

Points for Special Emphasis

1. Program Flexibility

In order to avoid freezing in statutory terms a mandatory policy, the Committee has recommended that the Executive be assigned the responsibility for crafting the program in accordance with Congressionally defined objectives.

2. Time Frame

The President is specifically directed and required to promulgate a regulation within 15 days of enactment, to be effective 15 days thereafter. Much of the work has already been done and a program is already drawn and awaits only the President's decision to act.

3. Price Controls

The bill would require that the program determine the prices of products or the methods for determining equitable prices of these products. It will not be necessary to set specific prices but merely an equitable method for determining price levels (such as a specified percentage markup).

4. Products Covered

The program requires the allocation of crude oil, residual fuel, and refined petroleum products. Refined petroleum product means gasoline, kerosene, distillates (including Number 2 fuel oil), LPG (propane and butane, but not ethane), refined lubricating oils, or diesel fuel.

The program would reach both the refiner and producer level (excluding stripper wells). The Committee expects the President, in applying controls, to exercise care not to discourage production.

5. Objectives (See Sec. 4(b) of the bill.)

The objectives are not set forth with any order of preference in mind. The President is given flexibility so that so that the goals may be attained collectively "to the maximum extent practicable."

The President is directed to allocate products to refiners and marketers in amounts equal to those that they obtained in 1972, but this is qualified by reference to the goals set forth in Sec. 4(b). A requirement that domestic production be confined within the United States is qualified by a finding that such allocation be both practicable and necessary to accomplish these goals.

6. Federal Trade Commission Reports

The Federal Trade Commission is directed to monitor the program and report to the Congress on its effectiveness so that Congress can receive an evaluation from an objective body with experience in the field.

Amendment offered by Mr. STAGGERS: Page 15, insert after line 7 the following:
(3) To the extent practicable and consistent with the objectives of subsections (b) and (d), the mandatory allocation program established under the regulation under subsection (a), shall not provide for allocation of LPG in a manner which denies LPG to any industrial user if no substitute for LPG is available for use by such industrial user.

Mr. STAGGERS. Mr. Chairman, this amendment would direct the President to take steps to assure that to the extent practicable and consistent with the objectives of this act, he does not allocate LPG in a manner which denies an industrial user access to a fuel for which there is no alternative available. Let me illustrate what is intended. Propane is a liquefied petroleum gas in critically short supply. People in rural areas need it to heat their homes; farmers use it to dry their crops; the petrochemical industry uses it as a feed stock; and the glass industry uses it as the only acceptable or feasible substitute for natural gas. The President is going to have to find an equitable balance among these priority uses. The amendment which I offer to this bill directs the President in this situation, to the extent practicable and consistent with the objectives of the act, to make sure that in allocating propane to farmers and others he does not force petrochemical and glass plants across the country to close their doors. In administering this program the President must be ever watchful to discover the unintended and undesired consequences of his acts. Clearly it is not in the public interest to allocate fuels in such a way as to result in large scale closings of industry, significant unemployment or serious economic stress in specific areas or regions of this Nation. I believe my amendment will serve as an admonition to the President to avoid that result.

Mr. MILFORD. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Texas.

Mr. MILFORD. I thank the gentleman for yielding.

Mr. Chairman, there is one thing that bothers me. The gas that the gentleman speaks of is used by farmers. It is also used by hula-hoop manufacturers. Is it my understanding by this that the hula-hoop manufacturer will have the same priority in obtaining this as farmers?

Mr. STAGGERS. Mr. Chairman, we have asked him to strike a reasonable balance. If it meant putting out of work thousands of people, or something like that, I would say he would have to strike a balance and allow them something to keep that plant running, if possible. We give him flexibility, but we do say that we do not want these petrochemical plants closing their doors because they are allocating this propane gas to other groups. It is important that we keep them running, too.

Mr. STAGGERS. I yield to the gentleman from Texas.

Mr. MILFORD. Mr. Chairman, I am wondering if, in writing this law, should it be that specific or should there be a definite priority established by classification?

Mr. STAGGERS. I do not think we can possibly do that. We have struggled over that and we run into thousands of questions that would have to be answered. We would have to write the bill with thousands of pages here if we tried to cover each industry. We have to leave some flexibility to the President. In this amendment we say to him, the industrial users, that those that have the chemical plants of this Nation and who need this shall be taken into consideration and get their fair share.

Mr. CASEY of Texas. Will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Texas (Mr. CASEY).

Mr. CASEY of Texas. Mr. Chairman, is this the amendment the gentleman spoke to me about earlier?

Mr. STAGGERS. Yes, sir.

Mr. CASEY of Texas. The gentleman said that he thought this might alleviate the fears I might have with respect to the petrochemical plants.

Mr. STAGGERS. That was my purpose.

Mr. CASEY of Texas. Of course, my colleague from Texas referred to hula-hoop manufacturers; but all we need to do is look around in our homes and we will find plastic everywhere.

Mr. STAGGERS. The gentleman is correct.

Mr. CASEY of Texas. They will find plastics in their telephones, in their table tops, or what have you. We are talking about hundreds of thousands of jobs. The gentleman referred to them as pyramids.

I have one plant in my district, just one plant which makes 5 percent of the total benzene production which goes to a plant in St. Louis, which in turn makes a product—it is Monsanto in my district—it goes to another plant in Texas and then the two products wind up in Massachusetts to be made into a final product. So we are talking about the pyramiding of jobs.

I just want to thank the gentleman for introducing this amendment that will assure these jobs not only for my people, but as I say, it originates in Texas, but it affects people all over America.

Mr. STAGGERS. All over America, that is right.

Mr. SEIBERLING. Will the gentleman yield?

Mr. STAGGERS. I would be happy to yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Chairman, at the bottom of page 12 the bill provides for: "equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all classes of users."

But is there anything in this bill that requires the distributors of heating oil, for example, to make equitable allocation among specific users, so that we do not have a specific situation where someone builds a new home and he cannot get fuel oil, because no producer will supply him?

Mr. STAGGERS. I would answer the gentleman, the answer is "No," because it takes into consideration public health, welfare and safety, and, of course, the heating of private homes and things like that. We have to leave some discretion here, as I told the gentleman from Texas. If we start to name them all, we would have a book that we couldn't put on this table; so we kept away from that. So we had to provide for that generally and leave some discretion.

Mr. WAGGONNER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do not know whether I am for or against this particular amendment. I am conscious that we cannot write a bill that takes care of everybody; but the net effect of this amendment is to preclude the President under the authority granted him in this bill from being able to establish priorities where, indeed, priorities might be necessary.

I want the chairman of the full committee to listen to this. If this amendment is adopted, the President cannot attach a priority to the needs of heating homes across this land or providing farmers fuel to plow their lands, if they use propane, if the President is required to do what he is asked to do in this amendment.

It would be much better for us, if we really want the President to do what he thinks is best, to scrap this bill and all of us sign a letter, all 435 of us saying, "Mr. President, do the best you can with this tough situation."

I am a little more than surprised that the chairman of the committee would challenge the gentleman from Texas (Mr. PICKLE) a little bit earlier for looking after the interests of what he said were Texas interests and then introducing an amendment here that is intended to take care of the glass plants of West Virginia.

Mr. STAGGERS. Will the gentleman yield?

Mr. WAGGONNER. I would be happy to yield to the gentleman from West Virginia, because I would like the gentleman to have his words read back.

Mr. STAGGERS. I never mentioned the name of Texas once. The gentleman mentioned it.

Mr. WAGGONNER. The gentleman said his district, and the gentleman is from Texas.

Mr. STAGGERS. That is right, but I did not say Texas.

Mr. WAGGONNER. The gentleman said the gentleman from Texas.

Mr. STAGGERS. I did not say Texas.

Mr. WAGGONNER. The gentleman said the gentleman from Texas.

Mr. WAGGONNER. Mr. Chairman, I guess we can get unanimous consent to

Chairman's floor
amendment to Petroleum Allocation Act

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

NOVEMBER 10, 1973.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 1570]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1570) to authorize the President of the United States to allocate crude 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 to the Secretary of the Interior; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

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

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

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

(b) The purpose of this Act is to grant 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 refineries in the United States to permit such refineries to operate at full capacity;

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

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

(H) economic efficiency; and

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

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

(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 of LPG in a manner which denies LPG to any industrial user if no substitute for LPG is available for use by such industrial user.

(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, except that (A) the President or his delegate may amend such regulation so long as such regulation, as amended, meets the requirements of this section, and (B) the President may exempt crude oil, residual fuel oil, or any refined petroleum product from such regulation in accordance with paragraph (2) of this subsection. The authority to promulgate and amend the regulation and to issue any order under this section, and to enforce under section 5 such regulation and any such order, expires at midnight February 28, 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.

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

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

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

EFFECT ON OTHER LAWS AND ACTIONS TAKEN THEREUNDER

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

(b) The regulation under section 4 and any order issued thereunder shall preempt any 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, shall report to the President and to the Congress respecting 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).

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the Senate bill, insert the following: "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."

And the House agree to the same.

HARLEY O. STAGGERS,
TORBERT H. MACDONALD,
LIONEL VAN DEERLIN,
CLARENCE J. BROWN,
JAMES M. COLLINS,

Managers on the Part of the House.

HENRY M. JACKSON,
ALAN BIBLE,
FRANK CHURCH,
LEE METCALF,
WARREN G. MAGNUSON,
JOHN O. PASTORE,
PAUL FANNIN,
CLIFFORD P. HANSEN,
MARK O. HATFIELD,
M. W. COOK,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1570) to authorize the President of the United States to allocate crude 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 to the Secretary of the Interior; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendments struck out all of the Senate bill after the enacting clause and inserted a substitute text and provided a new title for the Senate bill.

The committee of conference has agreed to a substitute for both the Senate bill and the House amendment to the text of the bill. Except for clarifying, clerical, and conforming changes, the differences are noted below:

The conference substitute generally follows the provisions of the House amendment. A detailed description and explanation of the provisions of the House amendment from which the provisions of the conference substitute are derived may be found in the report of the House committee on Interstate and Foreign Commerce accompanying H.R. 9681 (House Report No. 93-531), which was substituted for the text of S. 1570 on the floor of the House.

Several general comments should be made concerning the overall pattern of this legislation agreed to by the conference committee. Initially, it should be said that the conferees are in unanimous agreement that due to various factors the self-regulatory laws of supply and demand are not currently operating in the petroleum market. It is imperative that the Federal Government now accept its responsibility to intervene in this marketplace to preserve competition and to assure an equitable distribution of critically short supplies. Toward this end, the conference substitute requires the President to promptly implement a mandatory allocation program which must be crafted so as to accomplish Congressionally defined objectives. These are set out principally in section 4(b) of the conference substitute. Very generally stated they establish guidelines for the priority uses of fuels covered by this Act and set forth standards of action concerning the competitive structure of the industry and general economic policy to be followed in the establishment of the fuel allocation program.

The listing of objectives in successive paragraphs (A) through (I) in section 4(b)(1) is not intended to establish any order of priority. There are collective goals, and the conferees have not attempted to discern

an order of precedence or value one against another. It is fully recognized that, in some instances, it may be impossible to satisfy one objective without sacrificing the accomplishment of another. For example, the President could not totally allocate propane to agricultural and rural heating needs and at the same time give consideration to the identified objective of preserving and fostering competition in the petro-chemical industry. For this reason the direction to the President is qualified to permit the regulation to be constructed so as to accomplish the enumerated objective "to the maximum extent practicable". This qualification is intended to give the President administrative flexibility in marshalling short supplies and equitably assigning them to particular needs.

In meeting the objectives of section 4(b), the President may find it most convenient to rely on historical use and supply patterns. The conferees wish to emphasize, however, that the President *need not* base allocations on a historical period. The President is intended to have full flexibility in devising the most effective and efficient means of meeting the priority needs of the American people identified in section 4(b). There are, of course, many situations where priority users simply do not have a historical use pattern. For example, in this emergency period a high priority has been assigned to the maintenance of public services including those provided by government and utilities—whether privately, publicly, municipally, or cooperatively owned. It is expected that the President will pay special attention to the need of continuing these services without disruption or interruption. Allocations to utilities, in particular, should be made to the extent necessary to preserve the reliability of our utility services in various parts of the country. It is understood that, in certain instances, these utilities have relied on their ability to obtain inexpensive natural gas. They have no historical pattern of using residual fuel oil or other covered fuels, but where natural gas is unavailable they must locate and make use of substitute fuels. The President's program must take into consideration this need and, where appropriate, provide for the necessary allocations. It is not the expectation of the conferees, however, that allocations of covered fuels would be made to utilities and others solely for the purpose of minimizing their costs of operation. The President would be expected to take into account on a case by case basis the availability to utilities of alternatives fuels, such as coal.

In the face of the present shortage, large integrated oil companies understandably protect their own interests first. As shortages deepen—and all figures and analyses available seem to indicate that they will—it is unreasonable to expect businessmen to share their limited supplies with their competitors. Indeed, some have argued that it may be inconsistent with their obligations to shareholders to do so. Accordingly, this legislation requires the mandatory allocation program to be so structured as to prevent major oil companies from inequitably restructuring crude production for their own use or from favoring their directly-owned outlets over independent marketers in the sale or distribution of refined petroleum products.

Allocations of crude are to be made to small and independent refiners and allocations of refined petroleum products are to be made to independent marketers (including small and independent refiners) in amounts *equal* to those which such refiners and marketers were

able to obtain in calendar year 1972, if allocations in such amounts are practicable and consistent with the objectives of the Act. The independent marketer and small and independent refiner is not *guaranteed* supply at 1972 levels if to do so would be inconsistent with the Congressionally defined goals in sections 4(b) and (d). Moreover, the President is given express authority to order departures from allocations based on 1972 historical patterns in cases where those departures are necessary to meet priority needs. For example, it would be expected that an independent marketer or small or independent refiner would be denied an allocation based upon calendar year 1972 in circumstances where the allocated fuel is not being put to a use which is consistent with the needs identified in section 4(b) or the requirements of section 4(d).

It should be noted that allocations are to be based on a corresponding period in calendar year 1972. The President is intended to have discretion to select within the calendar year the appropriate period or periods. Thus the corresponding period of 1972 could be the entire calendar year or the President could divide the year into quarters, months, or weeks. Moreover, it should be emphasized that the President is intended to have flexibility to depart from the calendar year 1972 altogether if it would be inconsistent with the Congressionally stated objectives to continue to rely on that base period. In such event the President would be expected to select some other appropriate historical period or some other mechanism or procedure for allocation which would be more suited to the accomplishment of the objectives of this Act.

The mandatory allocation program will operate to compel the allocation of product throughout the various levels of the petroleum market. It may be necessary, in selective cases, to compel the allocation of product to particular end-users, such as hospitals, units of government, or persons engaged in energy production and transportation; but it is not generally expected that the regulation promulgated by the President will be burdened with the complexities of assigning fuels to users unless such assignment is necessary to carry out the purposes of the Act. When required, however, it is intended that the President would have full authority under this Act to identify permissible uses of covered fuels and to restrict the amounts which may be made available to such uses.

FINDINGS AND PURPOSE

The House amendment and the Senate bill were grounded on similar findings and purposes with one exception: the Senate bill contained findings not found in the House amendment related to shortages of natural gas liquids. Also contained in the Senate bill, but not in the House amendment, was the admonition that no allocation plan, regulation or order, nor mandatory price, price ceiling or restraint, was to be promulgated whose net effect would be a substantial reduction of the total supply of crude oil or refined petroleum products available in or to markets in the United States.

Conference substitute

The Senate recedes. By way of initial emphasis it should be noted that the bill which the Conference Committee reports today is not designed to and should not be interpreted as increasing supplies of critically short petroleum products. The shortage problem is the result

of policies which have been in effect over a number of years, and it awaits a more far reaching and long ranged solution. Instead, this bill focuses on the short term objectives of seeing to it that during times of shortage our priority needs are met and that whatever limited supplies we have are equitably distributed throughout the nation to meet regional needs and preserve competition in the marketplace. Although specific language to this end was not included in the bill, it is the clear and firm understanding on the part of the Managers of both Houses that the mandatory allocation program called for in this legislation shall not be designed or implemented in a manner which would have the net effect of occasioning a substantial reduction in the total supply of crude oil, residual fuel oil or refined petroleum products. It is expected that the President in applying the mandatory controls called for in this legislation will assiduously avoid that result.

DEFINITIONS

House

Section 3 of the House amendment defined the term "branded independent marketer" to mean a person who 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 clause (A) or (B)) above, and who does not control such refiner.

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

The term "independent refiner" was defined to mean a refiner who (A) obtained, directly or indirectly, in the calendar quarter which ended immediately prior to the date of enactment of the bill, more than 70 per centum of his crude oil refinery input from producers who do not control, and are not controlled by or under common control with, such refiner, and (B) marketed or distributed in such quarter and continues to market or distribute (i) a substantial volume of gasoline refined by him through nonbranded independent marketers, and (ii) a substantial volume of other refined petroleum products refined by him directly to the ultimate user.

The term "refined petroleum product" was defined to mean gasoline, kerosene, distillates (including Number 2 fuel oil), LPG, refined lubricating oils, or diesel fuel, and the term "LPG" was defined to mean propane and butane, but not ethane.

Senate

Sections 105(b) and 108(b) of the Senate bill contained defined terms. The terms defined in section 105(b) were meant for purposes of such sections, and the terms defined in section 108(b) of the Senate bill were for purposes of sections 108, 109, and 110 of the Senate bill.

The definitions in section 105(b) of the Senate bill dealt with sales to independent refiners and dealers. The term "base period" was defined as the period from October 1, 1971, to September 30, 1972, inclusive; the term "nonaffiliated" referred to a buyer (seller) who has no substantial financial interest in, is not subject to a substantial common financial interest in, and is not subject to a substantial common financial interest with, the seller (buyer) in question; the term "independent refiner" meant a refiner who produced in the United States less than one hundred thousand barrels per day of petroleum products during the base period; the term "independent dealer" meant a terminal operator, jobber, dealer, or distributor, at wholesale or retail, who obtains refined petroleum products either on term contract or in spot markets, and who purchased during the base period at least half of such products from nonaffiliated sellers.

Section 108 of the Senate bill contained definitions for purposes of sections 108 through 110 of the Senate bill. The term "base period" meant the period from October 1, 1971, to September 30, 1972. The term "market area" meant any State or any area so defined by the Secretary of the Interior.

The term "petroleum distributor" meant any person engaged in commerce in the sale, consignment, or distribution of petroleum products to wholesale or retail outlets whether or not it owns, leases, or in any way controls such outlets.

The term "petroleum refiner" meant any person engaged in the importation or refining of petroleum products.

The term "petroleum product" meant any liquid refined from petroleum and usable as a fuel.

The term "petroleum retailer" meant any person engaged in commerce in the sale of any petroleum product for purposes other than resale in any State, either under a franchise or independent of any franchise or who was so engaged at any time after the start of the base period.

The term "State" meant any State, the District of Columbia, the Commonwealth of Puerto Rico, and any organized territory or possession of the United States. This provision also defined "commerce", "franchise", "notice of intent" and "person".

Conference substitute

The conference substitute contains the provisions of the House amendment with the following changes:

(1) The definition of "independent refiner" is modified in three respects: First, the requirement that the refiner obtain 70 percent of his crude oil refinery input from producers not controlling, controlled by or under common control with the refiner is changed to a requirement that a refiner obtain either 70 percent of his refinery input of domestic crude oil, or 70 percent of his refinery input of domestic and imported crude oil, from producers who do not control, or are not controlled by and are not under common control with such refiner.

Second, the requirement that he market or distribute a substantial volume of his gasoline through nonbranded independent marketers is changed to a requirement that a substantial volume be marketed through branded independent marketers or nonbranded independent marketers. Third, the requirement that a substantial volume of other refined petroleum products be marketed directly to the ultimate user is dropped.

(2) A definition of "small refiner" is added in the conference substitute. A small refiner is 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.

(3) The conference substitute contains a definition of the United States. The term, when used in the geographic sense, means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

In incorporating the term "independent refiner" from the House bill and in making some modifications thereto, the conference committee has sought to identify for certain purposes under this bill a refiner who is dependent upon others for the major portion of his crude demand and who has historically provided independent marketers (both non-branded and branded) with gasoline supplies. The conferees are aware that refiners frequently exchange crude supply with one another for purposes of convenience and to minimize distribution costs. In instances where a refiner trades or exchanges crude supply which he had produced or which had been produced by an affiliated person of such refiner, the supply so obtained would be looked upon as if it were supply of the refiner's own production in determining his entitlement to "independent refiner" status.

The Committee is aware that some independent refiners have historically been able to obtain foreign crude from persons who control are controlled by or are under common control with them. It would not be consistent with the objectives of this legislation to require allocations of crude to such refiners based upon their 1972 crude runs in amounts necessary to make up for a short fall in supply occurring because the refiner's parent or affiliate has cut off or reduced—without good reason—the refiners' supply of foreign crude. The President would be expected to take this into consideration in implementing the requirements of section 4(c).

Special mention should be made of the term "refined petroleum product" which is taken from the House amendment. This term is defined to mean kerosene, gasoline, distillates (including Number 2 fuel oil), LPG (as further defined to mean propane and butane), refined lubricating oils, or diesel fuel. The conference committee considers the term "kerosene" to also encompass jet fuel and the term "diesel fuel" to also refer to light commercial heating oil. It is understood that the term "distillates" when applied in a technical sense would encompass only Numbers 1, 2, and 4 fuel oils. It is the committee's intent, however, that this term also reach to include naphtha and benzene so as to require the allocation of these products as may be necessary to accomplish the objective of restoring and fostering competition in the petrochemical sector of industry. In this respect the conference committee wishes to emphasize that, in expressing congressional concern with fostering competition in the petrochemical

industry, the committee intends to also identify petrochemical feedstock needs as important end-uses for which allocation should be made.

In singling out small refiners for certain purposes under this bill, the Conference Committee intends to offer a mantle of protection to those refiners who by reason of their relatively small size may be disadvantaged in competing with larger refiners in bidding for and obtaining adequate crude supplies.

The inclusion of the definition of the term "United States" is designed to make clear that the allocation program called for under this legislation is to reach beyond the States and the District of Columbia to the Commonwealth of Puerto Rico and the territories and possessions of the United States. The conference committee is aware that important refinery facilities are located in Guam and the Virgin Islands. It is expressly intended that allocations of covered fuels be made both to and from these refineries as may be required to carry out the purposes of this legislation.

MANDATORY ALLOCATION

A. THE REGULATORY SCHEME

House

Section 4 of the House amendment set forth a mandatory allocation program which provided that not later than ten days after the date of enactment, the President was to promulgate a regulation providing for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product, in amounts and at prices specified in (or determined in a manner prescribed by) such regulation and that such regulation was to take effect not later than fifteen days after its promulgation. The regulation was required, to the extent practicable, to be consistent with certain objectives described below. Section 4(b)(3) of the House amendment included the direction to the President to give consideration to allocating residual fuel oil and 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.

Section 4(c)(3) of the House amendment provided that, to the extent practicable and consistent with the objectives of certain other provisions in section 4 of the House amendment, the mandatory allocation program established under the regulation under subsection (a) was not to provide for allocation of LPG in a manner which denied LPG to industrial users if no substitute for LPG was available for use by such industrial users.

Section 4(d) of the House amendment provided that the regulation under section 4 would have to require that crude oil, residual fuel oil, and all refined petroleum products (other than refined lubricating oils) which are produced or refined within the United States should be totally allocated for use by ultimate users within the United States, to the extent practicable and necessary to accomplish certain objectives discussed later.

Section 4(e) of the House amendment also stated that no regulation under this section was to provide for allocation of, or specify (or

prescribe a manner for determining) the price of, crude oil produced in a calendar month by any well, the average daily production of which did not exceed 10 barrels per day during the month preceding such calendar month.

Senate

Sections 104, 105, 108, 109, and 110 of the Senate bill contained the Senate bill's basic provisions with respect to the allocation of crude oil and refined petroleum products.

Sections 105 and 108 through 110 are discussed later in this statement.

Section 104 stated that within thirty days of the date of enactment of the bill, the President was, after due notice and public hearings, to cause to be prepared and published, priority schedules, plans, and regulations for the allocation or distribution of crude oil and any refined petroleum product which was or may be in short supply nationally or in any region of the United States in accordance with the objectives of the bill. The bill also stated that if the President found that on either a nationwide or regional basis a shortage had been reached, or may imminently reach, emergency proportions, he could order temporary allocations as necessary to accomplish the objectives of the section, pending promulgation of priority schedules, plans, and regulations as otherwise required by the bill.

The Senate bill further provided that in order to accomplish the objectives of section 102 of the bill, and subject to the provisions thereof, the President was directed to allocate or distribute or cause to be allocated and distributed, pursuant to the schedules, plans, and regulations required under the aforementioned provisions of the bill, any liquid fuel, whether crude or processed, and whether imported or domestically produced, then or prospectively in extraordinarily short supply nationally or in any region of the United States.

The Senate bill stated that the regulations required by the aforementioned provision was to include standards and procedures for determining or reviewing prices of fuels allocated by the President under the provisions of the bill to prevent (1) appropriation of private property without due compensation or (2) exorbitant price increases reflecting temporary shortage conditions.

Also, under the Senate bill, the President was directed to use his authority under the bill and under existing law to assure that petroleum and petroleum products were allocated in such a manner as to assure adequate production, processing, and distribution of food and fiber.

Conference substitute

(1) *General.*—The conference substitute basically follows the House amendment to the Senate bill. It provides for the mandatory allocation of crude oil, residual fuel oil, and each refined petroleum product produced in or imported into the United States.

(2) *Effective dates.*—The regulation requiring such allocation in amounts and at prices specified in (or determined in a manner prescribed by) such regulation is to be promulgated not later than fifteen days after the date of enactment of the bill and to take effect not later than fifteen days after its promulgation. The conference substitute allows the President in accordance with section 4(f) to delay the effective date of the regulation promulgated under section 4(a). This sub-

section permits delay only of the provisions of the regulation with respect to the allocation of gasoline and with respect to any allocation of products which are allocated under section 203(a)(3) of the Economic Stabilization Act of 1970 prior to promulgation of the regulation under the bill. No delay is permitted under this subsection in the provisions relating to price.

Under subsection (f) the provisions of the regulation under section 4(a) respecting allocation of gasoline need not take effect until thirty days after the promulgation of such regulation. In addition, if 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 fifteen days after the date of enactment of the bill and if the President determines that delay in the effective date of provisions of the regulation promulgated under section 4(a) of the conference substitute 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 program, 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.

(3) *Exemption authority.*—Section 4(g)(2) of the conference substitute permits the President, if he finds (A) that application of the regulation under section 4(a) to crude oil, residual fuel oil, or a refined petroleum product is not necessary to carry out the Act, (B) there is no shortage of such oil or product, and (C) 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 the Act, to amend the regulation to exempt such oil or product from such regulation for a period of not more than ninety days. The President must submit the amendment and findings to the Congress. An amendment may not exempt more than one oil or product (but separate amendments may be submitted for different oils or products; and at the expiration of the 90 days that an amendment applies to an oil or product, a new amendment applicable to such oil or product could take effect). An amendment would take effect on a date specified in the amendment, but not before the end of a period 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. Either House of Congress before the expiration of the period could by simple resolution disapprove such amendment.

(4) *Industrial use of LPG.*—The conference substitute accepts the provisions of the House amendment which direct the President to take steps to assure that, to the extent practicable and consistent with the objectives of this Act, he does not allocate LPG in a manner which denies an industrial user access to a fuel for which there is no available alternative. Propane is a liquified petroleum gas in critically short supply. People in rural areas need it to heat their homes; farmers use it to dry their crops; the petrochemical industry uses it as a feedstock; and the glass industry uses it as the only acceptable or feasible substitute for natural gas. In the allocation of propane, the

President is going to have to find an equitable balance among these priority uses. Paragraph (5) requires the President in this situation, to the extent practicable and consistent with the objectives of the Act, to make sure that in allocating propane to farmers and others he does not force petrochemical and glass plants across the country to close their doors. In administering this program, the President must be ever watchful to discover the unintended and undesired consequences of his acts. Clearly it is not in the public interest to compel the allocation of covered fuels (including propane and other refined petroleum products) in such a way as to result in large scale closings of industry, significant unemployment or serious economic stress in specific areas or regions of this nation. The President must be ever vigilant to avoid that result.

Several points should be made concerning the amendments made by the conference substitute to the House provisions relating to the timing requirements for the issuance and implementation of the mandatory allocation program. First, it was decided to give the President 15 days instead of 10 days to promulgate the regulation providing for the mandatory allocation of covered fuels. This was done simply with the understanding that—although the Administration has for several months been engaged in the task of devising a workable allocation mechanism—a 15-day period is probably minimally required to fashion a program with the necessary requirements and modifications of existing procedures to accomplish the objectives stated in this legislation.

Second, the Conference substitute continues the House requirement that the regulation once promulgated take effect 15 days thereafter. However, additional flexibility has been given to the President to delay this effective date in the case of the applicability of the allocation requirements to gasoline and to products already subject to mandatory controls under orders issued pursuant to the President's Economic Stabilization Act authority. The President is permitted to delay the gasoline allocation on the premise that his full administrative energies may be required to focus on other refined petroleum products in the first days of implementing the program. It is the Committee's understanding that an allocation program, if it is to work at all, must be comprehensive in scope and therefore must include the major refined components of a barrel of crude oil. Gasoline simply must be brought within the program as soon as practicable if we are to avoid the disastrous dislocations of resources and effort which have occurred in the past year as a result of selectively applying controls to the petroleum industry. For this reason the President is not permitted to defer the effective date of the gasoline allocation controls beyond 30 days after promulgation of the initial regulation.

The authority to defer the effective date for allocations of products already subject to mandatory controls under orders issued by the President pursuant to his Economic Stabilization Act authority is founded on the desire to take every step to permit an orderly transition from those programs to the allocation requirements of this legislation. For example, allocation programs have been established for propane and so-called "middle distillates." Modifications in these programs will be required to conform them to accomplish the Congressionally defined objectives stated in this legislation. It would not be a reasoned result for these programs to be summarily terminated while necessary

revisions are made. Accordingly, this legislation provides for their continuance up until the effective date of the regulation called for in this legislation and permits the President to defer that effective date when necessary to provide for an orderly transition.

(5) *Users denied access to other fuels.*—The conference substitute contains the provisions from the House amendment which direct the President to give consideration to allocating residual fuel oil and 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, and the conference substitute states that this consideration also be given where such person's supply of such fuels is unobtainable by reason of an abandonment of service permitted or ordered by a Federal or State agency.

The inclusion of the House provisions on this matter represents a determination by the members of the conference that there must be reasoned coordination of Federal and state policies which control or influence the energy requirements of our citizens and industry. It is the expectation that in fashioning the allocation program and ordering subsequent adjustments to it, the President shall be watchful of the need to allocate supply to those users, such as electric utilities, who contribute to the accomplishment of the objectives of this legislation in those circumstances where such users have been denied access to alternative fuels by actions taken by other Federal or state governmental authority.

(6) *Exports.*—The conference substitute contains in section 4(d) the House provision relating to the total allocation of crude oil, residual fuel oil, and all refined petroleum products which are produced or refined within the United States. However, the exception relating to refined lubricating oil has been removed.

An allocation of covered fuels totally within the boundaries of the United States would act to prevent the export of such substances. In this regard the conference committee wishes to emphasize the conditions upon which such exclusion would be based. Total allocations within the United States would be required *only* where practicable *and* where necessary to accomplish the objectives of section 4(b). It is not intended to interrupt or prevent export of fuels which are consistent with those objectives. In this regard the conference committee is especially mindful of the potential hardship which would result from an interference with or disruption of the important fuel interchanges with Canada and Mexico.

Particular complexity and concern is raised with respect to maintenance of international transportation. Other nations faced with similar fuel shortages are also adopting fuel allocation and conservation measures. Without reciprocity and comity among nations, these measures, if discriminatory or retaliatory, could jeopardize international air, ocean, and surface transport regardless of what steps are taken by the United States to allocate equitably among its own carriers. It is thus essential in making fuel allocations to coordinate, to the extent necessary, with foreign governments and, consistent with principles of reciprocity and comity and as may be consistent with the objectives of this Act, meet the fuel needs of foreign carriers at United States' points served by them.

(7) *Allocation at producer level.*—The conference substitute contains in section 4(e)(1) provisions which state that the provisions of the regulation under subsection (a) shall specify (or prescribe the manner for determining) price of crude oil at the producer level; but, if the President finds 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 section 4, such regulation need not require allocation of crude oil at such level. The conference substitute requires that any finding made pursuant to this subsection be transmitted to the Congress in the form of a report setting forth the basis of his finding that allocation at the producer level is not necessary to attain such objectives.

Several have argued that the compelled allocation of crude oil at the producer level would be administratively unworkable. Indeed, the Administration identified this problem as largely responsible for its opposition to the House bill. Others contend that producer-level allocations are absolutely essential if the objectives of the Act are to be accomplished. Unable to fully resolve the issue, the conference substitute seeks an accommodation of these opposing views. Under its terms, the President would be relieved of the necessity of applying allocation requirements to the producer level if he can make the finding that allocation at that level on a national, regional, or case-by-case basis is unnecessary to attain the objectives of the Act. Specifically noted is the objective contained in section 4(b)(1) (E) which calls for the allocation of crude in a manner which makes maximum utilization of our nation's total refinery capacity.

The conference committee wishes to emphasize that the President is to retain full authority to require allocation at the producer level on a national, regional, or case-by-case basis whenever he determines it is necessary to attain the objectives of the Act. It is expressly intended to give the President flexibility to act selectively. Accordingly, he may apply controls to large but not small producers—thus avoiding administrative complexity. Also, it is expected that the authority to require allocations at the producer level on a case-by-case basis can be and would be exercised to prevent producers from withholding supplies from the market by capping wells or otherwise.

It is specifically intended that the allocation program operate at the refinery level to compel inter-refinery transfers and exchanges of crude oil. By this means, it is expected that allocations of crude would be made to assure the maximum utilization of the refinery capacity of the United States and, in particular, that low-sulfur crude will be allocated to those refineries which are limited in their ability to process crude oil of higher sulfur content or which are operating under environmental restrictions which prevent the processing of high-sulfur grade crude. While the President's authority does not expressly permit him to order refineries to adjust their product mix (i.e. crack the barrel at different fractions to produce more or less of a specific refined petroleum product), the President must, in allocating crude to different refineries, take into account the historical patterns of product mix so as to assure accomplishment of the Congressionally stated objectives. Moreover, in circumstances where additional supply of a particular product, such as home heating oil, must be obtained, it is expected that the President will withhold or divert the allocation of crude from any refinery which

does not adjust his product mix to contribute to the development of such additional supply.

(8) *Stripper wells.*—The conference substitute contains a provision relating to stripper wells. This provision, found in section 4(e)(2) states that 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. In order to qualify for the exemption, a lease must be operating at the maximum feasible rate of production and in accordance with recognized conservation practices. Any agency designated by the President under section 5(b) of the conference substitute for such purpose is authorized to conduct inspections to insure compliance with this paragraph and shall promulgate and cause to be published requirements implementing the provisions of this paragraph.

B. OBJECTIVES

House

Section 4(b)(1) of the House amendment set forth certain objectives which the regulation promulgated under that section was to the maximum extent practicable to provide for seven objectives. The House amendment's objectives included the 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); the maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto; the 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, nonbranded independent marketers, and branded independent marketers; and the 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, nonbranded independent marketers, branded independent marketers, and among all users.

Senate

Section 102 of the Senate bill provided for the President to take such actions as are necessary to insure the attainment of the specified objectives in implementing the authority granted under the Senate bill. These objectives included the maintenance of all public services; the maintenance of all essential agricultural operations, including farming, ranching, dairy and fishing activities and services directly related to the cultivation, production and preservation of food; the preservation of an economically sound and competitive petroleum industry, including the competitive viability of the independent producing, refining, marketing, distributing, and petrochemical sectors of that industry; and the equitable distribution of fuels at equitable prices among all regions and areas of the United States and all classes of consumers with the proviso that priority shall be given to supplying essential activities in the public interest and to independent marketers, jobbers, and refiners who supply those

priorities. Whenever possible, preference shall be given to independent refiners and marketers (1) in the carrying out of such priorities, and (2) in other cases where all other conditions are equal and a choice must be made between allocation of supplies to an independent or to a major company.

Conference substitute

The conference substitute basically follows the House amendment to the Senate bill with the following changes:

(1) The objective providing for protection of the public health, safety, and welfare, and the national defense specifies that public health, safety, and welfare includes the maintenance of residential heating, such as individual homes, apartments, and similar occupied units.

(2) The objective providing for maintenance of all public services specified that such maintenance of public services included facilities and services provided by municipally, cooperatively, or investor owned utilities or by any State or local government or authority. The conference substitute further specifies that this objective includes transportation facilities and services which serve the public at large.

(3) The conference agreement includes small refineries in the objective relating to the preservation of an economically sound and competitive petroleum industry.

(4) The conference substitute contains a new objective (E) relating to the allocation of suitable types, grades, and quality of crude oil to refineries in the United States to permit such refineries to operate at full capacity.

(5) The conference substitute includes small refiners in the 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.

(6) The conference substitute contains a new objective (G) relating to the 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, energy fuels, and for the required transportation related thereto.

Section 4(b)(1)(I) of the conference substitute requires special mention. This section emphasizes the objective of minimizing economic distortion, inflexibility and unnecessary interference in market mechanisms. The committee recognizes that mandatory allocation programs which compel the distribution and sale of fuels for particular uses at specified prices necessarily distort the economy and interfere with a free market mechanism. It is the intent of this legislation that that economic distortion and interference be minimized to the extent practicable. The President should assure himself that his actions interrupt existing supply mechanisms only when necessary to permit the accomplishment of the objectives stated in subsection (4). Moreover, while it is expressly recognized and intended that the allocation program would have the effect of abrogating contracts for the supply of fuels covered by the regulation, such abrogation should occur *only* to the extent necessary to accomplish the objectives of the Act. It is expected that the President's regulation will in most cases merely confirm existing supply relationships. For example, it is understood that in many circumstances small refiners own their own production

or obtain it from affiliated sources. It is not expected that the President would disturb this relationship unless it were necessary to do so.

The conferees have included in section 4(b)(1)(B) specific mention of the need to allocate fuels to provide for the maintenance of transportation facilities and services which serve the public at large. The term "transportation services" is intended to identify those surface, rail or air facilities and services—whether public or privately owned—which serve the general public or which otherwise serve the objectives of this Act.

The petroleum fuel shortage threatens numerous areas of commerce. The jeopardy from shortage of these fuels impacts most directly on transportation. Without adequate petroleum fuel most United States' domestic and international transportation, with no option to convert to other fuels, potentially would be seriously disrupted. A significant reduction of transportation capability could adversely affect all other areas of commerce and the national economy. Thus, one of the primary objectives of the Act is to assure maintenance of transportation services.

C. PRICES

House

The House amendment provided in section 4(b)(2) that in specifying prices (or prescribing the manner for determining them), the regulation under section 4 of the House amendment was to provide for a dollar-for-dollar pass-through of net increases in the cost of crude oil and refined petroleum products to all marketers or distributors at the retail level; and the use of the same date in the computation of markup, margin, and posted price for all marketers or distributors of crude oil and refined petroleum products at all levels of marketing and distribution.

Senate

Section 116 of the Senate bill provided that the Congress found and declared that, notwithstanding the imposition of mandatory controls by the Cost of Living Council on March 6, 1973, on the prices of crude oil and petroleum products, such prices had increased and were continuing to increase at an excessive rate and that in order to control inflation, promote a sound economy, and carry out the objectives of the Senate bill as stated in section 102, the Congress urged the President immediately to take such further action as may be necessary to stabilize effectively the prices of crude oil and petroleum products.

Conference Substitute

The conference substitute contains the provisions of the House amendment with a change making the House provisions applicable to residual fuel oil.

The conference committee wishes to make several comments with respect to the pricing authority contained in this legislation. This has been included on the premise that it does no good to require the allocation of products if sellers are then permitted to demand unfair and unrealistic prices. It is not intended, however, that the pricing authority be exercised by establishing specific prices for products at each level in the distribution system. For example, the regulation could merely state an equitable method for determining price levels, such as permitting a specified percentage markup of base costs. The

conference committee has decided to couple price controls with the mandatory allocation authority so as to focus in a single act decision-making authority and responsibility for dealing with the fuels shortage situation.

By requiring that both allocations and prices be covered in the regulation required to be promulgated and implemented under Section 4(a), Congress intends to force the Administration to rationalize and harmonize the objective of equitable allocation of fuels with the objectives of the Economic Stabilization Act. The committee wishes to emphasize that the pricing controls called for in this legislation may, in those circumstances where pricing controls established pursuant to other federal authority are consistent with the requirements and objectives of this Act, merely confirm those controls in the regulation to be promulgated under authority of section 4 of this Act. It is expressly contemplated, for example, that the price controls established by Phase IV under authority of the Economic Stabilization Act would continue in effect unless and until required to be modified by the price regulation required to carry out the purposes of this Act. As a matter of administrative convenience, the President may wish to continue to exercise federal pricing controls through the Cost of Living Council and may, pursuant to section 5(b), assign to that agency responsibility for administering the price controls called for in this Act.

The reference to equitable prices in the bill is specifically intended to emphasize that one of the objectives of the mandatory allocation program is to prevent price gouging or price discrimination which might otherwise occur on the basis of current shortages. On the other hand, it is contemplated that prices for allocated fuels will be set at levels or pursuant to methods which will permit adequate compensation to assure that private property is not implicitly confiscated by the government. Most importantly, the President must, in exercising this authority, strike an equitable balance between the sometimes conflicting needs of providing adequate inducement for the production of an adequate supply of product and of holding down spiraling consumer costs.

D. ALLOCATION TO INDEPENDENT REFINERS AND MARKETERS

House

Section 4(c)(1) of the House amendment provided that to extent practicable and consistent with the objectives of subsections (b) and (d) of section 4, the mandatory allocation program established under the regulation under subsection (a) of section 4 was to be so structured as to result in the allocation during each period during which the regulation applied of each refined petroleum product to each branded and each nonbranded independent marketer, and of crude oil to each independent refiner, in an amount equal to the amount sold or otherwise supplied to such marketer or refiner during the corresponding period of 1972, adjusted to provide a pro rata sharing among persons engaged in the marketing or distributing of a refined petroleum product of any amount of such product produced in excess of the amount produced in calendar year 1972, or a pro rata reduction in the amount allocated to such persons if lesser amounts are produced than those produced in calendar year 1972; and a pro rata sharing among refiners of any amount of crude oil produced in excess of the amount

produced in calendar year 1962, or a pro rata reduction in the amount allocated to such refiners if lesser amounts are produced than those produced in calendar year 1972.

Section 4(c)(2) of the House amendment provided the President was authorized by order, to require such adjustments in the allocations of refined petroleum products and crude oil established under the regulation under subsection (a) of section 4 as may reasonably have been necessary in the case of refined petroleum products (i) to take into consideration market entry by branded independent marketers and nonbranded independent marketers subsequent to calendar year 1972, or (ii) to take into consideration subsequent expansion or reduction of marketing or distribution facilities of such marketers; and in the case of crude oil (i) to take into consideration market entry by independent refiners subsequent to calendar year 1972, or (ii) to take into consideration subsequent expansion or reduction of refining facilities of such refiners. Any adjustments made under section 4(c)(2) may have been made only upon a finding that, to the maximum extent practicable, protection of the objectives of subsections (b) and (d) of section 4 were attained.

Senate

Section 105 of the Senate bill stated that the President was directed to use his authority under the Senate bill and under existing law to assure that no petroleum refinery in the United States was involuntarily required to operate at less than its normal full capacity because of the unavailability to said refinery of suitable types or grades of crude oil.

Subsection (c) of section 105 provided that in order to achieve the objectives of the bill, (1) any producer or importer of crude petroleum and/or natural gas liquids who produced in the United States and/or imported more than two hundred thousand barrels per day of crude oil and natural gas liquids during the base period had to sell or exchange to nonaffiliated independent refiners or to any other reasonable and appropriate class of refiners established by regulation, in accordance with the objectives and priorities established under section 102(e) of the Senate bill, in the aggregate during each quarter during the effective term of the Senate bill a proportion of his domestic production and imports no less than the proportion he sold or exchanged to such refiners during the corresponding quarter of the base period. It also provided under such subsection that to the extent practicable, all such refiners previously supplied by such producer or importer were to continue to be supplied on an equitable basis taking into consideration past supply relationships and unused refinery capacity; and (2) all refiners or importers of petroleum products were to sell or exchange to nonaffiliated independent dealers or to any other reasonable and appropriate class of purchasers established by regulation, in accordance with the objectives and priorities established under section 102(e) of the Senate bill, in the aggregate in each quarter during the effective term of the Senate bill, a proportion of his refinery production and imports of said products no less than the proportion he sold or exchanged to such dealers during the corresponding quarter of the base period. It further provided that to the extent practicable, all such dealers previously supplied by such refiner were to continue to be supplied on an equitable basis taking into consideration past supply relationships.

Subsection (d) of section 105 stated that the allocation program established pursuant to section 105 may have been replaced or amended by, or incorporated into, the priority schedules, plans, and regulations promulgated under section 104 of the Senate bill.

Section 109 of the Senate bill stated that a petroleum refiner or a petroleum distributor was not to deliver or tender for delivery in any quarter to any petroleum distributor or petroleum retailer a smaller quantity of petroleum products than the quantity of such products delivered by him or his predecessor or predecessors during the corresponding quarter in the base period, unless he delivered to each petroleum distributor or petroleum retailer doing business in commerce the same percentage of the total amount as was delivered to all such distributors or retailers in the market area who were supplied by such refiner or distributor and that a petroleum refiner or a petroleum distributor was not to sell petroleum products to a nonfranchised petroleum distributor or petroleum retailer at a price, during any calendar month, which was greater than the price at which such petroleum products were sold to a similarly situated franchised petroleum distributor or petroleum retailer on the same level of commerce (wholesale or retail) in the market area except that a reasonable differential which equaled the value of the goodwill, trademark, and other protections and benefits which accrued to franchised distributors or retailers was not prohibited.

Enforcement of this provision is described below under the section relating to enforcement.

Section 110 of the Senate bill stated that a petroleum refiner or a petroleum distributor was not to cancel, fail to renew, or otherwise terminate a franchise unless he furnished prior notification pursuant to this paragraph to each petroleum distributor or petroleum retailer affected. Such notification was to be in writing and was to be accomplished by certified mail to such distributor or retailer; was to be furnished not less than ninety days prior to the date on which such franchise was to be canceled, not renewed, or otherwise terminated; and was to contain a statement of intention to cancel, not renew, or to terminate together with the reasons therefor, the date on which such action was to take effect, and a statement of the remedy or remedies available to such distributor or retailer under the Senate bill together with a summary of the provisions of this section.

Section 110 of the Senate bill further stated that a petroleum refiner or a petroleum distributor was not to cancel, fail to renew, or otherwise terminate a franchise unless the petroleum retailer or petroleum distributor whose franchise was terminated failed to comply substantially with essential and reasonable requirement of such franchise or failed to act in good faith in carrying out the terms of such franchise, or unless such refiner or distributor withdrew entirely from the sale of petroleum products in commerce for sale other than resale in the United States.

Conference substitute

The conference substitute incorporates the provisions of the House amendment with the following changes:

(1) Small refiners are given the same treatment as independent refiners.

(2) The provisions of subsection (c)(1) which provide for allocation of refined petroleum products to branded and nonbranded independent marketers based on amounts they received in 1972 are expanded to provide for allocation of such products to small refiners and independent refiners based on amounts they received in 1972.

(3) The provisions of sections 4(c)(1) (A) and (B) of the House amendment which required a pro rata increase in allocations of refined petroleum products and crude oil to marketers and refiners, respectively, to reflect increase in supply are deleted, and replaced in the conference substitute by a provision directing the President to report to the Congress monthly, beginning not later than January 1, 1974, with respect to any change after 1972 in the aggregate national or regional market shares of nonbranded independent marketers, branded independent marketers, and other persons engaged in the marketing or distributing of refined petroleum products. The provision further requires that 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 1972 contributes to a significant increase in any market share described above, the President must order an equitable adjustment in allocations of such product.

(4) The President is directed to order adjustments in the allocations of crude oil, residual fuel oil, and refined petroleum products as may reasonably be necessary to accomplish the objectives of section 4(b) or to prevent any person from taking any action which would be inconsistent with those objectives.

(5) In adjusting allocations to provide pro rata decreases, the President is directed to consider aggregate decreases in domestic production plus imports, rather than considering only domestic production.

A great deal of the discussion in conference focused on the workings of section 4(c). Under the terms of the House amendment, the mandatory allocation program was required to be so structured—to the extent practicable and consistent with the objectives of the Act—as to result in the allocation to branded independent marketers and non-branded independent marketers of amounts of refined petroleum product equal to what they were able to obtain in calendar year 1972. Finding that many small refiners and independent refiners have historically also been bulk purchasers and marketers of refined petroleum products, the conference committee determined to in addition include such refiners within the formula so as to give to them an entitlement to refined petroleum products (to the extent practicable and consistent with the objectives of the Act) based upon 1972 allotments.

It is understood that a number of independent marketers, small refiners and independent refiners have been sold to or otherwise been acquired by others since 1972. It is the expectation of the conferees that where it is possible to trace the corporate or business history of an entity, the successor company shall be entitled to the base period allocation of its predecessor.

The committee has also made provision for the allocation of crude oil to small and independent refiners based upon their calendar year 1972 crude runs. Here, as in the case of refined petroleum products, it is expected that small and independent refiners who entered the

market after calendar year 1972 and who acquired interests in refineries which had been in operation during that year would be entitled to claim an allocation based upon the 1972 crude runs of the predecessor refineries.

(1) *Certain contracts.*—The conferees wish to comment specifically on the application of this section in circumstances where a successor company has acquired assets and made capital investments in reliance on a court decree issued in furtherance of a resolution of antitrust claims. As noted in an earlier portion of this report, it is intended that the allocation program minimize economic distortion and interference with market mechanisms. Also this legislation lists as a basic objective the need to promote and foster competition in the petroleum industry. It would be an anomalous result if the allocation program would be implemented in a manner which would frustrate or make impossible the accomplishment of a court-ordered decree whose objective was to create a viable competitive entity where there was none before. It is expected, therefore, that the President will take care to assure that the allocation program would not interrupt supply agreements, whose very terms had been ordered by a court to assure that an entity would be able to operate in a manner which offers meaningful competition. The Committee does not wish, however, to totally insulate such supply agreements. It is fully intended and expected that the President would have authority to abrogate such contracts if the President finds that he must do so in order to accomplish the objectives of this Act.

(2) *Pro-rata sharing of shortfall.*—In those circumstances where the aggregate amount of crude oil produced in or imported into the United States is less than the amounts produced or imported in calendar year 1972, the conference substitute requires a pro rata reduction in the amounts allocated among refiners. This provision is intended to assure an equitable sharing of the shortfall among small, independent, and other refiners including those which are owned and operated by major vertically integrated oil companies. A similar pro-rata sharing, as described above, is provided for shortfalls in refined petroleum products.

(3) *Refinery expansion or new construction.*—The conferees view the construction of new refineries, and the expansion of present refinery capacity, as critically important factors in maximizing the amount of petroleum products available to meet domestic demand. The conferees are concerned that refiners may be hesitant to make the substantial investments, and other commitments required for the construction of new refineries and the expansion of existing facilities unless they are assured of adequate supplies of crude oil for their facilities. The provisions of Section 4(c)(4)(B), are intended to provide the President with a means of affording that assurance.

Although the conferees have determined not to include the dealer protection provisions which were contained in the Senate bill, the committee wants to express its concern with the downstream vertical integration of the major oil companies into the distribution and retail levels of the market. Major oil companies have begun to market secondary brands through wholly-owned distribution subsidiaries. The primary brands are to an increasing extent being marketed through so-called salaried or managed retail outlets. Branded independent marketers, already under short term lease and supply agreements, are finding that their agreements are not being renewed. Leases of one year's

duration are being converted to thirty days. Representatives of branded dealers believe that this represents an attempt by the majors to force private entrepreneurs out of the retail market and to convert station operators to salaried employees. The committee believes that the agency administering this Act and the Congress should watch this development closely. Should it be shown to be progressing in a manner which can not be dealt with under the allocation authority contained in this bill, it may be in order for the Congress to consider remedies such as proposed in the Senate bill or as may be appropriate in the formulation of tax, import and anti-trust policy.

ENFORCEMENT

House

Section 5(a) of the House amendment provided that the regulation under the House amendment would be enforced under sections 205 through 213 (other than 212(b)) of the Economic Stabilization Act of 1970 (as in effect on the date of enactment of the bill) except that the expiration of the Economic Stabilization Act would not affect any authority to amend and enforce the regulation or to issue and enforce any order under the House amendment.

Senate

The Senate bill authorized the head of the agency designated to implement the bill to require periodic reporting and to issue subpoenas. The head of the agency (or his delegate) was authorized to request the Attorney General to bring an action in the appropriate district court of the United States to enjoin any act or practices constituting a violation of the bill (or order or regulation thereunder) and upon a proper showing a temporary restraining order or a preliminary or permanent injunction would be granted without bond. The court could also issue mandatory injunctions.

The Senate bill also contained special provisions providing a private remedy for the enforcement of the provision of section 109 which prohibit failing to sell petroleum products to petroleum distributors and retailers at prices and in quantities determined under that section. Section 109(b) authorized a petroleum retailer or a petroleum distributor to maintain a suit against certain refiners and distributors who engage in conduct prohibited by section 109 and whose products he purchases. The court was directed to grant such equitable relief to remedy the effects of the prohibited conduct, including declaratory judgment and mandatory or prohibitive injunctive relief. The court was also authorized to grant interim equitable relief, and punitive damages; and award the plaintiff a reasonable attorney's fee. Notice of intent to file suit was required to be filed with each defendant and with certain public officials. Similar enforcement provisions were provided for section 110 of the Senate bill.

Conference Substitute

The Senate recedes.

ADMINISTRATION

Both the Senate bill and House amendment authorized the President to delegate any part of his authority under the bill to any Federal officer or agency. In addition, the Senate bill required designation of an agency to promulgate regulations and supervise compliance. The

Senate bill also required establishment of an office to receive complaints from State and local governments respecting fuel oil and gasoline supplies and prices.

Conference substitute

The conference substitute follows the provisions of the House amendment with an amendment permitting the President to delegate functions under the bill to States (or to officers thereof) as well as to Federal officers and agencies.

EFFECT ON OTHER LAWS

Both the House and Senate versions of the bill provide generally that compliance with bill and requirements imposed under the bill are a defense to the actions under the antitrust laws and for certain breaches of contract. The Senate bill, in addition, made such compliance a defense to State pricing or restraint-of-trade statutes comparable to the antitrust laws.

Conference substitute

The Senate recedes.

The conferees wish to make special mention of the limited antitrust defense created by the provisions of the conference substitute. Under its terms, certain meetings, conferences, or other communications which might otherwise be construed to violate the antitrust laws would be permitted provided that (i) the President issues an appropriate approving order, (ii) the meeting, conference, or communication takes place in the presence of a representative of the Antitrust Division of the Department of Justice, and (iii) a transcript is kept, and—together with a copy of any agreement resulting therefrom—placed in a public file. The conferees believe it is a reasoned interpretation of the application of these provisions to permit the Attorney General to exempt from these requirements classes or types of meetings, conferences, or communications, which are ministerial in nature and which occur subsequent to and in furtherance of agreements, decisions, and policies which are arrived at at meetings, conferences, or communications authorized by the President attended by a representative of the Department of Justice and appropriately transcribed. To be consistent with the requirements of this section, however, a written summary of any such meetings, conferences, or communications should be made, and, together with any agreement resulting therefrom, deposited with the Attorney General and the Federal Trade Commission, where it shall be made available for public inspection.

MONITORING BY FEDERAL TRADE COMMISSION

House

The House amendment directed the Federal Trade Commission to monitor the program established under the regulation under section 4 during the first 45 days the regulation is in effect and not later than 60 days after the regulation takes effect to report to the Congress and the President respecting the effectiveness of the provisions of the House amendment and of actions taken pursuant to the provisions of the House amendment. The scope of the Commission's investigative authority, for this purpose, is augmented to encompass individuals, partnerships, and certain common carriers.

Senate

The Senate bill directed that the Attorney General and the Federal Trade Commission monitor the actions taken pursuant to the Senate bill by the agency designated to administer the provisions thereof and by persons subject to the provisions thereof, and report to the President and to the Congress any provision of the bill, action taken pursuant thereto, or condition created thereby, which would have tended to create or maintain anticompetitive practices or situations inconsistent with the antitrust laws or had a lasting adverse impact upon competition or upon any of the objectives set forth in section 102 (d), (f), or (g) of the bill.

The Federal Trade Commission was to prepare and transmit to the Congress, not later than thirty days after the enactment of section 112, an interim report on the following, and not later than six months after such date a report on the relationship between the structure, behavior, and operational characteristics of the petroleum industry (including the vertical integration of production, transportation, refining, and marketing; and joint ventures among petroleum companies) and the causes of the present shortages of crude oil and refined petroleum products; and a report on petroleum industry practices and trends in the marketing of gasoline and other petroleum products including the use of credit cards, the promotion of second and third brand name products, the terms and conditions of franchise agreements and the protection they afford the franchisee, and the role of the independent retailer. The scope of the Commission's authority to implement the aforementioned provisions was augmented to include all corporations including common carriers subject to the Act.

Conference substitute

The Senate recedes.

REPORTS TO CONGRESS

Senate

Section 106 of the Senate bill directed the President to submit to both Houses of Congress any schedules, plans, and regulations promulgated for implementing the provisions of the bill.

The Senate bill also directed the President to make to the Congress quarterly reports, and upon termination of authority under the bill a final report, including a summary and description of all actions taken under the authority of the bill, an analysis of their impact, and an evaluation of their effectiveness in implementing the objectives of section 102 of the bill.

House

The House amendment contained no comparable provision.

Conference substitute

The conference report contains no general requirement for periodic reports or for reports to Congress respecting regulations. See description of the mandatory allocation program contained in section 4 of the conference substitute for requirements for reports on specific matters.

HIGHWAY SPEED REDUCTIONS TO CONSERVE GASOLINE

Senate

Section 111 of the Senate bill stated that it was the sense of the Congress that, in order to conserve gasoline supplies which in some areas of the Nation were approaching critical shortages (1) speed limits for motor vehicles traveling on Federal-aid highways presently at or in excess of fifty-five miles per hour should be reduced immediately to fifty-five miles per hour, or ten miles per hour lower than the speed limit posted on the affected portion of such Federal-aid highway prior to the enactment of section 11, whichever is the greater; (2) Federal, State, and local governmental agencies should take appropriate actions to achieve and enforce such reductions in vehicle speed; and (3) Federal, State, and local governmental agencies should take such actions as may be necessary to increase public awareness of the need to conserve gasoline and the means for doing so, including the connection between decreasing gasoline consumption and decreasing vehicle speed, excessive idling, unnecessary travel, and abrupt acceleration and deceleration.

House

The House amendment contained no comparable provision.

Conference substitute

The Senate recedes.

NATIONAL VOLUNTARY ENERGY CONSERVATION PROGRAM

Senate

Section 113 of the Senate bill provided that in order to more effectively carry out the purpose of the Senate bill to solve a national energy crisis the President was to (1) develop a National Voluntary Energy Conservation Program calling for and suggesting means of terminating unnecessary use of energy for power or lighting, and (2) call upon State and local officials, public and private entities, and the public generally, by means of television, radio, newspaper, and other appropriate manner, to cooperate in promoting and carrying out such program.

House

The House amendment contained no comparable provision.

Conference substitute

The Senate recedes.

GOVERNMENT USE OF ECONOMY CARS AND LIMOUSINES; PROMOTION OF CARPOOLS

Senate

Section 114 of the Senate bill provided that, as an example to the rest of our Nation's automobile users, the President of the United States was requested to take such action as is necessary to require all agencies of Government, where practical, to use economy model automobiles, pickups, and trucks; that the President was to take action to require that no Federal official or employee below the level of cabinet officer be furnished a limousine because such automobiles are particularly expensive, gas consuming and pollution producing; and

that the President was requested to take such action as was necessary to begin a national program of public information to inform the commuter of the benefits of carpools and economy cars and that the President was to report to Congress on legislative incentives to promote such a program.

House

The House amendment contained no comparable provision.

Conference substitute

The Senate recedes.

ESTABLISHMENT OF STATE FUELS AND ENERGY CONSERVATION OFFICES

Senate

Section 115 of the Senate bill expressed the sense of the Congress that each Governor of each State was requested to establish a State Office of Fuels and Energy Conservation, such office immediately to develop and promulgate a program to encourage voluntary conservation of gasoline, diesel oil, heating oil, natural gas, propane, other fuels, and electrical energy.

House

The House amendment contained no comparable provision.

Conference substitute

The Senate recedes. However, the conference substitute, in section 5(b), authorizes the President to delegate functions under the bill to States or officers thereof.

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