be necessary or desirable in the future.

This is not to suggest that serious problems may not continue to exist—both for the petroleum industry and for the consumer of its products—for they clearly may. We still have spot shortages of certain products, for example, and the "two-tier" price structure has begun to threaten the competitive viability of some refiners and marketers—particularly in the independent segment of the industry. FEA is deeply concerned about the "after-effects" of the embargo and the related dramatic increase in the price of imported oil, and we are doing our best to develop appropriate solutions. As serious as these problems may be, however, they do not reflect the continuation of significant shortages which alone would justify continued reliance on the comprehensive Allocation Act.

FEA's projections indicate that the supply picture today is remarkably different from that of last November. We now estimate that, provided we are able to import crude oil at current levels of 3.5 million barrels per day, the supply of most

petroleum products will be adequate through the second quarter of 1975, and should continue to improve thereafter. This estimate is based on an assumption of continuation of the moderate conservation measures being observed at present, including a slight turn-down of thermostats during the winter.

In addition, preliminary estimates through the second quarter of 1975 indicate that:

Inventories of motor gasoline will increase by approximately 20 percent through June 1975, which should place the country in a favorable supply situation for next summer.

Middle distillates will be in adequate supply this winter, although inventory levels will reach low levels in the Eastern States, especially the Northeast.

For residual fuel, we expect no shortfall during this winter, the first quarter of 1975 (assuming constant May prices) and the second quarter of 1975.

Approximately a two percent shortfall of naphtha jet fuel can be expected late this year, but by the first quarter of 1975 supplies should again be ample at current prices.

No shortfall is expected for Kerosene jet fuel, aviation gasoline or petrochemical feedstocks.

Liquified petroleum gases ("LPG's"), most notedly propane and butane, will remain in extremely short supplies. Although shortfalls in the supply of propane will persist through the first quarter of 1975 as distribution problems and increased winter heating requirements are encountered, there should be a sufficient supply of propane by the second quarter of 1975.

We anticipate that the overall supply picture for these particular fuels will also continue to improve after the second quarter of 1975.

Given these projections, we believe any supply problems which remain can be solved without continued reliance on an omnibus mandatory allocation program covering every facet of the petroleum industry and affecting, if not dictating, virtually every domestic transaction involving crude oil and covered petroleum products. As we develop additional information and insight, we will be happy to work with Congress in determining what, if any, residual allocation or pricing authority—perhaps of a discretionary or standby nature—should be maintained to deal with the problems of spot-shortages and price inequities.

We have been continually concerned with the competitive position of the independent marketers and small and independent refiners. However, we believe that the problem in this area is not one of inadequate supply, but rather of cost/price disadvantage. As you know, the present two-tier crude oil pricing structure was designed to minimize windfall profits from the production of crude oil from existing wells. Now that normal supply conditions are returning,



this system is apparently resulting in a competitive advantage for the major refiners and marketers who control a proportionately larger share of low-price "old" domestic crude oil. FEA is studying this problem carefully, and is committed to taking whatever action might be necessary to preserve the competitive viability of the independent sector of the industry.

On August 28, 1974, we solicited public comment on a proposed regulation which would roughly equalize crude oil costs among refiners; and, just this morning, we opened two days of public hearings on this proposal. This program is intended to achieve an equitable distribution of low price "old oil" among all sectors of the petroleum refining industry, including independent and small refiners, and to assure that domestically-refined petroleum products are sold at equitable prices by all distributors, including branded and non-branded independent marketers.

In addition to our concern with the two-tier pricing structure, we have been constantly reviewing the status of the branded and non-branded independent marketers. As I mentioned in my appearance before you on Friday, September 20, our latest report, published August 28, 1974, suggests that the share of the market supplied by the independent marketers for the first five months of this year has been moving very close to that share which they supplied in the first five months of 1972. The percent change in the share of independent marketers, who, by the way, account for more than 80% of our retail gasoline sales, did decline after May 1973, and, until January 1974, remained one to two percent below the share for the corresponding months of 1972. Since January, however, the percent of independent market shares has been rising and, as of May 1974, was nearly identical to the percentage share of the market in the corresponding months of 1972.

We are continually improving our methods of surveying the independent market shares and expect a more sophisticated method to be operable within several months. If additional statutory authority should be needed to protect independent marketers and small and independent refiners following final expiration of the Allocation Act, we will, of course, propose such legislation to the Congress. In the interim, we will continue with the programs designed to assist independents that I outlined in my testimony before you on September 20, 1974.

Because of favorable supply conditions, FEA has also been considering the advisability of exempting certain petroleum products from the Mandatory Petroleum Price and Allocation Regulations, under the applicable provisions of Allocation Act. On July 3, FEA published a proposal to exempt residual fuel oil from mandatory allocation and public hearings were held on the proposal during the week of July 23. Following the hearings, a decision was made to maintain allocation controls on residual oil in order to avoid

potential adverse effects of exemption from allocation on independent refiners and marketers.

As a result of these hearings and further analysis, we have concluded that an orderly deallocation program cannot proceed until problems emanating from the present two-tier pricing system are solved. In addition, we are persuaded that given the unacceptable inflationary impact of decontrolling the price of "old oil," some kind of crude cost equalization program seems to offer the most promising avenue of dealing with this dilemma.

Once the adverse effects of the two-tier pricing system are taken care of, we will be in a position to proceed with a staged deallocation program, designed to exempt those fuels which are in most ample supply. Assuming the Congress allows such exemptions to take place, we should have a practical demonstration of the impact of ending allocation under conditions of ample supply by mid-spring. Of course, even at that point, the question of whether price controls on domestic crude oil should be continued beyond the expiration of the Act will remain a major issue. Among other things, careful consideration will have to be given to the effectiveness of any crude oil equalization program which we might implement, the need for a windfall profits tax, the possibilities for increased domestic production and, most importantly, the possible inflationary effect which expiration of the Act without limited discretionary or standby authority might have.

FEA is also exploring ways to streamline and simplify its existing regulatory programs. Two alternative proposals for relaxation of controls on aviation fuels were issued for public review in early August. One proposal would have ended the mandatory supplier-purchaser relationship between suppliers and civil air carriers. The other would merely allow civil air carriers to seek contracts with new suppliers possessing ample fuel supplies. Public hearings on the proposal were conducted in September and we are currently in the process of reviewing the hearing record and the written comments that we received.

On September 5, 1974, we proposed several major revisions to our present pricing regulations. One of these proposals would eliminate the "special products rule" which currently imposes restrictions upon the allocation of increased product costs among refined petroleum products. Another would permit increased non-product costs to be passed through automatically without resort to currently existing prenotification procedures. Public hearings on these proposals will begin on Spetember 30, 1974. We intend to explore additional avenues for streamlining and simplifying our regulatory structure once the two-tier pricing system is eliminated and our deallocation program is moving forward.

Finally, FEA, in cooperation with other interested Federal agencies, is developing the Project Independence Blueprint, which will present the policy options for protecting the nation from the adverse economic, social and political effects of foreign supply interruptions or excessive foreign oil price increases. We expect that the Blueprint will be completed in November and will provide a factual foundation for exploring appropriate legislative initiatives.



In conclusion, the Administration is willing to accept a four to six month extension of the Emergency Petroleum Allocation Act to permit an orderly phase out of controls and to provide an opportunity to explore more appropriate alternatives, if needed, once the winter is over. The supply emergency that led to enactment of the Allocation Act has now passed and the problems which may confront us in the future deserve, and will require, new and more flexible solutions.

The imposition of comprehensive government controls on a production and distribution system as large and complex as the petroleum industry inevitably produces distortions which can adversely affect the entire economy. The fact that such problems tend to become more severe and entrenched over time persuades us that it would be extremely unwise to maintain any regulatory program on a continuing basis. More appropriate measures to deal with specific spot shortages or price disparities which may occur in the future need to be carefully explored by the Administration and the Congress as the deallocation program goes forward.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you might have.

## Changes in Existing Law Made by the Bill, as Reported

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

## Emergency Petroleum Allocation Act of 1973

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Emergency Petroleum Allocation Act of 1973".

### FINDINGS AND PURPOSE

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

(1) shortages of crude oil, residual fuel oil, and refined petroleum products caused by inadequate domestic production, environ-

mental constraints, and the unavailability of imports sufficient to satisfy domestic demand, now exist or are imminent;

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

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

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

DEFINITIONS

SEC. 3. For purposes of this Act:

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

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

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

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

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

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



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

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

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

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

MANDATORY ALLOCATION

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

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

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

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

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

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

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

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

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

(H) economic efficiency; and

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

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

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

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

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

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

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

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



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

(i) the aggregate share of nonbranded independent marketers,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If—

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

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

he may in the regulation promulgated under subsection (a) of this section delay, until not later than thirty days after the date of the promulgation of the regulation, the effective date of the provisions of such regulation insofar as they relate to such oil or product. At the same time the President promulgates such regulation, he shall report to Congress setting forth his reasons for the action under this paragraph.

(g)(1) The regulation promulgated and made effective under subsection (a) shall remain in effect until midnight [February 28, 1975] *August 31, 1975*, except that (A) the President or his delegate may amend such regulations so long as such regulation, as amended, meets the requirements of this section, and (B) the President may exempt crude oil, residual fuel oil, or any refined petroleum product from such



regulation in accordance with paragraph (2) of this subsection. The authority to promulgate and amend the regulation and to issue any order under this section, and to enforce under section 5 such regulation and any such order, expires at midnight [February 28, 1975] *August 31, 1975*, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight [February 28, 1975] *August 31, 1975*.

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

ADMINISTRATION AND ENFORCEMENT

SEC. 5. (a)(1) Except as provided in paragraph (2), (A) sections 205 through 211 of the Economic Stabilization Act of 1970 (as in effect on the date of enactment of this Act) shall apply to the regulation promulgated under section 4(a), to any order under this Act, and to any action taken by the President (or his delegate) under this Act, as if such regulation had been promulgated, such order had been issued, or such action had been taken under the Economic Sabilization Act of 1970; and (B) section 212 (other than 212(b)) and 213 of such Act shall apply to functions under this Act to the same extent such sections apply to functions under the Economic Stabilization Act of 1970.

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

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

EFFECT ON OTHER LAWS AND ACTIONS TAKEN THEREUNDER

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

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

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

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

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

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

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

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

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

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

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



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

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

MONITORING BY FEDERAL TRADE COMMISSION

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

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

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