95TH CONGRESS
2d Session
SENATE
REPORT
No. 95–1126

NATURAL GAS

AUGUST 18 (legislative day, AUGUST 16), 1978.—Ordered to be printed

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

CONFERENCE REPORT

[To accompany H.R. 5289]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment numbered 8 of the Senate to the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Florida, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate numbered 8 and agree to the same with an amendment as follows:

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Natural Gas Policy Act of 1978".

(b) TABLE OF CONTENTS.—

TABLE OF CONTENTS

★(Star Print)

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) NATURAL GAS.—The term "natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(2) WELL.—*The term "well" means any well for the discovery or production of natural gas, crude oil, or both.*

(3) NEW WELL.—*The term "new well" means any well—*

(A) *the surface drilling of which began on or after February 19, 1977; or*

(B) *the depth of which was increased, by means of drilling on or after February 19, 1977, to a completion location which is located at least 1,000 feet below the depth of the deepest completion location of such well attained before February 19, 1977.*

(4) OLD WELL.—*The term "old well" means any well other than a new well.*

(5) MARKERWELL.—

(A) GENERAL RULE.—*The term "marker well" means any well from which natural gas was produced in commercial quantities at any time after January 1, 1970, and before April 20, 1977.*

(B) NEW WELLS.—*The term "marker well" does not include any new well under paragraph (3)(A) but includes any new well under paragraph (3)(B) if such well qualifies as a marker well under subparagraph (A) of this paragraph.*

(6) RESERVOIR.—*The term "reservoir" means any producible natural accumulation of natural gas, crude oil, or both, confined—*

(A) *by impermeable rock or water barriers and characterized by a single natural pressure system; or*

(B) *by lithologic or structural barriers which prevent pressure communication.*

(7) COMPLETION LOCATION.—

(A) GENERAL RULE.—*The term "completion location" means any subsurface location from which natural gas is being or has been produced in commercial quantities.*

(B) MARKER WELL.—*The term "completion location", when used with reference to any marker well, means any subsurface location from which natural gas was produced from such well in commercial quantities after January 1, 1970, and before April 20, 1977.*

(8) PRORATION UNIT.—*The term "proration unit" means—*

(A) *any portion of a reservoir, as designated by the State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, which will be effectively and efficiently drained by a single well;*

(B) *any drilling unit, production unit, or comparable arrangement, designated or recognized by the State or Federal agency having jurisdiction with respect to production from the reservoir, to describe that portion of such reservoir which will be effectively and efficiently drained by a single well; or*

(C) *if such portion of a reservoir, unit, or comparable arrangement is not specifically provided for by State law or by any action of any State or Federal agency having regulatory jurisdiction with respect to production from such reservoir, any voluntary unit agreement or other comparable arrangement applied, under local custom or practice within the locale*

in which such reservoir is situated, for the purpose of describing the portion of a reservoir which may be effectively and efficiently drained by a single well.

(9) NEW LEASE.—The term "new lease", when used with respect to the Outer Continental Shelf, means a lease, entered into on or after April 20, 1977, of submerged acreage.

(10) OLD LEASE.—The term "old lease", when used with respect to the Outer Continental Shelf, means any lease other than a new lease.

(11) NEW CONTRACT.—The term "new contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was not previously subject to an existing contract.

(12) ROLLOVER CONTRACT.—The term "rollover contract" means any contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term (not including any extension thereof taking effect on or after such date of enactment) specified by the provisions of such existing contract, as such contract was in effect on the date of the enactment of this Act, whether or not there is an identity of parties or terms with those of such existing contract.

(13) EXISTING CONTRACT.—The term "existing contract" means any contract for the first sale of natural gas in effect on the day before the date of the enactment of this Act.

(14) SUCCESSOR TO AN EXISTING CONTRACT.—The term "successor to an existing contract" means any contract, other than a rollover contract, entered into on or after the date of the enactment of this Act, for the first sale of natural gas which was previously subject to an existing contract, whether or not there is an identity of parties or terms with those of such existing contract.

(15) INTERSTATE PIPELINE.—The term "interstate pipeline" means any person engaged in natural gas transportation subject to the jurisdiction of the Commission under the Natural Gas Act.

(16) INTRASTATE PIPELINE.—The term "intrastate pipeline" means any person engaged in natural gas transportation (not including gathering) which is not subject to the jurisdiction of the Commission under the Natural Gas Act (other than any such pipeline which is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act).

(17) LOCAL DISTRIBUTION COMPANY.—The term "local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline engaged in the transportation, or local distribution, of natural gas and the sale of natural gas for ultimate consumption.

(18) COMMITTED OR DEDICATED TO INTERSTATE COMMERCE.—

(A) GENERAL RULE.—The term "committed or dedicated to interstate commerce", when used with respect to natural gas, means—

(i) natural gas which is from the Outer Continental Shelf; and

(ii) natural gas which, if sold, would be required to be sold in interstate commerce (within the meaning of

the Natural Gas Act) under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act.

(B) Exclusion.—Such term does not apply with respect to—

(i) natural gas sold in interstate commerce (within the meaning of the Natural Gas Act)—

(I) under section 6 of the Emergency Natural Gas Act of 1977;

(II) under any limited term certificate, granted pursuant to section 7 of the Natural Gas Act, which contains a pregrant of abandonment of service for such natural gas;

(III) under any emergency regulation under the second proviso of section 7(c) of the Natural Gas Act; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act, if such certificate was specifically granted for the transportation of that natural gas for such user;

(ii) natural gas for which abandonment of service was granted before the date of enactment of this Act under section 7 of the Natural Gas Act; and

(iii) natural gas which, but for this clause, would be committed or dedicated to interstate commerce under subparagraph (A)(ii) by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(I) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(II) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act) for resale (other than any sale described in clause (i) (I), (II), or (III)).

(19) CERTIFICATED NATURAL GAS.—The term "certificated natural gas" means natural gas transported by any interstate pipeline in a facility for which there is in effect a certificate issued under section 7(c) of the Natural Gas Act. Such term does not include natural gas sold to the user by the producer and transported pursuant to a certificate which is specifically issued under section 7(c) of the Natural Gas Act for the transportation of that natural gas, for such user unless such natural gas is used for the generation of electricity.

(20) SALE.—The term "sale" means any sale, exchange, or other transfer for value.

(21) FIRST SALE.—

(A) GENERAL RULE.—The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii), or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) CERTAIN SALES NOT INCLUDED.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume of natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

(22) DELIVER.—The term "deliver" when used with respect to any first sale of natural gas, means the physical delivery from the seller; except that in the case of the sale of proven reserves in place to any interstate pipeline, any intrastate pipeline, any local distribution company, or any user of such natural gas, such term means the transfer of title to such reserves.

(23) CERTIFICATE.—The term "certificate", when used with respect to the Natural Gas Act, means a certificate of public convenience and necessity issued under such Act.

(24) COMMISSION.—The term "Commission" means the Federal Energy Regulatory Commission.

(25) FEDERAL AGENCY.—The term "Federal agency" has the same meaning as given such term in section 105 of title 5, United States Code.

(26) PERSON.—The term "person" includes the United States, any State, and any political subdivision, agency, or instrumentality of the foregoing.

(27) AFFILIATE.—The term "affiliate", when used in relation to any person, means another person which controls, is controlled by, or is under common control with, such person.

(28) ELECTRIC UTILITY.—The term "electric utility" means any person to the extent such person is engaged in the business of the generation of electricity and sale, directly or indirectly, of electricity to the public.

(29) MCF.—The term "Mcf", when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

(30) BTU.—The term "Btu" means British thermal unit.

(31) MONTH.—The term "month" means a calendar month.

(32) MILE.—The term "mile" means a statute mile of 5,280 feet.

(33) UNITED STATES.—The term "United States" means the several States and includes the Outer Continental Shelf.

(34) STATE.—The term "State" means each of the several States and the District of Columbia.

(35) OUTER CONTINENTAL SHELF.—The term "Outer Continental Shelf" has the same meaning as such term has under section

2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

(36) PRUDHOE BAY UNIT OF ALASKA.—The term "Prudhoe Bay Unit of Alaska" means the geographic area subject to the voluntary unit agreement approved by the Commissioner of the Department of Natural Resources of the State of Alaska on June 2, 1977, and referred to as the "affected area" in Conservation Order No. 145 of the Alaska Oil and Gas Conservation Committee, Division of Oil and Gas Conservation, Department of Natural Resources of the State of Alaska, as such order was in effect on June 1, 1977, and determined without regard to any adjustments in the description of the affected area permitted to be made under such order.

(37) ANTITRUST LAWS.—The term "Federal antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14–19, 20, 21, 22–27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8–9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

TITLE I—WELLHEAD PRICING

SUBTITLE A—WELLHEAD PRICE CONTROLS

SEC. 101. INFLATION ADJUSTMENT; OTHER GENERAL PRICE CEILING RULES.

(a) ANNUAL INFLATION ADJUSTMENT FACTOR.—

(1) GENERAL RULE.—For purposes of this title, the annual inflation adjustment factor applicable for any month shall be the sum of—

(A) a factor equal to one hundredth of the quarterly percent change in the GNP implicit price deflator; plus

(B) a correction factor of 1.002.

(2) QUARTERLY PERCENT CHANGE IN THE GNP IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (1)—

(A) IN GENERAL.—The term "quarterly percent change in GNP implicit price deflator", when used with respect to any month, means the quarterly percent change in the GNP implicit price deflator, computed and published as an annual rate by the Department of Commerce, for the most recent calendar quarter for which such quarterly percent change has been so published at least 8 days before the beginning of such month.

(B) MONTHS BEFORE ENACTMENT.—For purposes of applying such term with respect to any month in any calendar quarter which ends before the date of the enactment of this Act and for which a quarterly percent change in the GNP implicit price deflator has been published by the Department of Commerce as of such date of enactment, the quarterly percent change in the GNP implicit price deflator for the calendar quarter in which such month occurs shall be used in lieu of the quarterly percent change in the GNP implicit price deflator for a preceding calendar quarter.

(3) GNP IMPLICIT PRICE DEFLATOR.—For purposes of paragraph (2)—

(A) IN GENERAL.—The term "GNP implicit price deflator" means, except as provided in subparagraph (B), the preliminary estimate of the implicit price deflator, seasonally adjusted, for the gross national product, as computed and published by the Department of Commerce for the calendar quarter involved.

(B) MOST RECENT DATA AVAILABLE ON ENACTMENT.—The most recent revision, if any, of such implicit price deflator which has been so published before the date of the enactment of this Act, shall be used in lieu of the preliminary estimate of such implicit price deflator.

(b) RULES OF GENERAL APPLICATION.—

(1) DEPTH.—Except where otherwise provided, the depth of the completion location of any well shall be the true vertical depth, measured from the surface location of the well.

(2) COMMERCIAL QUANTITIES.—In determining whether production of natural gas has occurred in commercial quantities, quantities of natural gas produced from a well and used for the testing of such well or for other field uses which are production related shall not be taken into account.

(3) COMPUTATION OF MONTHLY EQUIVALENT.—For purposes of computing any price under this title, the monthly equivalent of any factor shall be the twelfth root of such factor.

(4) APPLICATION OF CEILING PRICES.—The maximum lawful ceiling prices under this title—

(A) shall only apply to natural gas produced in the United States;

(B) shall apply to the month of delivery without regard to the date of the sale or the date of the contract under which the sale occurs; and

(C) shall not apply to deliveries occurring before the first day of the first month beginning after the date of the enactment of this Act.

(5) SALES QUALIFYING UNDER MORE THAN ONE PROVISION.—If any natural gas qualifies under more than one provision of this title providing for any maximum lawful price or for any exemption from such a price with respect to any first sale of such natural gas, the provision which could result in the highest price shall be applicable.

(6) COMPUTATION AND PUBLICATION OF CEILING PRICES.—The Commission shall—

(A) not later than 5 days before the beginning of any month, compute and make available the maximum lawful prices prescribed under this title for such month and the monthly equivalent of the annual inflation adjustment factor for such month, and

(B) as soon as possible thereafter, publish such maximum lawful prices and such factor for such month in the Federal Register.

(7) ROUNDING.—Any maximum lawful price under this title shall be computed to the nearest mill (rounding any fraction

thereof which is one-half a mill or higher to the next highest mill).

(8) COMPUTATION OF INITIAL CEILING PRICES.—In computing any maximum lawful price under the provisions of this title for the first month for which such provisions take effect, if the initial maximum lawful price is established by reference to any month before such month, such maximum lawful price shall be computed as if such provisions had been in effect during each such prior month.

(9) EFFECT ON CONTRACT PRICE.—In case of—

(A) any price which is established under any contract for the first sale of natural gas and which does not exceed the applicable maximum lawful price under this title, or

(B) any price which is established under any contract for the first sale of natural gas which is exempted under subtitle B of this title from the application of a maximum lawful price under this title,

such maximum lawful price, or such exemption from such a maximum lawful price, shall not supersede or nullify the effectiveness of the price established under such contract.

SEC. 102. CEILING PRICE FOR NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM THE OUTER CONTINENTAL SHELF.

(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of—

(1) new natural gas; and

(2) natural gas produced from any old lease on the Outer Continental Shelf and qualifying under subsection (d) for the new natural gas ceiling price.

(b) MAXIMUM LAWFUL PRICE.—The maximum lawful price under this section for any month shall be—

(1) $1.75 per million Btu's, in the case of April 1977; and

(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

(A) the annual inflation adjustment factor applicable for such month; plus

(B)(i) .035, in the case of any month beginning before April 20, 1981; or

(ii) 04, in the case of any month beginning after April 20, 1981.

(c) DEFINITION OF NEW NATURAL GAS.—

(1) GENERAL RULE.—For the purposes of this section, the term "new natural gas" means each of the following categories of natural gas:

(A) NEW OCS LEASES.—Natural gas determined in accordance with section 503 to be produced from a new lease on the Outer Continental Shelf.

(B) NEW ONSHORE WELLS.—Natural gas determined in accordance with section 503 to be produced (other than from the Outer Continental Shelf) from—

(i) any new well which is 2.5 miles or more (determined in accordance with paragraph (2)) from the nearest marker well; or

(ii) any completion location, of any new well, which is located at a depth at least 1,000 feet below the deepest completion location of each marker well within 2.5 miles (determined in accordance with paragraph (2)) of such new well.

(C) NEW ONSHORE RESERVOIRS.—

(i) GENERAL RULE.—Except as provided in clauses (ii) and (iii), natural gas determined in accordance with section 503 to be produced (other than from the Outer Continental Shelf) from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977.

(ii) BEHIND-THE-PIPE EXCLUSION.—Clause (i) shall not apply to natural gas produced from any reservoir if—

(I) the reservoir was penetrated before April 20, 1977, by an old well from which natural gas or crude oil was produced in commercial quantities (whether or not such production was from such reservoir); and

(II) natural gas could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977.

(iii) WITHHELD GAS EXCLUSION.—Clause (i) shall not apply to natural gas produced from any reservoir—

(I) If such natural gas is produced through an old well; and

(II) subject to clause (iv), suitable facilities for the production and delivery to a pipeline of such natural gas were in existence on April 20, 1977.

(iv) EMERGENCY SALE FACILITIES.—The criteria of clause (iii)(II) shall not be considered to be met by reason of the existence of production and delivery facilities which were installed to carry out sales and deliveries of natural gas—

(I) under section 6 of the Emergency Natural Gas Act of 1977; or

(II) under the emergency sale authority pursuant to Opinion 699–B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act.

(2) DETERMINATIONS OF DISTANCE.—For purposes of determining the distance from any new well to any marker well—

(A) SURFACE LOCATION TO SURFACE LOCATION.—The measurement shall be the horizontal distance from the surface location of the new well to the surface location of the marker well—

(i) in any case in which the new well meets requirements for the non-directional drilling of wells prescribed by the appropriate State or Federal agency having regulatory jurisdiction over the drilling of such well; or

(ii) in any case in which—

(I) the surface drilling of such new well began on or after February 19, 1977;

(II) production of natural gas in commercial quantities began from such well before the date of the enactment of this Act; and

(III) the drilling of such well was not subject to any requirement regarding directional or non-directional drilling, or the drilling of such well was subject to requirements regarding directional drilling but such requirements did not necessitate the obtaining of any permit or other certificate before drilling began.

(B) COMPLETION LOCATION TO SURFACE LOCATION.—In the case of any new well which is not covered by subparagraph (A), the measurement shall be the horizontal distance from—

(i) the closest point of any completion location of the new well, vertically projected to the same elevation as the surface location of the nearest marker well; to

(ii) the surface location of such marker well.

(3) DETERMINATION OF COMMERCIAL QUANTITIES.—For purposes of determining whether production of natural gas has occurred in commercial quantities under paragraph (1)(C)—

(A) a rebuttable presumption exists that production from a reservoir in commercial quantities has not occurred if natural gas has not been sold and delivered from such reservoir before April 20, 1977; and

(B) quantities of natural gas sold in interstate commerce (within the meaning of the Natural Gas Act) shall not be taken into account if such quantities were sold before the date of the enactment of this Act—

(i) under section 6 of the Emergency Natural Gas Act of 1977; or

(ii) under the emergency sale authority pursuant to Opinion 699–B issued by the Federal Power Commission under section 7(c) of the Natural Gas Act.

(4) NEW WELLS WHICH ARE ALSO MARKER WELLS.—For purposes of applying paragraph (c)(1)(B)(ii) in the case of any marker well which is also a new well under section 2(3)(B), the reference in such paragraph (c)(1)(B)(ii) to the deepest completion location of any marker well shall be deemed to be a reference to any subsurface location from which natural gas was produced in commercial quantities after January 1, 1970, and before February 19, 1977.

(d) OCS GAS QUALIFYING FOR NEW NATURAL GAS CEILING PRICE.—For purposes of this section—

(1) OCS RESERVOIRS DISCOVERED ON OR AFTER JULY 27, 1976.—Natural gas determined in accordance with section 503 to be produced from an old lease on the Outer Continental Shelf shall qualify for the new natural gas ceiling price if such natural gas is produced from a reservoir which was not discovered before July 27, 1976.

(2) RESERVOIRS PENETRATED BEFORE JULY 27, 1976.—For purposes of paragraph (1) a reservoir shall be considered as having been discovered before July 27, 1976, if—

(A) such reservoir was penetrated by a well before July 27, 1976; and

(B) with respect to such well—

(i) the results of any production test meeting the requirements of OCS Order No. 4 demonstrate that, as of the time of such test, the reservoir is capable of producing in paying quantities (within the meaning of such Order);

(ii) any production capability evidence meeting the requirements of OCS Order No. 4 demonstrates that, as of the time such evidence is obtained, the reservoir is capable of producing in paying quantities (within the meaning of such Order); or

(iii) subject to paragraph (3), an induction-electric log, sidewall cores and core analysis, or a wire line formation test indicates that, as of the time of such test, the reservoir is commercially producible.

(3) EFFECT OF NEGATIVE PRODUCTION CAPABILITY TESTS.—For purposes of paragraph (1), a reservoir shall not be considered as having been discovered before July 27, 1976, by the penetration of such reservoir by a well before July 27, 1976, if, with respect to such well—

(A) a production test meeting the requirements of OCS Order No. 4 was performed and the results of such test fail to demonstrate that, as of the time of such test, such reservoir was capable of producing in paying quantities (within the meaning of such Order); and

(B) production capability evidence meeting the requirements of OCS Order No. 4 does not exist or, if existing, does not demonstrate that, as of the date such evidence was obtained, such reservior was capable of producing in paying quantities (within the meaning of such Order).

(4) BURDEN OF PROOF.—For purposes of paragraph (1), the producer shall have the burden of showing that—

(A) no test described in paragraph (2)(B) (i) or (iii) was performed and no evidence described in paragraph (2)(B) (ii) or (iii) exists; or

(B) if any such test was performed or such evidence exists, the results of such test or such evidence do not provide the applicable demonstration or indication specified under paragraph (2).

(5) DEFINITION OF OCS ORDER NO. 4.—For purposes of this subsection, the term "OCS Order No. 4" means the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, as approved by the Chief of the Conservation Division on August 28, 1969.

(e) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The preceding provisions of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the

natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

SEC. 103. CEILING PRICE FOR NEW, ONSHORE PRODUCTION WELLS.

(a) APPLICATION.—In the case of natural gas determined in accordance with section 503 to be produced from any new, onshore production well, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULE.—The maximum lawful price under this section for any month shall be—

(A) $1.75 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) PRODUCTION AFTER 1984 FROM WELLS 5,000 FEET OR LESS IN DEPTH.—Effective beginning with the month of January 1985 and in any month thereafter, in the case of any first sale of natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, and which is produced from a new, onshore production well from a completion location located at a depth of 5,000 feet or less, the maximum lawful price under this section for any such natural gas delivered during any month shall be a price which is midway between—

(A) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

(B) the maximum lawful price, per million Btu's, computed for such month under paragraph (1).

(c) DEFINITION OF NEW, ONSHORE PRODUCTION WELL.—For purposes of this section, the term "new, onshore production well" means any new well (other than a well located on the Outer Continental Shelf)—

(1) the surface drilling of which began on or after February 19, 1977;

(2) which satisfies applicable Federal or State well-spacing requirements, if any; and

(3) which is not within a proration unit—

(A) which was in existence at the time the surface drilling of such well began;

(B) which was applicable to the reservoir from which such natural gas is produced; and

(C) which applied to a well (i) which produced natural gas in commercial quantities or (ii) the surface drilling of which was begun before February 19, 1977, and which was thereafter capable of producing natural gas in commercial quantities.

(d) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The preceding provisions of this section shall not apply to any natural gas produced

from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

SEC. 104. CEILING PRICE FOR SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE.

(a) APPLICATION.—In the case of natural gas committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and for which a just and reasonable rate under the Natural Gas Act was in effect on such date for the first sale of such natural gas, the maximum lawful price computed under subsection (b) shall apply to any first sale of such natural gas delivered during any month.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULE.—The maximum lawful price under this section for any month shall be the higher of—

(A) (i) the just and reasonable rate, per million Btu's established by the Commission which was (or would have been) applicable to the first sale of such natural gas on April 20, 1977, in the case of April 1977; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month, or

(B) any just and reasonable rate which was established by the Commission after April 20, 1977, and before the date of the enactment of this Act and which is applicable to such natural gas.

(2) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

SEC. 105. CEILING PRICE FOR SALES UNDER EXISTING INTRASTATE CONTRACTS.

(a) APPLICATION.—The maximum lawful price computed under subsection (b) shall apply to any first sale of natural gas delivered during any month in the case of natural gas, sold under any existing contract or any successor to an existing contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act.

(b) MAXIMUM LAWFUL PRICE.—

(1) GENERAL RULES.—Subject to paragraphs (2) and (3), the maximum lawful price under this section shall be the lower of—

(A) the price under the terms of the existing contract, to which such natural gas was subject on the date of the enact-

ment of this Act, as such contract was in effect on such date; or

(B) the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

(2) CONTRACT PRICE EXCEEDING NEW GAS CEILING PRICE ON ENACTMENT.—In the case of any natural gas described in subsection (a) for which the contract price applicable on the date of the enactment of this Act exceeds the maximum lawful price, per million Btu's, computed for such date under section 102 (relating to new natural gas), the maximum lawful price under this section shall be the higher of—

(A) the maximum lawful price, per million Btu's, computed for such month under section 102; or

(B)(i) the contract price on the date of the enactment of this Act, in the case of the month in which this Act is enacted; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(3) PRICE INCREASES RESULTING FROM INDEFINITE PRICE ESCALATOR CLAUSES.—

(A) IN GENERAL.—Effective January 1985, and each month thereafter, in the case of any first sale of natural gas, which is sold at a price established under any indefinite price escalator clause of any existing contract or successor to an existing contract and for which the contract price on December 31, 1984, is higher than $1.00 per million Btu's, the maximum lawful price under this section for any such natural gas delivered during any month shall be the higher of—

(i) the maximum lawful price, per million Btu's, computed under paragraph (2)(B); or

(ii)(I) in the case of January 1985, the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for such month; and

(II) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this clause for the immediately preceding month multiplied by the monthly equivalent of the sum of a factor equal to the annual inflation adjustment factor applicable for such month plus .03.

(B) DEFINITION OF INDEFINITE PRICE ESCALATOR CLAUSE.—For purposes of this paragraph, the term "indefinite price escalator clause" includes any provision of any contract—

(i) which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or

(ii) which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

(C) CONTRACT MODIFICATIONS AFTER MAY 3, 1978, TO BE DISREGARDED.—*In the case of any natural gas which was subject to any contract on May 3, 1978, that contained an indefinite price escalator clause on such date, no amendment to or modification of the operation of such contract made after such date may have the effect of limiting or precluding the application of this paragraph on or after January 1, 1985, to prices allowed with respect to such natural gas.*

(D) EXCLUSION.—*Subparagraph (A) shall not apply to any first sale of new natural gas (as defined in section 102(c)), stripper well natural gas (as defined in section 108(b)), high-cost natural gas (as defined in section 107(c)), natural gas produced from a new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of more than 5,000 feet, and, beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, natural gas produced from any new, onshore production well (as defined in section 103(c)) from a completion location located at a depth of 5,000 feet or less.*

(c) DEFINITION OF CONTRACT PRICE.—*For purposes of this section, the term "contract price", when used with respect to any specific date, means—*

(1) *the price paid, per million Btu's, under a contract for deliveries of natural gas occurring on such date; or*

(2) *if no deliveries of natural gas occurred under such contract on such date, the price, per million Btu's, that would have been paid had such deliveries occurred on such date.*

SEC. 106. CEILING PRICE FOR SALES UNDER ROLLOVER CONTRACTS.

(a) INTERSTATE ROLLOVER CONTRACTS.—*In the case of any first sale under any rollover contract of natural gas which was committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—*

(1)(A) *in the case of the month in which the effective date of such rollover contract occurs, the just and reasonable rate, if any, per million Btu's established by the Commission and applicable on such date to the natural gas subject to the expired contract; and*

(B) *in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or*

(2)(A) *$.54 per million Btu's, in the case of April 1977; and*

(B) *in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.*

For purposes of this subsection, the term "rollover contract" includes any contract which would have been a rollover contract but for the

fact that the expiration of the previous contract occurred prior to the day before the date of the enactment of this Act.

(b) INTRASTATE ROLLOVER CONTRACTS.—

(1) GENERAL RULE.—In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, the maximum lawful price under this subsection for such natural gas delivered during any month shall be the higher of—

(A) (i) the maximum price paid under the expired contract, per million Btu's, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month; or

(B) (i) $1.00 per million Btu's, in the case of April 1977; and

(ii) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subparagraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) CERTAIN STATE OR INDIAN PRODUCTION OR ROYALTY SHARES.—

(A) GENERAL RULE.—In the case of any first sale under any rollover contract of natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which constitutes a State government's or Indian tribe's natural gas production or royalty share or other interest (as of such day) in natural gas production, from real property (including subsurface mineral interests) owned on the date of the enactment of this Act by such State government or Indian tribe (as the case may be), the maximum lawful price under this subsection for any such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).

(B) INDIAN TRIBAL LANDS.—For purposes of this paragraph, land shall be considered to be owned by an Indian tribe only if—

(i) such land is owned directly by such tribe; or

(ii) such land is held by the United States or any State in trust for Indian persons and is located within the boundaries of an Indian reservation (as such boundaries were in effect on the date of the enactment of this Act).

(C) DEFINITIONS.—For purposes of this paragraph—

(i) STATE GOVERNMENT.—The term "State government" means any State or any agency, instrumentality, or political subdivision of a State.

(ii) INDIAN TRIBE.—The term "Indian tribe" means any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians.

(c) *CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section, if such price is—*

(1) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(2) just and reasonable within the meaning of the Natural Gas Act.

SEC. 107. CEILING PRICE FOR HIGH-COST NATURAL GAS.

(a) *WELLS COMPLETED BELOW 15,000 FEET.—In the case of any first sale of high-cost natural gas produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from any completion location which is located at a depth of more than 15,000 feet, the maximum lawful price under this section for such natural gas delivered during any month shall be the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas).*

(b) *COMMISSION AUTHORITY TO PRESCRIBE HIGHER INCENTIVE PRICES.—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any high-cost natural gas, which exceeds the otherwise applicable maximum lawful price to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost natural gas.*

(c) *DEFINITION OF HIGH-COST NATURAL GAS.—For purposes of this section, the term "high-cost natural gas" means natural gas determined in accordance with section 503 to be—*

(1) produced from any well the surface drilling of which began on or after February 19, 1977, if such production is from a completion location which is located at a depth of more than 15,000 feet;

(2) produced from geopressured brine;

(3) occluded natural gas produced from coal seams;

(4) produced from Devonian shale; and

(5) produced under such other conditions as the Commission determines to present extraordinary risks or costs.

(d) *PROVISIONS FOR HIGH-COST NATURAL GAS TO BE ELECTIVE.—If any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax is specifically allowable with respect to any high-cost natural gas (or category thereof) under any provision of law enacted after the date of the enactment of this Act, the provisions of subsections (a) and (b) of this section and the provisions of subtitle B shall not apply to such natural gas produced from any well unless an election to have such provisions apply (in lieu of such credit, exemption, deduction, or adjustment) with respect to such natural gas produced from such well is filed with the Commission on or before the later of—*

(A) the 30th day after the date of the enactment of the Act under which such credit, exemption, deduction, or adjustment is provided; or

(B) the date the surface drilling of such well began.

SEC. 108. CEILING PRICE FOR STRIPPER WELL NATURAL GAS.

(a) GENERAL RULE.—In the case of any first sale or stripper well natural gas the maximum lawful price under this section for such natural gas delivered during any month shall be—

(1) $2.09 per million Btu's, in the case of May 1978; and

(2) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this subsection for the preceding month multiplied by the monthly equivalent of a factor equal to the sum of—

(A) the annual inflation adjustment factor applicable for such month; plus

(B)(i) .035, in the case of any month beginning before April 20, 1981; or

(ii) .04, in the case of any month beginning after April 20, 1981.

(b) DEFINITION OF STRIPPER WELL NATURAL GAS.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the term "stripper well natural gas" means natural gas determined in accordance with section 503 to be nonassociated natural gas produced during any month from a well if—

(A) during the preceding 90-day production period, such well produced nonassociated natural gas at a rate which did not exceed an average of 60 Mcf per production day during such period; and

(B) during such period such well produced at its maximum efficient rate of flow, determined in accordance with recognized conservation practices designed to maximize the ultimate recovery of natural gas.

(2) PRODUCTION IN EXCESS OF 60 MCF.—The Commission shall, by rule, provide that, if nonassociated natural gas produced from a well which previously qualified as a stripper well under paragraph (1) exceeds an average of 60 Mcf per production day during any 90-day production period, such natural gas may continue to qualify as stripper well natural gas if the increase in nonassociated natural gas produced from such well was the result of the application of recognized enhanced recovery techniques.

(3) DEFINITIONS.—For purposes of this subsection—

(A) PRODUCTION DAY.—The term "production day" means—

(i) any day during which natural gas is produced; and

(ii) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency having regulatory jurisdiction over the production of natural gas

(B) 90-DAY PRODUCTION PERIOD.—The term "90-day production period" means any period of 90 consecutive calendar days excluding any day during which natural gas is not produced for reasons other than voluntary action of any person with the right to control production of natural gas from such well.

(C) NONASSOCIATED NATURAL GAS.—*The term "nonassociated natural gas" means natural gas which is not produced in association with crude oil.*

SEC. 109. CEILING PRICE FOR OTHER CATEGORIES OF NATURAL GAS.

(a) APPLICATION.—*The maximum lawful price computed under subsection (b) shall apply to any first sale of any natural gas delivered during any month, in the case of any natural gas which is not covered by any maximum lawful price under any other section of this subtitle, including—*

(1) natural gas produced from any new well not otherwise qualifying for a higher maximum lawful price under this title;

(2) natural gas committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and for which a just and reasonable rate under the Natural Gas Act was not in effect on such date for the first sale of such natural gas;

(3) natural gas which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which was not subject to an existing contract on such day; and

(4) natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(b) MAXIMUM LAWFUL PRICE.—

(1) THE MAXIMUM LAWFUL PRICE UNDER THIS SECTION FOR ANY MONTH SHALL BE—

(A) $1.45 per million Btu's, in the case of April 1977; and

(B) in the case of any month thereafter, the maximum lawful price, per million Btu's, prescribed under this paragraph for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor applicable for such month.

(2) CEILING PRICES MAY BE INCREASED IF JUST AND REASONABLE.—*The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section if such price is—*

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

SEC. 110. TREATMENT OF STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.

(a) ALLOWANCE FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.—*Except as provided in subsection (b), a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this subtitle if such first sale price exceeds the maximum lawful price to the extent necessary to recover—*

(1) State severance taxes attributable to the production of such natural gas and borne by the seller, but only to the extent the

amount of such taxes does not exceed the limitation of subsection (b); and

(2) any costs of compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or other similar costs, borne by the seller and allowed for, by rule or order, by the Commission.

(b) LIMITATION ON STATE SEVERANCE TAXES.—The State severance tax allowable under subsection (a)(1) with respect to the production of any natural gas may not incude any amount of State severance taxes borne by the seller which results from a provision of State law enacted on or after December 1, 1977, unless such provision of law is equally applicable to natural gas produced in such State and delivered in interstate commerce and to natural gas produced in such State and not so delivered.

(c) DEFINITION OF STATE SEVERANCE TAX.—For purposes of this section, the term "State severance tax" means any severance, production, or similar tax, fee, or other levy imposed on the production of natural gas—

(1) by any State or Indian tribe (as defined it section 106(b)(2)(B)(ii)); and

(2) by any political subdivision of a State if the authority to impose such tax, fee, or other levy is granted to such political subdivision under State law.

SUBTITLE B—DECONTROL OF CERTAIN NATURAL GAS PRICES

SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

(a) GENERAL RULE.—Subject to the reimposition of price controls as provided in section 122, the provisions of subtitle A respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e), cease to apply effective January 1, 1985:

(1) NEW NATURAL GAS.—New natural gas (as defined in section 102(c)).

(2) NEW, ONSHORE, PRODUCTION WELLS.—Natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) INTRASTATE CONTRACTS IN EXCESS OF $1.00.—Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if—

(A) such natural gas was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act; and

(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occurred on such date, is higher than $1.00 per million Btu's.

(b) HIGH-COST NATURAL GAS.—Effective beginning on the effective date of the incremental pricing rule required under section 201, the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 107(c)(1), (2), (3), or (4).

(c) NATURAL GAS PRODUCED FROM 5,000 OR LESS.—Effective beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 122, the provisions of subtitle A respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d), cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas—

(1) was not committed or dedicated to interstate commerce on April 20, 1977; and

(2) is produced from a completion location which is located at a depth of 5,000 feet or less.

(d) EXCLUSION OF CERTAIN ALASKA NATURAL GAS.—The provisions of subsections (a) and (c) shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(e) LIMITATION ON INDEFINITE PRICE ESCALATORS.—Natural gas which is not subject to maximum lawful prices under subtitle A solely by reason of subsection (a)(3) and which is sold under any existing contract or successor to an existing contract at a price established under an indefinite price escalator clause (as defined in section 105(b)(3)(B)) shall be subject to the provisions of section 105(b)(3).

SEC. 122. STANDBY PRICE CONTROL AUTHORITY.

(a) REIMPOSITION OF PRICE CONTROLS.—The President, in accordance with subsection (c)(1), or the Congress, in accordance with subsection (c)(2), may reimpose maximum lawful prices for first sales of natural gas to which section 121(a) applies and delivery of which occurs after the effective date of the reimposition of such maximum lawful prices.

(b) LIMITATIONS.—A reimposition of maximum lawful prices under this section—

(1) may not take effect earlier than July 1, 1985, nor later than June 30, 1987; and

(2) shall remain in effect for a period of 18 months.

(c) PROCEDURE FOR REIMPOSING PRICE CONTROLS.—For purposes of this section—

(1) PRESIDENTIAL REIMPOSITION.—Any exercise of authority by the President under subsection (a) shall be by written order issued after May 31, 1985, and, subject to subsection (b), shall take effect for the first month beginning after the first 30 calendar days of continuous session of Congress (as determined in accordance with section 507(b)) after a copy of such order has been submitted to each House of the Congress unless during such 30 calendar days of continuous session of Congress, the Congress adopts a concurrent resolution of disapproval described in section 507(c)(1).

(2) CONGRESSIONAL REIMPOSITION.—Any exercise of authority by

the Congress under subsection (a) shall be by the adoption of a concurrent resolution after May 31, 1985, described in section 507 (c)(2) and, subject to subsection (b), shall take effect for the first month beginning after the date of the adoption of such resolution.

(d) MAXIMUM LAWFUL PRICES APPLICABLE UNDER REIMPOSITION OF PRICE CONTROL.—If maximum lawful prices are reimposed under this section on first sales of natural gas to which section 121(a) applies, the maximum lawful price under this section for any first sale of such natural gas delivered during any month shall be—

(1) except as provided in paragraph (2), the maximum lawful price, per million Btu's, computed for such month under section 102 (relating to new natural gas); and

(2) the maximum lawful price, per million Btu's, computed for such month under section 103(b)(2) (relating to new, onshore production wells 5,000 feet or less in depth), in the case of natural gas produced from any new, onshore production well (as defined in section 103(c)) if such natural gas—

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of 5,000 feet or more.

(e) ALLOWANCE FOR STATE SEVERANCE TAXES AND CERTAIN PRODUCTION-RELATED COSTS.—A price may exceed the maximum lawful price applicable for such natural gas under this section to the same extent as is provided under section 110 with respect to maximum lawful prices under subtitle A.

(f) LIMITATION.—Maximum lawful prices may be reimposed only once under this section.

SEC. 123. REPORT TO THE CONGRESS.

(a) REPORTS.—On or before July 1, 1984, and on or before January 1, 1985, the Department of Energy shall prepare and transmit to the President and to each House of the Congress a report on natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. Each such report shall include an evaluation by the Department of Energy whether equilibrium exists between supply and demand for natural gas.

(b) PUBLIC COMMENT.—In preparing each report required under subsection (a), the Department of Energy shall provide an opportunity for public comment with respect to matters required under subsection (a) to be included in such report.

TITLE II—INCREMENTAL PRICING

SEC. 201. INDUSTRIAL BOILER FUEL USE.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Commission shall prescribe and make effective (and may from time to time amend) a rule designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

(1) described in section 203; and

(2) incurred by any interstate pipeline.

(b) INITIAL APPLICATION.—The requirements of the rule under this section shall apply with respect to the boiler fuel use of natural gas by any industrial boiler fuel facility.

(c) DEFINITIONS.—For purposes of this section—

(1) INDUSTRIAL BOILER FUEL FACILITY.—The term "industrial boiler fuel facility" means any industrial facility, as defined by the Commission which uses natural gas as a boiler fuel and which is not exempt under section 206.

(2) BOILER FUEL USE.—The term "boiler fuel use" means the use of any fuel for the generation of steam or electricity.

SEC. 202. AMENDMENT EXPANDING APPLICATION FOR OTHER INDUSTRIAL USES.

(a) IN GENERAL.—

(1) COMMISSION RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall, by rule, prescribe an amendment to the rule required under section 201 designed to provide for the passthrough, in accordance with the provisions of this title, of the costs of natural gas which are—

(A) described in section 203; and

(B) incurred by any interstate pipeline.

(2) EFFECTIVENESS.—The amendment required by this section, and any amendment to the rule under section 201 which is applicable to facilities to which the amendment required by this section applies (other than a technical or clerical amendment), shall take effect only as provided under subsection (c).

(b) EXPANDED APPLICATION.—The requirements of the rule under section 201, as amended under subsection (a), shall apply with respect to the industrial use of natural gas (as defined by the Commission in such rule), including boiler fuel use of natural gas (as defined in section 201(C)(2)) by—

(1) any industrial boiler fuel facility (as defined in section 201(C)(1)); and

(2) any industrial facility which is within a category defined by the Commission in such amendment as subject thereunder to the requirements of such rule which is not exempt under section 206.

(c) CONGRESSIONAL REVIEW.—

(1) IN GENERAL.—Any amendment, the effectiveness of which is subject to this subsection, shall take effect beginning with the first month which begins more than 30 days after the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such amendment has been submitted to each House of the Congress or on such later date, not more than 90 days thereafter, as may be provided in such amendment unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3) with respect to such amendment.

(2) AUTHORITY IN THE EVENT OF CONGRESSIONAL DISAPPROVAL.—

(A) AUTHORITY TO RESUBMIT.—If either House of the

Congress adopts a resolution of disapproval with respect to the amendment required under subsection (a) (or any amendment proposed and submitted under this subparagraph), the Commission may thereafter submit to each House of the Congress an amendment, satisfying the requirements of subsections (a) and (b), which amendment shall take effect as provided under paragraph (1).

(B) LIMITATION.—The authority of subparagraph (A) may not be exercised—

(i) earlier than 6 months after the date of the adoption of the most recent resolution of disapproval with respect to any such amendment under this section; and

(ii) later than 2 years after the date of the adoption of any resolution of disapproval described in section 507(c)(3) with respect to the amendment required under subsection (a).

SEC. 203. ACQUISITION COSTS SUBJECT TO PASSTHROUGH.

(a) IN GENERAL.—The following costs shall be subject to the passthrough requirements of the rule prescribed under section 201 (including any amendment under section 202):

(1) NEW NATURAL GAS.—In the case of new natural gas (as defined in section 102(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

(2) NATURAL GAS UNDER INTRASTATE ROLLOVER CONTRACT.—In the case of natural gas, delivered under a rollover contract, which was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act, any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which such delivery occurs.

(3) NEW, ONSHORE PRODUCTION WELL GAS.—In the case of natural gas produced from any new, onshore production well (as defined in section 103(c)), any portion of the first sale acquisition cost of such natural gas which exceeds the incremental pricing threshold applicable for the month in which the delivery of such natural gas occurs.

(4) LNG IMPORTS.—Subject to section 207, in the case of liquefied natural gas imported into the United States, any portion of the first sale acquisition cost of such natural gas (whether or not liquefied when acquired) which exceeds the incremental pricing threshold applicable for the month in which such liquefied natural gas enters the United States.

(5) NATURAL GAS (OTHER THAN LNG) IMPORTS.—Subject to section 207, in the case of natural gas (other than liquefied natural gas) imported into the United States, any portion of the first sale acquisition cost of such imported natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which such natural gas enters the United States, without regard to section 110.

(6) STRIPPER WELL NATURAL GAS.—*In the case of stripper well natural gas (as defined in section 108(b)), any portion of the first sale acquisition cost of such natural gas which exceeds the maximum lawful price, per million Btu's, computed under section 102 (relating to new natural gas) for the month in which the delivery of such natural gas occurs, without regard to section 110.*

(7) HIGH-COST NATURAL GAS.—*In the case of high-cost natural gas (as defined in section 107(c)), any portion of the first sale acquisition cost of such natural gas which exceeds 130 percent of the amount the Commission determines represents——*

(A) the weighted average per barrel cost of Number 2 fuel oil landed in the greater New York City metropolitan area, during an appropriate period preceding the month during which delivery of such natural gas occurs; divided by

(B) a Btu conversion factor of 5.8 million Btu's per barrel.

(8) ALASKA NATURAL GAS TRANSPORTATION SYSTEM.—*In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—*

(A) Any portion of the first sale acquisition cost of such natural gas which is not described in subparagraph (B) and which exceeds the maximum lawful price, per million Btu's computed under section 109 (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs, without regard to section 110; and

(B) any amount paid to any person (other than the producer of such natural gas or an affiliate of such producer) for, or attributable to, any compressing, gathering, processing, treating, liquefying, or transporting such natural gas, or any similar service provided with respect to such natural gas, before the delivery of such natural gas to such system.

(9) INCREASED STATE SEVERANCE TAXES.—

(A) INCREASES INCLUDED.—Any portion of the cost of natural gas at any first sale attributable to any increase in the amount of State severance taxes (as defined in section 110(c)) which results from a provision of State law enacted on or after December 1, 1977.

(B) CERTAIN CHANGES ALLOWED IN METHOD OF COMPUTING TAX.—Subparagraph (A) shall not apply to any increase in State severance taxes resulting from a change in the method of computation of such tax by reason of any provision of State law enacted on or after December 1, 1977, if—

(i) as of the effective date of such change in method of computation, such increase does not result in an increase in the level of such tax, expressed as a percentage of the weighted average first sale price of natural gas produced in such State, above the percentage of such average first sale price which such tax constituted on the day before such effective date; and

(ii) such provision of law is equally applicable to natural gas produced in such State and delivered in inter-

state commerce and to natural gas produced in such State and not so delivered.

(C) DETERMINATION OF AVERAGE PRICE.—The price to be used in determining the weighted average first sale price for purposes of clause (i) shall be the price paid at the first sale which is used by such State in administering such tax (or an imputed value, if the State uses an event other than a first sale in administering such tax).

(10) PURCHASES UNDER SECTION 311.—In the case of any sale of natural gas authorized under section 311, any portion of any amount paid, per million Btu's, in the acquisition of such natural gas in any such sale which exceeds the incremental pricing threshold applicable for the month in which such acquisition occurs.

(11) SURCHARGES PAID TO OTHER PIPELINES.—The amount of any surcharge (described in section 204(c)(3)) paid by any interstate pipeline for natural gas acquired by such pipeline from another interstate pipeline.

(b) FIRST SALE ACQUISITION COSTS.—

(1) GENERAL RULE.—For purposes of this section, the first sale acquisition cost of natural gas is—

(A) the price paid, per million Btu's, in any first sale of such natural gas, in the case of any natural gas produced in the United States and acquired in such first sale; and

(B) the price paid for such natural gas, per million Btu's, at the point of entry to the United States, in the case of natural gas or liquefied natural gas imported into the United States.

Any amount of State severance taxes paid at any first sale shall not be included under subparagraph (A) or (B).

(2) INTERSTATE PIPELINE PRODUCTION.—For purposes of this section, in the case of any natural gas produced by any interstate pipeline or any affiliate of such pipeline, the first sale acquisition cost of such natural gas shall be determined in accordance with rules prescribed by the Commission.

(c) INCREMENTAL PRICING THRESHOLD.—For purposes of this section, the incremental pricing threshold applicable for any month shall be—

(1) $1.48 per million Btu's, in the case of March 1978; and

(2) in the case of any month thereafter, the amount, per million Btu's, determined under this subsection for the preceding month multiplied by the monthly equivalent of the annual inflation adjustment factor (as defined in section 101(a)) applicable for such month.

(d) CLASSIFICATION TO BE BASED ON PROVISIONS UNDER WHICH SALE PRICE IS DETERMINED.—In the case of natural gas which is described in more than one paragraph of paragraphs (1) through (8) of subsection (a), the Commission shall, by rule, prescribe the method for determining under which such paragraph the first sale acquisition costs of such natural gas shall be subject to the passthrough requirements of this title, based upon the classification of such natural gas under which the price of such natural gas is determined under title I.

SEC. 204. METHOD OF PASSTHROUGH.

(a) ESTABLISHMENT OF INCREMENTAL PRICING ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any interstate pipeline subject to such rule shall establish and maintain an incremental pricing account (hereinafter in this title referred to as the "account").

(b) CREDITS TO ACCOUNT.—The rule required under section 201 (including any amendment under section 202 to such rule) shall provide that any costs subject to the passthrough requirements of this title under section 203 (and any carrying charges permitted by the Commission) shall be credited to the account of such pipeline. Amounts so credited may not be allocated to the rates and charges of such pipeline except to the extent provided under this section.

(c) REQUIREMENT FOR DIRECT PASSTHROUGH.—

(1) IN GENERAL.—The rule required under section 201 (including any amendment under section 202 to such rule) shall be designed to provide that any amounts in any interstate pipeline's account will be passed through, in accordance with a method prescribed under paragraph (2), by means of a surcharge determined in accordance with a method prescribed under paragraph (3).

(2) SURCHARGE PASSTHROUGH.—The rule required under section 201 (including any amendment under section 202) shall provide—

(A) that any surcharge calculated under paragraph (3) may not be imposed by any interstate pipeline except in accordance with a method prescribed under subparagraph (B); and

(B) one or more methods for imposing such surcharge on the rates and charges of such pipeline applicable to any volume of natural gas delivered, during the calendar period involved, for industrial use to any incrementally priced industrial facilities served directly by such interstate pipeline and to incrementally priced industrial facilities served indirectly through any other interstate pipeline or any local distribution company.

(3) SURCHARGE.—

(A) CALCULATION OF SURCHARGE.—Subject to subparagraphs (B) and (C), the amount of any surcharge imposed by any interstate pipeline under this subsection on deliveries of natural gas during the calendar period involved shall be based on the dollar amount in such pipeline's account at the beginning of such period and on the volume of natural gas delivered directly or indirectly by such pipeline during such period or a preceding calendar period to incrementally priced industrial facilities for industrial use with such adjustments as the Commission determines necessary to carry out the purposes of this title.

(B) ELIMINATION OR REDUCTION OF SURCHARGE APPLICABLE TO A FACILITY.—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods which have the effect of eliminating or reducing the amount of the surcharge determined under subparagraph (A) to be passed through under paragraph (2)

with respect to volumes of natural gas to be delivered directly or indirectly to any incrementally priced industrial facility for industrial use to the extent that such surcharge, in the absence of such elimination or reduction, would cause the rates and charges, per million Btu's, paid for such volumes of natural gas by that incrementally priced industrial facility to exceed the appropriate alternative fuel cost.

(C) INCREASE IN GENERAL SURCHARGE TO REFLECT AN ADJUSTMENT UNDER SUBPARAGRAPH (B).—The rule under section 201 (including any amendment under section 202 to such rule) shall provide one or more methods by which, in any case in which the surcharge is eliminated or reduced under subparagraph (B) with respect to certain deliveries of natural gas, the interstate pipeline involved may recover from incrementally priced industrial facilities which are not subject to any surcharge elimination or reduction under subparagraph (B) the dollar amount which would have been so passed through if the elimination or reduction under subparagraph (B) had not occurred.

(D) EXCEPTION.—The methods prescribed under subparagraphs (B) and (C) need not require—

(i) elimination or reduction under subparagraph (B) of the surcharge with respect to any specific deliveries of natural gas; or

(ii) the increase under subparagraph (C) of the surcharge generally applicable due to any adjustment under subparagraph (B),

if the Commission determines that to do so would be impracticable or unnecessary to carry out the purposes of this title.

(4) LOCAL DISTRIBUTION COMPANY DIRECT PURCHASES.—In any case in which a local distribution company directly incurs any first sale acquisition cost subject to the passthrough requirements of this title under section 203 or otherwise directly incurs any other cost subject to such requirements under sections 203(a)(8)(B), (9), or (10), such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this title as if it were an interstate pipeline.

(5) PIPELINES AND LOCAL DISTRIBUTION COMPANIES WITH MORE THAN ONE SOURCE OF NATURAL GAS.—The rule under section 201 (including any amendment under section 202 to such rule) shall prescribe one or more methods for determining, for purposes of paragraph (2)(B) and paragraph (3)(A), the volume of natural gas delivered indirectly by any interstate pipeline to any incrementally priced industrial facility through any other interstate pipeline or local distribution company for purposes of appying subsecton (d)(2).

(d) DEDUCTIONS FROM ACCOUNT.—

(1) IN GENERAL.—Amounts passed through by any interstate pipeline by means of any surcharge under this section shall be deducted from such pipeline's account.

(2) *NORMAL ALLOCATION TO OCCUR WHERE BTU EQUIVALENCY IS REACHED FOR ALL FACILITIES SERVED BY A PIPELINE.—In any case in which the rates and charges to incrementally priced industrial facilities for natural gas deliverer, directly or indirectly, by any interstate pipeline for industrial use to incrementally priced industrial facilities subject to the rule required under section 201 (including any amendment under section 202 to such rule), are not less than the appropriate alternative fuel cost, such rule shall prescribe one or more methods by which amounts in excess of that reasonably necessary to maintain such rates and charges applicable to such industrial facilities at the appropriate alternative fuel cost may be deducted from such pipeline's account and may be allocated to the rates and charges of such interstate pipeline in any manner which would be permitted in the absence of this title.*

(e) *DETERMINATION OF ALTERNATIVE FUEL COST.—*

(1) *IN GENERAL.—Except as provided in paragraph (2), the appropriate alternative fuel cost for any region (as designated by the Commission) shall be the price, per million Btu's, for Number 2 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel.*

(2) *REDUCTION OF APPROPRIATE ALTERNATIVE FUEL COST ALLOWED.—The Commission may, by rule or order, reduce the appropriate alternative fuel cost—*

(A) for any category of incrementally priced industrial facilities, subject to the rule required under section 201 (including any amendment under section 202 to such rule) located within any region and served by the same interstate pipeline; or

(B) for any specific incrementally priced industrial facility which is subject to such requirements and which is located in any region;

to an amount not lower that the price, per million Btu's, for Number 6 fuel oil determined by the Commission to be paid in such region by industrial users of such fuel, if and to the extent the Commission determines, after an opportunity for written and oral presentation of views, data, and arguments, that such reduction is necessary to prevent increases in the rates and charges to residential, small commercial, and other high-priority users of natural gas which would result from a reallocation of costs caused by the conversion of such industrial facility or facilities from natural gas to other fuels, which conversion is likely to occur if the level of the appropirate alternative fuel cost were not so reduced.

(f) *DETERMINATION OF APPROPRIATE ACCOUNTING PERIOD.—The rule required to be prescribed in section 201 shall specify the appropriate calendar periods used for purposes of such rule (including any amendment under section 202 to such rule).*

(g) *INCREMENTALLY PRICED INDUSTRIAL FACILITY DEFINED.—For purposes of this section, the term "incrementally priced industrial facility" means any industrial facility subject to the requirements of the rule under section 201 (including any amendment under section 202 to such rule).*

(h) INDUSTRIAL USE DEFINED.—For purposes of this section, the term "industrial use", when used with respect to natural gas, means the boiler fuel use of natural gas (as defined in section 201(c)(2)) and any other use defined, by rule by the Commission as an industrial use.

SEC. 205. LOCAL DISTRIBUTION COMPANY PASSTHROUGH REQUIREMENTS.

(a) GENERAL RULE.—Any surcharge under this title, paid by any local distribution company with respect to natural gas which is indirectly delivered by any interstate pipeline to incrementally priced industrial facilities which are served by such local distribution company, shall be directly passed through to such industrial facilities.

(b) PROHIBITION ON OFFSETTING MODIFICATIONS IN RATES AND CHARGES.—Any modification of the method of allocating costs to the rates and charges of such local distribution company in effect on the date of the enactment of this Act is prohibited if a court, in any action brought under section 504(b)(3), determines that such modification has the effect of creating any offset, in the rates and charges for natural gas applicable to any incrementally priced industrial facility served by such company, for the amount of any surcharge under this title paid by such local distribution company with respect to natural gas delivered by any interstate pipeline indirectly to that incrementally priced industrial facility.

(c) SPECIAL ENFORCEMENT AUTHORITY OF ATTORNEY GENERAL.—In addition to such enforcement authority as may be available to the Commission or any person, the Attorney General may enforce the requirements of this subsection in accordance with the provisions of section 504(b)(3).

(d) PREEMPTION OF STATE OR LOCAL LAW.—The requirements of this title shall preempt and supersede any provision of State or local law to the extent such provision of law would preclude the passthrough of any surcharge under this title or prevent the application of the requirements of this section.

(e) STATE COMMISSION DEFINED.—For the purposes of this subsection, the term "State commission" means the State, political subdivision, or an agency of either, having jurisdiction with respect to the rates and charges of any local distribution company.

SEC. 206. EXEMPTIONS.

(a) SMALL EXISTING INDUSTRIAL BOILER FUEL USERS.—

(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule required under section 201 shall not apply with respect to any boiler fuel use of natural gas by any industrial boiler fuel facility in existence on the date of the enactment of this Act if such use of natural gas by such facility does not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission.

(2) PERMANENT EXEMPTION.—

(A) GENERAL RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing, for the exemp-

tion of any small industrial boiler fuel facility from the rule required under section 201 (including any amendment under section 202 to such rule).

(B) DEFINITION.—For purposes of this paragraph, the term "small industrial boiler fuel facility" means any industrial boiler fuel facility in existence on the date of the enactment of this Act that had an average per day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977 which did not exceed the lesser of—

(i) 300 Mcf; or

(ii) such average daily rate of use during a month of peak use as the Commission determines in such rule is necessary to assure that the volume of natural gas estimated by the Commission to have been used for boiler fuel during calendar year 1977 by facilities which are exempted under this paragraph does not exceed 5 percent of the total volume of natural gas estimated by the Commission to have been used for boiler fuel transported by interstate pipelines and used during calendar year 1977 as a boiler fuel.

(b) AGRICULTURAL USERS OF NATURAL GAS.—

(1) INTERIM EXEMPTION.—During the period preceding the effective date of any permanent exemption under paragraph (2), the rule prescribed under section 201 shall not apply to any facility to the extent of any agricultural use of natural gas.

(2) EXEMPTION BY RULE.—Not later than 18 months after the date of the enactment of this Act, the Commission shall prescribe and make effective a rule providing for the exemption from the rule required under section 201 (including any amendment under section 202 to such rule) any facility with respect to any agricultural use of natural gas for which the Commission determines that an alternative fuel or feedstock is not—

(A) economically practicable; or

(B) reasonably available.

(3) AGRICULTURAL USE DEFINED.—For purposes of this subsection, the term "agricultural use", when used with respect to natural gas, means the use of natural gas to the extent such use is—

(A) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, or crop drying; or

(B) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

(c) SCHOOLS, HOSPITALS, AND CERTAIN OTHER FACILITIES.—The rule under section 201 (including any amendment to such rule under section 202) shall not apply to—

(1) any school, hospital, or other similar institution;

(2) the generation of electricity by any electric utility; or

(3) to the extent provided by the Commission by rule, any qualifying cogenerator (as defined in section 3(18)(B) of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978).

(d) OTHER EXEMPTIONS.—

(1) IN GENERAL.—*The Commission may, by rule or order, provide for the exemption, in whole or in part, of any other incrementally priced industrial facility or category thereof from the rule prescribed under section 201 (including any amendment under section 202 to such rule).*

(2) CONGRESSIONAL REVIEW.—*Any rule which provides for any exemption under this subsection may take effect after the expiration of the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such rule has been submitted to each House of the Congress, unless, during such 30 day period of continuous session of Congress, either House of the Congress adopts a resolution of disapproval described in section 507(c)(3), with respect to such rule.*

SEC. 207. TREATMENT OF CERTAIN IMPORTS.

(a) CERTAIN LNG IMPORTS.—*Except to the extent of a determination otherwise under subsection (c)(1), the provisions of section 203(a)(4) shall not apply to the passthrough of the first sale acquisition costs of liquefied natural gas (or natural gas vaporized from liquefied natural gas) imported into the United States if—*

(1) the importation of such liquefied natural gas has been authorized under section 3 of the Natural Gas Act on or before May 1, 1978;

(2) an application for such authority was pending under such section on such date; or

(3) in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the Department of Energy Organization Act (or any delegation or assignment thereunder), determines that a contract binding on the importer or other substantial financial commitment of the importer has been made on or before such date.

(b) CERTAIN NATURAL GAS IMPORTS (OTHER THAN ING).—*Subject to subsection (c)(2), the provisions of section 203(a)(5) shall only apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceeds both—*

(1) the maximum delivery obligations, for the month in which such delivery of such natural gas occurs, which is specified in contracts entered into on or before May 1, 1978, and in effect when such delivery occurs; and

(2) the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977.

(c) AUTHORITY WITH RESPECT TO INCREMENTAL PRICING OF NATURAL GAS OR LNG IMPORTS.—

(1) LNG IMPORTS.—Subsection (a) (2) and (3) shall not apply with respect to any liquefied natural gas imports if, in connection with the granting of any authority under the Natural Gas Act to import such liquefied natural gas, the Secretary of the Department

of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(4) shall apply with respect to such liquefied natural gas imports.

(2) NATURAL GAS IMPORTS (OTHER THAN LNG).—The provisions of sections 203(a)(5) shall apply to the passthrough of the first sale acquisition costs of volumes of natural gas (other than liquefied natural gas) imported into the United States which exceed the volume of natural gas imported into the United States by the interstate pipeline involved during any corresponding period (determined appropriate by the Commission) of calendar year 1977 if, in connection with the granting of any authority under the Natural Gas Act to import such natural gas, the Secretary of the Department of Energy or the Commission, in accordance with the assignment of functions under the Department of Energy Organization Act, determines that the provisions of section 203(a)(5) shall apply with respect to such natural gas imports.

SEC. 208. ALASKA NATURAL GAS.

In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

(1) any portion of the first sale acquisition cost of such natural gas incurred by any interstate pipeline which is not required to be incrementally priced under this title, and

(2) any amount incurred by any interstate pipeline, for transportation of such natural gas after delivery of such natural gas to such system,

shall be allocated to the rates and charges of such interstate pipeline in accordance with the general principles applicable on the date of the enactment of this Act for establishing rates in connection with the issuing of certificates under the Natural Gas Act for interstate pipelines.

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

SUBTITLE A—EMERGENCY AUTHORITY

SEC. 301. DECLARATION OF EMERGENCY.

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

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

(2) the exercise of authorities under section 302 or section 303 is reasonably necessary, having exhausted other alternatives to the maximum extent practicable, to assist in meeting natural gas requirements for such high-priority uses.

(b) LIMITATION.—

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

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

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

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

SEC. 302. EMERGENCY PURCHASE AUTHORITY.

(a) PRESIDENTIAL AUTHORIZATION.—During any natural gas supply emergency declared under section 301, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

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

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

(B) the sale or transportation of such natural gas was not pursuant to a certificate issued under the Natural Gas Act immediately before the date on which such contract was entered into; or

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

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

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

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

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

SEC. 303. EMERGENCY ALLOCATION AUTHORITY.

(a) IN GENERAL.—*In order to assist in meeting natural gas requirements for high-priority uses of natural gas during any natural gas supply emergency declared under section 301, the President may, by order, allocate supplies of natural gas under subsections (b), (c), and (d) to—*

(1) any interstate pipeline;

(2) any local distribution company—

(A) which is served by any interstate pipeline;

(B) which is providing natural gas only for high-priority uses; and

(C) which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and

(3) any person for meeting requirements of high-priority uses of natural gas.

(b) ALLOCATION OF CERTAIN BOILER FUEL GAS.—

(1) REQUIRED FINDING.—*The President shall not allocate supplies of natural gas under this subsection unless he finds that—*

(A) to the maximum extent practicable, emergency purchase authority under section 302 has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

(B) emergency purchases of natural gas supplies under section 302 are not likely to satisfy the natural gas requirements for such high-priority uses;

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

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

(2) ALLOCATION AUTHORITY.—*Subject to paragraph (1), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas the use of which has been prohibited by the President pursuant to authority under section 607 of the Public Utility Regulatory Policies Act of 1978 (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).*

(c) ALLOCATION OF GENERAL PIPELINE SUPPLY.—

(1) REQUIRED FINDINGS.—*The President shall not allocate supplies of natural gas under this subsection unless he finds that—*

(A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) has been uti-

lized to assist in meeting natural gas requirements for high-priority uses of natural gas;

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

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

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

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

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

(2) REQUIRED NOTIFICATION FROM STATE.—

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

(i) a shortage of natural gas supplies available to such State exists or is imminent;

(ii) such shortage or imminent shortage endangers the supply of natural gas for high-priority uses in such State; and

(iii) the exercise of authority under State law is inadequate to protect high-priority uses of natural gas in such State from an interruption in natural gas supplies.

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

(i) volumes of natural gas required to meet the natural gas requirements for high-priority uses of natural gas in such State;

(ii) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas supplies available to such State;

(iii) information on the authority under State law which will be exercised to protect high-priority uses; and

(iv) such other information which the President requests or which the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed by such State.

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

(5) CONSIDERATION OF ALTERNATIVE FUEL AVAILABILITY.—*In issuing any order under this subsection the President shall consider the relative availability of alternative fuel to natural gas users supplied by the interstate pipeline ordered to make deliveries pursuant to this subsection.*

(d) ALLOCATION OF USER-OWNED GAS.—

(1) REQUIRED FINDING.—*The President shall not allocate supplies of natural gas under this subsection unless he finds that—*

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

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

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

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

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

(2) ALLOCATION AUTHORITY.—*Subject to paragraphs (1) and (3), in order to assist in meeting natural gas requirements for high-priority uses of natural gas, the President may, by order, allocate supplies of natural gas which would be certificated natural gas but for the second sentence of section 2(19).*

(3) CONSIDERATION OF ECONOMIC FEASIBILITY OF ALTERNATIVE FUELS.—*In issuing any order under this subsection, the President shall consider the economic feasibility of alternative fuels available to the user which owned the natural gas subject to an order under this subsection.*

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

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

(g) COMPENSATION.—

(1) IN GENERAL.—*If the parties to any order issued under subsection (b), (c), (d), or (h) fail to agree upon the terms*

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

(2) CALCULATION OF COMPENSATION FOR CERTAIN BOILER FUEL NATURAL GAS.—For purposes of any supplemental order under paragraph (1) with respect to emergency deliveries pursuant to subsection (b), the President shall calculate the amount of compensation—

(A) for supplies of natural gas based upon the amount required to make whole the user subject to the prohibition order, but in no event may such compensation exceed just compensation prescribed in section 607 of the Public Utility Regulatory Policies Act of 1978; and

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

(3) COMPENSATION FOR OTHER NATURAL GAS ALLOCATED.—For the purpose of any supplemental order under paragraph (1), if the party making emergency deliveries pursuant to subsection (c) or (d)—

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

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

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

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

(h) RELATED TRANSPORTATION AND FACILITIES.—The President may, by order, require any pipeline to transport natural gas, and to construct and operate such facilities for the transportation of natural gas, as he determines necessary to carry out any order under subsection (b), (c), or (d). Compensation for the costs of any construction or transporta-

tion ordered under this subsection shall be determined under subsection (g) and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

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

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

(k) DEFINITION OF HIGH-PRIORITY USE.—For purposes of this section, the term "high-priority use" means any—

(1) use of natural gas in a residence;

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

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

SEC. 304. MISCELLANEOUS PROVISIONS.

(a) INFORMATION.—

(1) OBTAINING OF INFORMATION.—In order to obtain information to carry out his authority under this subtitle, the President may—

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

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

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

(2) ENFORCEMENT OF SUBPENAS AND ORDERS.—The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(b) REPORTING OF PRICES AND VOLUMES.—In issuing any order under section 302 or 303, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

(c) PRESIDENTIAL REPORTS TO CONGRESS.—The President shall report to the Congress, not later than 90 days following the termination under section 301(b) of any declaration of a natural gas supply emergency (or extension thereof) under section 301(a), respecting the exercise of authority under section 301, 302, 303, or this section.

(*d*) *DELEGATION OF AUTHORITIES.—The President may delegate all or any portion of the authority granted to him under section 301, 302, 303, or this section to such Federal officers or agencies as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5 of the United States Code, any Federal officer or agency to which authority is delegated or redelegated under this subsection shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.*

(*e*) *ANTITRUST PROTECTIONS.—*

(*1*) *DEFENSES.—There shall be available as a defense for any person to civil or criminal action brought for violation of the Federal antitrust laws (or any similar law of any State) with respect to any action taken, or meeting held, pursuant to any order of the President under section 303 (b), (c), (d), or (i), or any meeting held pursuant to a request of the President under section 303(g), if—*

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

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

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

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

(*2*) *REQUIREMENTS OF MEETINGS.—With respect to any meeting held pursuant to a request by the President under section 303(g) or pursuant to an order under section 303—*

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

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

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 303, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of section 303 and any order thereunder; and

(D) such other procedures as may be specified by the President in such request or order shall be complied with.

(*f*) *EFFECT ON CERTAIN CONTRACTUAL OBLIGATIONS.—There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such*

act was taken or that such omission occurred for purposes of complying with any order issued under section 303.

(g) PREEMPTION.—Any order issued pursuant to this title shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

SUBTITLE B—OTHER AUTHORITIES AND REQUIREMENTS

SEC. 311. AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION.

(a) COMMISSION APPROVAL OF TRANSPORTATION.—

(1) INTERSTATE PIPELINES.—

(A) IN GENERAL.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(B) JUST AND REASONABLE RATES.—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).

(2) INTRASTATE PIPELINES.—

(A) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(B) RATES AND CHARGES.—

(i) MAXIMUM FAIR AND EQUITABLE PRICE.—The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(ii) COMMISSION RULE.—The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(b) COMMISSION APPROVAL OF SALES.—

(1) IN GENERAL.—The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) RATES AND CHARGES.—

(A) MAXIMUM FAIR AND EQUITABLE PRICE.—The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) COMMISSION RULE.—The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, or delivery service provided by such pipeline in connection with any sale of natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(C) ADJUSTMENT.—

(i) APPLICATION.—This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's weighted average acquisition cost of natural gas, computed without regard to the acquisition of such additional volume of natural gas.

(ii) COMMISSION ADJUSTMENT.—In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline due to any increase in such pipeline's weighted average acquisition cost of natural gas.

(3) LIMITATION.—

(A) TWO-YEAR DURATION.—No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) EXTENSION.—Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such extension satisfies the requirements of this subsection.

(4) ADEQUACY OF SERVICE TO INTRASTATE CUSTOMERS.—Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such pipeline's customers at the time of such sale.

(5) PROCEDURAL REQUIREMENTS.—

(A) AFFIDAVIT.—Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the intrastate pipeline involved and setting forth—

(i) the identity of the interstate pipeline or local distribution company involved;

(ii) each point of delivery of the natural gas from the intrastate pipeline;

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) VERIFICATION OF COMPLIANCE.—Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the intrastate pipeline involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) TERMINATION OF SALES.—

(A) HEARING.—Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an opportunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the intrastate pipeline involved to provide adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this Act.

(B) SUSPENSION PENDING HEARING.—Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) DETERMINATION.—The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the intrastate pipeline involved.

(D) STATE INTERVENTION.—Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) DISAPPROVAL OF APPLICATION.—The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the intrastate pipeline involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(D) such sale would circumvent or violate any provision of this Act.

(c) TERMS AND CONDITIONS.—Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

SEC. 312. ASSIGNMENT OF CONTRACTUAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS.

(a) AUTHORIZATION OF ASSIGNMENTS.—The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) EFFECT OF AUTHORIZATION UNDER SUBSECTION (A).—For the effect of an authorization under subsection (a), see section 601 (relating to the coordination of this Act with the Natural Gas Act).

(c) SURPLUS NATURAL GAS.—For purposes of this section, the term "surplus natural gas" means any natural gas—

(1) which is not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act;

(2) the first sale of which is subject to a maximum lawful price established under title I of this Act; and

(3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be en-

titled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

SEC. 313. EFFECT OF CERTAIN NATURAL GAS PRICES ON INDEFINITE PRICE ESCALATOR CLAUSES.

(a) HIGH-COST NATURAL GAS.—No price paid in any first sale of high-cost natural gas (as defined in section 107 (c)) may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 107(c)).

(b) OTHER TRANSACTIONS.—No price paid—

(1) in any sale authorized under section 302(a), or

(2) pursuant to any order issued under section 303 (b), (c), (d), or (g),

may be taken into account in applying any indefinite price escalator clause (as defined in section 105(b)(3)(B)).

SEC. 314. CLAUSES PROHIBITING CERTAIN SALES, TRANSPORTATION, AND COMMINGLING.

(a) GENERAL RULE.—Any provision of any contract for the first sale of natural gas is hereby declared against public policy and unenforceable with respect to any natural gas covered by this Act if such provision—

(1) prohibits the commingling of natural gas subject to such contract with natural gas subject to the jurisdiction of the Commission under the provisions of the Natural Gas Act;

(2) prohibits the sale of any natural gas subject to such contract to, or transportation of any such natural gas by, any person subject to the jurisdiction of the Commission under the Natural Gas Act, or otherwise prohibits the sale or transportation in interstate commerce (within the meaning of the Natural Gas Act) of natural gas subject to such contract; or

(3) terminates, or grants any party the option to terminate, any obligation under any such contract as a result of such commingling, sale, or transportation.

(b) NATURAL GAS COVERED BY THIS ACT.—For purposes of subsection (a), the term "natural gas covered by this Act" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act;

(2) natural gas, the sale in interstate commerce of which—

(A) is authorized under section 302(a) or 311(b); or

(B) is pursuant to an assignment under section 312(a); and

(3) natural gas, the transportation in interstate commerce of which is—

(A) pursuant to any order under section 302(c) or section 303 (b), (c), (d) or (h); or

(B) authorized by the Commission under section 311(a).

SEC. 315. CONTRACT DURATON; RIGHT OF FIRST REFUSAL; FILING OF CONTRACTS AND AGREEMENTS.

(a) CONTRACT DURATION.—

(1) GENERAL RULE.—The Commission may, by rule or order, specify the minimum duration of any contract (other than any

existing contract) for the purchase of natural gas to which section 601(a)(1) (A) or (B) is applicable. In no case may the minimum contract duration specified under this paragraph applicable to natural gas produced from any reservoir exceed 15 years or, if less, the commercially producible life of such reservoir. The provisions of this paragraph shall not apply to contracts of natural gas subject to the requirements of paragraph (3).

(2) NONDISCRIMINATORY APPLICATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Commission may not exercise the authority provided under paragraph (1) in a manner which—

(i) provides an advantage to interstate pipelines by diverting supplies of natural gas to interstate pipelines and thereby denying adequate supplies of natural gas to intrastate pipelines; or

(ii) otherwise discriminates between purchases by interstate pipelines and intrastate pipelines of natural gas.

(B) SPECIAL CIRCUMSTANCES.—The Commission may vary any requirement established under paragraph (1) with respect to any contract by an interstate pipeline or intrastate pipeline to the extent necessary to respond to special circumstances.

(3) CONTRACTS FOR PURCHASE OF OCS NATURAL GAS.—The Commission shall prescribe a rule which shall require that any first sale contract (other than any existing contract) for the purchase of natural gas which is produced from any reservoir on the Outer Continental Shelf and which is new natural gas (as defined in section 102(b)) or high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4)) shall be for a duration of not less than 15 years or, if less the commercially producible life of the reservoir.

(b) OFFERS; RIGHT OF FIRST REFUSAL.—

(1) APPLICATION.—This subsection shall apply with respect to any natural gas which is committed or dedicated to interstate commerce on the day before the date of the enactment of this Act and which is—

(A) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4));

(B) new natural gas (as defined in section 102(c)); or

(C) natural gas produced from any new, onshore production well (as defined in section 103(c)).

This subsection shall not apply to any natural gas committed or dedicated to interstate commerce solely by reason of section 2(18)(A)(i).

(2) OFFER OF SALE.—The Commission shall, by rule, require that if natural gas subject to the requirements of this subsection is produced on or after the first day of the first month beginning after the date of the enactment of this Act, a bona fide offer to sell such natural gas must be made to the person who, but for the provisions of section 601(a)(1)(B) (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas

if such natural gas were sold (or any successor in interest to such person).

(3) RIGHT OF FIRST REFUSAL.—The Commission shall, by rule, require that following—

(A) the expiration or termination of any contract with respect to the first sale of natural gas subject to the requirements of this subsection to the person who, but for the provisions of sections 601(a)(1)(B) (relating to deregulation), would have been entitled pursuant to the commitment or dedication of such natural gas to interstate commerce to receive such natural gas if such natural gas were sold (or any successor in interest to such person), or

(B) any rejection of any bona fide offer, described in paragraph (2), to sell natural gas subject to the requirements of this subsection,

such person who would have been entitled to receive such natural gas shall be granted a right of first refusal of the first offer to sell such natural gas which, subject to the exercise of any right of first refusal under this paragraph, has been substantially accepted in principle by another person in an arms-length transaction.

(c) FILING OF CONTRACTS AND ANCILLARY AGREEMENTS.—The Commission may, by rule or order, require any first sale purchaser of natural gas under a new contract, a successor to an existing contract, or a rollover contract to file with the Commission a copy of such contract, together with all ancillary agreements and any existing contract applicable to such natural gas.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

SEC. 401. NATURAL GAS FOR ESSENTIAL AGRICULTURAL USES.

(a) GENERAL RULE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Energy shall prescribe and make effective a rule, which may be amended from time to time, which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment—

(1) does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c); or

(2) is necessary in order to meet the requirements of high-priority users.

(b) CURTAILMENT PRIORITY NOT APPLICABLE IF ALTERNATIVE FUEL AVAILABLE.—If the Commission, in consultation with the Secretary of Agriculture, determines, by rule or order, that use of a fuel (other than natural gas) is economically practicable and that the fuel is reasonably available as an alternative for any agricultural use of natural gas, the provisions of subsection (a) shall not apply with respect to any curtailment of deliveries for such use.

(c) DETERMINATION OF ESSENTIAL AGRICULTURAL USE REQUIREMENTS.—The Secretary of Agriculture shall certify to the Secretary of Energy and the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential agricultural uses in order to meet the requirements of full food and fiber production.

(d) AUTHORITY OF SECRETARY OF AGRICULTURE TO INTERVENE.—*The Secretary of Agriculture may intervene as a matter of right in any proceeding before the Commission which is conducted in connection with implementing the requirements of the rule prescribed under subsection (a).*

(e) LIMITATION.—*The Secretary of Agriculture may not exercise any authority under this section for the purpose of restricting the production of any crop.*

(f) DEFINITIONS.—*For purposes of this section—*

(1) ESSENTIAL AGRICULTURAL USE.—*The term "essential agricultural use", when used with respect to natural gas, means any use of natural gas—*

(A) *for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or*

(B) *as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food,*

which the Secretary of Agriculture determines is necessary for full food and fiber production.

(2) HIGH-PRIORITY USER.—*The term "high-priority user" means any person who—*

(A) *uses natural gas in a residence;*

(B) *uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day;*

(C) *uses natural gas in any school, hospital, or similar institution; or*

(D) *uses natural gas in any other use the curtailment of which the Secretary of Energy determines would endanger life, health, or maintenance of physical property.*

SEC. 402. NATURAL GAS FOR ESSENTIAL INDUSTRIAL PROCESS AND FEEDSTOCK USES.

(a) GENERAL RULE.—*The Secretary of Energy shall prescribe and make effective a rule which provides that, notwithstanding any other provision of law (other than subsection (b)) and to the maximum extent practicable, no interstate pipeline may curtail deliveries of natural gas for any essential industrial process or feedstock use, unless such curtailment—*

(1) *does not reduce the quantity of natural gas delivered for such use below the use requirement specified in subsection (c);*

(2) *is necessary in order to meet the requirements of high-priority users; or*

(3) *is necessary in order to meet the requirements for essential agricultural uses of natural gas for which curtailment priority is established under section 401.*

(b) CURTAILMENT PRIORITY APPLICABLE ONLY IF ALTERNATIVE FUEL NOT AVAILABLE.—*The provisions of subsection (a) shall apply with respect to any curtailment of deliveries for any essential industrial process or feedstock use only if the Commission determines that use of a fuel (other than natural gas) is not economically practicable and that no fuel is reasonably available as an alternative for such use.*

(c) DETERMINATION OF ESSENTIAL INDUSTRIAL USE REQUIREMENTS.—*The Secretary of Energy shall determine and certify to the Commission the natural gas requirements (expressed either as volumes or percentages of use) of persons (or classes thereof) for essential in-*

dustrial process and feedstock uses (other than those referred to in section 401(f)(1)(B)).

(d) DEFINITIONS.—For purposes of this section—

(1) ESSENTIAL INDUSTRIAL PROCESS OR FEEDSTOCK USE.—The term "essential industrial process or feedstock use" means any use of natural gas in an industrial process or as a feedstock which the Secretary determines is essential.

(2) HIGH-PRIORITY USER.—The term "high-priority user" has the same meaning as given such term in section 401(f)(2).

SEC. 403. ESTABLISHMENT AND IMPLEMENTATION OF PRIORITIES.

(a) ESTABLISHMENT OF PRIORITIES.—The Secretary of Energy shall prescribe the rules under sections 401 and 402 pursuant to his authority under the Department of Energy Organization Act to establish and review priorities for curtailments under the Natural Gas Act.

(b) IMPLEMENTATION OF PRIORITIES.—The Commission shall implement the rules prescribed under sections 401 and 402 pursuant to its authority under the Department of Energy Organization Act to establish, review, and enforce curtailments under the Natural Gas Act.

SEC. 404. LIMITATION ON REVOKING OR AMENDING CERTAIN PRE-1969 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY.

(a) GENERAL RULE.—The Commission may not, during the 10-year period beginning on the date of the enactment of this Act, revoke or amend any certificate of public convenience and necessity issued before January 1, 1969, under section 7 of the Natural Gas Act for the transportation of natural gas owned by any electric utility except upon the application of the person to whom such certificate was issued.

(b) COMMISSION CURTAILMENT AUTHORITY.—The limitation under subsection (a) shall not affect the authority of the Commission to enforce any curtailment of deliveries of natural gas under the Natural Gas Act.

TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

SEC. 501. GENERAL RULEMAKING AUTHORITY.

(a) IN GENERAL.—Except where expressly provided otherwise, the Commission shall administer this Act. The Commission, or any other Federal officer or agency in which any function under this Act is vested or delegated, is authorized to perform any and all acts (including any appropriate enforcement activity), and to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act.

(b) AUTHORITY TO DEFINE TERMS.—Except where otherwise expressly provided, the Commission is authorized to define, by rule, accounting, technical, and trade terms used in this Act. Any such definition shall be consistent with the definitions set forth in this Act.

(c) DELEGATION OF CERTAIN DETERMINATIONS.—The Commission may delegate to any State agency (with the consent of such agency) any of its functions with respect to section 105, 106(b), and 109(a)(1), and (3).

SEC. 502. ADMINISTRATIVE PROCEDURE.

(a) ADMINISTRATIVE PROCEDURE ACT.—Subject to subsection (b), the provisions of subchapter II of chapter 5 of title 5, United States

Code, shall apply to any rule or order issued under this Act having the applicability and effect of a rule as defined in section 551(4) of title 5 United States Code; except that sections 554, 556, and 557 of such title 5 shall not apply to any order under such section 301, 302, or 303.

(b) OPPORTUNITY FOR ORAL PRESENTATIONS.—To the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded with respect to any proposed rule or order described in subsection (a) (other than an order under section 301, 302, or 303). To the maximum extent practicable, such opportunity shall be afforded before the effective date of such rule or order. Such opportunity shall be afforded no later than 30 days after such date in the case of a waiver of the entire comment period under section 553(d)(3) of title 5, United States Code, and no later than 45 days after such date in all other cases. A transcript shall be made of any such oral presentation.

(c) ADJUSTMENTS.—The Commission or any other Federal officer or agency authorized to issue rules or orders described in subsection (a) (other than an order under section 301, 302, or 303) shall, by rule, provide for the making of such adjustments, consistent with the other purposes of this Act, as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. Such rule shall establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or rescission of, exception to, or exemption from, such applicable rules or orders. If any person is aggrieved or adversely affected by the denial of a request for adjustment under the preceding sentence, such person may request a review of such denial by the officer or agency and may obtain judicial review in accordance with section 506 when such denial becomes final. The officer or agency shall, by rule, establish procedures, including an opportunity for oral presentation of data, views, and arguments, for considering requests for adjustment under this subsection.

(d) PROCEDURES APPLICABLE FOR INCREMENTAL PRICING DETERMINATIONS RESPECTING IMPORTS.—Notwithstanding the preceding provisions of this section, any determination made under section 207(c) shall be made in accordance with the procedures applicable to the granting of any authority under the Natural Gas Act to import natural gas or liquefied natural gas (as the case may be).

SEC. 503. DETERMINATIONS FOR QUALIFYING UNDER CERTAIN CATEGORIES OF NATURAL GAS.

(a) GENERAL RULE.—

(1) DETERMINATION.—If any State or Federal agency makes any final determination which it is authorized to make under subsection (c) for purposes of—

(A) applying the definition of new natural gas under section 102(c);

(B) deciding if certain natural gas produced from the Outer Continental Shelf qualifies under section 102(d) for the new natural gas ceiling price;

(C) applying the definition of new, onshore production well under section 103(c);

(D) applying the definition of high-cost natural gas under section 107(c); or

(E) applying the definition of stripper well natural gas under section 108(b);

such determination shall be applicable under this Act for such purposes unless such determination is reversed under the provisions of subsection (b) or unless such State or Federal agency has waived its authority under the provisions of subsection (c).

(2) NOTICE TO COMMISSION.—Any Federal or State agency making a determination under paragraph (1) shall provide timely notice in writing of such determination to the Commission. Such notice shall include such substantiation and be in such a manner as the Commission may, by rule, require.

(b) COMMISSION REVIEW.—

(1) AUTHORITY TO REVIEW AND REVERSE.—The Commission shall reverse any final State or Federal agency determination described in subsection (a) if—

(A) it makes a finding that such determination is not supported by substantial evidence in the record upon which such determination was made; and

(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) and the final such finding is made within 120 days after the date of the preliminary finding.

(2) REMAND ON BASIS OF COMMISSION INFORMATION.—If—

(A) the Commission finds that a State or Federal agency determination is not consistent with information contained in the public records of the Commission, and which is not part of the record upon which such determination was made; and

(B) such preliminary finding and notice thereof under paragraph (3) is made within 45 days after the date on which the Commission received notice of such determination under subsection (a)(2) and the final such finding is made within 120 days after the date of the preliminary finding,

it may remand the matter to such State or Federal agency for consideration of such information. If such agency, after consideration of the information transmitted to it by the Commission, affirms its previous determination, such determination, as so affirmed, shall be subject to review in accordance with this subsection (other than this paragraph).

(3) NOTICE.—The Commission shall provide notice of any proposed finding under this subsection to the State or Federal agency which made such determination and those parties identified in the notice to the Commission of such determination.

(4) JUDICIAL REVIEW OF COMMISSION ACTIONS.—

(A) REMANDS.—Any party identified in the notice to the Commission of a determination by a State or Federal agency may obtain review of any final decision by the Commission to remand under paragraph (2) in the United States Court of Appeals for any circuit in which such party is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such decision if it finds such decision is arbitrary or capricious.

(B) FINDINGS.—Any person aggrieved or adversely affected by a final finding of the Commission under paragraph (1) may within 60 days thereafter file a petition for review of such finding in the United States Court of Appeals for any circuit in which the party involved in such determination is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. The reviewing court shall reverse any such finding of the Commission if the State or Federal agency determination involved is supported by substantial evidence.

(c) STATE AUTHORITY.—

(1) GENERAL RULE.—A Federal or State agency having regulatory jurisdiction with respect to the production of natural gas is authorized to make determinations referred to in subsection (a).

(2) WAIVER.—

(A) IN GENERAL.—Any Federal or State agency may, in whole or in part, waive its authority to make determinations referred to in subsection (a)(1) by entering into an agreement in accordance with subparagraph (B). If such agency executes such a waiver, the Commission shall, consistent with the agreement, make the determinations which would otherwise be made by such Federal or State agency until the earlier of—

(i) the expiration of the period specified in the agreement; or

(ii) the date such agency transmits to the Commission written notice that it terminates such waiver and assumes the authority to make determinations referred to in subsection (a)(1).

Any waiver, or termination of any waiver, shall not apply to any determination with respect to any petition therefor which is pending before such agency or the Commission (as the case may be) on the date on which such a waiver or revocation is made.

(B) AGREEMENTS.—Any waiver under subparagraph (A) may be made only by a written agreement between the Federal or State agency involved and the Commission. Any such agreement shall set forth the terms and conditions applicable to such waiver.

(3) PROCEDURES APPLICABLE.—Determinations of a Federal or State agency referred to in subsection (a)(1) shall be made in accordance with the procedures generally applicable to such agency for the making of such determinations or comparable determinations under the provisions of Federal or State law, as the case may be, pursuant to which they exercise their regulatory jurisdiction. The Commission may prescribe the form and content of filings with a Federal or State agency in connection with determinations made under this section.

(4) JUDICIAL REVIEW.—Any such determination referred to in subsection (a)(1) made in accordance with procedures described in paragraph (3) shall not be subject to judicial review under

any Federal or State law except as provided under subsection (b).

(d) EFFECT OF DETERMINATIONS.—For purposes of this Act—

(1) GENERAL RULE.—Any final determination referred to in subsection (a)(1) made by a Federal or State agency (or by the Commission under subsection (c)(2)) which relates to any natural gas and which is no longer subject to review by the Commission under this section or to judicial review shall thereafter be binding with respect to such natural gas. The preceding sentence shall not apply to any final determination—

(A) if in making such determination the Commission or such Federal or State agency relied on any untrue statement of a material fact; or

(B) if there was omitted a statement of material fact necessary in order to make the statements made not misleading, in light of the circumstances under which they were made, to the Federal or State agency in making such final determination or to the Commission in reviewing such determination.

(2) APPLICATION OF TITLE 18.—Any untrue statement or omission of material fact to a Federal or State agency upon which the Commission relied shall be deemed to be statement or entry under section 1001 of title 18, United States Code.

(e) INTERIM COLLECTION OF MAXIMUM LAWFUL PRICE.—

(1) COLLECTION OF SECTION 109 PRICE.—

(A) GENERAL RULE.—Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, a seller of natural gas which is produced from a new well may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price under section 109 for any first sale of such natural gas.

(B) REQUIREMENTS.—A seller may charge and make collections under subparagraph (A) only in accordance with the following requirements:

(i) SWORN STATEMENT.—Before any such collection is made, the seller shall file with the Commission, and any Federal or State agency having authority to make determinations referred to in subsection (a)(1), a written sworn statement that such natural gas is produced from a new well and that such seller believes in good faith that such natural gas is eligible under this Act to be sold at a price not less than the appropriate maximum lawful price under section 109.

(ii) PETITION FOR DETERMINATION.—Within 90 days after the date of the enactment of this Act, the seller files a petition to such Federal or State agency for a determination under this section.

(iii) COLLECTION SUBJECT TO REFUND.—Any such collection made by the seller pending a determination under this section shall be collected subject to a condition of refund, with interest, in the event it is determined by such Federal or State agency that the applicable maxi-

mum lawful price is lower than that provided under section 109.

(2) ALTERNATE INTERIM COLLECTION AUTHORITY.—

(A) GENERAL RULE.—*Promptly after the date of the enactment of ths Act, the Commissioner shall, by rule or order, provide one or more methods under which a seller of natural gas may in accordance with requirements established, and for such period as may be prescribed, under such rule or order, charge and collect for any first sale of such natural gas the maximum lawful price under title I for which a petition is filed for a determination under this section in any case in which such price exceeds the appropriate maximum lawful price under section 109.*

(B) COLLECTION SUBJECT TO REFUND.—*Any such collection made by the seller pending a determination under section 503 shall be collected subject to a condition of refund, with interest. Such refund with interest shall be paid, in accordance with the rule under subparagraph (A), unless it is determined under this Act that the applicable maximum lawful price is equal to or greater than that collected. In addition, such seller shall comply with such requirements as the Commission shall prescribe in the applicable rule or order to provide adequate assurance that funds, to the extent attributable to a price in excess of the appropriate maximum lawful price under title I are available in the event of such refund.*

(3) COLLECTION AFTER INITIAL DETERMINATION.—

(A) GENERAL RULE.—*Effective beginning on the date of the notice of a determination under subsection (a) (2), a seller of natural gas covered by such determination may, in accordance with subparagraph (B), charge and collect the appropriate maximum lawful price applicable under such determination.*

(B) REQUIREMENTS.—*A seller may charge and make collections under subparagraph (A) if such collection is subject to conditions prescribed by the Commission to assure refund, with interest, in the event it is determined under this Act that the applicable maximum lawful price is lower than that provided under section 109.*

SEC. 504. ENFORCEMENT.

(a) GENERAL RULE.—*It shall be unlawful for any person—*

(1) to sell natural gas at a first sale price in excess of any applicable maximum lawful price under this Act; or

(2) to otherwise violate any provision of this Act or any rule or order under this Act.

(b) CIVIL ENFORCEMENT.—

(1) IN GENERAL.—*Except as provided in paragraphs (2) and (3), whenever it appears to the Commission that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of any provision of this Act, or of any rule or order thereunder, the Commission may bring an action in the District Court of the United States for the District of Co-*

lumbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this Act, or any rule or order thereunder.

(2) ENFORCEMENT OF EMERGENCY ORDERS.—Whenever it appears to the President that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order under section 302 or any order or supplemental order issued under section 303, the President may bring a civil action in any appropriate district court of the United States to enjoin such acts or practices.

(3) ENFORCEMENT OF INCREMENTAL PRICING.—The Secretary, the Commission, or, on the request of the Secretary of Energy or the Commission, the Attorney General may institute a civil action for injunctive or other equitable relief as may be appropriate to assure compliance with the provisions of section 205 requiring the pass-through of surcharges paid under section 204 by any local distribution company with respect to natural gas delivered to incrementally priced industrial facilities served by such company. Such action may be instituted in any district court of the United States in the State in which such local distribution company conducts business or in the District Court of the United States for the District of Columbia.

(4) RELIEF AVAILABLE.—In any action under paragraph (1), (2), or (3), the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction without bond. In any such action, the court may also issue a mandatory injunction commanding any person to comply with any applicable provision of law, rule, or order, or ordering such other legal or equitable relief as the court determines appropriate, including refund or restitution.

(5) CRIMINAL REFERRAL.—The Commission may transmit such evidence as may be available concerning any acts or practices constituting any possible violations of the Federal antitrust laws to the Attorney General, who may institute appropriate criminal proceedings.

(6) CIVIL PENALTIES.—

(A) IN GENERAL.—Any person who knowingly violates any provision of this Act, or any provision of any rule or order under this Act, shall be subject to—

(i) except as provided in clause (ii) a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation; and

(ii) a civil penalty, which the President may assess, of not more than $25,000, in the case of any violation of an order under section 302 or an order or supplemental order under section 303.

(B) DEFINITION OF KNOWING.—For purposes of subparagraph (A), the term "knowing" means the having of—

(i) actual knowledge; or

(ii) the constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.

(C) EACH DAY SEPARATE VIOLATION.—For purposes of this paragraph, in the case of a continuing violation, each day of violation shall constitute a separate violation.

(D) STATUTE OF LIMITATIONS.—No person shall be subject to any civil penalty under this paragraph with respect to any violation occurring more than 3 years before the date on which such person is provided notice of the proposed penalty under subparagraph (E). The preceding sentence shall not apply in any case in which an untrue statement of material fact was made to the Commission or a State or Federal agency by, or acquiesced to by, the violator with respect to the acts or omissions constituting such violation, or if there was omitted a material fact necessary in order to make any statement made by, or acquiesced to by, the violator with respect to such acts or omissions not misleading in light of circumstances under such statement was made.

(E) ASSESSED BY COMMISSION.—Before assessing any civil penalty under this paragraph, the Commission shall provide to such person notice of the proposed penalty. Following receipt of notice of the proposed penalty by such person, the Commission shall, by order, assess such penalty.

(F) JUDICIAL REVIEW.—If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (E), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(c) CRIMINAL PENALTIES.—

(1) VIOLATIONS OF ACT.—Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this Act shall be subject to—

(A) a fine of not more than $5,000; or
(B) imprisonment for not more than two years; or
(C) both such fine and such imprisonment.

(2) VIOLATION OF RULES OR ORDERS GENERALLY.—Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any rule or order under this Act (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E)), shall be subject to a fine of not more than $500 for each violation.

(3) VIOLATIONS OF EMERGENCY ORDERS.—Any person who knowingly and willfully violates an order under section 302 or an order or supplemental order under section 303 shall be fined not more than $50,000 for each violation.

(4) EACH DAY SEPARATE VIOLATION.—For purposes of this subsection, each day of violation shall constitute a separate violation.

(5) DEFINITION OF KNOWINGLY.—For purposes of this subsection, the term "knowingly", when used with respect to any act or omission by any person, means such person—

(A) *had actual knowledge; or*

(B) *had constructive knowledge deemed to be possessed by a reasonable individual who acts under similar circumstances.*

SEC. 505. INTERVENTION.

(a) AUTHORITY TO INTERVENE.—

(1) INTERVENTION AS MATTER OF RIGHT.—*The Secretary of Energy may intervene as a matter of right in any proceeding relating to the prorationing of, or other limitations upon, natural gas production which is conducted by any State agency having regulatory jurisdiction over the production of natural gas.*

(2) ENFORCEMENT OF RIGHT TO INTERVENE.—*The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene under paragraph (1).*

(3) ACCESS TO INFORMATION.—*As an intervenor in a proceeding described in subsection (a), the Secretary shall have access to information available to other parties to the proceeding if such information is relevant to the issues to which his participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State agency.*

(b) ACCESS TO STATE COURTS.—

(1) REVIEW IN STATE COURTS.—*The Secretary may obtain review of any determination made in any proceeding described in subsection (a)(1) in the appropriate State court if the Secretary intervened or otherwise participated in the original proceeding or if State law otherwise permits such review.*

(2) PARTICIPATION AS AMICUS CURIAE.—*In addition to his authority to obtain review under paragraph (1), the Secretary may also participate an amicus curiae in any judicial review of any proceeding described in subsection (a)(1).*

SEC. 506. JUDICIAL REVIEW.

(a) ORDERS.—

(1) IN GENERAL.—*The provisions of this subsection shall apply to judicial review of any order, within the meaning of section 551(6) of title 5, United States Code (other than an order assessing a civil penalty under section 504(b)(4) or any order under section 302 or any order under section 303), isued under this Act and to any final agency action under this Act required to be made on the record after an opportunity for an agency hearing.*

(2) REHEARING.—*Any person aggrieved by any order issued by the Commission in a proceeding under this Act to which such person is a party may apply for a rehearing within 30 days after the issuance of such order. Any application for rehearing shall set forth the specific ground upon which such application is based. Upon the filing of such application, the Commission may grant or deny the requested rehearing or modify the original order without further hearing. Unless the Commission acts upon such application for rehearing within 30 days after it is filed, such application shall be deemed to have been denied. No person may bring an action under this section to obtain judicial review of any order of the Commission unless—*

(A) such person shall have made application to the Commission for a rehearing under this subsection; and

(B) the Commission shall have finally acted with respect to such application.

For purposes of this section, if the Commission fails to act within 30 days after the filing of such application, such failure to act shall be deemed final agency action with respect to such application.

(3) AUTHORITY TO MODIFY ORDERS.—At any time before the filing of the record of a proceeding in a United States Court of Appeals, pursuant to paragraph (4), the Commission may, after providing notice it determines reasonable and proper, modify or set aside, in whole or in part, any order issued under the provisions of this Act.

(4) JUDICIAL REVIEW.—Any person who is a party to a proceeding under this Act aggrieved by any final order issued by the Commission in such proceeding may obtain review of such order in the United States Court of Appeals for any circuit in which the party to which such order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia circuit. Review shall be obtained by filing a written petition, requesting that such order be modified or set aside in whole or in part, in such Court of Appeals within 60 days after the final action of the Commission on the application for rehearing required under paragraph (2). A copy of such petition shall forthwith be transmitted by the clerk of such court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to such order of the Commission shall be considered by the court if such objection was not urged before the Commission in the application for rehearing unless there was reasonable ground for the failure to do so. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court deems proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive. The Commission shall also file with the court its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final subject to

review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(5) ORDERS REMAIN EFFECTIVE.—*The filing of an application for rehearing under paragraph (2) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.*

(b) REVIEW OF RULES AND ORDERS.—*Except as provided in subsections (a) and (c), judicial review of any rule or order, within the meaning of section 551(4) of title 5, United States Code, issued under this Act may be obtained in the United States Court of Appeals for any appropriate circuit pursuant to the provisions of chapter 7 of title 5, United States Code, except that the second sentence of section 705 thereof shall not apply.*

(c) JUDICIAL REVIEW OF EMERGENCY ORDERS.—*Except with respect to enforcement of orders or subpenas under section 304(a), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all civil cases and controversies under section 301, 302 or 303, including any order issued, or other action taken, under such section. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 304(a)(2); such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days after the entry of judgment by the district court. Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, under section 301, 302, or 303.*

(d) JUDICIAL REVIEW OF CERTAIN INCREMENTAL PRICING DETERMINATIONS.—*Notwithstanding the preceding provisions of this section, any final determination made under section 207(c) shall be subject to judicial review in accordance with the provisions of the Natural Gas Act applicable to judicial review of any final determination respecting the grant or denial of any authority to import natural gas or liquefied natural gas.*

SEC. 507. CONGRESSIONAL REVIEW.

(a) APPLICATION.—*This section applies with respect to—*

(1) *any disapproval by concurrent resolution of a Presidential reimposition of maximum lawful prices under section 122;*

(2) *any congressional reimposition by concurrent resolution of maximum lawful prices under section 122; and*

(3) *any resolution of disapproval relating to incremental pricing under section 202(c) or 206(d)(2).*

(b) DETERMINATION OF CALENDAR DAYS OF CONTINUOUS SESSION.—*In determining calendar days of continuous session for purposes of provisions of this Act providing for disapproval under this section—*

(1) *continuity of session is broken only by an adjournment of Congress sine die; and*

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 30-calendar-day period involved. If both Houses are not in session on the day any submittal subject to disapproval is received by the appropriate officers of each House, for purposes of this section such submittal shall be deemed to have been submitted on the first succeeding day on which both Houses are in session. If both Houses of the Congress do not receive a submittal on the same day, it shall not be considered to be received by either House until the day on which both Houses receive it.

(c) RESOLUTION.—For purposes of this section, and sections 122, 202, and 206—

(1) CONCURRENT RESOLUTION DISAPPROVING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution of disapproval", when used with respect to reimposition of maximum lawful prices under section 122(c)(1), means a resolution the matter after the resolving clause of which is as follows: "That the Congress does not approve of the reimposition of maximum lawful prices for first sales of natural gas under section 122(c)(1) of the Natural Gas Policy Act of 1978 pursuant to the transmittal by the President to the Congress on _____, 19__.", the blank spaces being filled with the appropriate date.

(2) CONCURRENT RESOLUTION EFFECTING REIMPOSITION OF PRICE CEILINGS.—The term "concurrent resolution", when used with respect to reimposition of maximum lawful prices under section 122(c)(2), means a resolution the matter after the resolving clause of which is as follows: "That the Congress favors reimposition of maximum lawful prices for first sales of natural gas as provided for under section 122(c)(2) of the Natural Gas Policy Act of 1978.".

(3) RESOLUTION OF DISAPPROVAL OF INCREMENTAL PRICING ACTION.—The term "resolution of disapproval", when used with respect to incremental pricing rules, means a resolution the matter after the resolving clause of which is as follows: "That the _____ does not approve the proposed rule under section ____ of the Natural Gas Policy Act of 1978 (relating to incremental pricing of natural gas) a copy of which was transmitted to the Congress on _____.", the first blank being filled with the House in which such resolution is introduced, the second blank space being filled with the section under which proposed rule was issued, and the following blank spaces being filled with the appropriate date. For purposes of this paragraph, the term "rule" means any rule or any amendment thereto (other than a technical or clerical amendment).

(d) EXPEDITED PROCEDURE.—

(1) CONGRESSIONAL RULEMAKING POWER.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by

paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) REFERRAL.—A resolution described by paragraph (2) once introduced with respect to any submittal shall immediately be referred to a committee (and all resolutions with respect to the same submittal shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(3) DISCHARGE.—

(A) IN GENERAL.—If the committee to which a resolution with respect to a submittal has been referred has not reported it at the end of 20 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such submittal which has been referred to the committee.

(B) MOTIONS.—A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal) and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) RENEWAL.—If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same submittal.

(4) FLOOR CONSIDERATION.—

(A) MOTION TO CONSIDER.—When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) DEBATE AND CONSIDERATION.—Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit, the resolution shall not be in order, and it shall not be in order to move to

reconsider the vote by which such resolution was agreed to or disagreed to.

(6) DETERMINATION ON MOTIONS.—

(A) MOTIONS TO POSTPONE OR TO PROCEED TO OTHER BUSINESS.—*Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.*

(B) APPEALS FROM THE DECISION OF THE CHAIR.—*Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.*

(7) SUBSEQUENT ACTION.—*Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in that House any other resolution with respect to the same such submittal.*

SEC. 508. TECHNICAL PROVISIONS.

(a) SECTION 645 OF THE DEPARTMENT OF ENERGY ORGANIZATION ACT.—*Section 645 of the Department of Energy Organization Act is amended by inserting at the end thereof the following new sentence: "For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978, the Commission shall have the same powers and authority as the Secretary has under this section."*

(b) SECTION 301(a) OF THE DEPARTMENT OF ENERGY ORGANIZATION ACT.—*In order to obtain information for the purpose of carrying out its functions under this Act, the Commission shall have the same authority as is vested in the Secretary under section 301(a) of the Department of Energy Organization Act with respect to the exercise of authority under section 11(b) of the Energy Supply and Environmental Coordination Act of 1974 and sections 13 (b), (c), and (d) of the Federal Energy Administration Act of 1974.*

TITLE VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS

SEC. 601. COORDINATION WITH THE NATURAL GAS ACT.

(a) JURISDICTION OF THE COMMISSION UNDER THE NATURAL GAS ACT.—

(1) SALES.—

(A) NATURAL GAS NOT COMMITTED OR DEDICATED.—*For purposes of section 1(b) of the Natural Gas Act, effective on the first day of the first month beginning after the date of the enactment of this Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply to natural gas which was not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act solely by reason of any first sale of such natural gas.*

(B) COMMITTED OR DEDICATED NATURAL GAS.—*Effective beginning on the first day of the first month beginning after the date of the enactment of this Act, for purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the*

jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act and which is—

(i) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4) of this Act);

(ii) new natural gas (as defined in section 102(c) of this Act); or

(iii) natural gas produced from any new, onshore production well (as defined in section 103(c) of this Act).

(C) AUTHORIZED SALES OR ASSIGNMENTS.—For purposes of section 1(b) of the Natural Gas Act, the provisions of the Natural Gas Act and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

(i) authorized under section 302(a) or 311(b); or

(ii) pursuant to any assignment authorized under section 312(a).

(D) NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any sale of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission do not apply to such sale solely by reason of subparagraph (A), (B), or (C) of this paragraph.

(E) ALASKAN NATURAL GAS.—Subparagraph (B)(ii) and (iii) shall not apply with respect to natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(2) TRANSPORTATION.—

(A) JURISDICTION OF THE COMMISSION.—For purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is—

(i) pursuant to any order under section 302(c) or section 303(b), (c), (d), or (h) of this Act; or

(ii) authorized by the Commission under section 311(a) of this Act.

(B) NATURAL-GAS COMPANY.—For purposes of the Natural Gas Act, the term "natural-gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

(b) CHARGES DEEMED JUST AND REASONABLE.—

(1) SALES.—

(A) FIRST SALES.—Subject to paragraph (4), for purposes of sections 4 and 5 of the Natural Gas Act, any amount paid

in any first sale of natural gas shall be deemed to be just and reasonable if—

(i) such amount does not exceed the applicable maximum lawful price established under title I of this Act; or

(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to subtitle B of title I of this Act.

(B) EMERGENCY SALES.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized under section 302(a) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established under such section and applicable to such sale.

(C) SALES BY INTRASTATE PIPELINES.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid in any sale authorized by the Commission under section 311(b) shall be deemed to be just and reasonable if such amount does not exceed the fair and equitable price established by the Commission and applicable to such sale.

(D) ASSIGNMENTS.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid pursuant to the terms of any contract with respect to that portion of which the Commission has authorized an assignment authorized under section 312(a) shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful price established under title I of this Act.

(E) AFFILIATED ENTITIES LIMITATION.—For purposes of paragraph (1), in the case of any first sale between any interstate pipeline and any affiliate of such pipeline, any amount paid in any first sale shall be deemed to be just and reasonable if, in addition to satisfying the requirements of such paragraph, such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline.

(2) OTHER CHARGES.—

(A) ALLOCATION.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 303 (b), (c), or (d) of this Act shall be deemed to be just and reasonable if such amount is prescribed by the President under section 303(h)(1).

(B) TRANSPORTATION.—For purposes of sections 4 and 5 of the Natural Gas Act, any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 311(a) of this Act shall be deemed to be just and reasonable if such amount does not exceed that approved by the Commission under such section.

(c) GUARANTEED PASSTHROUGH.—

(1) CERTIFICATE MAY NOT BE DENIED BASED UPON PRICE.—The Commission may not deny, or condition the grant of, any certificate under section 7 of the Natural Gas Act based upon the amount

paid in any sale of natural gas, if such amount is deemed to be just and reasonable under subsection (b) of this section.

(2) RECOVERY OF JUST AND REASONABLE PRICES PAID.—For purposes of sections 4 and 5 of the Natural Gas Act, the Commission may not deny any interstate pipeline recovery of any amount paid with respect to any purchase of natural gas if—

(A) under subsection (b) of this section, such amount is deemed to be just and reasonable for purposes of sections 4 and 5 of such Act, and

(B) such recovery is not inconsistent with any requirement of any rule under section 201 (including any amendment under section 202),

except to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

SEC. 602. EFFECT ON STATE LAWS.

(a) AUTHORITY TO PRESCRIBE LOWER MAXIMUM LAWFUL PRICES.—Nothing in this Act shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State which does not exceed the applicable maximum lawful price, if any, under title I of this Act.

(b) COMMON CARRIERS.—No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation—

(1) pursuant to any order under section 302(c) or section 303 (b), (c), (d), or (i) of this Act; or

(2) authorized by the Commission under section 311(a) of this Act.

And the House agree to the same.

HENRY M. JACKSON,
FRANK CHURCH,
FLOYD K. HASKELL,
DALE BUMPERS,
WENDELL H. FORD,
SPARK M. MATSUNAGA,
MARK O. HATFIELD,
JAMES A. MCCLURE,
PETE V. DOMENICI,
Managers on the Part of the Senate.

HARLEY W. STAGGERS,
THOMAS L. ASHLEY,
AL ULLMAN,
RICHARD BOLLING,
THOMAS S. FOLEY,
JOHN D. DINGELL,
PAUL D. ROGERS,
BOB ECKHARDT,
PHILIP R. SHARP,
CHARLES WILSON,
DAN ROSTENKOWSKI,
JAMES C. CORMAN,
CHARLES B. RANGEL,
Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE ON CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate numbered 8 to the bill (H.R. 5289) for the relief of Joe Cortina of Tampa, Florida, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment numbered 8 to the text added the text of S. 2104, as amended, and Part 4 (Natural Gas) of H.R. 8444, the National Energy Act. The House agreed to the Senate amendment, and further amended H.R. 5289 by striking out the text of the Senate amendment and inserting in lieu thereof the text of Title I of H.R. 8444 as passed by the House.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The Senate recedes from its disagreement to the House amendment to the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below.

The managers note that a Concurrent Resolution pertaining to this legislation is intended to be presented to the House and the Senate for consideration. It will remove the portions of this legislation pertaining to Mr. Cortina, for whom a relief bill has already passed. It will also make technical corrections and any changes necessary to conform this legislation to the other portions of the National Energy Act which may pass this year.

INTRODUCTION

The natural gas pricing policy passed by the House as Part 4 of H.R. 8444, the National Energy Act, established a single uniform price policy for natural gas produced in the United States. It imposed Federal price controls on the intrastate market for the first time. All price controls were permanent. It defined "new natural gas" and established a Federal ceiling price for such gas which was related to the average refiner acquisition cost of domestically produced crude oil. The initial price was guaranteed to be a minimum of $1.75 per million Btu's. Increases in the initial price were tied to increases in crude oil costs. It also established a comprehensive pattern of Federal ceiling prices for other categories of natural gas production.

The House passed bill provided an incremental pricing mechanism for passing on natural gas price increases experienced by both interstate and intrastate pipeline companies. It would have required these increases to be paid by low-priority users until the delivered price of

natural gas to these users reached equivalency with the cost of substitute fuels at the burner-tip.

The House passed bill also extended certain provisions of the Emergency Natural Gas Act of 1977, which has now expired, and amended the Natural Gas Act to alter the regulatory burdens imposed upon natural gas producers.

The natural gas pricing policy legislation passed by the Senate was an amended version of S. 2104, the Natural Gas Policy Act. The Senate bill was a substitute for S. 2104 as reported from Committee which was adopted on the floor of the Senate.

The Senate passed bill embodied a significantly different approach to the natural gas pricing policy issue than that adopted by the House.

The Senate bill eliminated Federal price controls on new natural gas produced onshore in two years. Different price controls for new natural gas produced from the offshore Federal domain lands were established. Those price controls expired in five years. Pending the elimination of price controls, interim price ceilings were established in each case. The interim price ceiling for new natural gas production onshore was tied to the current cost of No. 2 fuel oil landed in New York City. The interim price ceiling for offshore new natural gas production was set at a national ceiling price to be established pursuant to criteria specified in the legislation.

Existing Federal regulation of flowing interstate natural gas was continued; flowing intrastate natural gas was not regulated by the Federal Government.

The Senate passed bill directed the Federal Power Commission (now the Federal Energy Regulatory Commission) to implement incremental pricing through its regulatory authority over the rates and charges for interstate pipelines. It also extended certain provisions of the Emergency Natural Gas Act of 1977, and amended the Natural Gas Act to limit the regulatory authority of the Commission.

The conference agreement reconciles these two very different bills by redefining what natural gas production qualifies as "new natural gas" and lengthening the period of time prior to the deregulation of most categories of natural gas. The initial price for new natural gas is comparable to the one provided in the House passed bill, though it increases over time according to a new schedule specified in the conference agreement. The difference between the definitions of new natural gas qualifying for new natural gas price treatment is reconciled by expanding the House definition of new natural gas, and by providing an additional category of natural gas, new onshore production wells. The ceiling price for production from this category increases at a slower rate than the ceiling price for most of the gas that would have qualified as new natural gas under the Senate passed bill, but which does not qualify under the conference agreement.

The conference agreement provides an incremental pricing mechanism for passing through to end users some of the increased prices for natural gas and implements incremental pricing for industrial users in two steps. The direct application of the incremental pricing section is patterned after the Senate passed bill by being limited to consumers served directly or indirectly by interstate pipeline companies. The operation of the incremental pricing mechanism for pass-

ing through increased costs is patterned after the House passed bill which utilized a burner-tip passthrough requirement.

The conference agreement extends authority for emergency allocation of natural gas and provides authority for natural gas sales from unregulated intrastate pipelines, and local distribution companies.

A detailed summary of the conference agreement follows.

SHORT TITLE

Section 1. The conferees agreed to the short title, "Natural Gas Policy Act of 1978".

SECTION 2. DEFINITIONS

The conference agreement provides definitions for several terms. The conferees have provided the Commission authority to define additional terms as necessary for the purpose of implementing this Act under the authority provided in sec. 501(b). The conferees also provide the Commission authority to refine definitions of terms provided in the Act in a manner that is consistent with the definitions provided.

The definitions provided in the Act are generally self-explanatory, except as noted.

Natural gas

The definition of natural gas is identical to the definition of natural gas provided in the Natural Gas Act. It is not intended to extend the provisions of the Act to facilities for the production of synthetic natural gas, or facilities for methane gas generated by the decomposition of organic waste. The conference agreement declares clauses prohibiting commingling unenforceable in sec. 314. The definition of natural gas is not intended to be used to impose regulations, or price controls, under this Act on the sale of synthetic natural gas which is commingled with natural gas meeting the requirements of the definition.

Marker well

The concept of a marker well is intended by the conferees to be used for the purpose of delineating those wells from which distance and depth are to be measured for the purpose of determining whether natural gas qualifies under the definition of new natural gas. A marker well is any well from which natural gas was produced in commercial quantities at any time after January 1, 1970 and before April 20, 1977. A well first producing natural gas on or after April 20, 1977 does not qualify as a marker well. If a well has been increased in depth by means of drilling on or after February 19, 1977 to a completion location which is at least 1,000 feet below the deepest completion location which produced natural gas before February 19, 1977, that well qualifies as a new well and as a marker well. However, a well the surface drilling of which began on or after February 19, 1977, and as such qualifies as a new well does not qualify as a marker well under this definition, regardless of whether it produced in commercial quantities before April 20, 1977. A well which qualifies as a new well because the surface

drilling of it began on or after February 19, 1977, which also produced natural gas in commercial quantities prior to April 20, 1977, is not a marker well under this definition. Such a construction would make it impossible for all other new wells within 2.5 miles to qualify for new gas price treatment under the definition of new natural gas.

Reservoir

The conferees intend that two separate producible accumulations of natural gas within the same formation, but separated by a permeability restriction, or water barrier, which prevents pressure communication are to be considered to be separate reservoirs.

Rollover contract

An existing contract which expires at the end of a fixed term qualifies as a rollover contract. An existing contract may have a specified term of five years which will be extended by operation of the contract for one or more years unless the producer gives notice of his intention to terminate the contract within a specified period of time in advance. Such a contract will qualify as a rollover contract at the end of the fixed five year term without regard to the extensions occurring after the date of enactment.

An existing contract may also have a specified term of five years unless the price of natural gas subject to it is deregulated during that given year period whereupon the price to be paid under the terms of the contract will be renegotiated by the parties to the contract. Such a contract will not qualify as a rollover contract by operation of the renegotiation provision until the end of the five year term. The contract resulting from the operation of the renegotiation provision qualifies instead as a successor to an existing contract.

Existing contract

The conferees intend the term "existing contract" to cover any contract in existence on the day before the date of enactment. It is intended that the operative terms of an existing contract be determined by the terms of the contract in effect as of the date of enactment of this Act.

Successor to an existing contract

The conferees intend any successor to an existing contract which does not qualify as a rollover contract, or a new contract, to be a successor to an existing contract. Identity of parties or terms is not necessary to qualify under this definition.

Interstate pipeline

The definition of an interstate pipeline does not include so-called Hinshaw pipelines which are those pipelines that are exempt from the jurisdiction of the Commission by sec. 1(c) of the Natural Gas Act. Hinshaw pipelines are subject to incremental pricing, however, as local distribution companies. Hinshaw pipelines are not subject to allocation under this Act.

Intrastate pipeline

The definition of the term intrastate pipeline is intended to include any pipeline which transports natural gas under a limited claim of

jurisdiction asserted by the Commission under the Natural Gas Act. For example, participation by an intrastate pipeline in a transaction pursuant to Federal Power Commission Order No. 533 involves it in interstate transportation which is an activity subject to Commission jurisdiction under the Natural Gas Act. In order to encourage intrastate pipelines to participate in Order No. 533 arrangements, the Commission has ruled that it will assert only a limited claim of jurisdiction over participating intrastate pipelines. Intrastate pipelines which participate in Order No. 533 or similar transactions do not become interstate pipelines solely by virtue of such participation.

Committed or dedicated to interstate commerce

The term committed or dedicated to interstate commerce, for purposes of this Act, means natural gas from the Outer Continental Shelf and most natural gas which, if sold, would be required to be sold in interstate commerce within the meaning of the Natural Gas Act. The definition is intended by the conferees to clarify any uncertainty resulting from recent court decisions as to what natural gas may qualify under what price categories in Title I of this Act, and what natural gas may qualify for non-price deregulation in Title VI of this Act.

The term does not apply to:

(A) natural gas sold in interstate commerce—

(1) under sec. 6 of the Emergency Natural Gas Act of 1977;

(2) under a limited term certificate with a pregrant of abandonment of service pursuant to sec. 7 of the Natural Gas Act;

(3) under any emergency sale pursuant to sec. 7(c) of the Natural Gas Act; and

(4) to the user by the seller and transported under a certificate granted pursuant to sec. 7(c) of the Natural Gas Act;

(B) natural gas for which abandonment of service was granted on or before the date of enactment under sec. 7 of the Natural Gas Act; and

(C) natural gas which would be committed or dedicated pursuant to the above criteria by reason of the action of any person (including any successor in interest thereof, other than by means of any reversion of a leasehold interest), if on May 31, 1978—

(1) neither that person, nor any affiliate thereof, had any right to explore for, develop, produce, or sell such natural gas; and

(2) such natural gas was not being sold in interstate commerce (within the meaning of the Natural Gas Act) for resale (other than any sale described in (A) (1), (2), or (3) above).

The conferees intend that the term "successor in interest" shall exclude any interest owner who acquires his right pursuant to the reversion or any other termination of a natural gas leasehold interest, or any subsequent grantee of such interest owner who acquires his interest after the date of such reversion or other termination.

The exclusion described in paragraph (C) above limits further extension of the holding of the Supreme Court in *California et al.* v. *Southland Royalty Co. et al.* (Slip Opinion No. 76–1114, decided May 31, 1978). The case is not, however, reversed on its facts.

Under the exclusion, certain natural gas is not to be considered committed or dedicated, if such natural gas is committed or dedicated by

reason of the action of any person and neither that person (or any successor in interest thereof) nor any affiliate, on May 31, 1978, had any right to explore for, develop, produce, or sell such natural gas. If the right to explore is vested in any other person by means of any reversion of a leasehold, such other person is not to be considered a successor in interest, and thus the natural gas would not be considered committed or dedicated, unless the gas is also sold in interstate commerce (within the meaning of the Natural Gas Act) for resale on May 31, 1978.

Several examples may be helpful. Seller A commits natural gas to interstate commerce in 1950. On May 31, 1978, Seller B, Seller A's successor in interest, has the right to explore for, develop, produce, or sell such natural gas. The natural gas remains committed or dedicated to interstate commerce.

Seller C is a lessee, who commits natural gas under a leashold interest to interstate commerce in 1950. In 1971, the lease reverts to Seller D, and Seller D terminates the sales in interstate commerce. No natural gas from the lease is sold in interstate commerce for resale on May 31, 1978. Such natural gas is excluded from the definition of committed or dedicated. However, if Seller D had sold such natural gas in interstate commerce for resale on May 31, 1978, such natural gas would be committed or dedicated under the definition.

With respect to natural gas from the Outer Continental Shelf that is not subject to a certificate of public convenience and necessity under the Natural Gas Act on the date of enactment, the term "committed or dedicated to interstate commerce" is used solely for the purpose of the pricing and other provisions of this Act. This definition does not create new freestanding obligations or expand the jurisdiction of the Commission under the Natural Gas Act.

TITLE I—WELLHEAD PRICING

Subtitle A—Wellhead Price Controls

INFLATION ADJUSTMENT; OTHER GENERAL PRICE CEILING RULES

SECTION 101(a). ANNUAL INFLATION ADJUSTMENT FACTOR

The House provision tied increases in the ceiling price for new natural gas to increases in the refiner acquisition cost of domestic crude oil. The Senate provision tied ceiling price increases to increases in the landed cost of No. 2 fuel oil in New York City for onshore production, and to increase according to specified criteria for production from offshore Federal lands.

The conferees agreed that all natural gas prices would be allowed to escalate with inflation and, in some cases, faster than inflation. Escalation is intended to be compounded annually, but not monthly. Both an inflation factor and a Consumer Price Index (CPI) "correction factor" are included in the "annual inflation adjustment factor" that is used to adjust prices for inflation.

The inflation factor component of the annual inflation adjustment factor is based upon the Gross National Product (GNP) implicit price deflator. The quarterly percent change in the implicit price deflator

for the Gross National Product expressed as an annual rate, as published by the Department of Commerce, is divided by 100 to convert the published number, which is expressed in percentage points, to a number that can be used in a multiplicative formula.

Two rules are utilized in determining the appropriate quarterly percent change to use in the calculation of the ceiling price for any given month.

The first rule determines which quarter should be used for the purpose of calculating the inflation adjustment to be used for any given month. The purpose of the rule is to insure that the most recent data available is used in calculating ceiling prices for months that have already occurred. The rule states that for any month prior to the date of enactment for which any GNP implicit price deflator data is available on the date of enactment of this Act for the quarter in which that month occurs, the GNP implicit price deflator data for that quarter will be used for calculating the price for that month. For any other month, the GNP implicit price deflator data available for the most recent quarter preceding that month for which data has been published at least seven days before the beginning of that month will be used. Thus, for most months prior to enactment, prices will be adjusted for inflation that actually occurred in that month. For all other months, however, because of the time lag in the collection and compilation of inflation data, the inflation adjustment will be based upon data for one or two quarters prior to the quarter in which that month occurs.

Since the preliminary GNP estimate for a given quarter is generally not published until twenty days after the end of that quarter, for the first month of any calendar quarter after enactment of this Act the preliminary estimate for the second preceding quarter will be used. However, because the preliminary estimate for the preceding quarter will generally be published more than seven days prior to the beginning of the second month of any calendar quarter, that estimate will be used in calculating prices for both the second and the third month of that quarter and the first month of the following quarters.

The second rule addresses the question of which revision of the quarterly percent change in the GNP implicit price deflator will be used. It states that, for any quarter for which any version of the quarterly percent change is available on the date of enactment of this Act, the most recent version of that percent change which is available on the date of enactment will be used whenever data for that quarter is used. For any quarter for which no version of the quarterly percent change has been published as of the date of enactment the preliminary estimate of the percent change for that quarter would be used when that estimate becomes available. Thus, the most recent data available on date of enactment is used for all quarters for which data is available at that time. From that point on, the preliminary estimate is always used.

The GNP implicit price deflator is adjusted by addition of a CPI "correction factor" of 0.2 percentage points (.002). The conferees added the 0.2 percentage point figure to adjust the GNP inflation factor to better approximate the Consumer Price Index (CPI) inflation factor in each month. Over the past seven years, the annual rate of increase in the CPI has exceeded the rate of increase in the GNP

implicit price deflator by about 0.2 percentage points. Because the CPI is in the process of being phased out in its current form, the Conferees agreed to use the annual rate of increase in the deflator adjusted by the historical difference between the rate of inflation as measured by the GNP implicit price deflator and as measured by the CPI for purposes of adjusting ceiling prices for inflation.

For purposes of calculating the annual inflation adjustment factor, the 0.2 percentage points are incorporated into a factor of 1.002 which when added to the GNP inflation factor described above, becomes the basis for a multiplicative adjustment to previous ceiling prices.

The conferees recognize that the Department of Commerce may develop a new inflation index for use in lieu of the GNP implicit price deflator. If that occurs, the conferees intend that the Commission shall make the necessary adjustments in the new index to conform as closely as possible to the deflator as it is presently calculated. Authority to do so is provided by sec. 501.

SECTION 101(b). RULES OF GENERAL APPLICATION

The conference agreement includes several rules of general application to be used in interpreting this Act.

The "commercial quantities" rule has broader application than that required under the new natural gas definition. It also applies to marker wells and to completion location. The concept of field uses which are production related used in defining the term is not meant to include uses in refineries. It is more limited, covering uses such as reinjection or compression.

The annual rate of inflation described above is converted to a monthly adjustment factor by taking the twelfth root of the annual inflation adjustment factor. This adjustment is termed the "computation of monthly equivalent". Because adjustment of prices is by a multiplicative, rather than by an additive formulation, the twelfth root (as opposed to one-twelfth) of the annual rate is used for the monthly inflation adjustment factor. This results in an inflation adjustment factor that compounds annually, but not monthly, as was intended by the conferees.

Ceiling prices are calculated from the date specified in the appropriate section. However, they do not go into effect prior to the date of enactment, and apply only to deliveries occurring on or after the date of the enactment of this Act.

The conference agreement provides that if natural gas qualifies under more than one price category, the provisions that permit the seller to obtain the highest price applies. If a seller wishes to change the category under which production from a given well qualifies, he must apply to the appropriate State or Federal agency with authority to make determinations under section 503.

The rule for application of ceiling prices pertains to maximum lawful prices. All maximum lawful prices are ceiling prices only. In no case may a seller receive a higher price than his contract permits.

The price ceilings provided by the conference agreement apply to the "first sale" of any natural gas. The first sale, which is defined in sec. 2, means any sale of any volume of natural gas to any pipeline,

to any local distribution company, to any person for his use, and all sales occurring before such sales.

In addition to publishing maximum lawful prices each month, the Commission should publish the monthly equivalent of the annual inflation adjustment factor for that month and a cumulative inflation adjustment factor for each month since the date of enactment of this Act, which would reflect the combination of all monthly adjustment factors between the given month and the current month. Such figures could be used for the calculation of maximum lawful prices for existing and rollover contracts.

CEILING PRICE FOR NEW NATURAL GAS AND CERTAIN NATURAL GAS PRODUCED FROM OUTER CONTINENTAL SHELF

SECTION 102(a). APPLICATION

House provision

The House passed bill established a statutory ceiling price which was applicable to the first sale of new natural gas. The ceiling price was equal to the Btu equivalent of the average refiner acquisition cost of domestic crude oil (excluding North Slope Alaskan crude oil) calculated without regard to the crude oil equalization tax, if any.

Senate provision

The Senate passed bill established a separate ceiling price mechanism for onshore and offshore production of new natural gas.

The ceiling price for new natural gas produced onshore was equal to the "current" Btu equivalent price of No. 2 fuel oil landed in New York City, as determined by the Commission. It was applicable as of January 1, 1977, and expired two years after the date of enactment of the legislation.

The ceiling price for new natural gas produced from offshore Federal lands was set by establishing a national ceiling price. The national ceiling price was to be determined by the Commission according to criteria which took into account various costs and prices enumerated in the legislation. Pending establishment of the national ceiling price, the legislation provided an interim ceiling price tied to the average first sale price of new domestic crude oil as of the date of enactment of the legislation. The interim ceiling price was to be adjusted monthly until superceded by establishment of the national ceiling price.

Conference agreement

The conference agreement provides a ceiling price which is expressed as the maximum lawful price, per million Btu's, for any first sale of new natural gas, and for any first sale of natural gas produced from an old lease on the Outer Continental Shelf that qualifies for the new natural gas ceiling price.

The ceiling price is adjusted on a monthly basis and increases on a monthly basis. Ceiling prices are not "vintaged" according to the month, quarter, or year during which the natural gas is first delivered from a given well (see sec. 101(b)(4)(B)) or according to contract date.

To obtain the price applicable to all deliveries made during any given month, the price applicable during the immediately preceding

month is multiplied by the monthly equivalent of the new gas price escalator described in sec. 1 02(b) for that month.

In addition, the maximum lawful price charged by the producer is exclusive of certain state severance taxes, and may include any adjustment for gathering, processing, compression, treating, liquefication, or transportation if borne by the seller and allowed by the Commission (see sec. 110).

SECTION 102(b). MAXIMUM LAWFUL PRICE

House provision

The House passed bill allowed the statutory ceiling price to increase over time at a rate equal to the rate of increase in the average refiner acquisition cost of domestic crude oil.

Senate provision

The Senate passed bill allowed the ceiling price for new natural gas produced onshore to increase over time so that it would be equal to the "current" Btu equivalent price of No. 2 fuel oil landed in New York City, as determined by the Commission. It allowed the ceiling price for new natural gas produced from offshore Federal lands to increase monthly to correspond to increases in the first sale price of new domestic crude oil under the interim ceiling price; monthly increases were also allowed under the national ceiling price.

Conference agreement

The conferences agreed that the new gas price would escalate at an annual rate equal to the sum of an inflation factor, a .002 CPI "correction factor", and a real growth factor, which is equal to 3.5 percentage points (.035) from April 20, 1977 through April 1981 and 4.0 percentage points (.04) thereafter.

The conference agreement establishes an initial price of $1.75/MMBtu's beginning April 20, 1977. On the first day of each calendar month, beginning May 1, 1977, this price is adjusted to reflect the rate of escalation agreed upon by the Conferees.

The mathematical statement of the formula is:

$$P_n = P_{n-1}\left(\frac{GNP}{100} + 1.002 + GF\right)^{1/12} \qquad (1)$$

where

P_n = the applicable price for such month;

P_{n-1} = the applicable price for the month immediately preceding such month;

GNP = the quarterly percent change of the GNP implicit price deflator, expressed as an annual rate, for the appropriate quarter; and

GF = the growth factor, as defined above.

A sample calculation can be used to illustrate the operation of the ceiling price mechanism for the months prior to enactment of the Act.

The ceiling price for new gas is initially set at $1.75 as of April 20, 1977. The first price adjustment to be applied to that $1.75 price

occurs on May 1, 1977. The quarterly percent change in the GNP implicit price deflator for the second quarter of 1977, expressed as an annual rate is 7.7, which, when divided by 100 and added to 1.002 yields an annual inflation adjustment factor of 1.079. The growth factor of .035 is added to this to yield an annual escalation rate of 1.114 the twelfth root of which is 1.00904. The price for April 20, 1977 ($1.75) is multiplied by this monthly price adjustment factor of 1.00904 to yield a maximum price of $1.766 applicable to all deliveries made during May, 1977.

On June 1, another price adjustment is made. Again, the quarterly percent change in the GNP implicit price deflator for the second quarter of 1977 is used, and the growth factor is the same. Thus, the price adjustment is identical to that calculated for May. The May price is multiplied by the 1.00904 adjustment factor to yield a June price of $1.782.

In the calculation of the price for July, the quarterly percent change for the third quarter of 1977 is used to reflect inflation that actually occurred during that month. The June price would be multiplied by the monthly price adjustment based on these updated inflation figures to yield the price applicable during July.

Estimates of the ceiling prices that would be in effect under this section for August, September, and October of 1978 are set forth below. These estimates are based on the most recently published revisions of GNP implicit price deflator data available as of August 1, 1978, which is the second quarter preliminary estimate of the deflator. The actual prices will be determined by the most recent GNP deflator data published on the date of enactment of this Act.

	Per MMBtu's
August 1, 1978	$2.014
September 1, 1978	2.036
October 1, 1978	2.057

The legislation directs the Commission to compute the ceiling prices established under this section and to publish them in the Federal Register to the nearest mill (see sec. 101(b)(6)).

SECTION 102(c) DEFINITION OF NEW NATURAL GAS

House provision

The House defined the term "new natural gas" separately with respect to onshore and offshore natural gas production.

With respect to onshore production, new natural gas was defined as natural gas produced from a well (the drilling of which began after April 20, 1977) which is:

(1) more than 2.5 miles from an old well;

(2) 1,000 feet deeper than an old well within 2.5 miles; or

(3) in a newly discovered reservoir (as determined by the appropriate State agency, pursuant to Federal guidelines).

With respect to offshore production, new natural gas was defined as natural gas produced from:

(1) Federal leases granted on or after April 20, 1977; or

(2) previously granted Federal leases which have been abandoned and are subject to releasing by the Federal Government.

Senate provision

The Senate made no distinction in its definition of the term "new natural gas" between onshore and offshore production, except that offshore natural gas must be dedicated for the lesser of the life of the reservoir or 15 years to qualify as new natural gas.

The Senate defined the term "new natural gas" as:

(1) natural gas "sold or delivered" in interstate commerce for the first time on or after January 1, 1977, not including any natural gas which the Commission determines could have been produced economically and sold prior to January 1, 1977, and was wrongfully withheld from sale or delivery (natural gas previously sold interstate commerce, pursuant to FPC limited term certificates or temporary emergency contracts, is deemed not to have been "committed" to interstate commerce); or

(2) natural gas produced from a reservoir discovered on or after January 1, 1977 (including a reservoir discovered by the deeper drilling of an existing well), as determined by rule by the Commission, regardless of whether or not the lease covering a newly discovered reservoir was previously committed or dedicated to the interstate market; or

(3) natural gas produced from a well initiated on or after January 1, 1977, and completed within an extension of a previously discovered reservoir, as determined by rule by the Commission, regardless of whether or not the lease covering such a previously discovered reservoir was previously committed or dedicated to the interstate market.

Conference agreement

The conference agreement combines portions of the House and Senate definitions of new natural gas. New natural gas is defined as gas produced from:

(1) new Outer Continental Shelf leases; and

(2) new onshore wells—

(a) which are 2.5 miles or more from the nearest marker well; or

(b) from a completion location which is at least 1,000 feet (measured by the true vertical depth) below the deepest completion location of all marker wells within 2.5 miles; and

(3) a reservoir from which natural gas was not produced in commercial quantities prior to April 20, 1977.

The term new Outer Continental Shelf lease may apply to submerged acreage which has been or is subject to a lease, if such lease expires and is released by the Secretary of Interior. The conferees understand that the Secretary of Interior has authority under the Outer Continental Shelf Lands Act, as amended, to insure that any releasing of submerged acreage is not accomplished for the purpose of avoiding the maximum lawful price that would otherwise be applicable to production under the terms of the expired lease.

The conference agreement specifies the manner in which the distance between any new well and the nearest marker well is to be

measured for the purpose of qualifying under (1) or (2) above (see sec. 102(c)(2)).

The conference agreement includes certain limitations upon what constitutes production in commercial quantities for the purpose of qualifying under (3) above (see sec. 102(c)(3)).

The conference agreement excludes "behind-the-pipe" natural gas (under sec. 102(c)(1)(C)(ii)) and "withheld" natural gas (under sec. 102(c)(1)(C)(iii)) from qualifying as new natural gas and defines each term.

The behind-the-pipe exclusion prohibits natural gas produced from any reservoir from qualifying as new natural gas under this definition if natural gas "could have been produced in commercial quantities from such reservoir through such old well before April 20, 1977." The phrase "could have been produced" is intended by the conferees to refer to the capability of the reservoir to produce without regard to whether actual production capability existed. For example, the pipe in the well piercing the reservoir, which is producing from another horizon, may not have the appropriate perforation to produce from the pierced reservoir. However, if the pipe were perforated, or if the necessary additional facilities were installed at the appropriate place, it could have produced natural gas. Such instances are intended to be covered by the exclusion.

The criteria of the withheld gas exclusion are not to be considered as being met if production and delivery facilities were installed for the purpose of carrying out sales pursuant to the Emergency Natural Gas Act of 1977, or under the emergency sale authority pursuant to Federal Power Commission Opinion 699–B (60-day emergency sales and rollovers of those sales).

Gas produced from the Prudhoe Bay Unit on the North Slope of Alaska and transported through the Alaska Natural Gas Transportation System (as described in the President's Decision and Report to Congress transmitted to the Congress on September 22, 1977 pursuant to the Alaska Natural Gas Transportation Act) is specifically excluded from qualifying as new natural gas. The term "Prudhoe Bay Unit" is defined in section 2.

SECTION 102(d) OCS GAS QUALIFYING FOR NEW NATURAL GAS CEILING PRICE

The conference agreement provides that production from Outer Continental Shelf reservoirs discovered on or after July 27, 1976 on leases issued prior to April 20, 1977 may qualify for the new natural gas ceiling price. Such gas would not have qualified as new gas under the House passed bill but would have qualified as new natural gas under the Senate passed bill.

For purpose of qualifying for the new natural gas ceiling price under this subsection, a reservoir is considered as having been discovered before July 27, 1976 if it was penetrated before July 27, 1976 by a well capable of producing natural gas in paying or commercial quantities. The conference agreement provides several tests for use in making such determination. The tests for what constitutes paying quantities or commercially producible natural gas are:

(1) the results of a production test described in OCS Order No. 4; or

(2) any production capability evidence described in OCS Order No. 4; or

(3) an induction-electric log, sidewall cores and core analysis, or wire line formation test indicates that the reservoir was commercially producible.

The reference to Order No. 4 is to the Outer Continental Shelf Order No. 4, issued by the United States Geological Survey Gulf of Mexico Area, Conservation Division (effective August 28, 1969).

For the purpose of determining the existence of natural gas in paying or commercial quantities the results of the above referenced tests and evidence are to be evaluated at the time such test results or evidence are known utilizing the evaluating techniques available and conditions existing at the time of such evaluation. Any of the results of the above referenced tests, and evidence obtained from any test performed after July 27, 1976, are not included under this subsection.

Generally induction-electric log tests are performed in conjunction with other logs such as porosity logs. It is contemplated that the determination of commercial producibility under part three above will consider the results of any such tests performed in conjunction with the induction-electric log.

The conference agreement requires that the seller assume the burden of proof before the appropriate State or Federal agency which has the responsibility to determine whether a well qualifies for a new natural gas price treatment.

The conference agreement delegates the authority to make determinations required under this section. See sec. 503.

CEILING PRICE FOR NEW, ONSHORE PRODUCTION WELLS

SECTION 103(a). APPLICATION; AND

SECTION 103(b). MAXIMUM LAWFUL PRICE

This section of the conference agreement provides a special ceiling price schedule for natural gas production from new, onshore production wells. These wells would have been excluded from the House passed definition of new natural gas and included in the Senate passed definition of new natural gas. The ceiling prices provided by this section of the conference agreement are more generous than would have been provided for such gas by the House passed bill and less generous than would have been provided by the Senate passed bill.

The initial ceiling price for gas produced from new onshore production wells provided by the conference agreement is $1.75/MMBtu's beginning in April, 1977. That initial ceiling price increases monthly under the conference agreement by multiplying the previous month's price by the monthly equivalent of the annual inflation adjustment factor.

The formula for determining increases in the ceiling price for this natural gas is the same as that provided for determining the ceiling price of new natural gas except that the formula does not include the 3.5 percent and 4.0 percent allowances. (Technical note: Referring to eq. 1 the growth factor GF=0.)

Estimates of ceiling prices that would be in effect under this section for August, September, and October of 1978 are set forth below. These estimates are based on the most recently published revisions of GNP implicit price deflator data available as of August 1, 1978. The actual prices will be determined by the most recent GNP data published on the date of enactment of this Act.

	Per MMBtu's
August 1, 1978	$1.930
September 1, 1978	1.945
October 1, 1978	1.961

As of January 1, 1985, ceiling prices are removed for natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, produced from new onshore production wells producing from a depth of 5,000 feet deep or more. A special ceiling price for natural gas which was not committed or dedicated to interstate commerce on April 20, 1977 produced from wells producing from less than 5,000 feet deep goes into effect on January 1, 1985. The ceiling price, which is to be computed by the Commission, is a price which is midway between the new gas ceiling price (computed under sec. 102) and the new onshore production well ceiling price (computed under this section). These prices continue through June 30, 1987 or the last date on which price controls remain in effect if price controls are reimposed pursuant to sec. 122.

SECTION 103(c). DEFINITION OF NEW, ONSHORE PRODUCTION WELL

A new onshore production well is defined as any new well—

(1) the surface drilling of which began on or after February 19, 1977; and

(2) which satisfies applicable Federal or State well-spacing requirements; and

(3) which is not within a proration unit—

(A) which was in existence at the time the surface drilling of the well began; and

(B) which was applicable to the reservoir from which such natural gas is produced; and

(C) applicable to a well which produced natural gas in commercial quantities or the surface drilling of which was begun before February 19, 1977 and which was thereafter capable of producing natural gas in commercial quantities.

In some instances, a State or Federal agency may designate a proration unit for a reservoir which it later determines cannot effectively or efficiently be drained by a single well. In such cases, the State or Federal agency may allow another well to be drilled on the same proration unit. The conferees do not intend a new well to be disqualified as a new onshore production well in such cases. The important factor in that determination is whether the portion of the reservoir covered by the unit will be effectively and efficiently drained by a single well. In all cases, the unit must be designated prior to drilling the new well.

Natural gas produced from the Prudhoe Bay Unit does not qualify for the ceiling price established by this section.

The conference agreement delegates the authority to make determinations required under this section. See sec. 503.

CEILING PRICE FOR SALES OF NATURAL GAS DEDICATED TO INTERSTATE COMMERCE

SECTION 104(a). APPLICATION

Both the House passed bill and the Senate passed bill would have determined the ceiling price for existing interstate contracts by reference to existing law. However, the conference agreement addresses ceiling prices for sales under existing interstate contracts by conforming price increases under such contracts with the other ceiling price increases provided for in the legislation.

The ceiling price computed under subsection (b) applies to any first sale of natural gas delivered during any month for natural gas committed or dedicated to interstate commerce on the day before the date of enactment of this Act and for which a just and reasonable price under the Natural Gas Act was in effect.

SECTION 104(b). MAXIMUM LAWFUL PRICE

The conference agreement allows the just and reasonable rates that were in effect on April 20, 1977 as converted, if necessary, to a million Btu basis, for natural gas subject to the jurisdiction of the Commission under the National Gas Act to be adjusted by multiplying those prices by the monthly equivalent of the annual inflation adjustment factor. This means that just and reasonable rates in effect as of April 20, 1977 will escalate thereafter with inflation as measured by the GNP implicit price deflator plus 0.2 percentage points.

The ceiling prices under this section are calculated from April, 1977. However, they do not become effective until the date of enactment of this Act, if the contract so permits. See sec. 101(b)(4)(C).

CEILING PRICE FOR SALES UNDER EXISTING INTRASTATE CONTRACTS

SECTION 105(a). APPLICATION

The conference agreement establishes a maximum lawful price for first sales of natural gas under an existing intrastate contract or any successor to an existing intrastate contract. The maximum lawful price depends upon the contract price in effect on the date of enactment of this Act. If the contract price in effect on the date of enactment is less than the new gas ceiling price, the maximum lawful price for any subsequent month is the lower of (1) the price under the terms of the existing contract in effect on the date of enactment, or (2) the new gas price. Thus, the price under the contract may escalate through the operation of both fixed price escalator clauses and indefinite price escalator clauses in existence as of the date of enactment, but the price may not exceed the new gas price.

If the contract price in effect on the date of enactment is greater than the new gas price, the maximum lawful price for any subsequent month is the higher of (1) the contract price in effect on the date of enactment escalated by the monthly equivalent of the annual inflation adjustment factor, or (2) the new gas price. Thus the operation of both fixed price escalator clauses and indefinite price escalator clauses is limited to the rate of the inflation adjustment until the price equals the new gas price.

Once the price under an existing intrastate contract equals the new gas price, the contract price may increase at a rate equal to the increase in the new gas price. All maximum lawful prices are ceiling prices only; in no case may a seller receive more than the contract permits.

The conference agreement imposes additional limits upon the operation of indefinite price escalator clauses in existing contracts as of January 1, 1985. A special rule, in sec. 105(b)(3), limits the escalation of prices of natural gas for certain intrastate contracts in existence as of the date of enactment. The special rule is not to be applied to intrastate contracts that roll over between the date of enactment and January 1, 1985. If the contract price on December 31, 1984 is higher than $1.00 per MMBtu's, the ceiling prices for such gas are removed pursuant to sec. 121(a)(3), subject to the special rule. This special rule limits the operation of indefinite price escalator clauses in existing intrastate contracts for which the contract price on December 31, 1984 is higher than $1.00 per MMBtu's so that the contract price may not exceed the new gas ceiling price as of January 1, 1985, adjusted by the monthly equivalent of the annual inflation adjustment factor, plus 3.0 percentage points. This limitation applies to natural gas which is deregulated solely as a result of qualifying as an existing contract or a successor to an existing contract in excess of $1.00 per million Btu's on or before December 31, 1984. Thus, natural gas which is deregulated as a result of being new gas under sec. 121(a)(1), gas from deregulated new, onshore production wells under sec. 121(a)(2) or 121(c), or high cost natural gas under sec. 121(b), would not be subject to this limitation, even if it were sold under an existing intrastate contract. Furthermore, natural gas qualifying as gas produced from a natural gas stripper well would not be so limited, if such gas were sold subject to the provisions of sec. 108, rather than taking deregulated treatment as an existing intrastate contract.

The conference agreement specifically prohibits prices paid in any sale of high-cost natural gas, from triggering the operation of any indefinite price escalator clauses. The conference agreement also cedes the Federal Government's authority to further limit the operation of indefinite price escalator clauses to State governments wishing to do so. The Congress, by adoption of this section, recognizes the right of States to prescribe more stringent limitations on the operation of such clauses than those prescribed herein.

This section of the conference agreement is not intended to apply to interstate contracts in existence as of the date of enactment. Such contracts are currently subject to regulation by the Commission pursuant to the Natural Gas Act. Commission regulations bar the use of indefinite price escalator clauses in interstate sales.

Some intrastate contracts currently in existence contain indefinite price escalator clauses which can be triggered by a number of factors, including adjustments by the Commission of "just and reasonable" rates established under the Natural Gas Act. The conferees do not intend that the mere establishment of the ceiling prices under this Act shall trigger indefinite price escalator clauses in existing intrastate contracts. Once natural gas is sold pursuant to the ceiling prices under this Act, such clauses would be activated as limited by this section.

The conference agreement requires that no alteration made after May 3, 1978, of any provision of an intrastate contract in effect as of that date shall be effective to alter the application of the ceiling price limitations of this provision that would have prevailed had such alteration not occurred.

SECTION 106. CEILING PRICE FOR SALES UNDER ROLLOVER CONTRACTS

House provision

The House passed bill provided different ceiling prices for previously interstate sales and previously intrastate sales. The legislation defined the term rollover contract as a contract entered into after April 20, 1977 for the sale of natural gas which was previously subject to an existing contract that expired at the end of a fixed term specified in such contract.

Senate provision

The Senate passed bill did not include comparable provisions for rollover contracts. It relied upon existing law under which rollover contracts of previously interstate sales are not regulated by the Commission and previously intrastate sales are not regulated by the Federal Government unless that gas is sold in interstate commerce.

Conference agreement

Under the conference agreement, the ceiling price applicable to natural gas sold pursuant to rollover contracts depends upon whether the gas is sold in interstate or intrastate commerce as of the date of enactment. If production from a well or a reservoir is committed or dedicated to interstate commerce as of the date of enactment, production from that well or that reservoir is governed by the provision for rollover interstate contracts (sec. 106(a)). If production from a well or a reservoir is not committed or dedicated to interstate commerce as of the date of enactment, production from that well or reservoir is governed by the provisions for rollover intrastate contracts (sec. 106(b)). Provision is made to assure interstate sellers to receive the same rollover price treatment they would receive under existing law if the natural gas is flowing in interstate commerce but no contract is in effect on the date of enactment; when the rollover contract is entered into they may receive the rollover price.

An existing interstate contract may require a producer to deliver a specified amount of natural gas. In order to fulfill the terms of that contract, a producer may drill new wells that but for the contract obligation would otherwise qualify for the new gas price. Once the existing contract rolls over, the conferees do not intend the production from such new wells that would otherwise qualify for the new gas price to be bound by the ceiling price terms of this section unless the rollover contract itself so provides.

If a contract that was an intrastate contract as of the date of enactment rolls over in a manner that the natural gas production becomes interstate, the provision for rollover intrastate contracts still applies. In other words, the conferees intend the nature of the contract in effect on the date of enactment to govern which of the subsections of this section applies.

SECTION 106(a) INTERSTATE ROLLOVER CONTRACTS

House provision

Under the House passed legislation, the ceiling price for previously interstate sales was to be established by the Commission at a level which did not exceed the maximum price received under the expiring contract, except to the extent the Commission authorized a higher price as necessary to permit recovery of increased costs to maintain production. The legislation specified that in no event could the Commission authorize a price in excess of $1.45 per MMBtu's.

The House passed legislation allowed the ceiling price to increase according to an inflation adjustment based upon the GNP deflator (so that the ceiling price levels are expressed in constant real dollar terms). However, where the price under the expiring contract exceeds $1.45 per million Btu's, the ceiling price would have been adjusted at the rate of increase of the average refiner acquisition cost of domestic crude oil.

Senate provision

The Senate passed legislation had no comparable provision. Under existing law, old natural gas sold following the expiration of an existing contract would be permitted to receive the applicable Commission determined just and reasonable price. In most instances, that just and reasonable price is set by a FPC decision at 55¢/MMBtu's for the second half of 1978 and is allowed to increase 1¢ per year.

Conference agreement

The conference agreement provides a ceiling price of 54¢ per million Btu's escalated with inflation for interstate rollover contracts. However, if the just and reasonable rate applicable to the expiring contract was greater than the price that represents 54¢ per million Btu's escalated with inflation until the time of rollover, the new ceiling price is based upon the just and reasonable rate applicable to the expiring contract.

The measure of inflation used for escalation of prices under this section is the monthly equivalent of the annual inflation adjustment factor. The measure of inflation is the same as that provided for new onshore production wells.

SECTION 106(b). INTRASTATE ROLLOVER CONTRACTS

House provision

Under the House passed legislation, the ceiling price for previously intrastate sales was to be established by the Commission at a level which did not exceed the maximum price received under the expiring contract, except to the extent that the Commission authorized a higher price as necessary to permit recovery of increased costs to maintain production. The legislation specified that in no event may the Commission authorize a price—

(1) in excess of $1.45 per MMBtu's if the contract under the expiring contract was less than or equal to $1.45 per MMBtu's; or

(2) in excess of the Btu related price (for new natural gas) if the contract price under the expiring contract was greater than $1.45 per MMBtu's.

The House passed legislation allowed the ceiling price to increase according to an inflation adjustment based upon the GNP deflator described in the previous subsection.

Senate provision

The Senate passed legislation provided the natural gas that was previously subject to an intrastate contract would qualify as new natural gas if subsequently sold in interstate commerce. Previously intrastate gas subsequently sold in intrastate commerce would remain exempt from Federal price regulation.

Conference agreement

The conference agreement provides a ceiling price of $1.00 per million Btu's escalated with inflation for intrastate roll-over contracts if the maximum price paid under the expiring contract is below that price.

If the maximum price paid under the expiring contract is greater than $1.00 per million Btu's escalated with inflation until the time of rollover, the new ceiling price is that price.

The conference agreement does not roll back the price paid under any existing intrastate contract. Nor does it roll back the price paid under any existing intrastate contract upon its rollover.

The measure of inflation used to escalate prices under this section is the monthly equivalent of the annual inflation adjustment factor. The formula for determining increases in the ceiling price is the same as that provided for new onshore production wells and interstate rollover sales.

The conference agreement provides a ceiling price equal to the new natural gas ceiling price for any first sale under an intrastate rollover contract for certain State or Indian tribe royalty shares of production. Both (1) the State royalty share of natural gas produced from real property owned, as of date of enactment, by a State or Indian tribe, and (2) production owned by a State or local government unit or Indian tribe, from such real property, may receive the new gas price (under sec. 102). Royalty interests, or production interests, from State and Indian tribe lands owned as of April 20, 1977 qualify under this subsection.

The conferees intend the term "real property owned" to include the ownership of subsurface mineral rights owned by a State or local government unit. However, the term is not meant to include mineral rights leased by a State or local government unit that are owned by another party.

The term Indian tribe, as used in this section, includes both lands owned by Indian tribes, and lands within the existing boundaries of Indian reservations which are held in trust by the Secretary of Interior for Indian persons. It is not intended to include the so-called allotment lands located outside the existing boundaries of Indian reservations.

SECTION 107. CEILING PRICE FOR HIGH COST NATURAL GAS

House provision

The House passed bill authorized the Commission to establish special ceiling prices in excess of the ceiling prices established by the legislation for high cost natural gas. The higher prices were authorized to the extent necessary to provide reasonable incentives for the production of high cost natural gas. High cost natural gas was defined as natural gas produced from wells located beneath more than 500 feet of water; from completion locations producing from more than 15,000 feet; from geopressured brine; or under such other conditions as present extraordinary risks or costs.

Senate provision

The Senate passed bill gave the Commission authority to authorize a price in excess of either the interim ceiling price, or the national ceiling price for new natural gas for natural gas produced from any high cost production area or vertical drilling depth. The Commission was authorized to designate high cost production areas and vertical drilling depths for offshore Federal lands. The operation of the new natural gas definition would have eliminated Federal ceiling prices for several of the categories of natural gas production that were covered by the House passed definition of high cost natural gas.

Conference agreement

Under the conference agreement, high cost natural gas is defined as natural gas produced from any new well, the surface drilling of which began on or after February 19, 1977, from a completion location more than 15,000 feet deep; natural gas produced from geopressured brine; occluded natural gas produced from coal seams; natural g produced from Devonian shale; and natural gas determined by Commission to be produced under such other conditions as prese extraordinary risks or costs. The first four categories of high cost natural gas are deregulated upon the effective date of the first incremental pricing rule. See sec. 121. Pending such deregulation, the conference agreement provides an interim ceiling price, which shall be equal to the new natural gas ceiling price, for natural gas produced from a well, the surface drilling of which began on or after February 19, 1977, from a completion location below 15,000 feet. Gas produced from geopressurized brine, occluded natural gas produced from coal seams and natural gas produced from Devonian shale, receives whatever price is otherwise applicable under this Title until such gas becomes deregulated upon the effective date of the first incremental pricing rule.

The Commission may determine that natural gas produced from submerged acreage located beneath more than 500 feet of water; or natural gas produced from tight formations with little permeability, including Western tight sand formations; or natural gas produced from hydropressured brine qualify as natural gas produced under such other conditions as present extraordinary risks or costs. The conference agreement gives the Commission authority to add other categories of natural gas production to the list which qualifies for special price treatment under this section.

This authority is intended by the conferees to be exercised in advance of drilling activity, in order to create price incentives. Such special ceiling prices are not intended by the conferees to be cost-based in nature, and do not require cost justification.

For example, some new wells will produce from depths close to 15,000 feet and some reentries will produce from depths below 15,000 feet, both possibly involving costs greater than normal, but neither qualifying as high cost gas under sec. 107(c). The Commission may determine that such wells should receive special price treatment under this section. The Commission could also determine that stripper natural gas wells with more than *de minimis* associated oil production qualify for treatment under this section. This gas, however, would not be deregulated upon the effective date of the first incremental pricing rule.

The ceiling price provisions of this section do not apply to natural gas for which any credit, exemption, deduction, or comparable adjustment to any Federal tax is specifically allowable if the producer elects to have such credit exemption, deduction or adjustment apply. If the producer chooses to have the provisions of this section apply, he is required to file an election indicating his plans to take advantage of the ceiling price provisions of this section not later than 30 days after enactment of the Act providing the special tax or comparable adjustment, or the date the surface drilling of the well qualifying under this section began, whichever is later. The conferees intend the term "comparable adjustment" to be construed broadly. It is meant to include any device or allowance which would have the effect of reducing a seller's Federal tax liability relating specifically to high cost natural gas as defined herein or by the Commission.

SECTION 108. CEILING PRICE FOR STRIPPER WELL NATURAL GAS

The conference agreement provides a special ceiling price for natural gas produced from stripper wells. The initial ceiling price for natural gas produced from stripper wells is $2.09 per MMBtu's. The ceiling price is allowed to increase at the monthly equivalent of the annual inflation adjustment factor, plus a real growth factor which is equal to .035 until April 20. 1981 and .04 thereafter. Escalation commences as of May, 1978 rather than as of April 20, 1977 as in the case of new gas. Estimates of the ceiling prices that would be in effect under this section for August, September and October of 1978 are set forth below. These estimates are based on the most recently published revisions of GNP deflator data avaliable as of August 1, 1978. The actual prices will be determined by the most recent GNP data published on the date of enactment of this Act.

	Per MMBtu's
August 1, 1978	$2. 158
September 1, 1978	2. 181
October 1, 1978	2. 205

A stripper well is defined as a well producing nonassociated natural gas for a ninety-consecutive day period at a rate which did not exceed an average of 60 Mcf per day when produced for such three consecutive months at its maximum efficient rate of flow and in accordance with recognized conservation practices. The conferees intend

that the appropriate state or Federal regulatory body with authority to make determinations under sec. 503 will determine what constitutes application of recognized conservation practices.

The conferees intend that the phrase "maximum efficient rate of flow" means the maximum rate at which the well could produce without damage to the reservoir. In instances where the well is incapable of producing at the reservoir's maximum efficient rate of flow, the well's maximum efficient rate of flow shall be based upon the maximum rate at which that well could produce. The conferees intend that application of the standard of the maximum rate at which a well could produce to the average of 60 Mcf per day measurement be consistent with recognized conservation practices but not to allow any limitation on production solely for the purpose of qualifying for price treatment under this section.

The conferees also intend that the Commission shall have authority to define what constitutes non-associated gas. The agreement contemplates that the Commission could allow a *de minimis* amount of oil to be produced from the well without disqualifying the well as a natural gas stripper well. The 60 Mcf per day measurement is intended to be applied after extraction of natural gas liquids; production of natural gas liquids does not disqualify a well from qualifying as a natural gas stripper well.

The section directs the Commission to provide, by rule, that stripper wells retain their stripper well status even if production is increased to an average above 60 Mcf per day but only if such increase is due to the application of recognized enhanced recovery techniques. The objective of this section is to insure that the producer does not have a built-in incentive to limit the production from a given well to an average of 60 Mcf per day.

Non-associated natural gas is defined as natural gas which is not produced in association with crude oil.

SECTION 109. CEILING PRICE FOR OTHER CATEGORIES OF NATURAL GAS

House provision

The House passed bill established ceiling prices for all "old natural gas" which was defined as natural gas other than new natural gas. Some old natural gas would have been subject to the rollover contract price ceilings discussed previously. Other old natural gas would have had different price ceilings according to whether it was subject to an existing or new contract.

The ceiling price applicable to old natural gas sold under an existing contract was to be determined according to—

(1) the Commission determined just and reasonable rate in effect on April 20, 1977 in the case of interstate sales; or

(2) the contract price in effect on April 20, 1977 in the case of intrastate sales.

The ceiling price applicable to old natural gas sold under a new contract was initially established at $1.45 per MMBtu's.

In all cases, the House passed legislation allowed the ceiling price to increase according to an inflation adjustment based upon the GNP deflator.

Senate provision

The Senate passed bill established ceiling prices for "old natural gas" which was defined as natural gas sold or delivered in interstate commerce other than new natural gas. Old natural gas sold under an existing contract would continue to be subject to the Commission determined just and reasonable price ceiling. The legislation did not include ceiling prices for intrastate sales under existing contracts; nor did it include ceiling prices for old natural gas sold under a new contract. In the latter case, existing law would apply the Commission determined just and reasonable price.

The Senate passed bill depended upon existing law for establishing increases in the ceiling prices. However, the legislation also removed from the Commission the power to decrease any interstate rate for old natural gas if the rate had previously been determined by the Commission to be just and reasonable.

Conference agreement

This section applies to—

(1) natural gas produced from any new well not otherwise qualifying for a higher ceiling price; and

(2) natural gas committed or dedicated to interstate commerce for which a just and reasonable rate was not in effect under the Natural Gas Act; and

(3) natural gas which was not committed or dedicated to interstate commerce and which was not subject to an existing contract; and

(4) natural gas produced from the Prudhoe Bay Unit on the North Slope of Alaska and transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976; and

(5) any natural gas which is not covered by any maximum lawful price under any other section of this subtitle.

In determining whether a "just and reasonable" price ceiling has been established under the Natural Gas Act, the conferees do not intend to require that a certificate has been issued with respect to that gas.

The conference agreement establishes an initial ceiling price of $1.45 per MMBtu's for natural gas produced from wells which qualify under the categories of this section. The inflation factor to be applied to such production is the same as that provided for new onshore production wells and rollover contracts which is equal to the monthly equivalent of the annual inflation adjustment factor. (See sec. 103 for a detailed description.) The ceiling prices under this section are calculated from April 20, 1977. However, such ceiling prices do not become effective until the date of enactment (see sec. 101(b)(4)(C)).

SECTION 110. TREATMENT OF STATE SEVERANCE TAXES AND OTHER SIMILAR PRODUCTION-RELATED COSTS

All ceiling prices under this Act are exclusive of State severance taxes borne by the seller and any adjustment which may be allowed by the Commission for specified production related costs.

Increases in State severance taxes above levels enacted on or before December 1, 1977, are excluded from the applicable ceiling price so long as they are applied uniformly to natural gas sold within the state in which it is produced, and to natural gas sold outside the state in which it is produced. Such increases, however, are required to be incrementally priced under sec. 203(a)(9). State severance taxes levied as a function of price for or as a function of the volume of production of all natural gas are considered by the conferees to be uniformly priced.

The term "State severance tax" is intended to be construed broadly. It includes any tax imposed upon mineral or natural resource production including an ad valorem tax or a gross receipts tax. It also includes any tax imposed by a local government unit under authority of State law or by an Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians.

While severance taxes which may be imposed by an Indian tribe are to be treated in the same manner as State imposed severance taxes, the conferees do not intend to prejudge the outcome of the cases on appeal before the Tenth Circuit Court of Appeals respecting the right of Indian tribes to impose taxes on persons or organizations other than Indians who are engaged in business activities on Indian reservations. The outcome of the cases on appeal will determine the legality of imposing such taxes. The cases are *Jicarilla Appache Tribe et al* v. *J. Gregory, Merrion and Robert L. Bayless* (78–1154, 10th Cir.) and *Jicarilla Apache Tribe* v. *Amoco Production Co. and Marathon Oil Co.* (78–1251, 10th Cir.)

The conference agreement provides authority for the Commission, by rule or order, to make adjustments in ceiling prices for production-related costs which include the costs of compressing, gathering, processing, treating, liquefying, or transporting natural gas. The authority is available for making adjustments to all ceiling prices.

The conferees recognize that, in certain cases, the just and reasonable rates under the Natural Gas Act include an allowance for production related costs. The conference agreement is not intended to alter or change that practice.

Subtitle B—Decontrol of Certain Natural Gas Prices

SECTION 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES

House provision

The House passed bill did not contain any termination of the ceiling prices established pursuant to the legislation.

Senate provision

The Senate passed bill provided for termination of the ceiling price applicable to onshore production of new natural gas two years after the date of enactment of the legislation. The ceiling price authority applicable to offshore production of new natural gas terminated on December 31, 1981. Intrastate natural gas production would have continued exempt from Federal price controls.

Conference agreement

The conference agreement provides for the elimination of Federal price controls for certain categories of natural gas. Thus the agreement "deregulates" those categories for ceiling price purposes.

New natural gas (under sec. 102) is deregulated effective January 1, 1985.

Natural gas produced from new onshore production wells (under sec. 103) producing from a completion location deeper than 5,000 feet is deregulated effective January 1, 1985, provided that such gas was not committed or dedicated to interstate commerce on April 20, 1977. Natural gas produced from new onshore production wells producing from a completion location shallower than 5,000 feet that was not dedicated to interstate commerce on April 20, 1977, is deregulated effective July 1, 1987, or as of the last date on which price controls are in effect if reimposed (under sec. 122), whichever is later. Gas produced from new onshore production wells committed or dedicated to interstate commerce on April 20, 1977 is not deregulated.

Natural gas sold under an existing intrastate contract, a successor to an existing contract, or any rollover contract is deregulated as of January 1, 1985, if such gas was not committed or dedicated to interstate commerce as of the day before the date of enactment and if the price paid pursuant to the contract for that gas is greater than $1.00 per million Btu's on December 31, 1984. Natural gas subject to an intrastate contract in existence on the date of enactment is not deregulated if the price paid pursuant to the contract is less than or equal to $1.00 per MMBtu's on December 31, 1984.

Certain categories of high-cost gas (under sec. 107(c)(1–4)) are deregulated on the effective date of the first incremental pricing rule (required by sec. 201).

The conference agreement does not provide for deregulation of any natural gas production not specifically enumerated in this section.

SECTION 122. STANDBY PRICE CONTROL AUTHORITY

The conference agreement provides authority for the President or the Congress to reimpose price controls in the form of maximum lawful prices on all categories of natural gas described in sec. 121(a) for a single period of 18 months. This authority may not be exercised to take effect earlier than July 1, 1985 nor later than June 30, 1987. If this authority is exercised, price controls could only be reimposed once. The Congressional decision to reimpose price controls is to be implemented by concurrent resolution which is not subject to judicial review or Presidential approval. The concurrent resolution to reimpose price controls under the authority and procedures provided by this section may not be passed prior to June 1, 1985.

The President's decision to reimpose price controls is subject to Congressional review. His decision may not be submitted prior to June 1, 1985. The President's decision is effective unless both Houses of Congress pass a concurrent resolution to veto the Presidential reimposition of controls.

The conference agreement requires the President to transmit his decision to reimpose price controls to the Speaker of the House of

Representatives and to the President of the Senate. The Congress would have 30 days in which to act to pass a concurrent resolution to veto the reimposition of controls.

The conference agreement provides an expedited procedure for Congressional consideration of a Presidential decision to reimpose price controls.

If price controls are reimposed under this section, the maximum lawful price for deliveries of any category of natural gas is the maximum lawful price computed under sec. 102, except for natural gas which was not committed or dedicated to interstate commerce on April 20, 1977, and which is produced from a completion location which is located at a depth of 5,000 feet or more which would have a maximum lawful price computed under sec. 103(b).

If price controls are reimposed, the reimposed price for new onshore production wells would be the same as that for new onshore production wells that were not deregulated (because the production from such wells was committed or dedicated to interstate commerce). If price controls are reimposed, the conferees intend that such price controls will be reimposed without respect to whether production of natural gas commenced before or after the date of deregulation, or the date of reimposition of controls. In some cases, a seller may sign a contract during the period of deregulation under which the contract price is greater than the price reimposed for categories of production covered by that contract. In such cases, the contract price will be rolled back upon the effective date of the reimposition. However, the reimposition will not have a retroactive effect requiring the buyer to refund payments made prior to reimposition.

If price controls are reimposed, the conference agreement provides that they must be reimposed for the full 18 month period on all categories described in this section.

SECTION 123. REPORT TO CONGRESS

The Senate passed bill required the Commission to study exploration, production, sale, transportation, distribution and consumption of natural gas. It also required the Commission to make an annual independent estimate of natural gas reserves; to keep current information regarding the following: ownership, operation, management, and control of all natural gas facilities; the utilization of natural gas; rates and charges for service to each type of consumer; and the relationship of the information to conservation, industry, commerce, and the national defense. The Commission was required to publish its studies and to report to Congress on them. The House passed bill did not contain a comparable provision.

The conference agreement requires the Department of Energy to submit two reports to the President and to Congress. The reports, to be submitted on or before July 1, 1984, and January 1, 1985, are required to discuss natural gas prices, supplies, and demand, and the competitive conditions and market forces in the natural gas industry in the United States. The reports are required to include an evaluation of whether a supply/demand balance exists in natural gas markets at the time of the reports, and/or whether that balance is expected to exist in the future.

The conference agreement requires the Department of Energy to provide an opportunity for public comment during preparation of the reports.

TITLE II—INCREMENTAL PRICING

House provisions—In general

The House passed bill required the Commission to allocate increases in the average cost of natural gas in excess of general inflation-based increases in the pipeline's average cost of gas (based upon costs for the 12-month period preceding enactment of the legislation) to low priority users. Low priority users were defined as any user of natural gas other than residential users and small commercial users using less than 50 thousand cubic feet of natural gas on a peak day.

The legislation made incremental charges applicable to both low priority users served by pipelines and to local distribution companies in proportion to their respective volumes of sales to low priority users.

It required local distribution companies to pass through incremental charges received by the local distribution company from its supplying pipeline or pipelines. The charges were to be passed through to low priority users. It provided that incremental pricing to a low priority user would end when the price of natural gas to the user reached the Btu equivalency with the reasonable cost of substitute fuels.

Further increases in natural gas costs would be borne by both high priority and low priority customers of the pipeline after all low priority users reached Btu equivalency with the reasonable cost of substitute fuels.

The House passed bill applied incremental pricing to both interstate and intrastate pipelines and to local distribution companies served by interstate or intrastate pipelines.

Senate provisions—In general

The Senate passed bill required the Commission to allocate costs of old natural gas for rate purposes to residential users, small users (less than 50 thousand cubic feet of natural gas on a peak day), hospitals, uses vital to public health and safety, agricultural users, food processing users and food packaging users until the price of natural gas to low priority users (all other users) equaled the reasonable cost of substitute fuel oil.

The legislation required the Commission to report annually to the Congress on the effect of incremental pricing. It also required interstate pipelines to report to the Commission at least annually on the volumes and prices of old natural gas, new natural gas and synthetic or liquefied natural gas transported by them.

The requirements of the Senate passed legislation applied only to interstate pipelines and not to intrastate pipelines or to local distribution companies.

Conference agreement—In general

The conference agreement requires the Commission to prescribe a rule for implementing incremental pricing. Each pipeline would be required under the rule to place certain portions of its acquisition costs of natural gas into a special incremental pricing account for pass-through to incrementally priced users.

A two stage process is utilized for identification of users who will be subject to incremental pricing. First, the Commission is required to develop a rule, within 12 months after the date of enactment, for implementation of incremental pricing applicable to certain industrial boiler fuel facilities. Second, the Commission is required to develop an amendment to the first rule, within 18 months after the date of enactment, for implementation of incremental pricing to other industrial users. This amendment to the first rule will be submitted to Congress for review. The amendment becomes effective unless disapproved by either House of Congress. If the second rule is disapproved, the Commission may submit a substitute proposal for review under the same procedure.

The conference agreement provides a statutory exemption from both rules for any residence, school, hospital, or similar institution, for any electric utility, and for certain industrial cogenerators. In addition, other "small" industrial boiler fuel users and "agricultural" users, as defined in sec. 206, are excluded from both the first rule and the amendment. The Commission is authorized to propose other exemptions from the first rule and from the amendment. If proposed, any exemption would be subject to Congressional review and veto by either House of Congress under sec. 202.

Only certain portions of an interstate pipeline's acquisition cost of natural gas are subject to the incremental pricing requirements and are required to be placed in the incremental pricing account for pass-through to low priority users under sec. 203.

Under sec. 204, the incremental pricing mechanism would operate to increase prices to incrementally-priced users until the price they pay for their natural gas equals the Btu equivalent price of substitute fuel oil. Once all incrementally-priced industrial users served by a given pipeline reach the Btu equivalency price, those users would not receive any further incremental pricing surcharge, except to maintain those users at the Btu equivalent price. Once all incrementally priced users served by a given pipeline reach the Btu equivalency price, that pipeline would not receive any further incremental pricing surcharge, except to maintain all covered users at the Btu equivalent price.

Amounts in excess of that necessary to maintain incrementally-priced users at the Btu equivalent price of substitute fuels will go back into the pipelines' general gas acquisition cost accounts for recovery through pipeline cost recovery procedures that would otherwise be applicable.

The conferees recognize that implementation of this program will be complex. The conference agreement provides for implementation of incremental pricing by rule, which is intended to give the Commission the requisite discretion to deal with difficulties that may arise.

Explanations of the operation of each section of this Title follow.

SECTION 201. INDUSTRIAL BOILER FUEL USE

The conference agreement requires the Commission to prescribe and make effective a rule, within 12 months after the date of enactment, designed to provide that natural gas acquisition costs subject to incremental pricing passthrough (under sec. 203) are passed through to

any industrial boiler fuel facility which uses natural gas as a boiler fuel. The application of this rule is limited to boiler fuel facilities served by an interstate pipeline, and those served by a local distribution company that is served by an interstate pipeline. The term interstate pipeline is meant to include those pipelines which are subject to the jurisdiction of the Commission under the Natural Gas Act. "Hinshaw" pipelines, which are not subject to the Commission's jurisdiction under sec. 1(c) of the Natural Gas Act, are considered local distribution companies, for purposes of incremental pricing, to the extent that they are served by an interstate pipeline.

This section sets forth general guidelines respecting the rule by which the Commission is to implement the passthrough requirement. The Commission is given flexibility under the conference agreement to prescribe the mechanics of passthrough, both as to the timing, and the amount of the surcharge.

The first rule applies to industrial boiler fuel facilities only. Natural gas fired boliers used to heat apartment buildings or shopping centers, for example, are not included in the rule required by this section.

The Commission is accorded flexibility by the conference agreement to make necessary adjustments in the calculation of the surcharge to be passed through. For examples, in some instances State regulations may already provide some form of incremental pricing which has resulted in the fuel price paid by industrial facilities (which will qualify as incrementally priced industrial facilities under this Title) already equalling the Btu-equivalent price of alternative fuel. The conferees do not intend the operation of this section to require the surcharge to be passed through to such facilities. The Commission is accorded the flexibility to adjust the surcharge to provide for an equitable distribution of such surcharge, so long as the distribution is consistent with the intent of this Title.

The Commission is required to make the rule under this section effective 12 months after the date of enactment. Flexibility is afforded the Commission to require accruals to the account established under sec. 204(a) to begin in the first calendar period beginning after the effective date, and passthrough to incrementally priced industrial facilities to begin in the next calendar period.

SECTION 202. AMENDMENT EXPANDING APPLICATION FOR OTHER INDUSTRIAL USES

The conference agreement requires the Commission to prescribe an amendment to the first rule, within 18 months after the date of enactment, designed to provide that natural gas acquisition costs subject to incremental pricing passthrough (under sec. 203) are passed through to other industrial facilities using natural gas. The application of the provisions of the amendment will be limited to industrial faclities served by an interstate pipeline, and those served by a local distribution company that is served by an interstate pipeline.

The section provides a Congressional review mechanism, by which either the Senate or the House of Representatives may adopt a resolution of disapproval of any amendment proposed by the Commission under this section. The amendment will take effect only if not disap-

proved by either House of the Congress within 30 calendar days of continuous session after it has been submitted. If the amendment required by sec. 202(a) is disapproved, after six months the Commission may submit additional proposals. Authority to submit proposals extends for a 2-year period beginning at the time of the adoption of the first disapproval resolution.

The conference agreement provides a mechanism for exempting "small" industrial users and "agricultural" users under sec. 206.

SEC. 203. ACQUISITION COSTS SUBJECT TO PASSTHROUGH

Only certain portions of an interstate pipeline's acquisition cost of natural gas are subject to passthrough under this section.

The conference agreement requires the following amounts to be subject to the passthrough requirements:

(1) That portion of the acquisition cost of—

(a) new natural gas;

(b) rollovers into the interstate system of previously intrastate natural gas;

(c) production from new, onshore production wells; and

(d) new liquefied natural gas imports (excluding projects exempted under sec. 207)

to the extent that the acquisition costs exceeds $1.48 per billion Btu's for March, 1978, and adjusted for inflation in subsequent months.

(2) That portion of the acquisition cost of—

(a) volumes of natural gas imports (other than LNG) in excess of both actual calendar year 1977 import volumes and contract volumes under a contract entered into on or before May 1, 1978 whichever is greater; and

(b) stripper well natural gas;

to the extent that the acquisition cost exceeds the new gas price applicable during the month in which delivery or importation of the gas occurs.

(3) That portion of the acquisition cost of high-cost gas which exceeds 130 percent of the Btu-equivalent of the landed cost of No. 2 fuel oil in New York harbor during an appropriate period preceding the month in which delivery of the gas occurs;

(4) In the case of natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976—

(a) that portion of the amount paid to the producer that exceeds the cost computed under sec. 109; and

(b) any amount paid to any person other than the producer for costs of gathering, processing, treating, liquefying, transporting, or compressing such gas prior to its delivery to the pipeline system.

(5) Any increase in the acquisition cost of natural gas attributable to any increase in State severance taxes or other similar production taxes above levels enacted on or before December 1, 1977.

The first sale acquisition cost of natural gas is defined as—

(1) the cost of such gas acquired in any first sale in the case of any natural gas produced in the United States; or

(2) the cost at the point of entry to the United States in the case of natural gas or liquefied natural gas imported into the United States.

The first sale acquisition cost is exclusive of state severance taxes.

With respect to State severance or other similar production taxes, the conference agreement requires increases in such taxes enacted after December 1, 1977 to go into the incremental pricing account. State severance taxes that were enacted on or before December 1, 1977 that did not become effective until after that date are not required to be placed in the incremental pricing account.

A change in the method of computation of State severance taxes or other similar production taxes which does not result in an increase in the level of such tax expressed as a percentage of the average price of all natural gas sold in the State (calculated as of the effective date of such change in the method of computation) does not constitute an increase in State severance taxes for purposes of incremental pricing under this section, if the newly computed tax is applied uniformly to interstate and intrastate sales. If the test of even application is not met, the increases in the taxes will be required to be incrementally priced.

The treatment to be given to severance taxes imposed upon the gas by the State of Alaska is the same as the treatment to be given all other severance or other similar production taxes under the conference agreement; that is, only increases in such taxes enacted after December 1, 1977, shall be incrementally priced.

The conference agreement also requires transportation costs for gas transported through the transportation system approved under the Alaska Natural Gas Transportation Act of 1976 to be rolled in. See sec. 208.

Where natural gas qualifies for two or more categories, the determination of which threshold price applies is left to the Commission, based upon the classification of the gas for purposes of pricing under Title I.

SECTION 204. METHOD OF PASSTHROUGH

The conference agreement requires each interstate pipeline serving any industrial users of natural gas that are subject to incremental pricing requirements under sec. 201 or 202 to establish and maintain an incremental pricing account. Amounts required by sec. 203 to be passed through are to be credited to the account and passed through by means of a surcharge on volumes of natural gas delivered, directly or indirectly, to incrementally priced industrial facilities for ultimate industrial use.

Under the conference agreement, the incremental pricing surcharge passthrough operates to allocate increases in gas prices to incrementally priced industrial facilities until the price paid by those facilities at the burnertip is equal to the Btu-equivalent cost of alternative fuel.

The surcharge is based upon the amount in the account and the pipeline's total volume of natural gas delivered directly or indirectly to incrementally priced industrial facilities. When a local distribution company receives natural gas from more than one interstate pipeline, the proportion of gas deliveries by any given pipeline for ultimate con-

sumption by an incrementally priced industrial facility is assumed to be equal to the proportion of total gas volume delivered to that local distribution company which comes from that given pipeline. Thus, for example, if 60 percent of a local distribution company's total supply of gas is supplied by pipeline A, pipeline A is allowed to impose a surcharge on 60 percent of the volumes delivered to incrementally priced industrial facilities served by that local distribution company.

The surcharge to any facility may be reduced if an unadjusted surcharge would result in rates and charges paid by any incrementally priced industrial facility that would exceed the appropriate alternative fuel cost as determined under this section.

The amount of that reduction would be borne by the other incrementally priced industrial facilities served by that pipeline. Any amount that the local distribution company could not recover from an individual facility because its price would then exceed the Btu-equivalent cost would revert back to the pipeline's account, to be recovered from all remaining incrementally priced facilities served by the pipeline that are paying less than the alternative fuel price. The amount of the reduction in the costs being passed through will be retained in the account for pass-through to other incrementally priced industrial facilities.

When and if the price paid by all incrementally priced users served by a local distribution company equals the alternative fuel price, the local distribution company would receive only that portion of its pipeline's account necessary to maintain those users at the alternative fuel price. In this manner, the share of the pipeline's account borne by a local distribution company serving incrementally priced facilities still paying less than the alternative fuel price will increase when all incrementally priced users served by a second local distribution company have reached the alternative fuel price.

When all incrementally priced industrial facilities served by a pipeline reach the Btu-equivalency of the cost of the alternate fuel, the passthrough will operate only to the extent necessary to maintain rates and charges for industrial users at that equivalency. Excess amounts may be allocated in whatever manner by which the pipeline or local distribution company is permitted to recover normal costs.

The conference agreement does not include a requirement for, nor any prohibition on, any particular manner of distribution of this excess cost among the customers of the interstate pipeline, nor among those of the local distribution company.

The cost of substitute fuel oils is to be determined by the Commission on a regional basis. The conference agreement provides the Commission discretion to select as a "region" any geographic or economic unit which it deems appropriate. Thus, the region could be several States, a part of a State, or even an area with particular geographic or air quality characteristics which affect the type of fuel used by industrial facilities. The conference agreement provides that the price paid by industrial users for No. 2 fuel oil is the alternative fuel cost unless the Commission determines otherwise. The Commission can determine that, in certain cases, the price paid by industrial users for fuel oil costing as low as No. 6 fuel oil is the appropriate fuel cost to use as the alternative fuel cost. The Commission may make

this determination either by rule or by order, on a case-by-case basis, or regionally by category of user on a pipeline-by-pipeline basis. The conferees intend that this determination may be made on the motion of any party, or on the Commission's own motion at any time after the date of enactment of this Act. The conferees recognize that it may be necessary or appropriate for the Commission to make this determination in advance of the effective date of the first rule. The conferees urge the Commission to take whatever action it deems appropriate or necessary (including expeditious consideration of these proceedings and consolidation of these cases) to avoid any delays in reducing the substitute fuel level so as to avoid the likelihood of conversions from natural gas by industrial users if those conversions would result in increases in natural gas rates for any residential, small commercial, and other high priority customers. The conferees intend that in determining the likelihood of these conversions occurring, the Commission move rapidly in the administrative hearings so as to avoid the irreparable damage which the conferees believe will occur to high priority users if these other industrial users, faced with uncertain natural gas rates, begin taking steps to secure alternate fuel supplies.

The conference agreement requires the Commission to make the determination of the cost of alternative fuel following the opportunity for written and oral presentation of views, data, and arguments. The determination is to be based upon a finding that the use of the lower Btu equivalency level is necessary to avoid load shifting that would otherwise result from conversion of incrementally priced industrial facilities to substitute fuels, if that shifting would, in turn, result in increased natural gas rates to high priority users, including residential and small commercial users.

SEC. 205. LOCAL DISTRIBUTION COMPANY PASSTHROUGH REQUIREMENTS

The conference agreement requires any surcharge paid by any local distribution company to be directly passed through to the incrementally priced industrial facility or facilities it serves.

The conference agreement prohibits States from modifying or otherwise changing the method of allocating costs to the rates and changes of local distribution companies in a manner that would have the effect of creating any offset for the surcharges required to be paid due to the operation of this Act. For example, a State regulatory commission wishing to soften the effect of incremental pricing could lower the basic cost of service charge to any facility which is an incrementally priced industrial facility under sec. 201 or 202. Such a reduction would neutralize the impact of the surcharge passthrough requirement. The conference agreement specifically prohibits such actions and provides authority to enforce the requirements of this section under sec. 504.

The requirements of this Title of the conference agreement preempt and supersede any provision of State or local law to the extent that such a provision would preclude the passthrough of any surcharge under this Title or prevent the application of the requirements of this section.

The conference agreement does not preclude State regulatory agencies from exercising their authority under State law to regulate local

distribution companies. A State regulatory agency could for example, raise prices to be paid by incrementally priced industrial facilities to levels higher than the levels required by this Title. The conferees have not mandated such a practice; nor has it been precluded. State law is not preempted in this case and States may wish to place more of the costs of service onto a particular class of industrial users. The conferees make no judgment as to the advisability of this action.

A State regulatory agency may wish to provide for some form of inverted rate schedules, or other rate-making technique, to provide for recovery of the costs required to be passed through under this Title. So long as the costs are passed through to the incrementally priced industrial facilities covered by the required rule, the State may use whatever ratemaking technique it so desires. The basic requirement of this Title is to recover the surcharge from the identified class of incrementally priced industrial facilities.

SECTION 206. EXEMPTIONS

Several types of users are exempted by this section from the requirements of the incremental pricing rules to be prescribed under sec. 201 and 202.

Any existing industrial facility which uses natural gas as a boiler fuel (that is not already exempted under sec. 201) is given an interim exemption from the requirements of the industrial boiler fuel use rule if the facility's use did not exceed an average of 300 Mcf per day during any month of a base period determined appropriate by the Commission. The interim exemption lasts until the Commission prescribes and makes effective a rule exempting any existing industrial boiler fuel facility from the requirements of both rules if the facility's boiler fuel use of natural gas did not exceed an average of 300 Mcf per day during any month of calendar year 1977.

The conference agreement provides the Commission authority to change the 300 Mcf threshold to a lower average daily rate of use, determined by the Commission to be necessary to assure that exempt "small" industrial boiler fuel facility use of natural gas did not exceed 5 percent of the United States interstate boiler fuel use of natural gas. The 5 percent determination is based upon the aggregate amount of natural gas which was used in calendar year 1977 for boiler fuel use, and that was transported through the facilities of interstate pipelines. The Commission is required to make any downward adjustment in the 300 Mcf threshold necessary to make the threshold correspond to a 5 percent exemption.

Any agricultural facility using natural gas is given an interim exemption from the requirements of the industrial boiler fuel use rule. Agricultural facilities are defined as users of natural gas for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed or food.

The interim exemption lasts until the Commission prescribes and makes effective a permanent rule exempting agricultural users from incremental pricing. Agricultural uses are exempted in the permanent

rule unless the Commission determines that an alternative fuel or feedstock is both economically practicable and reasonably available.

The conference agreement provides authority for the Commission, by rule, to provide for other exemptions from either rule. The Commission may propose exemptions which exempt any other incrementally priced industrial facility or category thereof either partially or completely. To give the Commission flexibility, the Conferees intend that these other exemptions may deal with either who is covered by the rule or at what level any particular class of users covered by the rule will be incrementally priced. Partial exemptions could be structured to lower the substitute fuel level applicable to any category of users to below the levels otherwise provided for in this title. Any proposed exemption is required to be submitted to Congres for review under sec. 508. Either House of Congress can veto a proposed exemption.

SECTION 207. TREATMENT OF CERTAIN IMPORTS

The conference agreement does not require incremental pricing for liquefied natural gas import projects which received a certificate under section 3 of the Natural Gas Act on or before May 1, 1978. Other projects for which incremental pricing is not required by this legislation are those for which an application for a certificate was pending on or before May 1, 1978, and projects for which the Secretary of Energy or the Commission determines that substantial financial commitments of the importer, including those of the applicant pipeline or consortium, or contract binding on the importer have been made on or before May 1, 1978. The conference agreement provides that the decision of whether incremental pricing will be required for such pending projects will be made under the authority and procedures of the Natural Gas Act. If a decision to require incremental pricing for a pending project is made under the Natural Gas Act, the incremental pricing would be implemented under the provisions of this Act.

New liquefied natural gas import projects, which are projects not described in this section, are treated under sec. 203.

The conference agreement exempts other natural gas imports from incremental pricing if the volume of such imports does not exceed the volume of natural gas imported into the United States during calendar year 1977. The conference agreement does not require incremental pricing for natural gas imports pursuant to contracts entered into on or before May 1, 1978, although the Secretary of Energy is authorized to determine if such import volumes will be subject to incremental pricing. The conference agreement provides that the decision of whether incremental pricing shall apply to these volumes will be made under the authority and procedures of the Natural Gas Act. If a decision to require incremental pricing for the imports described above is made under the Natural Gas Act, the incremental pricing would be implemented under the provisions of this Act.

New natural gas imports, which are projects not described in this section, are treated under sec. 203.

The term import is intended to cover natural gas produced outside of the United States. It does not cover natural gas produced in any State of the United States.

SECTION 208. ALASKA NATURAL GAS

The conference agreement requires rolled in pricing for any portion of the first sale acquisition cost which is not required to be incrementally priced, and transportation costs, for gas produced from the Prudhoe Bay Unit and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

The conferees agreed to provide rolled in pricing for natural gas transported through the Alaska Natural Gas Transportation System and for the cost of transportation because they believed that private financing of the pipeline would not be available otherwise. Rolled in pricing is the only Federal subsidy, of any type, direct or indirect, to be provided for the pipeline.

TITLE III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

Subtitle A—Emergency Authority

SECTION 301. EMERGENCY AUTHORITIES

Both the House and Senate passed bills extended the life of the Emergency Natural Gas Act of 1977 (ENGA), which has since expired. Both bills extended the emergency purchase authority contained in Section 6 of ENGA. The House and Senate passed bills also extended the allocation authority contained in Section 4 of ENGA. In both cases, the House passed bill amended ENGA to make it apply to both interstate and intrastate pipelines. The Senate passed bill was limited to interstate pipelines.

The conference agreement incorporates certain provisions that were contained in ENGA which are described below. This section gives the President authority similar to that contained in ENGA to declare a natural gas supply emergency, or to extend a previously declared emergency, if he makes findings required by the section. The emergency terminates on the date on which the President finds that a shortage does not exist, or is not imminent, or 120 days after the date of the emergency declaration, whichever is earlier.

An emergency declared under this Act is subject to the requirements of Title II of the National Emergencies Act (50 U.S.C. 1601). That Act requires Congress to meet to consider a vote on a concurrent resolution to determine whether the emergency declared under this Act shall be terminated if the emergency is still in effect six months after its declaration.

SECTION 302. EMERGENCY PURCHASE AUTHORITY

The conference agreement incorporates the emergency purchase authority contained in Section 6 of ENGA, making it a part of this Act, and extends such authority permanently. The conference agreement provides that the President may authorize transactions under this section. It provides authority for any interstate pipeline, or local distribution company served by an interstate pipeline, to contract for

emergency supplies of natural gas. The contract may be with any producer of natural gas (except a producer who is affiliated with the purchaser) if such gas is not produced from the OCS, and if it is not subject to a certificate under the Natural Gas Act; or with any intrastate pipeline, local distribution company, or other person (other than an interstate pipeline). The duration of any contract authorized under this section may not exceed four months. The President may authorize renewals. The conference agreement gives the President authority to require any pipeline to transport such natural gas, and to construct and operate such facilities for transportation of such natural gas as may be necessary to carry out contracts authorized under this section. The purchasing party must pay the costs of any such required construction. The operations of this section are specifically exempted from the requirements of the Natural Gas Act in Title VI.

The conference agreement requires the Commission to require the purchaser to maintain and make available records concerning emergency gas purchases, and gives the President authority to impose such other terms and conditions on these sales as he may deem necessary. He may, for example, prohibit purchases from being made under this authority while the purchasing pipeline has not curtailed deliveries for low priority uses, or if the pipeline does not expect to have to curtail deliveries for low priority uses during the period in which the emergency purchase gas would be consumed.

SECTION 303. EMERGENCY ALLOCATION AUTHORITY

The conference agreement restructures the emergency allocation authority contained in Section 4 of ENGA; limits it to interstate pipelines in most instances; and makes it permanent.

The conference agreement sets up a priority system for sources from which natural gas may be allocated during times of emergency. That priority system is described below. Prior to use of the authority, the President must make an emergency declaration pursuant to section 301.

The President is given authority to allocate supplies of natural gas to any interstate pipeline; any local distribution company served by an interstate pipeline which is providing natural gas for only high-priority uses and which is in need of deliveries of natural gas to assist in meeting natural gas requirements for high-priority uses of natural gas; and any person for meeting requirements of high-priority uses of natural gas.

The conference agreement requires the emergency purchase authority provided in section 302 to be exhausted to the maximum extent practicable before the allocation authority under this section may be exercised. Allocation to a pipeline would occur only after that pipeline has ordered the termination of all deliveries for other than high-priority uses and terminated such deliveries to the maximum extent practicable.

The conferees recognize that in some cases the requirement that allocation to a pipeline would occur only when that pipeline is providing, directly or indirectly deliveries for high-priority uses may be interpreted to disqualify a pipeline from receiving an allocation if a local distribution company it serves is still serving low priority uses while

another local distribution company it serves is only providing service for high-priority uses. For instance, a potential problem could arise in cases where a local distribution company receives natural gas from more than one pipeline or has developed its own supplies of natural gas through its own drilling program or through the use of synthetic natural gas. In such narrow cases, the conferees do not intend an interstate pipeline to be automatically disqualified from receiving an allocation for the sole purpose of serving a local distribution company which needs such gas for meeting the requirements of its high priority users. In all other cases, however, the conferees intend that the interstate pipeline company or local distribution company receiving the allocation has ordered the termination of all deliveries of natural gas for other than high priority uses before the pipeline is eligible to receive allocated volumes of natural gas.

The Public Utility Regulatory Policies Act, currently pending in conference committee, would give the President authority to prohibit the use of natural gas for certain boiler fuel uses during a natural gas supply emergency.

The conference agreement gives the President authority to order allocation of the natural gas freed from boilers pursuant to the Public Utility Regulatory Policies Act in order to protect high priority users.

After natural gas freed from boilers has been allocated to the maximum extent practicable, and if the President is notified by a Governor of any State that further measures under State law are insufficient to protect high priority users, the President may exercise his allocation authorities according to the priority schedule specified below.

First, he may allocate general pipeline supply gas between and among interstate pipelines.

Natural gas transported by an interstate pipeline which is used as boiler fuel by an electric utility shall be treated as general pipeline supply gas under this section if it does not qualify as natural gas freed from boilers under the definition in the Public Utilities Energy Policies Act.

Finally, he may allocate gas owned by an end user and transported by an interstate pipeline pursuant to a transportation certificate issued by the Commission.

The conference agreement requires the President to utilize his authority, to the maximum extent practicable, to allocate general pipeline supplies prior to the allocation of any user-owned gas. Therefore, it is contemplated that all low-priority customers using general pipeline supplies will be curtailed before the President orders the allocation of user-owned gas from that pipeline.

The conference agreement provides authority for the President to prescribe the amount of compensation to be paid for emergency deliveries and for any other expenses incurred in delivering or transporting such gas if the parties to any order issued under this section fail to agree upon the terms of compensation or transportation. The President is given authority to direct that compensation may be in kind and that it be provided by a date he specifies. The compensation provision is similar to the compensation provision provided by ENGA.

The Commission is required to prepare and submit a report to the Congress regarding the need for additional authority, if any, to allo-

cate supplies of natural gas which are not subject to allocation herein and which are likely to be necessary to meet high-priority uses. The report is required to be submitted not later than June 30, 1979.

High priority uses are defined in the conference agreement to include residential uses; small commercial uses using natural gas in a commercial establishment in amounts less than 50 Mcf per day on a peak day; or any other use of natural gas the termination of which the President determines would endanger life, health, or maintenance of physical property.

The conferees do not intend to authorize the President to use the authority under this section to allocate gas away from an industrial use of natural gas in one State, for the purpose of supplying natural gas for industrial use in another State, unless that gas is to be used for the maintenance of physical property that would otherwise be damaged.

This section incorporates several provisions, with minor revisions, which were contained in ENGA (sec. 303(e–j)). The conferees' intent is to preserve the legislative history of ENGA for these provisions.

SECTION 304. MISCELLANEOUS PROVISIONS

The conference agreement incorporates the ENGA provisions, with minor revisions, pertaining to obtaining of information, administrative procedure, judicial review, enforcement, reporting, delegation of authorities, antitrust protection effect on certain contractual obligations, and preemption. The conferees' intent is to preserve the legislative history of ENGA for these provisions.

SUBTITLE B—OTHER AUTHORITIES AND REQUIREMENTS

SECTION 311. AUTHORIZATION OF CERTAIN SALES AND TRANSPORTATION

House provision

The House passed bill included authority for the Commission to authorize an intrastate pipeline to sell natural gas to an interstate pipeline and to transport natural gas on behalf of an interstate pipeline which sales and transportation were to be upon such terms and conditions, including fair and equitable price terms, as determined by the Commission. Such sales and transportation would have been exempt from regulation under the Natural Gas Act and the intrastate pipeline would not have been subjected to regulation as a common carrier under Federal or State law by reason of such sale or transportation.

This authority was in addition to the emergency authority described under sec. 301 authorizing sales of natural gas by an intrastate pipeline to an interstate pipeline.

Senate provision

The Senate passed bill did not contain any such authorization for sales by intrastate pipelines to interstate pipelines. Its transportation provision, however, was similar to the provision in the House passed bill. However, the transportation authority extended to both interstate and intrastate pipelines and transportation by either could have been

on behalf of any interstate pipeline, intrastate pipeline, or any local distribution company served by an interstate or intrastate pipeline.

Conference agreement

The conference agreement gives the Commission authority to authorize interstate pipelines to transport natural gas on behalf of any intrastate pipeline, and any local distribution company. The rates and charges for such transportation are required to be just and reasonable within the meaning of the Natural Gas Act.

The conference agreement also gives the Commission authority to authorize intrastate pipelines to transport natural gas on behalf of any interstate pipeline, and any local distribution company served by any interstate pipeline. The rates and charges for such transportation are required to be fair and equitable, as defined. They may not exceed an amount which is determined by the Commission to be reasonably comparable to the rates and charges which any interstate pipeline would be permitted to charge for providing a similar transportation service. Such a transaction would not affect the exempt status of any party to the transaction under the Natural Gas Act.

The Commission may also authorize any intrastate pipepline to sell natural gas to any interstate pipeline, and to any local distribution company served by any interstate pipeline. The conference agreement provides that the rates and charges for such sales are required to be fair and equitable. A fair and equitable price may not exceed the sum of—

(1) the seller's weighted average acquisition cost of natural gas; plus

(2) an amount, calculated pursuant to a rule required to be established by the Commission, necessary to—

(a) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline, if any, for gathering, treating, processing, transportation, or delivery service provided; and

(b) provide an opportunity for the pipeline to earn a reasonable profit on such services.

Any profit spread establised by rule would be based upon the service cost, rather than on the total cost of gas. Such a transaction would not affect the exempt status of any party to the transaction under the Natural Gas Act. The conference agreement gives the Commission authority to allow an adjustment to the sales price calculated pursuant to the above in one particular circumstance.

The conferees recognize that in some instances an intra-state pipeline may experience a contemporaneous increase in its weighted average acquisition cost of natural gas purchased under existing intrastate contracts as a result of entering into transactions under this section. In such instances, the conference agreement provides authority for the Commission to offset such an increase. The word "offset" is intended to refer to the amount necessary to compensate for the increase in the weighted average acquisition cost of natural gas necessary to make the intrastate pipeline whole.

A very simple illustration seems appropriate. Assume that an intrastate pipeline (pipeline A) is transporting 3,000,000 cubic feet (3,000

Mcf) of natural gas per day at an average purchased gas cost of $1.00 per Mcf. Pipeline A has an option under an existing contract to take an additional 2,000,000 cubic feet (2,000 Mcf) of natural gas per day at a price of $2.00 per Mcf. At this particular time, pipeline A does not need the additional gas to serve its existing or projected customers. However, it has located a nearby interstate pipeline, pipeline B, that wishes to purchase the natural gas. As a result of entering into the transaction, the weighted average acquisition cost of natural gas purchased by pipeline A would increase to $1.40 per Mcf. By reason of taking greater quantities of gas under existing intrastate contracts at prices higher than the intrastate pipeline's weighted average acquisition cost of natural gas in order to consummate the sale, the intrastate pipeline will experience a contemporaneous increase in its weighted average acquisition cost of natural gas. The Commission shall increase the fair and equitable sales price in this circumstance only to offset such an increase, by providing an allowance equal to the $.40 increase for each thousand cubic feet being delivered by the pipeline.

The determination of the weighted average acquisition cost is meant to be a contemporaneous determination. It is not based upon an historical cost which may have been lower. Instead, it is intended to look to the cost of the gas at the time it is acquired and resold. In some instances, the weighted average acquisition cost of natural gas may even exceed the new gas ceiling price. This allowance for an adjustment to the fair and equitable price is intended to insure there is no incentive for an intrastate pipeline to defer purchases of gas from producers that would otherwise be available; nor is it intended that the mechanism available under this section be used as a vehicle to increase the producer's price; or to increase the price received by an intrastate pipeline from its intrastate customers above what it would have received had the mechanism not been available.

The conferees intend that the customers of a selling intrastate pipeline shall be in no worse position as to price and supply as a result of that pipeline entering into sale under this section.

The conferees do not intend the selling pipeline to make a profit on the purchase and sale aspects of the transaction. Again, perhaps this can best be illustrated by means of a hypothetical transaction.

Assume, for example, that the selling intrastate pipeline has been operating at 80 percent capacity, supplying intrastate gas to intrastate customers, and the State regulatory agency has permitted a rate on such intrastate gas which covers the total cost of service including all fixed capital costs. Under this situation, any additional amount of gas carried by the pipeline under the provisions of this section would not have been built into the rate structure to amortize or retire fixed capital costs. The rate on such additional 20 percent, the gas carried under this provision, would be governed only by that amount necessary to reasonably compensate the seller for the additional expenses associated with the performance of transportation, gathering, treating, and affording delivery service occasioned by its carriage plus a reasonable profit on such services.

Assume, though, a State regulatory commission, recognizing that a pipeline was regularly transporting 80 percent intrastate gas and 20 percent gas under this provision, permitted only 80 percent of the total cost of service including fixed capital costs in the intrastate gas rate

structure. Under that situation, the Commission could properly attribute 20 percent of the cost of service, including fixed capital costs, as the amount necessary to reasonably compensate the seller for expenses associated with transporting, gathering, treating, and delivery of the gas transported under this provision. Of course, the Commission would not have to grant such allocation as such allocation would be within its discretion.

Thus, it is not contemplated that there would be any double recovery for cost of service including fixed capital costs by virtue of an overlapping as between a State regulatory commission's permissible rate and the amount calculated by the Commission as necessary and reasonable compensation for transportation for performance of services under this provision.

The duration of sales entered into under this section is limited to two years. Successive extensions of not more than two years per extension are authorized, if approved by the Commission.

Sales authorized by this section are subject to interruption by the seller at his discretion, or by the Commission to the extent that the natural gas sold is required to enable the seller to render adequate service to its existing customers. The determination of what constitutes adequate service is made by the Commission without regard to the priority of the intrastate customers to be served. Such customers are to be evaluated as of the date of filing by the intrastate pipeline of an application to sell natural gas under this provision. The determination shall also encompass the foreseeable growth in demand, during the period of the sale under this section, of such industrial, residential, and commercial customers of the pipeline, and the local distribution companies served by the pipeline.

The conference agreement includes several procedural provisions for transactions under this section.

It gives the Commission authority to authorize the sale, transportation, or exchange by rule or by order. It provides authority for the Commission to condition approval of the sale, transportation, or exchange under this section upon such specified terms and conditions as it deems appropriate. It requires the Commission to disapprove any sale which involves the sale of natural gas by an intrastate pipeline that is determined to have been solely or primarily acquired by the pipeline for the purpose of purchase and resale into the interstate market. Gas that is determined by the Commission to be reasonably projected to be necessary to meet an intrastate pipeline's future market and buyer requirements shall not be considered by the Commission to be solely or primarily acquired by the intrastate pipeline for the purchase and resale in the interstate market. It requires the Commission to disapprove any application, or terminate any sale previously authorized under this section that would circumvent any provision of this Act.

SECTION 312. ASSIGNMENT OF CONTRACTURAL RIGHTS TO RECEIVE SURPLUS NATURAL GAS

The conference agreement gives the Commission authority to allow any intrastate pipeline to assign without compensation the right to receive surplus natural gas to an interstate pipeline or local distribu-

tion company. The determination of what constitutes "surplus" natural gas would be made by the appropriate State agency with jurisdiction over the rates of charges of the intrastate pipeline. The contract assignment would cover natural gas that is subject to a price ceiling under this Act. Entering into such an arrangement would not affect the exempt status of any party to the transaction under the Natural Gas Act.

The conferees intend that the term "assign" shall have its traditional meaning under contract law. It is a simple assignment of the rights of one party to receive goods and/or services under a contract entered into by that party. The assignee would not receive any additional right to receive goods or services beyond what was available to the assignor; nor would he incur any additional obligations or be required to pay additional compensation beyond what was available to the assignor. Both partial and total assignments are authorized. Thus, an assignment for a period of time less than the full contractual term or for a quantity less than the maximum daily contract volume is permissible.

SECTION 313. EFFECT OF CERTAIN NATURAL GAS PRICES ON INDEFINITE PRICE ESCALATOR CLAUSES

The conference agreement limits the effect of prices paid for high-cost natural gas defined in sec. 107, emergency purchases authorized under sec. 302(a), and allocations ordered under sec. 303, in the application of indefinite price escalator clauses, as defined in sec. 105(b).

SECTION 314. CLAUSES PROHIBITING CERTAIN SALES, TRANSPORTATION, AND COMMINGLING

Both the House and Senate passed bills contained provisions which declared contractual prohibitions on commingling of intrastate natural gas with interstate natural gas unenforceable with respect to sales of natural gas to which the legislation applies. The application of the provision in the Senate passed bill was limited to sales of natural gas authorized by proposed section 28 of the Natural Gas Act. The conference agreement adopts the House provision.

This section is not intended by the conferees to affect the exempt status of any party under the National Gas Act.

SECTION 315. CONTRACT DURATION; RIGHT OF FIRST REFUSAL; FILING OF CONTRACTS AND AGREEMENTS

The House passed bill authorized the Commission to regulate terms and conditions of service (other than price) contained in producer contracts for sales of natural gas. The authority applied to both interstate and intrastate sales contracts. The Senate passed bill did not contain a similar provision.

The conference agreement provides the Commission authority to specify the minimum duration of contracts for purchases to which sec. 601(a)(1) (A) or (B) is practicable. The duration is not to exceed 15 years or the commercially producible life of the reservoir, whichever is shorter.

The conference agreement also requires the Commission to exercise this authority in a nondiscriminatory manner with respect to onshore

purchases by interstate and intrastate pipelines. The Commission is specifically precluded from exercising its contract duration authority in a manner which gives an advantage to interstate pipelines which has the effect of diverting supplies of natural gas to interstate pipeline systems, thus denying adequate supplies of gas to intrastate pipeline systems. The Commission is authorized to vary the application of the general requirements under this section for purchases of onshore gas as necessary to respond to special circumstances of any particular pipeline or pipelines.

The conference agreement also directs the Commission to—

(1) require new contracts for sales of natural gas from lands on the Outer Continental Shelf to be for a minimum 15-year term or the commercially productible life of the reservoir (whichever is less);

(2) provide for a right-of-first refusal for certain categories of natural gas production.

A bona fide offer must be made to the purchaser of deregulated high cost natural gas, new natural gas, and natural gas produced from any new onshore production well which, but for the provisions of sec. 601(a)(1)(B), would be subject to the provisions of the Natural Gas Act. The term bona fide offer is intended, at a minimum, to include terms that would be legal for any purchaser to accept under the Natural Gas Act. Following the expiration of any contract covering such natural gas, and any rejection of a bona fide offer by the purchaser who would have been entitled to receive the natural gas under the Natural Gas Act, such purchaser is granted a right of first refusal of the first offer to sell such natural gas which has been accepted by another person in an arms-length transaction.

The right of first refusal provided in this section is in addition to any certificate and abandonment requirements of the Natural Gas Act which are not eliminated by Title VI.

The conferees do not intend anything in this section, or anything in this Act, to prejudge the outcome of *Shell Oil* v. *FERC*, No. 76–3066 (5th Cir. Jan. 20, 1978), currently pending before the Supreme Court on the question of the extent of the Commission's jurisdiction over producer performance standards.

The conference agreement also gives the Commission authority to require purchasers to file copies of all new contracts with the Commission for natural gas sales, and all ancillary agreements pertinent to those contracts.

TITLE IV—NATURAL GAS CURTAILMENT POLICIES

SECTION 401. NATURAL GAS FOR ESSENTIAL AGRICULTURAL USES

House provision

The House passed legislation prohibited any pipeline or local distribution company from curtailing natural gas deliveries to essential agricultural users identified by the Secretary of Agriculture below the essential requirements of such user, unless necessary to meet the natural gas requirements of high priority users.

The legislation defined "agricultural use" as any agricultural or food processing use of natural gas, including the use of natural gas—

(1) for irrigation pumping;
(2) for crop drying; or
(3) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, or food.

The legislation defined "high priority user" as any person who uses natural gas—

(1) in a residence;
(2) in a commercial establishment (in amounts less than 50,000 cubic feet on a peak day);
(3) in any other use the curtailment of which the Commission, the Department of Energy, or the State agency exercising regulatory authority (as the case may be) determines would endanger life, health, or physical property.

The Secretary of Agriculture was given authority to identify agricultural uses for which natural gas is essential, and to determine the supply requirements (including requirements resulting from capacity expansion) of identified agricultural uses to satisfy the requirements of full food and fiber production and processing, and to preserve public health, safety, and welfare.

The House passed bill applied to both interstate and intrastate pipelines, and to local distribution companies.

Senate provision

The Senate passed bill required the Commission or the Department of Energy, not later than 120 days after the date of enactment of this Act, to prohibit interstate pipelines from curtailing natural gas for essential agricultural purposes for which natural gas is necessary, as determined by the Secretary of Agriculture, unless such curtailment is required to maintain natural gas service for high priority users.

The agricultural priority extended to agricultural food processing and food packaging for which natural gas is necessary, including—

(1) irrigation pumping;
(2) crop drying; and
(3) use of natural gas as a raw material feedstock or process fuel and in production of fertilizer and essential agricultural chemicals (for present and expanded capacity in existing and future plants).

High priority user protection was afforded to—

(1) residential users;
(2) small users (using less than 50,000 cubic feet of natural gas on a peak day);
(3) hospitals; and
(4) similar users vital to public health and safety.

The Secretary of Agriculture was given authority to determine agricultural, food processing, and food packaging uses for which natural gas is necessary. He was required to certify natural gas quantities necessary for such essential uses in order to satisfy requirements for full food and fiber production.

The Senate passed bill applied solely to interstate pipelines.

Conference agreement

The conference agreement includes the Senate provision, with certain modifications, requiring the Commission to prohibit interstate

pipelines from curtailing deliveries of natural gas for any agricultural use, unless such curtailment of deliveries does not reduce the quantity of natural gas delivered for the use requirement of essential agricultural uses for which natural gas is necessary or is necessary to meet the requirements of high-priority users.

The modifications in the Senate provision which are included in the conference agreement require the Secretary of Energy to amend the current schedule of curtailment priorities adopted pursuant to the Natural Gas Act so as to bring them into conformity with the statutory requirements in this Act. This modification was necessary to bring the division of responsibility between the Secretary and the Commission into conformity with the Department of Energy Act. Nothing in this section denies the Commission's right under section 404 of the Department of Energy Organization Act to review the Secretary's rule under subsection (a).

Once the schedule of curtailment priorities is brought into conformity with the requirements of this Act, the Commission will be required to implement the revised curtailment priority schedule applicable to interstate pipelines. For purposes of implementing this section, the Commission is instructed to reopen curtailment plans that are already in effect under the Natural Gas Act only to the extent necessary to adjust those plans to bring them into conformity with the new curtailment priority schedule. The conferees were concerned that these changes not burden the Commission with lengthy proceedings which might throw existing curtailment plans into disarray. Therefore, the conference agreement includes the term "to the maximum extent practicable" to assure that the Commission has the necessary flexibility in implementing any changes. For example, the conferees do not intend the reopening of curtailment plans for this limited purpose to result in adoption of a new base year for curtailment purposes.

The conference agreement defines the term "agricultural use" to include uses of natural gas for agricultural production, natural fiber production, natural fiber processing, food quality maintenance, irrigation pumping, crop drying, or as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

The conference agreement includes the House definition of "high priority use", modified to include schools, hospitals, and any other similar institutions for which the Secretary determines that curtailment of natural gas supplies would endanger life, health, welfare, or maintenance of physical property. The term residence is intended to include apartment buildings and other multi-unit high-rise buildings used predominantly for residential purposes such as space heating, hot water heating, cooking and clothes drying. Such buildings may contain some space used for commercial purposes but, if such uses would each qualify as high priority under the commercial definition, the combination of such uses together with the residential use should not prevent the building from qualifying as high priority. It is intended that consideration of human needs be the basis for qualifying the building as high priority and the presence of commercial uses within the building should not disqualify the unit as high priority. Maintenance of physical property includes protection of plant property as it did under ENGA.

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The conference agreement gives authority to the Secretary of Agriculture to certify to the Secretary of Energy and to the Commission the natural gas requirements for agricultural uses in order to meet the requirements of full food and fiber production, based upon the definition of "agricultural use" contained in this section.

The Commission, in consultation with the Secretary of Agriculture, will determine if alternative fuels are economically practicable and reasonably available to meet the needs of agricultural uses as certified by him. If the Commission determines that alternative fuels meet both tests, the uses will not qualify for a curtailment priority. The conferees specifically granted the Secretary of Agriculture a special consultative role with respect to determinations regarding alternative fuel capability. The conferees do not intend the consultations between the Secretary of Agriculture and the Commission to be subject to the Commission's *ex parte* consultation rules.

The conferees intend that the authority to restrict curtailment priority by determining that alternative fuels are economically practicable and reasonably available be utilized only in cases where it is clear that both tests are met. One of the reasons for imposing such a requirement is to prevent unnecesary increases in the cost of food in this country. The Commission determination that an alternative fuel is "economically practicable" shall not include a requirement to switch to high cost alternatives. That is not what the conferees consider to be "economically practicable".

The conference agreement specifically includes authority for the Secretary of Agriculture to intervene before the Commission in curtailment proceedings implementing this section. The conferees do not intend that anything in this Act shall give the Secretary of Agriculture authority to exercise, or limit the performance of his duties under this section for the purpose of restricting production of any crop or crops.

SECTION 402. NATURAL GAS FOR ESSENTIAL INDUSTRIAL PROCESS AND FEEDSTOCK USES

The Senate passed bill contained a requirement for the Commission to give a curtailment priority for deliveries of natural gas for industrial use in which natural gas is essential and for which there is no economically practicable and reasonably available substitute. The term economically practicable is intended to have the same meaning as the Commission's standard of economic feasibility under extra-ordinary relief in curtailment cases. Industrial process fuel and feedstock uses would be given priority over all industrial boiler fuel uses. The priority follows high priority and essential agricultural uses directly, as defined elsewhere in the legislation.

The House passed bill did not contain a comparable provision.

The conference agreement incorporates the Senate provision, modifying it to conform with the division of responsibilities between the Secretary of Energy and the Commission contained in the Department of Energy Organization Act.

The conference agreement requires the Secretary of Energy to certify to the Commission the natural gas requirements for essential

industrial process fuel or feedstock uses of natural gas for which the Secretary determines natural gas is essential. The Commissian is given authority to implement the priority schedule. If the Commission determines that use of an alternative fuel is economically practicable and such fuel is reasonably available, the user will not be given a curtailment priority.

SECTION 403. ESTABLISHMENT AND IMPLEMENTATION OF PRIORITIES

The conference agreement conforms the responsibilities of the Secretary of Energy and the Commission under this Title to the division of responsibilities established in the Department of Energy Organization Act. Under this division, the Secretary establishes and reviews priorities for curtailments under the Natural Gas Act, and the Commission implements the priorities.

SECTION 404. LIMITATION ON REVOKING OR AMENDING CERTAIN PRE-1969 CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

The Senate passed bill contained a provision prohibiting the Commission from:

(1) modifying, amending, or abrogating contracts entered into prior to January 1, 1977, for the sale or transportation of natural gas for boiler fuel use;

(2) modifying, amending, or abrogating the supply terms of certificates issued under section 7 of the Natural Gas Act authorizing the sale or transportation of natural gas for boiler fuel use under a contract entered into prior to January 1, 1977, unless requested to do so by the certificate holder; or

(3) preventing, impairing, or limiting deliveries of natural gas for boiler fuel use under a contract entered into prior to January 1, 1977, or under a certificate issue under sectioin 7 of the Natural Gas Act, authorizing the sale or transportation of natural gas for boiler fuel use under such a contract, unless requested to do so by the certificate holder.

The provision was expressly qualified as not limiting the curtailment authority of the Commission.

The House passed bill did not contain a comparable provision.

The conference agreement incorporates a modified version of the Senate passed provision. This section denies the Commission authority to revoke or amend any certificate of public convenience and necessity, issued prior to January 1, 1969, for the transportation of natural gas owned by an electric utility, except upon the application by the holder of such transportation certificates. The provision is effective for a period of 10 years after the date of enactment of this Act.

This limitation on the Commission's authority does not limit the authority of the Commission to effectuate natural gas curtailments.

Natural gas affected by this section is subject to allocation under sec. 303(c) of this Act along with other general pipeline supply gas. Such gas may also qualify for allocation under sec. 303(b) of this Act.

Nothing in this section is intended to override any provision of the Powerplant and Industrial Fuel Use Act of 1978.

TITLE V—ADMINISTRATION, ENFORCEMENT, AND REVIEW

SECTION 501. GENERAL RULEMAKING AUTHORITY

The House passed bill provided authority to issue rules in enforcing compliance with the provisions of the legislation, and to further define terms used.

The Senate passed bill did not contain a comparable provision, relying instead upon sections of the Natural Gas Act under which the Commission may establish procedures to govern its proceedings, and has general powers to issue orders, rules, and regulations.

The conference agreement provides authority for the Commission or any other Federal officer or agency in which any function under the Act is vested to issue rules and orders under the Act, and to perform any and all acts as it may find necessary or appropriate to carry out the provisions of this Act. The authority to prescribe rules and orders necessary to carry out the provisions of this Act includes the authority to issue rules and orders necessary to prevent circumvention of the Act.

The Commission may define terms, prescribe the forms of reports, and prescribe effectice dates for rules and regulations. For instance, the Commission may define terms such as "transfer for value" used in the definition of first sale; it may also establish rules applicable to intracorporate transactions under the first sale definition.

SECTION 502. ADMINISTRATIVE PROCEDURE

The House passed bill provided that the rulemaking procedures of the Administrative Procedure Act would apply to the promulgation of any rule or order having the effect of a rule issued under the legislation. In addition, it required that there must be an opportunity for oral presentation of views; aggrieved persons may receive exceptions from, or modifications of, such rules in the case of special hardship, inequity, or unfair distribution of burdens.

The Senate passed bill did not contain a comparable provision, relying instead upon a section in the Natural Gas Act under which hearings, investigations, and proceedings are governed by procedures adopted by the Commission.

The conference agreement adopts the House provision.

Procedures applicable for State or other Federal agency determinations required by this Act are those procedures which are generally applicable for decisionmaking by such agency.

SECTION 503. DETERMINATIONS FOR QUALIFYING UNDER CERTAIN CATEGORIES OF NATURAL GAS

House provision

The House passed bill required the Commission to delegate the authority to determine which production qualifies as new natural gas produced from a newly discovered reservoir to the appropriate State regulatory agency upon the request of that agency. The Commission

was authorized to set terms and conditions for such a delegation, to rescind such delegation, and, within one year, to reverse or modify any determination made by the State agency.

Senate provision

The Senate passed bill assigned the Commission authority to determine what natural gas qualifies as new natural gas.

Conference agreement

The conference agreement provides a delegation to certain State or Federal agencies to make classification determinations required by Title I.

The State or Federal agency with natural gas under its regulatory jurisdiction determines whether certain natural gas satisfies the required factual determinations to be classified as new natural gas under sec. 102; new onshore production wells under sec. 103; high-cost natural gas under sec. 107; and stripper well natural gas under sec. 108. The determination made by such State or Federal agency includes the subsidiary determinations required to be made to determine the category for which natural gas production qualifies. For example, in determinations regarding new natural gas, the agency determinations would include deciding whether a new well is outside the 2.5 mile distance from a marker well; or whether natural gas is behind-the-pipe or withheld, within the definitions specified in the appropriate section, as may be further defined by the Commission. The State or Federal agency determination must then be submitted to the Commission for review, accompanied by such substantiation as the Commission may require. The Commission may reverse the State or Federal agency classification if it finds that such determination is not supported by substantial evidence. A seller may not collect a price under sections 102, 107 or 108 until a determination under this section has been made final, unless it is in accordance with the interim or alternative collection procedures described in this section.

The conferees intend that a determination that certain natural gas does not qualify for a certain category to be a determination within the scope of sec. 503(a), which is subject to Commission review. In cases in which the State or Federal agency finds that natural gas does not fall within one of the enumerated categories because the producer's application is not supported by substantial evidence, the absence of such evidence from the record would be treated by the Commission as substantial evidence supporting the agency's determination. In such cases, the Commission would not be required to reverse the finding under review. However, as many such determinations will be routine and may be reported *en bloc*, and the conferees do not intend to impose more paperwork than necessary on the States, the record of such negative determinations need be sent to the Commission only upon the request of the aggrieved party, normally the seller.

A preliminary reversal of the State or Federal determination must be made by the Commission within 45 days of receipt of notification, accompanied by the record, of the State or Federal agency decision. The initial finding is not subject to judicial review.

The conferees intend that such preliminary reversal be akin to the Commission's exercise of its suspension authority under section 205 of the Federal Power Act and section 4 of the Natural Gas Act.

The Commission may remand a State or Federal agency determination if it finds such determination is not consistent with information contained in its public records.

The provisions allowing Commission remand of a State or Federal agency determination are intended to provide a means for resolving conflicts caused by information available to the Commission where such information was not part of the record before the State agency. This provision is not intended to allow undue delay in the determination process. Thus, a party aggrieved by a Commission remand order has the option of seeking judicial review of such remand, based on the arbitrary and capricious standard.

Determinations made under this section are for the purpose of this Act only. For example, the determination of what constitutes a new reservoir shall not be binding on the State for any other purpose.

The final finding by the Commission to reverse a State or Federal agency determination must come within 120 days after the Commission's initial action.

A preliminary reversal must be followed by a final action to reverse, or it has no effect; the conferees do not intend to allow the Commission's initial action to stand without a subsequent final action that shall constitute final agency action for purposes of judicial review. The State or Federal agency determination stands if no action is taken within the 45 and 120 days provided. Only a final Commission reversal is binding under sec. 503(d).

The Commission's action in reversing a State or Federal agency determination is subject to judicial review. The conferees intend that the question of whether the State or Federal agency determination is supported by substantial evidence shall be a question of law. The Commission's determination of this question may be reversed by the court if it is not in accordance with the requirements of law; the Commission's determination to reverse a State or Federal agency determination must be based on a finding that there was no substantial evidence for such determination.

The conferees intend that the Commission's authority to review State or Federal agency determinations shall be limited to determining the narrow question of whether or not the agency determination is supported by substantial evidence. The conferees have followed the traditional definition of substantial evidence review; that is, there is no intention to allow the Commission to "second guess" the agency by independently weighing the evidence and reversing the agency's determination as if the initial responsibility to make the determination were placed within the Commission. If the Commission determines that substantial evidence exists for the State or Federal agency's determination, the Commission's inquiry and reviewing responsibilities terminate. The Commission may utilize information available to it in its own files, books, and records for assistance in conducting its review. Such evidence shall also be made available to the State or Federal agencies with responsibilities under this section upon the request of such agencies.

Nothing in this Title is intended to limit the jurisdiction of State courts to decide questions of State law. A party aggrieved by procedural aspects of State or Federal agency determinations may pursue whatever appeal rights are otherwise available under State or Federal law. The party is, at the same time, bound by the record made in the proceeding for purposes of Commission review. Thus, the party is free simultaneously to pursue Commission review, arguing that the record as transmitted did have substantial evidence to support the determination and to pursue procedural review, in State court for State determinations, arguing that the record is prejudiced due to procedural error. That State or Federal court's review of the record is limited to procedural questions. If successful before the Commission, the party has prevailed in any event. If unsuccessful there, but successful in the State or Federal court review, there would be an opportunity to make a new record before the State or Federal agency.

With respect to any natural gas, any final determination made by the State or Federal agency, or by the Commission, which is no longer subject to judicial review is binding with respect to such natural gas, unless the agency or Commission relied on any untrue statement of a material fact, or there was an omission of a material fact.

The conferees recognize that gas may be produced by the seller and sold to the buyer even while the determination process is proceeding either before a State or Federal agency, or before the Commission, or before the courts. This section includes provision for a seller of natural gas to make collections during this period in certain cases of production from new wells. In other cases, the conferees intend that the Commission should have power to establish rules concerning the collection and accounting for moneys paid during this period, the effect of a preliminary reversal, and the adjustment of prices and moneys upon any final determination different from that under which the parties were initially operating.

The State or Federal agency having regulatory jurisdiction with respect to the production of natural gas may waive its authority to make determinations under this section, if the Commission agrees.

The conference agreement provides several methods for interim collection of maximum lawful prices. Paragraphs (1) and (3) of subsection (e) provide statutory rules; paragraph (2) requires the Commission to establish, by rule, alternate methods for interim collection of maximum lawful prices. In all cases, the interim collection of such prices must be collected subject to a condition of refund, with interest, if the price collected is higher than the final maximum lawful price. Under paragraph (1), a seller of natural gas from a new well may collect the maximum lawful price under sec. 109 pending a determination by the appropriate State or Federal agency. In order to qualify for such interim collection the seller must file a sworn statement that such natural gas is produced from a new well, and that the seller believes in good faith that such natural gas is eligible to be sold at a price not less than the price under sec. 109. The seller must also file a petition for a determination within 90 days after the date of enactment with the appropriate State or Federal agency or, if later, before collection of the higher rate.

Under paragraph (2), the Commission must prescribe alternate methods of interim collection. The alternate method would permit the seller to collect for any natural gas the maximum lawful price under Title I for which a petition is filed for a determination in any case in which such price exceeds the price under sec. 109. Again, this collection is subject to refund with interest. In addition, the seller must comply with such requirements prescribed by the Commission to provide adequate assurance that funds attributable to the collection of a price in excess of the price under sec. 109 are available for refund. This assurance could be by means of bonding, escrow, posting of security, or such other means as the Commission determines to be appropriate.

Under paragraph (3), the seller may collect, after a determination by the appropriate State or Federal agency, the appropriate maximum lawful price applicable under such determination. If the State or Federal agency determines that the seller is entitled to a price in excess of the maximum lawful price under sec. 109, the seller may retroactively collect the appropriate price effective the first day of the first month after the date of enactment, or the day deliveries began, whichever is later, if the contract so permits. Again, this collection must be subject to refund, with interest. If, for example, the State or Federal agency determines that the production qualifies as new natural gas under sec. 102(b), the seller may collect the maximum lawful price provided under sec. 102(b), if his contract so permits. If either the Commission or a court reverses the State or Federal agency determination under the appropriate section, the seller would be required to refund monies collected in excess of the maximum lawful price for which the production qualifies.

SECTION 504(a). ENFORCEMENT

The conference agreement provides that it shall be unlawful for any person to violate any provision of this Act or any rule or order under this Act. Both civil and criminal enforcement provisions are provided.

SECTION 504(b). CIVIL PENALTIES

House provision

The House passed bill subjected violators of any provision, rule or order to the following civil penalties for each violation:

(1) $20,000 for violations relating to production, gathering, sale transmission or distribution of natural gas; or

(2) $2,500 for other violations.

Civil penalties would have been assessed by the Commission after a hearing on the record. The assessment would have been enforced, modified or set aside in the appropriate district court.

Senate provision

The Senate passed bill did not contain a comparable provision, relying instead on a section of the Natural Gas Act under which the Commission may bring an action in U.S. District Court if it appears a person is engaged or about to engage in acts or practices that con-

stitute or will constitute violations of the Act. Injunctive relief and mandamus are available civil remedies under the Natural Gas Act.

Conference agreement

The conference agreement adopts procedures for civil enforcement based upon the Natural Gas Act, as in the Senate passed bill. In addition, the conference agreement includes a modified version of the House provision, making violators of any provision, rule or order subject to a civil penalty of up to $5,000 for knowing violations of the Act or knowing violations of rules and orders pursuant to the Act.

The conference agreement provides authority for the Secretary or the Commission, or the Attorney General upon request of the Secretary or the Commission to institute a civil action for injunctive or other equitable relief to enforce the incremental pricing passthrough requirements in sec. 205(e).

The term "knowing" means the having of—

(1) actual knowledge, or

(2) the constructive knowledge deemed to be possessed by a reasonable person who acts in the circumstances.

The conferees intend that every person shall be presumed to have constructive knowledge of this Act. However, every person shall not necessarily be presumed to have constructive knowledge of the regulations adopted pursuant to the Act. The latter would be a question of fact to be determined by the reasonable man test.

A seller would not be in violation of sec. 504(a)(1) if the seller charged a price higher than the maximum lawful price because of reliance on prices or inflation factors published by the Commission in accordance with Title I. This follows from sec. 504(b)(6)(B), which indicates that a violation is not knowing if it rests on information not in the possession of a reasonable person who acts in the circumstances.

Of course, if such prices or inflation factors are later found in error or change, the definition of knowing would apply as soon as an individual actually knew, or reasonably should have known, of the correction. Continuing to charge the price based on the earlier published information would then be a violation.

In the case of a continuing violation, each day of violation constitutes a separate violation. The conference agreement includes a three year statute of limitations for civil penalties. The statute of limitations with regard to civil penalties is not intended by the conferees to affect the rights or remedies otherwise available under any provision of law for any person, State or Federal agency to bring any action to recover damages which may result from any violation of this Act or rule or regulation issued hereunder, or otherwise enforce any provision of this Act or rule or regulation issued hereunder. The statute of limitations shall not apply in the case of untrue statements of material facts, and omissions of material facts, during the determination process.

The Commission is given authority to assess civil penalties. Volators may obtan review of the Commission's assessment through a trial *de novo* in Federal district court. In addition, the Commission's authority pursuant to this section includes the authority to require refunds from any person.

Attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought under this section. Such an action would be an action brought "in connection with any function carried out by the Commission", which enables Commission attorneys to bring actions under sec. 401(i) of the Department of Energy Organization Act.

SECTION 504(c). CRIMINAL PENALTIES

House provision

The House passed bill subjected persons willfully violating any provision, rule or order to the following criminal penalties for each violation:

(1) one year imprisonment; or
(2) a fine of:
  (a) $40,000 for violations relating to production, gathering. sale, transmission or distribution of natural gas; or
  (b) $10,000 for other violations, or
(3) both imprisonment and fine.

Senate provision

The Senate passed bill did not contain a comparable provision, relying instead on a section of the Natural Gas Act under which willful and knowing violators of the Act are subject to a $5,000 fine, or two years' imprisonment, or both. In addition, willful and knowing violators of rules and orders issued under the Act are subject to a $500 fine for each day of violation.

Conference agreement

The conference agreement adopts procedures for criminal enforcement based upon the Natural Gas Act.

SECTION 505. INTERVENTION

The Secretary of Energy is given authority under this section to intervene in any State agency proceeding relating to the prorationing of, or other limitations upon natural gas production.

SECTION 506. JUDICIAL REVIEW

The House passed bill provided authority for persons aggrieved by rules and orders under the Act to obtain judicial review in the United States Court of Appeals for the District of Columbia Circuit.

The Senate passed bill did not contain a comparable provision, relying instead upon authority under the Natural Gas Act for persons aggrieved by orders to obtain judicial review in the United States Court of Appeals for the District of Columbia Circuit, or in the circuit where the person is located or has his principal place of business.

The conference agreement provides judicial review based upon the Natural Gas Act provision described above.

SECTION 507. CONGRESSIONAL REVIEW

The conference agreement provides procedures for Congressional action required by sec. 122, 202, or 206.

The section specifies the manner in which calendar days of continuous session are to be counted. It also provides expedited procedures for insuring floor consideration of any resolution required by sec. 122, 202, or 206. It is similar to the Congressional review procedure established in the Energy Policy and Conservation Act (40 U.S.C. 6201).

SECTION 508. TECHNICAL AMENDMENT

This section conforms the power of the Commission under this Act to the Department of Energy Organization Act. The conferees intend that the information-gathering authority granted under this section be exercised in a manner which avoids duplication of submissions by any person to the maximum extent practicable to achieve the purposes of this Act.

TITLE VI—COORDINATION WITH NATURAL GAS ACT: MISCELLANEOUS PROVISIONS

SECTIONS 601 (a) AND (b). COORDINATION WITH THE NATURAL GAS ACT

The conference agreement limits the jurisdiction of the Commission under the Natural Gas Act in a manner similar to the House-passed bill.

Natural gas not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act is never made subject to the Commission's jurisdiction under sec. 1(b) of the Natural Gas Act.

The Commission's jurisdiction under section 1(b) of the Natural Gas Act ceases on the first day of the first month beginning after the date of enactment of this Act for the following categories of natural gas:

High-cost natural gas which qualifies for deregulated price treatment under section 107(c) (1), (2), (3), or (4);

New natural gas under sec. 102(c); and

Natural gas produced from any new, onshore production well under section 103(c).

Emergency sales, intrastate pipeline sales, and assignments authorized under this Act do not become subject to the Commission's jurisdiction under sec. 1(b) of the Natural Gas Act.

No person is a "natural-gas company" under section 2(6) of the Natural Gas Act with respect to, or by reason of, emergency sales, intrastate pipeline sales, or assignments authorized under this Act.

Certain transportation of natural gas, pursuant to any order under sec. 302(c), or 303, or authorized by the Commission under sec. 311 of this Act, does not become subject to the Commission's jurisdiction

under sec. 1(b) of the Natural Gas Act. Nor is any person a "natural-gas company" under section 2(6) of the Natural Gas Act, with respect to, or by reason of, such transportation.

Any amount paid in any first sale of natural gas is deemed "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act, if such amount does not exceed the applicable maximum lawful price established under Title I of this Act; or, if there is no applicable maximum lawful price, by reason of the elimination of price controls pursuant to subtitle B of Title I of this Act.

Any amount paid in any emergency sale authorized under sec. 302 which does not exceed the fair and equitable price, as defined in sec. 302, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

Any amount paid in any sale by an intrastate pipeline authorized under sec. 311 which does not exceed the fair and equitable price, as defined in sec. 311, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

Any amount paid pursuant to the terms of a contract assignment authorized under sec. 312(a) which does not exceed the maximum lawful prices established under Title I of this Act, is deemed to be "just and reasonable" for purposes of sections 4 and 5 of the Natural Gas Act.

Any amount paid in any first sale between any interstate pipeline and any affiliate of such pipeline which does not exceed the same amount paid in comparable first sales between unaffiliated persons is deemed to be "just and reasonable".

Any amount paid by any interstate pipeline for transportation, storage, delivery, or other services provided pursuant to an allocation order under sec. 303 of this Act, and any amount paid by any interstate pipeline for any transportation authorized by the Commission under sec. 311(a) of this Act, is deemed to be "just and reasonable" for purposes of section 4 and 5 of the Natural Gas Act.

SECTION 601(c). GUARANTEED PASSTHROUGH

The conference agreement guarantees that interstate pipelines may pass through costs of natural gas purchases if the price of the purchased natural gas does not exceed the ceiling price levels established under the legislation which are deemed "just and reasonable" for purposes of the Natural Gas Act in the previous section. The conferees do not intend to guarantee passthrough of costs of natural gas purchases in cases of fraud or abuse as determined by the Commission. This recovery must be consistent with the incremental pricing provisions of Title II; however, Title II is structured to permit recovery of all costs which a pipeline is entitled to recover.

The provision is similar to passthrough provisions in both the Senate and House passed bills.

SECTION 602. EFFECT ON STATE LAWS

The conference agreement provides that nothing in this Act shall affect the authority of any State to establish or enforce any maximum lawful price for sales of gas in intrastate commerce which does not

exceed the applicable maximum lawful price, if any, under Title I of this Act. This authority extends to the operation of any indefinite price escalator clause. The Congress enacts this provision with a recognition that it is ceding its authority under the commerce clause of the Constitution to regulate prices for such production to affected States.

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HARLEY W. STAGGERS,
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