THE WHITE HOUSE

WASHINGTON

June 23, 1975

FEA (see Domestic Council)

MEMORANDUM FOR: JIM CONNOR

THROUGH: PHIL BUCHEN P.W.B.

FROM: KEN LAZARUS K

SUBJECT: Frank Zarb's Memo of 6/19/75 re: Next Steps in Decontrol

It is my understanding that Title 15 U.S.C. Section 753(g)(2) is the authority for the decontrol plan referred to in the referenced memorandum. This authority codifies Section 4 of the "Emergency Petroleum Allocation Act of 1973" (Pub. L. 91-379) as extended to August 31, 1975 by Pub. L. 93-511.

Section 753(g)(2) provides that the President or his designate may submit for Congressional review an amendment to the regulatory scheme provided in the 1973 Act exempting oil or a refined petroleum product from such regulation for a period of not more than 90 days.

If my understanding of the underlying authority for a decontrol plan is accurate, it would appear to undermine the tactical goals set forth in the referenced memo.

cisions if we are allowed to have other tes.

There is a strong desire on the part of any Senators, if not all Senators, on is side to look at each issue as it comes, compromise where compromise is possible, to vote with the other side wherever at is possible within one's conscience n these issues. I think that should be oted in terms of the very close vote that ist occurred.

Mr. HUGH SCOTT. Mr. President, I ontinue to say that there are issues n which we should consider possible tipulation, possible compromise. This clearly was one of them. This and the next one are the ones made by the Washington Post.

It is no wonder that the majority wants to steamroller us, not only on this issue but on the next one as soon as they can get to it, because that knocks out the one possible proposal of compromise that might have had some merit here that we could have gone into.

In answer to the charge that there was no steamroller, indeed there was. This issue passed, just before the announcement of the vote, by a majority, I believe, of three votes. Then four votes were changed. Of course, I would never, ever, refer to how they were changed, but four votes were changed.

Mr. SYMINGTON. Will the Senator yield?

SEVERAL SENATORS. Regular order, Mr. President.

The PRESIDING OFFICER. The Senator's minute has expired.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. Symington have 1 minute.

Mr. MOSS. Mr. President, reserving the right to object.

Mr. HUDDLESTON. I object.

The PRESIDING OFFICER. The objection is heard.

EMERGENCY PETROLEUM ALLOCATION EXTENSION ACT OF 1975

The Senate resumed the consideration of the bill (S. 1849) to extend the Emergency Petroleum Allocation Act.

The PRESIDING OFFICER. The Senate will now proceed to vote on S. 1849, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 1849) to extend the Emergency Petroleum Allocation Act.

The PRESIDING OFFICER. The question is, Shall the bill, as amended, pass? The clerk will call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Mississippi (Mr. EASTLAND), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that the Senator from Ohio (Mr. GLENN), and the Senator from North Carolina (Mr. MORGAN) are absent on official business.

I further announce that, if present and voting, the Senator from Ohio (Mr. GLENN), the Senator from North Carolina (Mr. MORGAN), the Senator from Minnesota (Mr. HUMPHREY) and the Senator from Vermont (Mr. LEAHY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is absent on official business.

I further announce that, if present and voting, the Senator from Arizona (Mr. GOLDWATER) would vote "nay."

The result was announced—yeas 62, nays 29, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—62

Abourezk	Hart, Philip A.	Nelson
Allen	Haskell	Nunn
Beall	Hathaway	Pastore
Bentsen	Hollings	Pearson
Biden	Huddleston	Pell
Brooke	Inouye	Percy
Bumpers	Jackson	Proxmire
Burdick	Javits	Randolph
Byrd, Harry F., Jr.	Johnston	Ribicoff
Byrd, Robert C.	Kennedy	Roth
Cannon	Leahy	Schweiker
Case	Magnuson	Sparkman
Chiles	Mansfield	Stafford
Church	Mathias	Stennis
Clark	McClellan	Stevenson
Cranston	McGovern	Stone
Culver	McIntyre	Symington
Eagleton	Mondale	Talmadge
Ford	Montoya	Tunney
Hart, Gary W.	Moss	Weicker
	Muskie	Williams

NAYS—29

Baker	Garn	McGee
Bartlett	Gravel	Packwood
Bellmon	Griffin	Scott, Hugh
Brock	Hansen	Scott, William L.
Buckley	Hatfield	Stevens
Curtis	Helms	Taft
Dole	Hruska	Thurmond
Domenici	Laxalt	Tower
Fannin	Long	Young
Fong	McClure	

NOT VOTING—8

Bayh	Goldwater	Metcalf
Eastland	Hartke	Morgan
Glenn	Humphrey	

So the bill (S. 1849), as amended, was passed as follows:

S. 1849

An act to extend the Emergency Petroleum Allocation Act

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

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Emergency Petroleum Allocation Extension Act of 1975".

EXTENSION OF MANDATORY ALLOCATION PROGRAM

SEC. 102. Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975," wherever it appears and inserting in lieu thereof "March 1, 1976,".

TITLE II

SEC. 203. Section 11(c)(2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by adding the following new subparagraph:

"(E) Price trends and related developments for coal and for other major energy sources which are not subject to direct price regulation at any level by the United States Government. As soon as practicable after the date of enactment of this subparagraph and at such times thereafter as he deems appropriate, the Federal Energy Administrator, after consultation with such other persons and agencies as he deems appropriate, shall provide an assessment of the relationship between price trends and related developments for energy sources covered by this subparagraph and energy policies, including any recommendations he may have in connection with such assessment.".

Mr. JACKSON. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 1849.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS ON S. 1849

EXTENSION OF EMERGENCY PETROLEUM ALLOCATION ACT

Mr. MOSS. Mr. President, I rise in support of S. 1849, extension of the Emergency Petroleum Allocation Act. Passage of the bill is vital to protect consumers from unjustifiable oil company price increases, to preserve the positive trends we have seen recently in the inflation rate, and to prevent a new explosion of job layoffs in industry.

At the outset, I want to make clear that our ultimate goal must be to restore free markets in energy. Free markets are unquestionably a more efficient allocator of economic resources and a more effective protection against unfair prices than Government regulation can ever be. It is equally clear, however, that there is not a free market in oil in the United States today. The price of oil, left unregulated by the Federal Government, is pegged to the monopoly price set by the OPEC cartel. That price is now around $13.40 per barrel, and every indication points to at least another $2 per barrel increase in the fall when the OPEC oil ministers again meet.

If the Emergency Petroleum Allocation Act is not extended, the Government's authority to control oil price increases will lapse on August 31. There will quickly follow a series of petroleum price increases which would be disastrous for the consumer, the farmer, business and the economy as a whole. At present, about 40 percent of our domestically produced oil sells at the OPEC level, $13.40. The end of price controls will mean a rise in the other 60 percent from its present price of $5.25 per barrel to the $13.40 monopoly level. That will mean increases in the price of gasoline which will make the 4 cents rise of July 4 seem like peanuts. And gasoline price hikes are only the beginning.

The price of food will skyrocket, because agriculture—as every farmer knows—is energy-intensive, and fertilizer is made from petroleum products.

Home heating and electric utility bills will continue to skyrocket upward—up nearly 25 percent this past year.

The cost of all goods and services will inflate because of increased transportation and material costs.

The President has belatedly recognized that instant decontrol of oil prices is a prescription for economic disaster. I am glad to see him now supporting an

94TH CONGRESS
1ST SESSION

S. CON. RES. 54

IN THE SENATE OF THE UNITED STATES

JULY 19 (legislative day, JULY 10), 1975

Mr. MANSFIELD (for himself and Mr. HUGH SCOTT) submitted the following concurrent resolution; which was ordered held at the desk

JULY 21, 1975

Considered and agreed to

JULY 22 (legislative day, JULY 21), 1975

Reconsidered and agreed to by unanimous consent

CONCURRENT RESOLUTION

Providing for a conditional adjournment of the Congress from August 1, 1975, until September 3, 1975.

Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, August 1, 1975, they stand adjourned until 12 o'clock noon on Wednesday, September 3, 1975, or until 12 o'clock noon on the second day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.

SEC. 2. The Speaker of the House of Representatives and the President pro tempore of the Senate shall notify the Members of the House and the Senate, respectively, to reassemble whenever in their opinion the public interest shall

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warrant it or whenever the majority leader of the House and the majority leader of the Senate, acting jointly, or the minority leader of the House and the minority leader of the Senate, acting jointly, file a written request with the Clerk of the House and the Secretary of the Senate that the Congress reassemble for the consideration of legislation.

SEC. 3. During the adjournment of both Houses of Congress as provided in section 1, the Secretary of the Senate and the Clerk of the House, respectively, be, and they hereby are, authorized to receive messages, including veto messages, from the President of the United States.

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDGINGTON OIL COMPANY, a corporation, Plaintiff, v. FEDERAL ENERGY ADMINISTRATION, an agency of the United States, and FRANK G. ZARB, Administrator, of the Federal Energy Administration Defendants.	Civil Action No. CV-75-1490-LTL

CERTIFICATION OF VERNON AFFIDAVIT

I hereby certify that the attached copy of the Affidavit of John Vernon, dated January 21, 1975, which I understand is to be filed with this Court in connection with the above-referenced litigation as Exhibit A to Defendants' Memorandum in Opposition to Plaintiff's Motion for Preliminary Relief, is a true and correct copy of said Affidavit as originally signed by me in January 1975.

John Vernon
JOHN VERNON

Subscribed and sworn to before me this 26th day of June, 1975.

Thomas H. Kemp
NOTARY PUBLIC

My commission expires:
My Commission Expires September 14, 1979

No. 37 E

EXHIBIT A

AFFIDAVIT OF JOHN VERNON

I, JOHN VERNON, being first duly sworn, on oath, depose and state as follows:

1. I am Associate Assistant Administrator for Fuels Management, Office of Operations, Regulations and Compliance of the Federal Energy Administration ("FEA"). Prior to joining FEA's predecessor agency, the Federal Energy Office ("FEO"), on February 25, 1974, I was associated with Creole Petroleum Corporation, a Delaware corporation affiliated with the Exxon Corporation and headquartered in Caracas, Venezuela. My last position at Creole was as Senior Advisor. I hold a Bachelor of Science degree in Chemical Engineering from Massachusetts Institute of Technology and a Master of Business Administration degree from Harvard University. I was an active participant in FEA's decision to implement the cost equalization program described below, and my office is responsible for the administration of that program.

I. <u>The Emergency Petroleum Allocation Act of 1973 and Agency Regulations Relating to Crude Oil.</u>

A. <u>Requirements of the Emergency Petroleum Allocation Act</u>

2. FEA is responsible for the development and implementation of a program for the mandatory allocation and pricing of crude oil, residual fuel oil and each refined petroleum product under the Emergency Petroleum Allocation Act of 1973 ("Allocation Act"), which became law on November 27, 1973. In Section 4(b)(1), Congress specified objectives which must be met, "to the maximum extent practicable," in any allocation program, including the following:

"(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, non-branded independent marketers, and branded independent marketers;

* * *

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

* * *

"(H) economic efficiency; and

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

3. In Section 4(c)(1) of the Act, Congress required that the mandatory allocation program for crude oil shall, "to the extent practicable and consistent with the objectives of subsections (b) and (d)," result in the allocation 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 refiner during the corresponding period of 1972, adjusted to provide for the aggregate shortfall, if any, in total crude supplies under 1972 levels. The term "independent refiner" is defined in Section 3(3) of the Allocation Act as any refiner that obtains more than 70 percent of its refinery input from sources not subject to its control and which markets a substantial portion of its gasoline through independent marketers. The term "small refiner" is defined in Section 3(4) of the Allocation Act as any refiner whose total refinery capacity does not exceed 175,000 barrels per day.

B. F 's Pri Regulator Progr Relat g to Crude Oil

4. The principal components of the regulatory program, other than the cost equalization program at issue here, which have been devised by FEA to regulate the allocation and pricing of crude oil, are described briefly in the paragraphs below. Each of these programs is currently in effect and operates in conjunction with the cost equalization program.

(1) The Two-Tier Pricing System

5. Beginning in 1971, a series of "leapfrogging" settlements were entered into between members of the Organization of Petroleum Exporting Countries and the major international oil producers whi rapidly increased the posted price of crude oil, each settlement being somewhat higher than the last and each driving up the price of crude oil in the world market, including the price of domestic crude oil. Then, during the Summer of 1973, the Organization of Petroleum Exporting Countries, by concerted action, raised their oil prices substantially above previous levels. For at least the previous 10 years, the U.S. had grown increasingly reliant on for crude oil due largely to a leveling off of domestic production, a therefore the nation had no choice but to accept the 1973 price increases if current levels of supply were to be maintained. Thu in August 1973, when the Cost of Living Council devised a system price-controls for the petroleum industry, it concluded that, while most domestically-produced crude oil had to be subjected to ceiling price controls to minimize as much as possible the inflationary impact of worldwide oil price increases, certain domestically-produced crude oil had to be exempted from ceiling prices to encourage domestic production over the long run.*/

6. The solution was the "two-tier" price system for domestic crude oil, promulgated by the Council on August 19, 1973 as part of the Phase IV petroleum price regulations (6 C.F.R. § 150, Subpart L) and subsequently adopted on January 14, 1974 as Part 212, Subpart D of the FEO Mandatory Petroleum

*/ The first sale of imported crude was also exempted from ceil prices because it was not possible to obtain sufficient imported supplies at a controlled price.

Allocation and Price Regulations. Briefly, under the two-tier pricing system, FEA imposes a ceiling price on domestic crude oil produced from a given property when production is at or below the level of production from the same property in the same month of 1972 (i.e., "old" oil). This ceiling price is basically the May 15, 1973 posted price plus $1.35, or about $5.25 per barrel on the average.*/ Crude produced in excess of 1972 production levels from the same property (i.e., "new" oil) is exempt from price controls, and each barrel of new oil produced releases from price controls a barrel of old oil (i.e., "released" oil). Thus, for example, if a particular property produced 100 barrels per day in 1972 and 110 barrels per day in 1974, 90 barrels would have to be sold at the FEA-imposed ceiling price, and 20 barrels (10 barrels of "new" oil plus 10 barrels of "released" oil) could be sold at the free market price. Also exempted from price controls were (i) by Congress in the Allocation Act, the first sale of crude oil produced from "stripper" wells (i.e., wells which produce less than 10 barrels per day) and, (ii) by FEA in its regulations, the first sale into U.S. commerce of imported crude oil.

7. Crude oil prices are significant not only at the producer level, but also at the refiner level and at the marketing level (i.e., the resellers of refined petroleum products), since FEA regulations permit refiners and resellers to pass through increased crude oil costs in the sale of refined products. Under the price rules, a refiner may charge no more than its May 15, 1973 price on a given product plus an adjustment for net increases (over May 1973) in the cost of crude

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*/ More specifically, under Section 212.73 of FEA regulations, the ceiling price for a particular grade of domestic crude in a particular field is (i) the highest posted price for that grade of crude at that field on May 15, 1973 or, in the absence of such a price, the posted price for comparable crude at the nearest field on that date, plus (ii) a maximum of $1.35 per barrel.

oil (foreign and domestic) and purchased refined products. Basically, a refiner's prices will reflect its average weighted crude oil costs plus its May 15 profit margin or markup. While May 15 profit margins may vary slightly from firm to firm, the largest contributor to varying lawful prices charged by refiners is the difference in average weighted crude costs attributable to the operation of the two-tier pricing system. These different lawful prices are passed on at the wholesaler and retailer level as such resellers are required to remain within their May 15, 1973 markup on products, while passing through any increased product costs from their suppliers.*/

(2) The December 1 Rule -- Section 211.63(a)

8. The imposition of the Arab oil embargo in October 1973 and the sharp increases in the posted prices of foreign crude oil greatly intensified the demand for price-controlled domestic crude oil during the Fall of 1973. Shifting of normal supplier/purchaser relationships was occurring during December 1973 in anticipation of the new regulatory program required by the Allocation Act of November 27, 1973, which many refiners assumed would result in a freeze of contractual relationships between suppliers and purchasers, but not before the end of 1973. In response to these considerations, FEA adopted the so-called "December 1" rule of § 211.63(a), which provides in substance that supplier/purchaser relationships

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*/ FEA's price regulations carry out the provisions of Section 4(b)(2) of the Allocation Act, which provide that in specifying prices for allocated products (or in prescribing the manner for determining them), FEA must use a single date in computing the base prices at all levels of marketing and distribution and FEA must permit a "dollar-for-dollar pass through" of net increased product costs to all marketers and distributors at the retail level.

in effect under contracts for sales, purchase and exchanges of domestic crude oil on December 1, 1973 shall remain in effect for the duration of the crude oil allocation program. While the December 1 rule freezes supplier/purchaser relationships and maintains essential supply channels, the rule was not designed to and does not achieve a full and equitable allocation of price-controlled old oil, the goal FEA's cost equalization program is intended to achieve.

(3) The Crude Oil Mandatory Sales ("Buy/Sell") Program.

9. Another major element in FEA's crude oil regulatory program is the Mandatory Crude Oil Sales Program set forth in 10 C.F.R. § 211.65. The purpose of this program is to correct the supply imbalances between the major integrated refiners on the one hand -- which have relatively greater direct control over both domestic and foreign crude oil production -- and the small and independent refiners on the other -- which had been dependent upon foreign crude oil or upon domestic crude oil delivered by the majors which, in turn, replaced it with relatively inexpensive foreign crude oil. Furthermore, because of the increasing price disparity between foreign and domestic crude oil, the buy/sell program was also designed as a pricing mechanism by which small and independent refiners would be given some access to the benefits of price-controlled domestic crude oil. Thus, the buy/sell program has served both a supply and a pricing function. As described below, the program's supply objective is to assure each small and independent refiner preferential allocations so that they may obtain volumes not less than the volumes they had in 1972. See Allocation Act, Section 4(c)(1). With respect to price considerations, buy/sell program sales are basically made at a refiner-seller's weighted average price (with certain adjustments), thereby giving small and independent refiners some access to the benefits of price-controlled oil and

ameliorating, to some extent, the overall price inequities that would otherwise prevail as a result of uneven distribution of price-controlled crude oil among refiners.

10. Under the buy/sell program, each "small refiner" and "independent refiner" (as those terms are defined in Sections 3(3) and 3(4) of the Act, respectively) is entitled to purchase in each three-month allocation quarter an amount of crude oil equal to the difference between (1) one-quarter of the crude oil it refined (i.e., its "runs to stills" or "crude runs") during the year 1972 and (2) the volume of its runs to stills during the period February through April 1974 (without regard to buy/sell purchases or sales by the refiner during that period), subject to certain adjustments not pertinent here. Purchases by small and independent refiners, called "refiner-buyers," are made from the 15 U.S. refiners which are neither "small" nor "independent" within the meaning of the Allocation Act. This group, called "refiner-sellers," includes the 15 largest integrated oil companies in the United States, except for several firms classified as independent refiners by reason of their relatively small amount of controlled production. Each refiner-seller's share of the total sales obligation under the buy/sell list is fixed; it is the ratio of each refiner-seller's refinery capacity to that of the total refinery capacity of all 15 refiner-sellers as of January 1, 1973.

11. FEA's special pricing rules governing allocation sales of crude oil under the buy/sell program, 10 C.F.R. § 212.94, provide that a refiner-seller may charge the weighted average price of all crude oil delivered to it in the area of the country where the sale is made in the month in which the sale is made. The seller may also add to the price a "handling fee" of 30 cents per barrel and may adjust the

price to take into account the fact that the crude oil sold may be of a higher or lower grade than the seller's average grade. Further adjustment may be made, if necessary, to shift to the buyer transporation costs associated with the sale. The program also allows a refiner-seller to pass through on a dollar-for-dollar basis in its prices for refined petroleum products any increased costs related to replacing allocated crude with higher-priced, foreign crude oil. 10 C.F.R. § 211.83(c). Therefore, a refiner-seller is permitted by FEA's pricing rules to recover fully the product and non-product costs associated with sales made under the program.

II. The Cost Equalization Program.

12. The newest component in FEA's regulatory program concerning crude oil is its Cost Equalization Program, 39 F.R. 42246 (December 4, 1974), the development and specifics of which are described in the paragraphs that follow.

A. Introduction

13. As previously noted, not all crude oil refined in the United States is subject to FEA's ceiling price regulations. Imported, new, released and stripper well oil, constituting approximately 60 percent of all crude oil runs to stills in domestic refineries, is priced at essentially the world market, while the balance, old oil, representing approximately 40 percent of all crude runs domestically, is subject to the ceiling price regulations. However, because of the two-tier pricing system and the dramatic price increases of foreign crude oil over the last year, as a result of the Arab oil embargo and concerted action taken by the Organization of Petroleum Exporting Countries, a substantial difference has developed between the average price of domestic old oil and free or world market prices of crude oil.

14. When the Cost of Living Council imposed controls on old domestic crude oil in August 1973, the per barrel price was set at May 14, 1973 posted prices plus $.35, which resulted in an average price of approximately $4.25, and remained there until the price was raised $1.00 to the current level of approximately $5.25 per barrel on December 19, 1973. During this same period, however, posted prices on representative foreign crude oil (Arabian light crude) increased over eight dollars per barrel, from approximately $3.07 per barrel in August 1973 to approximately $11.65 in January 1974. The increase in foreign crude prices has also increased domestic prices on new, released and stripper well oil to a current price in excess of $10.00 per barrel, as compared with an August 1973 price of around $5.00.

15. With the growing differential between the ceiling price for old oil and free market prices for stripper, new, released and imported oil, the uneven distribution of old oil among all refiners (particularly as it affected certain small and independent refiners) began to show up in significant price differences among such refiners in sales of refined products. Since refiners' prices on refined products are a function of their May 15, 1973 prices plus their increased crude oil costs, these price differentials were directly attributable to the different proportions of old oil which such refiners used to compute their overall increased crude oil costs.*/ Furthermore, price differentials among refiners

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*/ As shown in Attachment A hereto, a graph of refiner crude costs, the price disparity caused by the two-tier pricing system has created a considerable range of crude oil costs. For example, in May 1973, prior to the implementation of the two-tier system, the average composite crude cost for major integrated refiners was approximately $3.82 per barrel, while the average cost for small and independent refiners was about $3.91. A considerable disparity in average composite crude costs, however, had developed by July 1974: the average composite crude cost for major integrated refiners was around $9.08 per barrel; the average cost for small and independent refiners was about $9.96. This disparity, although now slightly reduced by sales under the buy/sell list, is nevertheless still significant.

were, of course thereafter translated into price differentials at wholesale and retail levels as independent marketers passed through their increased product costs on a dollar-for-dollar basis.*/

16. During the shortages of last Winter and Spring, these price differentials were passed through to the ultimate consumer with the anamolous result of purchasers paying significantly different prices for the same product. With the relaxation of the severe, worldwide supply shortage, following the termination of the Arab oil embargo, price competition began to reemerge for certain products. While the differences in refiners' average crude oil costs remained, competition in the marketing of refined products caused the differences in retail prices to be narrowed.

17. To meet competition, however, many refiners and marketers (with higher input costs) had to endure a severe cost-price squeeze. Many small and independent refiners and independent marketers -- unable to absorb the full amount of such costs -- were required to charge higher prices for their products with a consequential loss of market shares. The adverse effects of increased costs were felt especially at the marketing level. In many cases, high-cost, independent and small refiners were supplying their marketers at roughly the same cost as the retail-prices of major branded marketers. The inevitable result for many marketers was a drastic reduction in sales volume or continued operations at a loss.

18. In short, the two-tier crude oil pricing structure, which was deemed necessary to minimize the inflationary impact of world crude oil prices and to maintain incentives for domestic production, created economic distortions and

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*/ An "independent marketer" is a person who is not a refiner and who is engaged in the marketing or distributing of refined petroleum products. See Allocation Act, § 3(1),(2).

interfered with market mechanisms because of the uneven distribution of old crude oil among domestic refiners. Moreover, since independent marketers and many small and independent refiners were disadvantaged by this development, the distortion threatened the competitive viability of the independent sector of the petroleum industry.

19. As previously noted, FEA's December 1 rule and buy/sell program did not offer a complete solution to the conditions which had developed. FEA's December 1 rule had been only partially successful in addressing the problem of unequal crude oil input cost to refiners. By freezing all crude oil supplier/purchaser relationships as of December 1, FEA prevented further moves by the major integrated refiners to divert crude oil, including low-cost old oil, to their own refineries. The December 1 "freeze," however, did not assure the equitable allocation of old oil. The price rules governing sales made to comply with the mandatory crude oil allocation program -- the buy/sell program -- had a modest cost equalization effect on the small and independent refiners benefiting from that program. That cost equalization effect, however, was insufficient, since that program was principally designed to assure adequate supplies and the firms entitled to purchase the highest volumes of crude oil under that program were not necessarily the ones suffering the most from a lack of access to low-cost old oil.*/

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*/ Although there are comparative surpluses of crude oil on the world market and the cost equalization program (which in large part supplants the cost equalizing function of the buy/sell program) has now been adopted, there are still important reasons for retaining the buy/sell program. First, as described below, entitlements are issued based on volumes of crude runs, and small and independent refiners need a regulatory guarantee of purchases under the buy/sell list to maintain run levels. Second, a significant number of small and independent refiners, due to their location or other factors, are physically unable to receive crude supplies in the world market and must rely on their rights to purchase crude oil under the buy/sell program.

20. FEA was thus confronted with conditions which ran contrary to various objectives of the Allocation Act. With the relaxation of the worldwide shortage, an uneven distribution of old oil (which, given demand, is and will remain in short supply) began to produce economic distrotions which, contrary to the Allocation Act, interfered with the normal (and desirable) operation of market mechanisms, i.e., price competition. Section 4(b)(1)(I). Further, the price differentials encountered at all levels of the distribution chain ran counter to the statutory objective of equitable allocation of refined products at equitable prices among all regions of the U.S., all sectors of the petroleum industry and among all users. Section 4(b)(1)(F). Finally, the impact of these developments on independent marketers and many small and independent refiners ran counter to FEA's special mandate to protect the competitive viability of these components of the petroleum industry. Section 4(b)(1)(D).

21. For all of these reasons, FEA felt compelled to take action to correct the consequences of the inequitable allocation of old oil. The objective was clear -- to assure equal access to the benefits of low-cost, domestic crude oil so that all refiners and all marketers would have roughly comparable input costs.*/ Input costs were comparable in the petroleum industry prior to the rapid rise in world oil prices and that situation would have continued but for FEA's mandate to regulate prices on domestic crude oil and the resulting two-tier pricing system.

22. To accomplish this goal, FEA could have simply allocated old crude oil equitably among all refiners and required the actual transfer of voluminous amounts of old oil. This approach, however, would have entailed enormous

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*/ Or stated another way, the objective was to insure that all refiners and marketers shared equally in the benefits of price-controlled oil and the burdens of free market price oil.

administrative burdens, both to the government and to the industry. As such, the scheme was rejected as contrary to the statutory goal of economic efficiency. Section 4(b)(1)(H). Instead, FEA devised a means of achieving the equitable allocation of old oil through the issuance of "entitlements".*/

23. Under FEA's cost equalization program, in order for a refiner to keep barrels of old oil in excess of its proportionate share of old oil, it must purchase an "entitlement" from a refiner who has less than its proportionate share of old oil. To effectuate this system, FEA issues each refiner enough entitlements to refine the same proportionate share of old oil as any other refiner. A refiner with more than its

*/ FEA's decision, moreover, takes into account the fact that even if FEA had required a system of physical allocation of old oil among all refiners, under FEA regulations, refiners probably would have undertaken "exchanges" in order to minimize unnecessary movements of oil. For example, a refiner with more than its share of old oil (i.e., a "refiner-seller" who would be required to sell old oil to a refiner with less than its share) probably would have swapped such old oil for a refiner-buyer's new, released, stripper or imported oil rather than transship the old oil and purchase other crude oil to replace it. The refiner-seller would charge approximately $5.25 for each barrel of old oil required to be sold and would have to pay roughly $10.25 for each barrel of new, released, stripper or imported oil acquired in the exchange. However, since neither refiner would, in all likelihood, want to transship physically the oil, they could "net out" the transaction and the refiner-seller would pay $5.00 per barrel (the difference between the two prices) to the refiner-buyer for the right or "entitlement" to keep the price-controlled old oil at its refinery. If all refiners engaged in such swaps and accounted for the old oil that was required to be sold as a paper transaction, the result would be the same as an actual physical allocation of old oil. Similarly, the entitlements program, as devised, fully recognizes these practical considerations and achieves the end result of physical allocation without actually requiring unnecessarily burdensome physical transshipments.

share of ( ) oil will have to buy entitlements to cover those extra barrels of old oil; a refiner with less than its share will have excess entitlements which it can sell. In this manner, all refiners share equally in the benefits of the two-tier pricing system.

24. The results of buying and selling entitlements are precisely the same as if old oil were physically allocated among all refiners; namely, refiners will have roughly equal average weighted crude oil costs. This is accomplished by treating the cost of an entitlement a refiner purchases as part of its crude oil costs and by requiring the proceeds from the sale of an entitlement to be offset against the crude oil costs of the refiner selling the entitlement. Through this mechanism, FEA is able to minimize the economic distortion caused by the two-tier pricing system by distributing equitably to all refiners the benefits created by FEA's price controls on old oil. In other words, FEA's cost equalization program does no more than insure that certain elements of the petroleum industry are not given an undue competitive advantage solely because of the two-tier pricing system.

25. Furthermore, the effects of cost equalization at the refiner level will, of course, filter down the distribution chain to wholesalers and retailers, thereby minimizing adverse, downstream effects on marketers of petroleum products and preserving the competitive viability of independent marketers. Inequitable price differentials to consumers in the same or different regions of the country will also be eliminated. Accordingly, the market mechanism of price competition can operate without the distortions produced by inequitable distribution of low-cost product among the various sectors of the industry.

26. To make this cost equalization program work and to be consistent with its overall purpose and rationale, FEA concluded that it was also necessary to issue entitlements to certain importers of refined petroleum products. Basically, FEA concluded that it would be inequitable to address the problem of disproportionately high product costs to independent marketers who buy from domestic refiners dependent upon foreign crude oil and to ignore the plight of independent marketers who purchase finished products from foreign or offshore refineries. For FEA felt that Congress was no less concerned with the competitive viability of this latter group of independent marketers. See Allocation Act, § 4(b)(1)(D). Further, the goal of insuring the sale of refined products at equitable prices among all regions would not have been met by a cost equalization program which ignored the fact that certain regions are more heavily dependent than others on imports of finished products. Accordingly, FEA's cost equalization program was designed, "to the maximum extent practicable," to provide all refiners and independent marketers (regardless of their source of supply) an equitable share of the benefits of price-controlled, old oil.

B. Rulemaking Proceeding.

27. FEA initiated its expansive, three-month rulemaking proceeding concerning the allocation of old oil with a notice issued August 28, 1974, 39 F.R. 31650 (August 30, 1974). The notice of proposed rulemaking, Attachment B, contained the principal proposal and four alternatives, on

all of which comments were requested.*/

28. Following the publication of the August 28, 1974 notice in the Federal Register, the agency received over 600 written comments from interested parties, and public hearings were held on September 24 and 25, 1974, at which statements were presented by over 40 interested parties. After carefully considering the contents of all written comments received and testimony presented, FEA significantly modified its original proposal and, on November 7, 1974, issued a further notice of proposed rulemaking. 39 F.R. 39740 (November 11, 1974). The further notice of proposed rulemaking, Attachment C, contained a proposal which substantially followed the form of the principal August 28, 1974 proposal, but with at least three significant modifications.

-- A provision was added making a defined class of marketers historically reliant on certain imported finished products eligible to receive entitlements for imported residual fuel oil, home heating oil and No. 2-D diesel fuel. For each month, importers were to be issued that number of entitlements whose value equaled the difference between the weighted average cost of the imported product and the weighted average cost of the domestic product.

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*/ In addition to the main proposal and the four alternative proposals, the August 28 notice also requested comments on several issues relating to the principal proposal. These issues included: basing entitlement issuances on refinery runs rather than capacity; special provisions for processing agreements for non-refiners; criteria that could be utilized to determine if a refiner was operating at reduced levels due to entitlements sales; the desirability of providing for a weighted entitlement distribution in favor of small refiners; and not requiring the participation of refiners with old oil supply-to-capacity ratios within a specified percentage range.

-- The August 28, 1974 proposal had specified that entitlement calculations would be based upon each refiner's total current refinery capacity, but invited comment as to whether the volume of a refiner's crude oil runs to stills (i.e., barrels of crude oil actually refined) should instead be used as the basis for entitlement calculations. After receipt of numerous comments on this issue, FEA, in the November 7, 1974 further notice, proposed utilizing crude oil runs to stills as the basis for issuance of entitlements.

-- The August 28, 1974 proposal also solicited comments on alternative provisions for a weighting in the calculation of the amount of entitlements to be distributed to small refiners. The small refiner "bias" provided for in the November 7, 1974 further notice was based on the sliding scale used in determining the issuance of oil import tickets under the Oil Import Regulations. Thus, in addition to receiving entitlements under the general provisions of the program, small refiners with daily average volumes of crude oil runs to stills of less than 175,000 barrels were to receive a percentage of entitlements that increased in inverse proportion to their volume of crude runs to stills.

29. Over 175 comments were received by FEA with respect to the further notice of rulemaking. After carefully considering the contents of the written comments received, FEA, on November 29, 1974, issued and adopted the final rule for the allocation of old oil. Attachment D, 39 F.R. 42246 (December 4, 1974). The final rule revised the November 7 notice in two respects. First the small refiner "bias" contained in the November 7 notice was determined to be

insufficient to ensure the competitive viability of small refiners. Thus, the final rule provides for an increased bias by making it equivalent to the maximum economic preference historically received by small refiners under the Oil Import Regulations. Second, the final rule modified the basis on which entitlements are issuable to importers of residual fuel oil and home heating oil. FEA determined that importers of residual fuel oil should receive entitlements on the same basis as imports of home heating oil, and that a fixed fractional entitlement value per barrel of imports should be established. See paragraph 35 below.

30. Since the issuance of the final rule, FEA has taken two substantive actions relating to the old oil allocation program. First, pursuant to 10 C.F.R. § 211.67(i)(4), the agency set the value of an entitlement at $5.00 for the month of November 1974, the first base month to which the cost equalization program applies. 39 F.R. 43103 (December 10, 1974). The other action taken by FEA was to amend the November 29, 1974 rule, on an emergency basis, so as to allow those small refiners which, because of relatively high-level old oil runs, would be <u>buyers</u> of entitlements to phase into the program over a three-month period. Attachment E, 39 F.R. 43814 (December 19, 1974).*/

C. <u>Principal Features of the Cost Equalization Program</u>

31. As earlier described, FEA devised a means for achieving the equitable allocation of the old oil through the issuance of entitlements rather than through the physical allocation of voluminous amounts of old oil. FEA's program provides that each refiner will be issued that number of

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*/ On December 20, 1974, FEA also issued certain corrective and technical amendments to the cost equalization program, concerning the small refiner bias and the treatment of buy/sell sales. 39 F.R. 44710 (December 27, 1974).

entitlements" f[illegible] ea[illegible] month equal to that [illegible]fi[illegible]'s proportionate share of old oil in the U.S., adjusted upwa if the refiner is a beneficiary of the small refiner bias. Additionally, a limited number of eligible firms (includin refiners) which import residual fuel oil and home heating (which includes No. 2-D diesel fuel) are issued entitlemen based on the volume of such products imported. An "entitle is defined as the right of a refiner owning the entitlement to include one barrel of old oil in its adjusted crude oil receipts in a particular month.*/ Because the old oil allocation program is designed to remove inequitable conditi caused by the two-tier pricing system, the price of an entitlement has been set by FEA, with reference to the differential between controlled and uncontrolled crude oil prices, at $5.00. A refiner having a greater volume of old oil in its adjusted receipts than the volume permitted by entitlements issued to it is required to purchase from a refiner or eligible firm that has entitlements availabl for sale, a sufficient number of entitlements to cover the excess.

32. Refiner Entitlements. The number of entitlements that a refiner receives is based on its percentage of old oil to its total crude oil runs to stills. 10 C.F.R. § 211.67(a)(1). The use of crude runs and the rejection of the use of refining capacity as a basis for entitlement calculations reflects FEA's recognition that utilization of refining capacity would result in less effective cost equalization

*/ Refiners must differentiate between old, new and released oil for billing purposes, and billings often arrive late and are subject to further adjustments. Under the cost equalization program, such billings which have the effect of correcting the amounts of old oil run by a refiner in a prior month (not including months prior to the beginning of the program) are reflected in adjustments to the current month's receipts, in order that the program can remain current even if billings are not. (See definition of "adjusted crude oil receipts." 10 C.F.R. § 211.62.)

relative to product output than use of crude runs to still. Furthermore, the use of crude runs encourages full utilizat of domestic refinery capacity, while the use of refining capacity would have provided an incentive to maintain idle, inefficient capacity. Substantial administrative problems concerning enforcement of minimum operating levels for refiners would also have been encountered under a capacity-based program.

33. In order to determine the precise number of entitlements issuable to a refiner, i.e., a refiner's equitab share of the total volume of old oil received into inventorie in a given month, a computation is made for each month to establish the "adjusted national old oil supply ratio," i.e., the volume of old oil included in the aggregate crude oil receipts for all refiners, expressed as a percentage of the total volume of the crude oil runs to stills for all refiners for that month. For example, if the total number of barrels of old oil was 200 million and the total number of crude runs is 500 million, the old oil supply ratio is 2/5 or 40 percent. Thus, if all old oil were equitably allocated among all domestic refiners, each refiner would run 40 percent old oil. Since small refiners and importers of certain imported products (including refiners) will be issued entitlements in addition to those to be received on the basis of crude run levels, the total volume of old oil used to calculate the national ratio of old oil runs must be reduced by the number of entitlements so provided. Therefore, in the aforementioned example, the ratio would be determined as follows:

$$\frac{200 \text{ million} - x - y}{500 \text{ million}}$$

where x is the number of additional entitlements given to small refiners pursuant to the small refiner bias, and y the number of entitlements given to eligible firms for imported products. Having established an adjusted national old oil supply ratio, that ratio is applied to each refiner crude runs and each refiner receives entitlements for that percentage of its crude runs.

34. Small Refiner Bias. In addition to the number of entitlements it might otherwise receive as a refiner, a small refiner (i.e., having a refinery capacity of less than 175,000 barrels per day) has, as noted, an additional "bias" weighted in its favor. The amount of the bias, which on a percentage basis becomes greater as crude oil runs to stills become smaller, was intended to be at least equal to the dollar value (with an inflation adjustment) of the highest preference afforded small refiners under the Oil Import Program during that period when oil import tickets were selling above one dollar. This bias recognizes (i) the historical position of small refiners, (ii) the relatively higher operating costs and capital expenditures of small refiners and (iii) the fact that such small refiners in many cases must market (and traditionally have marketed) their products at a lower price than the products of the major branded refiners. Accordingly, in order to help preserve the competitive viability of this class of refiners, the program provides that refiners with a daily average volume of crude oil runs to stills of less than 175,000 barrels for a particular month shall be issued additional entitlements for each day of that month equal to an applicable percentage of that average daily volume. That percentage varies with the daily average volumes of small refiners' crude runs to

stills for that month, up to 12.38 percent of daily average volume for refiners with a daily average volume of less than 10,000 barrels. 10 C.F.R. § 211.67(e).

35. Importer Entitlements. The decision to include a limited number of product importers in the class of persons eligible to receive entitlements was made in recognition of the Allocation Act's objectives of preserving the competitive viability of independent marketers and assuring the equitable distribution of refined products at equitable prices among all regions and areas of the United States. Section 4(b)(1)(D), (F). Since a cost equalization program at the refinery level would not place marketers dependent on certain higher-priced, imported finished products in a competitive posture and since it would be unfair to equalize input costs for independent marketers dependent upon domestically refined products, but not for independent marketers dependent upon foreign-produced products, FEA designed its cost equalization program so that marketers reliant upon certain imported finished products would be eligible to receive entitlements for their imports and could sell entitlements to refiners that need them.

36. Persons eligible for entitlement issuances are certain importers of residual fuel oil and No. 2 heating oil (which includes No. 2-D diesel fuel) referred to as "eligible firms." FEA regulations define an "eligible firm" so as to include only that well-defined group of historical marketers of such imported products. See 10 C.F.R. § 211.62. The "eligible products" were singled out for inclusion because they account for the major portion of finished product imports into the United States. The East Coast in particular is substantially dependent on imports of these products. Additionally, because of the volume of these products imported,

they possess the greatest potential for significant adverse economic impact when import prices rise above prevailing domestic prices in the event of unexpected demand increases or supply shortages. Imports of other finished and unfinished products, on the other hand, are not as significant in the overall domestic market for petroleum products, and it was determined that inclusion of such products in the program would pose substantial administrative burdens and technical problems. Moreover, it was feared that inclusion of more products than necessary would create an undue incentive to import products and would operate as a disincentive to utilize and expand domestic refining capacity.

37. The rules for the issuance of entitlements to importers of No. 2 heating oil and residual fuel oil are as follow:

a. No. 2 Heating Oil. After considering the use of a system that would premise the issuance of entitlements upon the then prevailing differential between domestic and imported prices for the product on a weighted average basis across the nation, FEA concluded that such a system would be administratively infeasible. Difficulties in calculating this differential, given the variations in sulphur content as well as transportation differentials, make such a system unworkable. Moreover, since refiners sell at various prices to different classes of purchasers, FEA would have had to devise a system for obtaining a valid representative domestic price for comparison with the landed cost of imports. FEA thus determined that use of a fixed fractional entitlement value per barrel of imported heating oil offered an equally effective and administratively more feasible method for achieving the goal of protecting the competitive viability of independent marketers. Using current market differentials between imported and domestic heating oil, FEA concluded that a barrel of imported heating oil should be treated as equivalent to 30 percent of a barrel of crude oil included in a refiner's runs to stills. Thus, for every barrel of imported oil an eligible firm imports, entitlements will be issued with a value equivalent to .3 of the value of an entitlement issued on a barrel of crude oil in a refiner's runs for the month concerned. For example, if the adjusted national old oil supply ratio were 40 percent and the value of an entitlement were $5.00, each refiner would receive .4 of an entitlement ($2.00) for each barrel of crude oil included in its crude runs, and each barrel of imported product would receive .3 of this entitlement value, or approximately .12 ($.60) of an entitlement. It is estimated that entitlements will translate into a value of approximately 1-1/2 cents per gallon for imports of heating oil.

b. Residual Fuel Oil. FEA concluded that imports of residual fuel should receive entitlements on the same basis as those of No. 2 heating oil. This approach minimizes economic distortion since heating oil is a major component in refinery blending of currently refined low sulfur residual fuel oils and has many of the same uses as residual fuel oil. Thus, the issuance of entitlements on the same basis to each category of imports will prevent undesirable shifts to middle distillate (heating oil) imports from residual fuel oil imports. See Allocation Act, § 4(b)(1)(I). Furthermore, because residual fuel users in many areas of the country must depend exclusively on imported product, fa. ure o give them entitleme .s w uld mean they would not share proportionally in the benefits of the old oil allocation program, which otherwise would tend to equalize rude costs of domestic refiners. Finally, because the overwhelming majority of the residual fuel consumed in the United States is imported, the price of residual fuel oil consumed in ~~the~~ United States has been determined, for all practical purposes, by the landed cost of imports of this product. As a result, not only has the price of residual fuel oil moved above its historical relationship to the price of other domestically-refined petroleum products, but consumers of residual fuel oil have been effectively precluded from participating in the benefits of FEA price controls on producer sales of domestic crude petroleum. Accordingly, FEA has taken steps to provide some degree of equalization with respect to imports of residual fuel oil, as it does with middle distillates, in order to insure equitable allocation of residual fuel oil at equitable prices among all regions of the United States, among all sectors of the petroleum industry and among all users. See Allocation Act, § 4(b)(1)(F).

38. Entitlements Phase-In for Small Refiners. As previously noted, subsequent to the issuance of the final regulation for the program, FEA concluded that a special provision was necessary to assist those small refiners required to purchase entitlements under the program to adjust on a graduated basis to their entitlement purchase obligations. In so doing, FEA recognized that the immediate imposition of the full entitlement purchase requirement

could have a severe, short-term economic impact on certain of these small refiners and that such refiners would require a period of time to arrange necessary financing and to structure their marketing operations so as to minimize potential cash flow problems. This special provision, which was issued in the form of an emergency rule, provides that a small refiner, as to the first 30,000 barrels per day of its crude runs, does not have to purchase any entitlements for November, has to purchase only one-third the number it would otherwise have to purchase for December and has to purchase only two-thirds the amount that would otherwise be required for January 1975. For February 1975 and subsequent months, small refiners will be required to meet their full purchase obligations.

39. The Price of Entitlements. FEA's entitlement program was devised to overcome the market distortions caused by the two-tier pricing system. Therefore, FEA elected to fix the price of entitlements on a monthly basis with reference to the differential between controlled prices of old oil and market prices of uncontrolled oil during the base month for which the price is set. The price for each entitlement to be transferred in January 1975, based on crude oil data for the month of November 1974, is $5.00 39 F.R. 43103 (December 10, 1974). The notice establishing the $5 price described why a price slightly less than the differential between controlled and uncontrolled prices was chosen:

> "Data available to FEA suggests that the differential between the weighted average price of old oil on the one hand, and new, released, imported and stripper well oil, on the other, is currently about $6. Because this is an estimate comparing averages, however, and because the prices actually being paid by refiners for both old and new oil vary considerably above

Therefore, since FEA pricing regulations allow increased crude oil and product costs to be passed through on a dollar-for-dollar basis, the effect of the cost equalization program will be to eliminate the gross disparities in prices for the same product that have formerly prevailed at all levels of the distribution chain. It is anticipated that entitlements transferred in January 1975, the first month in which entitlements will be bought and sold, will result in some degree of cost equalization in February and will eventually bring prices into a much narrower range.

D. The Program Is Intended by FEA to Fulfill Various Objectives of the Allocation Act

42. As mentioned at the outset of the discussion of the cost equalization program, the disparity in average crude costs among refiners and the greater price competition accompanying recent periods of excess supplies of petroleum products have given rise to conditions requiring FEA action. These conditions have particularly affected small and independen refiners and independent marketers. See Paragraphs 15-21 above. According to comments received by FEA in its rulemaking proceeding, many small and independent refiners have been forced to cut their margins and sustain reductions in their market shares as a result of their disproportionate reliance upon crude oil sold at uncontrolled prices (e.g., new, released and imported).*/ The disparity in crude costs has also affected the competitive viability of a large segment of the independent marketing sector of the petroleum industry reliant upon products refined by high-cost refiners -- in many cases, small and indepe refiners, but in some instances, high-cost major refiners. Also, those marketers dependent upon high-cost imports of certain refined products, particularly No. 2 heating oil,

*/ The dire circumstances confronting many small and independen refiners are reflected in comments filed with FEA, excerpts of which are found in Attachment G.

have been placed at a competitive disadvantage.

43. FEA's cost equalization program is in direct response to these problems. As stated in the preamble to the November 7 further notice of rulemaking, the old oil allocation program was specifically designed by FEA to carry out, "to the maximum extent practicable," various objectives set forth in Section 4(b)(1) of the Emergency Petroleum Allocation Act:

> "To correct these inequitable conditions which FEA has found to exist, FEA intends to adopt this rule to allocate old oil equitably among all domestic refiners and to extend the benefits of such old oil to certain refined products at higher than domestic prices. FEA has concluded that the adoption of this proposed rule is within its authority under the Emergency Petroleum Allocation Act of 1973 (the "Allocation Act") to provide for the equitable allocation of crude oil and refined products, at equitable prices, among all regions of the United States, among all sectors of the petroleum industry and among all users [§ 4(b)(1)(F)]. . . . Moreover, adoption of this proposed rule is warranted to assure the preservation of an economically sound and competitive petroleum industry and, in particular, the competitive viability of independent refiners, small refiners, nonbranded independent marketers and branded independent marketers. [§ 4(b)(1)(D)] Elimination of the economic distortion caused by unequal access to price-controlled domestic crude oil will also minimize unnecessary interference with market mechanisms that would otherwise operate more effectively to help achieve the overall objectives of the Allocation Act. [§ 4(b)(1)(I)] Finally, FEA believes that the adoption of this proposed rule is a necessary precondition to any future relaxation or elimination of allocation or price controls." 39 F.R. 39740.

With respect to the objectives of the Act which FEA believes will be fulfilled by the issuance of entitlement benefits to a limited category of eligible firms importing No. 2 heating oil and residual fuel oil, see Paragraphs 35-37 above.

44. Second, and equally important, is the fact that the program is based on the broad allocation and pricing mandate applicable to FEA under Section 4(a) of the Allocation

Act.*/ Indeed, in connection with the legislation recently passed and signed into law extending the Allocation Act through August 31, 1975 (P.L. 93-511), both the Senate and the House called upon FEA to implement a cost equalization program under the authority granted to it in the Allocation Act. See S. Rep. No. 93-1082, 93d Cong., 2d Sess. at 2 (1974) (The Act "provides ample authority for the FEA to institute a system of price equalization to provide that all segments of the industry benefit from lower-priced domestic oil. The Committee was urged to amend the Act to achieve this objective but has been assured that the FEA intends to institute a price equalization program under existing authority in the immediate future."); H.R. Rep. No. 93-1443, 93d Cong., 2d Sess. at 3 (1974) ("[T]he Act includes adequate authority to permit the FEA to institute a system of price equalization applicable to crude oil, residual fuel oil and refined products to eliminate the regional and competitive inequities which result from a dependence upon high-cost imported oils and petroleum products. The FEA's stated commitment to Subcommittee Chairman Macdonald during the hearings on this bill to move promptly on a price equalization program has convinced the Committee that specific amendments to the Act to compel such action may prove to be unnecessary.")

III. Lack of Irreparable Harm to Buyers of Entitlements.

45. FEA's cost equalization program will not cause irreparable damage to those refiners required to buy entitlements. Under the program and the refiner's price

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*/ Pursuant to Section 4(a), FEA is required to

> "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 regulations. . . ."

rule (10 C.F.R. § 212.83), the amounts expended to purchase entitlements are treated as product costs which may be passed along to customers, on a dollar-for-dollar basis, in the prices the refiner is allowed to charge for its refined products. Thus every cent expended by a refiner for entitlement purchases is allowed by FEA's price regulations to be recovered. To the extent that current competitive conditions will not allow full recovery of the costs of entitlements in current prices, a refiner may, under the pricing rules applicable to refiners, carry those costs over to subsequent months, when competition would not prevent their recovery at that time. 10 C.F.R. § 212.83.

46. During the rulemaking proceeding, FEA received and considered comments from some refiners that they will nevertheless be injured by the program because they will no longer enjoy the competitive advantage of the lower crude costs which they are fortuitous enough to have. They argued that they might therefore suffer an irreparable diminution of their current market shares. While these consequences may possibly result from the program, FEA concluded that they are warranted in the circumstances and, in view of the profits being reported by many major oil companies, are not unjust or likely to threaten seriously their competitive viability. It should be emphasized that those refiners which are not required to buy entitlements under the old oil allocation program historically have had significantly lower crude costs than their competition due principally to the two-tier pricing system imposed on crude oil by the Cost of Living Council and then FEA. Thus, the competitive advantages that some refiners will lose as a result of these regulations were in large measure given them by other FEA regulations. The effect of the program

will be, in effect, to return the industry to conditions extant in early 1973 when there was no great disparity between the prices of foreign and domestic crude oil.

47. A final reason that no refiner is likely to suffer irreparable injury is that any refiner suffering serious hardship or gross inequity as a result of the entitlements program may obtain appropriate administrative relief from the requirements of the program by filing an exception request with FEA's Office of Exceptions and Appeals. FEA has implemented an expedited procedure to deal specifically with requests for exception from the cost equalization program, see Attachment E, 39 F.R. 43814, and one such request has already been granted in a joint application filed by the San Joaquin Refining Company and the West Coast Oil Company.

IV. Harm to FEA's Program and the Public Interest if an Injunction Issues.

48. Since the issuance of entitlements is calculated on the basis of the national old crude oil supply, an injunction relieving a single refiner from its obligation to purchase entitlements would cause a severe blow to the entire cost equalization program. Such an injunction would require a time-consuming recalculation of all entitlement issuances, would defer the operation of the program, pending a recalculation, for an indefinite period of time and, after the recalculation, the party obtaining the preliminary injunction would be placed at a competitive and financial advantage over those companies required to comply with the program. Further, these steps might be repeated several times as other refiners rush into other federal district courts seeking injunctive relief or such refiners may just choose to ignore the requirements of FEA's program. Accordingl

a court order preliminarily enjoining this program as to a single refiner would effectively disrupt the entire program for a considerable period of time. Moreover, any delay in the operation of the entitlements program will only serve to aggravate those serious problems outlined above confronting, among others, small and independent refiners and independent marketers. Thus, granting injunctive relief to an entitlement-buyer refiner would be contrary to public interest, because it would cause harm to those firms the Allocation Act was designed to protect, and would be contrary to the objectives of the Allocation Act (c.g., Section 4(b)(1)(D) and (F)).

JOHN VERNON

Subscribed and sworn to before me
this 21st day of January, 1975.

Notary Public

My commission expires: My Commission Expires June 1, 1977

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. Yes, I yield for the purposes of debate.

Mr. BROWN of Ohio. The letter to which the gentleman makes reference is not the letter to which I make reference. The letter to which I make reference is a letter from Mr. Zarb yesterday to me in which he says that the President will not sign an extension of this legislation.

The letter to which the gentleman from West Virginia makes reference is a letter about coal matters.

Mr. STAGGERS. Yes, an extension.

Mr. BROWN of Ohio. He is calling for an extension of the authority, as I understand. However, with respect to the legislation that went off the books on the 30th of June, where was our concern then? Why did we not do something about that then?

Mr. STAGGERS. The gentleman will recall that we did extend those provisions also in the bill H.R. 4035, but the President vetoed it.

Mr. BROWN of Ohio. I am addressing my remarks to the Emergency Petroleum Allocation Act. That is what we are talking about.

Mr. STAGGERS. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts (Mr. MACDONALD).

(Mr. MACDONALD of Massachusetts asked and was given permission to revise and extend his remarks.)

Mr. OTTINGER. Mr. Speaker, will the gentleman just yield for 1 second for a reply to that?

Mr. MACDONALD of Massachusetts. Yes; I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Speaker, that is a part of the legislation which we are considering today, the extension of the Coal Conversion Act, exactly what the gentleman from Ohio (Mr. BROWN) was referring to.

The gentleman from West Virginia (Mr. STAGGERS), our chairman, is 100-percent correct.

Mr. MACDONALD of Massachusetts. Mr. Speaker, I thank the chairman of the full committee for yielding to me, and I want to compliment the chairman of the subcommittee and all the members of that subcommittee who worked so hard and long on this entire problem.

I think that the gentleman from Ohio (Mr. BROWN) has confused some Members of the House by discussing things that do not have anything really to do with the extension of the Mandatory Allocation Act which is before us today.

Some of the arguments that the gentleman from Ohio (Mr. BROWN) made are perfectly sound arguments from his point of view, but they do not go to the extension of the Mandatory Allocation Act, because if this act is not extended it expires, by law, on August 31.

That is all this bill that we have before us right now is concerned with, to extend for 6 months what is presently law. It seems very clear to me that the Congress will need that much time to work, as the chairman of the full committee said, in a democratic way, which leads me actually to my main point, and that is that I hope that every Member of this body does not confuse the two things.

Yesterday and the day before and during other debate, we were doing what we were sent here to do, which is to represent our districts, our State, the people that we do represent, and their interests. However, today that is not what confronts us. Today is D-Day as to whether or not we will agree with the President.

He keeps telling us, and the press especially, both the news media, the written media, and the broadcast media, that we have refused to compromise.

It seems to me that the compromises that he has offered us are somewhat like when a man goes in to buy a car that is worth $12,000 and he offers $7,000. The salesman says he wants $15,000, and the man says, "All right. I will give you $8,000."

The salesman says, "No; since then it has gone up to $18,000."

At that point any sensible man does buy the car which the seller knew all the time.

Then he goes to the press and says that the Congress or the buyer refused to cooperate with him.

I think the time is long past due that he be given time to think the thing through, to come to some conclusion that will be satisfactory.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. MACDONALD of Massachusetts. I will yield to the gentleman as soon as I can.

I think that the President himself by now, since he has had so many people in charge of that program under FEA, has forgotten what his people are saying. Last year on January 24, 1974, Mr. Simon, who has never been accused of being antibig oil, said that any price at all that exceeded $7 per barrel was by itself a windfall profit. I repeat, Mr. Simon said any price for the oil, per barrel of oil over $7, is a windfall to the producer.

If the IRS or the FEA do not need more than 30 days to get geared up or, say that no bill does pass at the time the 6 months expires, it took the FEA so long to know what they were doing, and you can still get incorrect answers down there. I know they have been working under a handicap and they are still working under a handicap, but they need more time. The Nation needs more time.

We are voting not on local interests today, we are voting for the Nation. We are voting, among other things, to keep the costs to the farmers down. I know that everyone thinks of fuel oil in terms of gasoline and heating oil, but we should all remember that there is very much more to it than that. It is needed for protection of public health, safety, and welfare, the maintenance of public services and, as I say, agricultural operations.

We gave this authority to the FEA, and they have used part of it as far as allocation of the product, but they have done nothing much about the pricing, which they can under the mandatory allocation bill.

The SPEAKER. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Speaker, I yield 1 additional minute to the gentleman from Massachusetts.

Mr. MACDONALD of Massachusetts. Mr. Speaker, I would like to point out that if you were a driller and you had overseas operations, or if you owned any reserves of any kind, that you knew where they were and could tap them, and if two Presidents in a row had kept telling you that you are going to get deregulated completely, would you go ahead under a pricing structure? Or are you going to wait until such time as there are absolutely no controls on you, and you can charge any price that you want to, which is factually and actually the case that has happened? Two Presidents have told our oil companies, and now they are telling the natural gas people not to worry about it, there is no need to do any drilling because they are going to be deregulated completely, and they can work under their own structure.

Therefore, what has been the incentive except the high prices that are now occurring here within the United States, for them to do the drilling that the gentleman from Ohio, Mr. BROWN, properly said has fallen off?

The SPEAKER. The time of the gentleman has again expired.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman from West Virginia (Mr. STAGGERS), yield 2 additional minutes to the gentleman from Massachusetts so that I might ask the gentleman a question?

Mr. STAGGERS. I yield the gentleman from Massachusetts 2 additional minutes.

Mr. BROWN of Ohio. Mr. Speaker, if the gentleman will yield, as the gentleman from Massachusetts knows, I have a great deal of respect for the gentleman, and a great deal of affection for him, because we worked together on the Subcommittee on Communications and Power under his strong leadership as chairman. Up to the beginning of this Congress, communications and energy were separated and placed in separate subcommittees, the problems of energy were under that subcommittee's jurisdiction.

During that period of time when we were on the Energy Subcommittee together, the gentleman from Massachusetts, the distinguished chairman, and I were obligated to consider the extension of this act once before. That was from its expiration on December 31 of last year until August 31 of this year. We both supported that extension, as I recall, because we both believed that by this time, or August 31, the Congress would have come up with legislation which would have updated the legislation then on the books as it related to the situation in our current energy problem.

The change has come from shortage to surplus in terms of oil availability. The change has gone the other way as to where the oil comes from, more of it coming from the OPEC nations, and even more from the Arab nations. I and the man across the street is selling it for 3 cents cheaper. So the one writes in and complains and is indignant, but the problem is the refinery that is selling to him has a different basis for buying oil. They buy some crude oil at $11.50 and some at $5.25. If they get enough at the $5.25 price they can sell more cheaply.

But we cannot pay the Arabs $11.50 and pay the Americans $5.25. American oil deserves fair and equal treatment with Arab oil.

We have to come back and face this: This is a price control bill. If Members believe price control is good for America I suggest they check their history. They should remind themselves that it never will work. It never has.

This is a pro-Arab bill. The interests of this country are not served by our paying the Arabs $11.50 when we pay the Americans only $5.25. That is taking a shortsighted point of view for America.

It is true we are talking about what we are going to do, but the President is the only one who has had the courage and the foresight to face the issue. The issue is: We ought to decontrol and we ought to decontrol oil right now.

Mr. STAGGERS. Mr. Speaker, I yield 5 minutes to the chairman of the Subcommittee on Energy and Power, the gentleman from Michigan (Mr. DINGELL), for purposes of debate only.

Mr. DINGELL. Mr. Speaker, I urge adoption of S. 1849. For the Congress to fail to adopt this bill would constitute the basis for economic disaster in this country.

The President, very regrettably, has already vetoed a similar extension of the Allocation Act, that was H.R. 4035. S. 1849 is a simple 6-month extension of the authorities of the Emergency Petroleum Allocation Act. This bill could be the basis under which the President can avoid damage to the economy of the United States, avoid increases in the cost of living and achieve reductions in the levels of unemployment.

The subcommittee has prepared a study which indicates what we might anticipate if the Arabs increase prices and if decontrol goes into effect. Briefly summarized, this study forecasts economic disaster. Very regrettably the President has suggested a possible veto of S. 1849. That possibility should turn the blood of every American cold. Not only does the veto of S. 1849 and the sudden termination of controls under the Emergency Petroleum Allocation Act render likely the skyrocketing of the cost of living and the cost of petroleum products, which are part of everything that is used by every American, but also this possibility indicates the real potential for our witnessing the most destructive imaginable consequences within the petroleum marketing industry.

For example, hundreds of thousands of supply relationships within the industry would terminate. There is a strong possibility that major suppliers will pull out of whole areas of the country. There is the probability of price increases of crude oil; there is the probability of price increases of refined products; there is the probability of price increases at the wholesale level; and there is the probability of price increases at the retail level.

There is a possibility of something still worse, and that is that the whole distribution system upon which the supply of petroleum products to the economy is based will literally collapse by reason of termination of hundreds of thousands of ever-green contracts that exist in the industry.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. DINGELL. I yield very briefly for debate only to my dear friend, the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I want to commend the gentleman from Michigan and associate myself with his remarks.

I urge passage of S. 1849.

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I thank my colleague. He has been my dear friend and the senior ranking minority member of the Subcommittee on Energy and Environment of the Small Business Committee where the gentleman and I have worked continuously to see that small businesses were properly treated in this matter and I pay tribute to the gentleman.

Mr. Speaker, I have a question I would like to direct to the chairman of the committee in light of the comments I have raised.

There is a possibility of a veto of this extension. If a veto of this legislation does occur, there is a possibility that there would be a hiatus or a brief period during which there would be no authority to enforce the allocation and price control regulations relating to petroleum products, to supply relationships, to allocations and to entitlements.

Mr. Speaker, I am satisfied on the basis of reading the language in S. 1849 that it is the intent of the Congress that the extension of the allocation act included in S. 1849 take effect immediately and retroactively in the event of a veto and an override of that veto, and that there be no hiatus or gap during which violations of these regulations would not be subject to civil sanctions. Am I correct?

Mr. STAGGERS. Mr. Speaker, the gentleman is correct.

Mr. DINGELL. I am apprehensive that someone might interpret our actions today as failing to provide adequate notice to persons who might be affected by these regulations and it is my view that the consideration of this legislation at this time and the long history of the legislation, both in the House and in the Senate, makes it very plain that it is the intention of the Congress that there be no gap, no hiatus, and that the legislation be considered as following immediately and successively. That is to say, the allocation act as amended by this bill if amended after the 31st of August would none the less be read quite literally. As amended, the allocation act would continue, without interruption, to make enforceable the regulations. Thus, if this bill has not become law before August 31, and, therefore, the authority to enforce the regulations under EPAA should expire, if this bill becomes law thereafter, violations of the regulations during the interim would subject the violator to civil liability under the act.

The SPEAKER. The time of the gentleman from Michigan has expired.

Mr. STAGGERS. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. DINGELL. Thus, this legislation be considered as following immediately and successively upon expiration of the Emergency Petroleum Allocation Act on the 31st of August of this year at 12 o'clock midnight; is that correct?

Mr. STAGGERS. The gentleman is correct.

Mr. DINGELL. So, therefore, I might assume that all persons are necessarily on notice and there is no peril that this legislation would raise constitutional questions as to lack of notice by Congress regarding retroactivity in these matters; is that correct?

Mr. STAGGERS. The gentleman is correct.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Washington.

Mr. ADAMS. Mr. Speaker, I want to associate myself with the remarks of the gentleman from Michigan, the chairman of the subcommittee, and the gentleman from West Virginia, the chairman of the full committee, in the colloquy they have just finished. I am in support of the resolution.

(Mr. ADAMS asked and was given permission to revise and extend his remarks.)

Mr. STAGGERS. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. KETCHUM).

(Mr. KETCHUM asked and was given permission to revise and extend his remarks.)

Mr. KETCHUM. Mr. Speaker, it is a weary task to march up and down this hill again. We have been marching up and down it since late in 1973 when the Committee on Interstate and Foreign Commerce brought us a wonderful energy bill that we debated in the late hours prior to Christmas. Back when we passed the Emergency Petroleum Allocation Act, we really compounded the felony of wage and price controls. This very body terminated the wage and price controls when they discovered to their amazement that each and every time that the U.S. Congress got messed up with trying to direct the economy, we proceeded to wreck the economy. This bill seems to me to perpetuate the difficulties that we found ourselves in. We may recall when the Emergency Petroleum Act was first brought to this floor that several of us took the floor and indicated nothing but problems ahead. We can recall since the passage of that bill, we have been in a constant discussion in this body about one subject, and one subject only, energy, and particularly energy as it applies to oil.

Yesterday, this body in its limitless wisdom took action on H.R. 7014 in adopting an amendment that is certain to bring a veto of that bill. A few moments later, we took another action, which absolutely made a certainty that we would face decontrol, by turning down the President's program. Let me say at the outset that I do not think that the President's program is the greatest thing since powdered sugar either, but at least he did give us 39 months to achieve decontrol—3¼ years to achieve it on an orderly basis—and we turned that down.

Four times he has come to us in an attempt to compromise, and four times he has been turned down. I think he has no choice but to veto this resolution if it is passed, and if it is vetoed, on August 31 we will decontrol, and decontrol we should; return to the real world, to the real marketplace where supply and demand provides the answer. Those Members who fear immediate reprisals—if we choose to call it that—in the form of increased prices should have called to their own attention the fact that every bill that we have had on the floor of this House would ultimately increase the price of gasoline, only we would have been mandating it rather than relying on the free market.

I hope that the Members will refuse this last ditch stand on the part of perpetuating a controlled economy in America.

Mr. STAGGERS. Mr. Speaker, I yield 2 minutes to the gentleman from Texas, a member of the committee (Mr. ECKHARDT), for the purposes of debate only.

Mr. ECKHARDT. Mr. Speaker, I rise to further emphasize a point that my distinguished subcommittee chairman made a moment ago, because I think it is extremely important. That is, that this act does not permit for any hiatus between the termination of the present Allocation Act and its effective date. Of course, this act would not go into effect until a veto override, assuming there were a veto and then an override, but the act purports to take effect immediately at the termination of the Allocation Act. If there were a veto override, there would indeed be a hiatus during which prices might rise, but Congress would have given notice that such rise is made illegal if Congress ultimately prevails by a veto override. Clearly Congress has authority to act retroactively, and that retroactive effect would not be unconstitutional when those acting with notice of Congress intention have deliberately acted at their peril.

I cite in that connection the case of First National Bank in *Dallas v. United States*, 420 2d 725. So, what would occur? I feel sure that Congress would reexamine the matter after a veto and if prices had gone extremely high, as everyone is predicting they might do, Congress would, I believe, very likely override a veto. That means that any increase in price during the hiatus period could result in treble damages against whose who deliberately raised prices above the level that Congress ultimately mandated.

Mr. STAGGERS. Mr. Speaker, I yield 1 minute to the gentleman from Oklahoma (Mr. JONES).

(Mr. JONES of Oklahoma asked and was given permission to revise and extend his remarks.)

Mr. JONES of Oklahoma. Mr. Speaker, I think it is a foregone conclusion that this is going to pass. If it does, there will be a lot of bureaucrats downtown laughing up their sleeves at Congress.

A few months ago I became seriously interested in regulatory reforms to let us take control of the Government again. At the time, one of the FEA officials said that, "You will never get rid of us because we are almost 7,000 strong and now we have an average salary of about $17,000." And I gless he knew more about Congress than I did at that time.

I think all of the predictions that are made in good conscience by everybody as to what will happen if we phase out controls or if there is complete decontrol really are just predictions. They are not based on any kind of fact. I cannot tell the Members about the rest of the country, but should the President veto this extension and should price controls go off at the end of August, in the Midwest, in my part of the country, I think we are going to see the greatest consumer benefits that has ever happened. We will see a gas war that will let the consumer purchase gas at a reasonable price. We will see that competition, more than Government bureaucracy, is the best friend of the American consumer.

Mr. STAGGERS. Mr. Speaker, I yield 4 minutes for the purpose of debate only to the gentleman from California (Mr KREBS).

(Mr. KREBS asked and was given permission to revise and extend his remarks.)

Mr. KREBS. Mr. Speaker, as someone who has come to this chamber with relatively little knowledge—hopefully, with relatively few prejudices, although I have some—I have sat here for the last several days, and I have heard the majority—at least on the basis of yesterday's vote it is still a majority—being berated by some of our fellow Members on the theory that we have not done anything about the field of energy because some of us in these chambers—and I will plead guilty—have refused to fall over and play dead for the oil companies.

Mr. Speaker, as far as the President's so-called program is concerned—and I want to emphasize it is a so-called program because I am still trying to figure out what the President's program is, other than to hand a bonanza at the expense of the American consumer to the oil companies—let me say in as clear a fashion as I can to the leadership of the minority party—not the rank and file, but the leadership of the minority party—that I have not heard them say one thing constructive as far as an energy program is concerned, other than their well orchestrated refrain which originated from Pennsylvania Avenue, to the effect that we have to decontrol, and unless we decontrol we have no energy program.

Mr. Speaker, I think anyone who looks at H.R. 7014 cannot help but be struck by the fact that we have heard no arguments on H.R. 7014, which is the bill before us, other than the matter of pricing of oil.

We have heard a lot about compromise supposedly originating from the White House, and this has been repeated time and time again by very articulate members of the minority party and also some members of the majority party, but I cannot help but feel that the type of compromise that we have heard about is the type of compromise which is offered to a man who has been condemned to death and who has been told that his death penalty is going to be carried out except that it is going to be postponed for 30 days, and then an additional compromise is being made by offering a reprieve for 45 days, and a final compromise by offering a reprieve for 90 days. But he is still going to be executed.

I submit if the Members vote against the resolution before us and if we do what the President, for reasons best known to himself, wants us to do, then we will be doing exactly what will happen through the analogies I have drawn, namely, in my opinion, dealing a death blow to the best interests of the American consumer.

Mr. OTTINGER. Mr. Speaker, will the gentleman yield?

Mr. KREBS. I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Speaker, I would like to commend the gentleman from California (Mr. KREBS) for his fine statement. He has been saying what I have been trying to articulate during these past few days far better than I have been able to state. I associate myself with the gentleman's remarks.

Mr. KREBS. Mr. Speaker, I thank the gentleman very much.

Let me just close on a hopeful note. Maybe I am optimistic because I am influenced by my next door colleague, the gentleman from California, who likes to say that it is much more fun to be optimistic.

I hope that by granting this extension the President, those in the minority party, and those who come from the oil-producing States of this Nation will have second thoughts as to what they are really doing to the American consumer by removing controls from oil. If we are going to remove controls from oil, let us not kid ourselves as to what we are going to do. The sheiks in Saudi Arabia, Kuwait, and Algeria are going to determine what the price of our oil is going to be. I think that is not what the American consumer would like to see happen.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. KREBS. I yield to the gentleman from Ohio.

Mr. BROWN of Ohio. Mr. Speaker, that is a bonanza for the sheiks. That will increase our alliance with them.

Mr. STAGGERS. Mr. Speaker, I yield 1 minute to the gentleman from Ohio (Mr. BROWN) for the purpose of debate only.

Mr. BROWN of Ohio. Mr. Speaker, I would like to raise one point here, and I wonder if I could have the attention of the gentleman from Texas (Mr. ECKHARDT).

I hope the gentleman from Texas did not think he was setting legislative history here by the suggestion that it was his opinion that oil companies or any retailers or any jobbers in the distribution business would be subject to treble damages if we raised their price or made some different arrangement should the Emergency Petroleum Allocation Act authorities expire at any time in the future.

I do find some difficulty with that as being a very clear conclusion that one can draw from the legislation.

I wonder if the gentleman would be kind enough to offer me some verification that he was merely expressing a personal opinion and not drawing on an opportunity to try to establish a legal base for lawsuits.

The SPEAKER. The time of the gentleman from Ohio (Mr. BROWN) has expired.

Mr. STAGGERS. Mr. Speaker, I would be glad to yield 1 additional minute to the gentleman from Ohio (Mr. BROWN) for the purpose of debate only.

Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Speaker, the case of First National Bank of Dallas versus the United States said that extensive nonstatutory notice prior to enactment regarding retroactive effect of a statute constituted sufficient information in advance that if the act had retroactive effect, such would not deny duo process.

I was simply trying to make it clear that there is obviously extensive nonstatutory notice here and by this debate that the Allocation Act extension refers to and incorporates the Economic Stabilization Act, which provides for treble damages and other penalties and puts that into effect retroactively, assuming the President vetoes the bill and we override the veto, and that constitutes a binding effect.

The SPEAKER. The time of the gentleman from Ohio (Mr. BROWN) has again expired.

Mr. STAGGERS. Mr. Speaker, I yield 1 additional minute to the gentleman from Ohio (Mr. BROWN) for the purpose of debate only.

Mr. BROWN of Ohio. Mr. Speaker, I would like to refer the gentleman from Texas (Mr. ECKHARDT) to the language in section 4(g) of the EPAA, which says as follows:

> The regulation promulgated and made effective under subsection (a) shall remain in effect until midnight—

Now August 31, 1975—

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

Now August 31, 1975—

> but such expiration shall not affect any action or pending proceeding, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight—

Of that date.

I would suggest that that latter phrasing does indicate that the authority of the act in that respect terminates on that date.

The SPEAKER. The time of the gentleman from Ohio (Mr. BROWN) has expired.

Mr. STAGGERS. Mr. Speaker, I yield 1 additional minute to the gentleman from Ohio (Mr. BROWN) for the purposes of debate only.

Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. I will be glad to yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Speaker, what the gentleman read would be subject to the change provided in this act from August 31, 1975, to March 1, 1976. Therefore, if there were an ultimate override of a veto, that act would be in effect continuously until March 1, 1976.

The hiatus time would be, in effect, be a time subject to a retroactive penalty governed by section 210 of the Stabilization Act which is adopted in this act, which reads to this effect:

> In any action brought under subsection (a) against any person renting property or selling goods or services, who is found to have overcharged the plaintiff, the court may, in its discretion, award treble damages or $1,000 in each case, whichever is the lesser.

Mr. BROWN of Ohio. Mr. Speaker, may I just say in response to that that the gentleman may have a point. There would be a question because of the unusual nature of this. It occurs to me, however, that the action would almost be a Supreme Court constitutional issue, and not one that would flow from that kind of case.

Mr. STAGGERS. Mr. Speaker, I yield our remaining time to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, I thank the gentleman for yielding.

Mr. RHODES. Mr. Speaker, will the gentleman yield?

Mr. BROWN of Ohio. Yes. Mr. Speaker, I yield 6 minutes to the gentleman from Arizona (Mr. RHODES).

Mr. STAGGERS. Mr. Speaker, as I understand it, that is for the purposes of debate only.

(Mr. RHODES asked and was given permission to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I wish I could stand here and tell the Members that I think if this bill passes, it will become law, and that if the House had not taken the action on the President's decontrol plan which it took yesterday, I am sure that would be the case.

As it is, however, the President, if he signs this bill, will be putting himself and this country in a position of acquiescing in delaying, acquiescing in no action at all to do something about the plight that the country finds itself in insofar as energy is concerned.

I do not know any reasonable person could expect the President to believe that the House of Representatives and the Senate, with the track record which we have as far as inaction on energy is concerned, would do any better if there were 6 months more provided for that purpose.

I do not know how the President of the United States can be expected, feeling as strongly as he does about the necessity for decontrol, to wait any further for actions which this House might take which would result in more production from domestic oil fields. After all, is not that what we are trying to do?

I thought the name of the game was to provide better supplies of oil from domestic sources so that we would not have to import more from foreign sources. That was what I thought until yesterday, and on yesterday the whole roof caved in. Not only was the President's plan not approved, but also amendments to H.R. 7014 were approved which in my opinion, and in the opinion of practically everybody I have talked to, will be completely counterproductive insofar as increasing production of domestic oil is concerned.

What did we do yesterday? In the first place, we fixed the price of old oil at $5.25. We rolled back the prices of new oil from the price which is, I guess, somewhere around $12.50, back to $7.50. If anybody really believes that you are going to get more oil at lower prices, then he just does not understand the economic facts of life. How this could be done in the light of the testimony which has been given, in the light of the information which was brought forth about the cost of the production of old oil, is beyond me.

Let me say that in California there is a field that is operated by the State of California, and that field probably is going to be closed down because the cost of production from that field is up almost to $5.25 a barrel.

I said on the floor—and the gentleman from Texas agreed with me—under the present situation if you have on old oil field and you want to drill a new well there, and it costs plenty to drill wells these days, that if you do you will find ourself in a situation of taking oil from the new well and selling it at the old oil price. So, as a result, nobody is drilling in the old oil fields, and they are among the quickest, and the best areas for increasing our domestic production.

Everything this Congress has done, Mr. Speaker, as far as energy is concerned, has been counterproductive. It has been going in the direction of furnishing this country less energy, and not more energy. I say it is a shameful situation.

We are about to recess for 30 days. I approve of the recess. The Speaker and I together worked out the schedule earlier in the year, and I do not disapprove of the fact that we are doing it, but I do disapprove of the fact that we are leaving the country in a situation right now where the President of the United States will have only two possible courses of action: One is to surrender and forget decontrol of old oil, and the second is to veto S 1349. I am not interested in decontrol of old oil so we can get more of it.

I do not think that the President is going to say that he is not interested in decontrolling old oil—he knows we need more oil. The only other option which we are giving him is to veto this bill, which would extend the EPAA for 6 more months. If we were to remove EPAA controls immediately, the pricing of old oil could move up as high as the cap on new oil is now, and if it does that it would have the effect, in my opinion, of increasing the price of gasoline at the pumps very precipitiously.

Of course, that does not have to happen. It could be that the oil companies can—and they should—agree voluntarily to abide by the President's decontrol plan which the House did not approve. I would hope they might consider doing that. But the chances are that this idea might not be adopted, and if it is not adopted the prices will go up rather precipitously.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. RHODES. I yield to the gentleman from West Virginia.

Mr. STAGGERS. I thank the gentleman from Arizona for yielding to me.

Of course, the gentleman knows of my admiration and respect for him.

Mr. RHODES. The gentleman from Arizona knows that, and reciprocates that feeling.

Mr. STAGGERS. I would like to say that I do not see why the President does not have more than two options. He has the options of signing or not signing, he has those two. And he has also the option of waiting until we have completed the work on H.R. 7014 which we are working on now, and see what is in it before he takes any adverse action.

Mr. RHODES. My friend, the gentleman from West Virginia, I believe will have to agree with me that the amendment adopted yesterday provides for a price rollback which in the opinion of the President and in my opinion will produce less domestic oil instead of more domestic oil. I can say to my good friend, the gentleman from West Virginia, and I think that I can assure the gentleman that I am correct, that if that bill goes to the President with that rollback provision in it it will be vetoed. It might be that the veto would not be sustained. I do not know that.

Mr. STAGGERS. Mr. Speaker, will the gentleman yield again?

Mr. RHODES. Yes, of course, I yield.

Mr. STAGGERS. None of us is prophet enough to know what is going to be in H.R. 7014 when it finally gets through this House and when it gets through conference. I do not see why the President of the United States would not wait to see our final product.

The SPEAKER. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. DINGELL), chairman of the subcommittee.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. I thank the chairman.

Mr. Speaker, I observe that the legislation before us strikes out the date "August 31, 1975," and inserts in lieu thereof "March 1, 1976." I observe that the language of section 4(g)(1) of the Emergency Petroleum Allocation Act states:

> The regulation promulgated and made effective under subsection (a) shall remain in effect until midnight August 31, 1975. . . . The authority to promulgate and amend the regulation and to issue any order under this section, and to enforce under section 5 such regulation and any such order, expires at midnight August 31, 1975, but such expiration shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to midnight August 31, 1975.

I note that the practical effect of the amendment is to extend the period during which the regulations must remain in effect and the life of the authority to promulgate amend and, most importantly, amend the regulations until the first of March 1976. I think this is a very important point. I ask if my chairman of the committee agrees.

The SPEAKER. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Speaker, I yield 1 additional minute to the gentleman from Michigan.

Mr. Speaker, the answer is "Yes."

Mr. DINGELL. I ask my friend, the chairman of the Committee on Interstate and Foreign Commerce who is managing this bill, if it is not the clear intention of this Congress that the literal reading of the plain language of S. 1849 and of the Allocation Act as amended by S. 1849 be followed. Thus, it is the Congress intent that the regulations be viewed as having continued in effect without interruption from their original effective date until March 1 of 1976.

Mr. STAGGERS. That is correct.

Mr. DINGELL. Therefore, if this bill is vetoed, and the veto overridden, the regulation and the authority to enforce it would continue according to the literal language of the Allocation Act as amended by this bill. No constitutional impediments exist to this interpretation in view of the notice which this debate and the legislative history of this bill affords all interested persons.

Mr. BROWN of Ohio. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. The gentleman from Michigan is correct. If I have any time left, I yield to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. It would be a hiatus. I think there would have to be a Supreme Court determination.

The SPEAKER. The time of the gentleman has expired.

Mr. STAGGERS. Mr. Speaker, I yield myself such time as I may consume.

I think, Mr. Speaker, we all know the issue very well. It is as to whether we are going to extend this bill which will give the President authority to continue petroleum price and allocation controls until we conclude our work on energy legislation. I think that those who have said that the President is going to veto this bill have been belittling him and demeaning him, because I think he is going to work for what is in the best interests of America. I think he is going to say, "Let us wait until the Congress of the United States finishes its work and puts a bill on my desk, and let me judge whether I think it is a fair bill," and that then he will make up his mind. I have no hesitancy in my mind whatsoever that he will sign this bill. I think he is that kind of a man. I think he is too big a man to veto it and subject this Nation to the harsh consequences of abrupt decontrol. I think he is too big a man as President of the United States to say, "I am going to veto any bill that comes down here." I do not believe he will veto this bill. I do not believe he should.

So I would urge every Member of this House to vote aye on this resolution to send it to the President so that he can make the final decision.

Mr. PICKLE. Mr. Speaker, I note that section 203(E) provides for the Federal Energy Administrator to provide an assessment of the relationship between price trends and related development for coal, as well as other major energy sources. In my opinion, it is high time that we look into the price of coal.

I have consulted with the Bureau of Labor Statistics and am informed that the figures that they keep monthly, on an index basis, of the spot market for coal on a weighted average basis indicates the following:

1967 index figure	100
1973 October (embargo oil)	221.1
1975 June	385.9

Other figures that I have obtained from the Federal Energy Administration, indicate that the average price per ton of coal prior to the embargo was $8.50 per ton. After the embargo currently, the average price per ton of coal is approximately $15 per ton. While these figures are based on averages they are the combination of prices for utility, manufacturing and metallurgical-spot market prices for coal. They are based on the latest figures available to the FEA.

Looking at these figures, it is apparent that since 1967 the price of coal has almost quadrupled. Since the Arab embargo on oil, the price of coal has doubled. Why are we so eager to control the price of oil, and yet do nothing to control the price of another energy source, coal?

This in the face of the fact that we have vast quantities of domestic coal, while oil is an increasingly scarce resource. It is oil that we need to encourage domestic production as well as natural gas, another price regulated energy source. Our oil and gas reserves are the sources that we should be using priced to attract the needed capital to produce more.

While philosophically I am opposed to price controls, I find it inconsistent to understand why we regulate the price of oil and natural gas, but do not regulate the price of coal.

Therefore, it seems to me that we should indeed encourage investigation into these price trends in coal.

THE WHITE HOUSE

[Aug. 1975?]

Phil-

What is status legally of 1 Sep. Decontrol and oil Co's raise price? Can they keep raise, or can we roll back to 31 Aug.?

S. 1849

[Aug 1975]

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

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

An Act

To extend the Emergency Petroleum Allocation Act.

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

TITLE I

SHORT TITLE

SEC. 101. This title may be cited as the "Emergency Petroleum Allocation Extension Act of 1975".

EXTENSION OF MANDATORY ALLOCATION PROGRAM

SEC. 102. Section 4(g)(1) of the Emergency Petroleum Allocation Act of 1973 is amended by striking out "August 31, 1975," wherever it appears and inserting in lieu thereof "March 1, 1976,".

TITLE II

SEC. 201. This title may be cited as the "Coal Conversion Extension Act of 1975".

SEC. 202. Section 2(f)(1) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking "June 30, 1975" and inserting "December 31, 1975".

SEC. 203. Section 11(c)(2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by adding the following new subparagraph:

"(E) Price trends and related developments for coal and for other major energy sources which are not subject to direct price regulation at any level by the United States Government. As soon as practicable after the date of enactment of this subparagraph and at such times thereafter as he deems appropriate, the Federal Energy Administrator, after consultation with such other persons and agencies as he deems appropriate, shall provide an assessment of the relationship between price trends and related developments for energy sources covered by this subparagraph and energy policies, including any recommendations he may have in connection with such assessment.".

Speaker of the House of Representatives.

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

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[Aug-1975?]

KERSTEN v. UNITED STATES.

No. 3485.

Circuit Court of Appeals, Tenth Circuit.

May 6, 1947.

Writ of Certiorari Denied June 16, 1947.

See 67 S.Ct. 1744.

1. Statutes ⚷129, 170

Congress may revive or extend an act by any form of words which makes clear its intention to do so.

2. War ⚷4

Where section 4 of the Emergency Price Control Act of 1942 made it unlawful for any person to sell or deliver any commodity in violation of any regulation promulgated under section 2 of such act, and section 4 was continued in force by the Price Control Extension Act a violation of regulation in August, 1946, constituted a violation of section 4. Emergency Price Control Act of 1942, §§ 2, 4, 50 U.S.C.A.Appendix, §§ 902, 904; Emergency Price Control Extension Act of 1946, § 18, 50 U.S.C.A.Appendix, § 901a note.

3. Indictment and Information ⚷108

Where the facts alleged in information clearly charged a violation of section 4 of the Emergency Price Control Act of 1942 as extended the failure of the caption and body of the information to refer to the Price Control Extension Act could not have misled the defendant to his prejudice. Federal Rules of Criminal Procedure, rule 7(c), 18 U.S.C.A. following section 687; Emergency Price Control Act of 1942, §§ 2, 4, 50 U.S.C.A.Appendix, §§ 902, 904; Emergency Price Control Extension Act of 1946, § 18, 50 U.S.C.A. Appendix, § 901a note.

4. Criminal law ⚷121, 1150

A motion for a change of venue is addressed to the sound discretion of the trial court and in the absence of an abuse of discretion the denial of the application is not error. Federal Rules of Criminal Procedure, rule 21(a), 18 U.S.C.A. following section 687.

5. Criminal law ⚷126(1)

Denial of defendant's motion for a change of venue on ground of prejudice through statements of newspapers and radio broadcasts containing statements by local Office of Price Administration concerning charges against defendant was not an abuse of discretion. Federal Rules of Criminal Procedure, rule 21(a), 18 U.S.C.A. following section 687.

Appeal from the District Court of the United States for the District of Colorado; John Foster Symes, Judge.

Charles A. Kersten, an individual doing business as Kersten Motor Company, was convicted of selling used automobiles in excess of ceiling prices, and he appeals.

Affirmed.

Ralph Carr, of Denver, Colo. (Wilbur E. Rocchio and Fred M. Mazzulla, both of Denver, Colo., on the brief), for appellant.

Max D. Melville, Regional Enforcement Executive, Office of Temporary Controls of Denver, Colo. (Thomas J. Morrissey, U. S. Atty., and Joseph N. Lilly, Asst. U. S. Atty., both of Denver, Colo., on the brief), for appellee.

Before PHILLIPS, BRATTON, and MURRAH, Circuit Judges.

PHILLIPS, Circuit Judge.

Kersten was tried on counts 1, 7, 9, 13, and 20 of an information. He was convicted on counts 1, 9, and 20, and acquitted on the other two counts. Counts 1 and 9 charged that Kersten sold a used automobile at a price in excess of the price fixed by Maximum Price Regulation 540, as amended. Count 20 charged that he sold a used automobile at a price in excess of the price fixed by Maximum Price Regulation 594, as amended. The sale charged in count 1 occurred on June 21, 1946. The sales charged in counts 9 and 20 occurred on August 10 and August 12, 1946, respectively.

Although the Emergency Price Control Act of 1942[1] expired by its terms on June 30, 1946, it remained in force, after that date, for the purpose of sustaining any proper suit, action, or prosecution, with respect to any offense committed, or any

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1 50 U.S.C.A.Appendix, § 901 et seq.