

(Pub. L. 95-617, title III, § 309, Nov. 9, 1978, 92 Stat. 3153.)

**DEFINITIONS**

For definition of Secretary applicable to this section, see section 2602 of Title 16, Conservation.

**§ 3210. Prior and pending proceedings**

For purposes of this chapter, proceedings commenced by any State regulatory authority (with respect to gas utilities for which it has ratemaking authority) and any nonregulated gas utility before November 9, 1978, and actions taken before such date in such proceedings shall be treated as complying with the requirements of this chapter if such proceedings and actions substantially conform to such requirements. For purposes of this chapter, any such proceeding or action commenced before November 9, 1978, but not completed before such date shall comply with the requirements of this chapter, to the maximum extent practicable, with respect to so much of such proceeding or action as takes place after such date.

(Pub. L. 95-617, title III, § 310, Nov. 9, 1978, 92 Stat. 3154.)

**§ 3211. Relationship to other authority**

Nothing in this chapter shall be construed to limit or affect any authority of the Secretary or the Commission under any other provision of law.

(Pub. L. 95-617, title III, § 311, Nov. 9, 1978, 92 Stat. 3154.)

**DEFINITIONS**

For definition of Secretary and Commission applicable to this section, see section 2602 of Title 16, Conservation.

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**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 717x, 717y of this title; title 26 section 44D; title 42 section 7255.

**§ 3301. Definitions**

For purposes of this chapter—

**(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) Marker well**

**(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 November 9,

1978, 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 November 9, 1978, 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 November 9, 1978) specified by the provisions of such existing contract, as such contract was in effect on November 9, 1978, 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 November 8, 1978.

**(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 November 9, 1978, 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 [15 U.S.C. 717 et seq.].

**(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 [15 U.S.C. 717 et seq.] (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 [15 U.S.C. 717(c)]).

**(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 [15 U.S.C. 717 et seq.]) 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 [15 U.S.C. 717 et seq.]—

(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 [15 U.S.C. 717f], 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 [15 U.S.C. 717f(c)]; or

(IV) to the user by the producer and transported under any certificate, granted pursuant to section 7(c) of the Natural Gas Act [15 U.S.C. 717f(c)], 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 November 9, 1978, under section 7 of the Natural Gas Act [15 U.S.C. 717f]; 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 [15 U.S.C. 717 et seq.]) 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 [15 U.S.C. 717f(c)]. 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 chapter.

**(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 [15 U.S.C. 717 et seq.], 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.

**(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 1331(a) of title 43.

**(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).

(Pub. L. 95-621, § 2, Nov. 9, 1978, 92 Stat. 3352.)

**REFERENCES IN TEXT**

The Natural Gas Act, and such Act, referred to in pars. (15), (16), (18)(A)(i), (B)(i), (iii)(II), (23), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this Act to the Code, see section 717w of this title and Tables.

Section 6 of the Emergency Natural Gas Act of 1977, referred to in par. (18)(B)(i)(I), is Pub. L. 95-2, § 6, Feb. 2, 1977, 91 Stat. 7, which is set out in a note under section 717 of this title.

The Sherman Act (15 U.S.C. 1 et seq.), referred to in par. (37), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12, 13, 14-19, 20, 21, 22-27), referred to in par. (37), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of

this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in par. (37), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Act of June 19, 1936, chapter 592, referred to in par. (37), means act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

#### SHORT TITLE

Section 1 of Pub. L. 95-621 provided that: "This Act [enacting this chapter and amending section 7255 of Title 42, The Public Health and Welfare] may be cited as the 'Natural Gas Policy Act of 1978'."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3312, 3363, 3375, 3802 of this title.

### SUBCHAPTER I—WELLHEAD PRICING

#### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3343, 3372, 3413, 3431, 3432 of this title.

#### PART A—WELLHEAD PRICE CONTROLS

##### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3331, 3332 of this title.

#### § 3311. Inflation adjustment; other general price ceiling rules

##### (a) Annual inflation adjustment factor

###### (1) General rule

For purposes of this subchapter, 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 the 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 November 9, 1978, and for which a quarterly percent change in

the GNP implicit price deflator has been published by the Department of Commerce as of November 9, 1978, 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 November 9, 1978

The most recent revision, if any, of such implicit price deflator which has been so published before November 9, 1978, 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 subchapter, 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 subchapter—

(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 November 9, 1978.

###### (5) Sales qualifying under more than one provision

If any natural gas qualifies under more than one provision of this subchapter 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 subchapter 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 subchapter 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 subchapter 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 the 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 subchapter, or

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

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.

(Pub. L. 95-621, title I, § 101, Nov. 9, 1978, 92 Stat. 3356.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3343 of this title.

**§ 3312. 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) of this section 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) of this section 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 3413 of this title to be produced from a new lease on the Outer Continental Shelf.

**(B) New onshore wells**

Natural gas determined in accordance with section 3413 of this title 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 3413 of this title 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 [15 U.S.C. 717f(c)].

(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 nondirectional 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 November 9, 1978; and

(III) the drilling of such well was not subject to any requirement regarding directional or nondirectional 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 measurements 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 [15 U.S.C. 717 et seq.]) shall not be taken into account if such quantities were sold before November 9, 1978—

(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 [15 U.S.C. 717f(c)].

(4) New wells which are also marker wells

For purposes of applying subsection (c)(1)(B)(ii) of this section in the case of any marker well which is also a new well under section 3301(3)(B) of this title, the reference in such subsection (c)(1)(B)(ii) of this section 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 3413 of this title 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<sup>1</sup> 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 reservoir 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 [15 U.S.C. 719 et seq.].

(Pub. L. 95-621, title I, § 102, Nov. 9, 1978, 92 Stat. 3358.)

REFERENCES IN TEXT

Section 6 of the Emergency Natural Gas Act of 1977, referred to in subsec. (c)(1)(C)(iv)(I), (3)(B)(i), is Pub. L. 95-2, § 6, Feb. 2, 1977, 91 Stat. 7, which is set out in a note under section 717 of this title.

The Natural Gas Act, referred to in subsec. (c)(3)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (e), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

<sup>1</sup>So in original. Probably should be "reservoir".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3313, 3315, 3316, 3317, 3331, 3332, 3343, 3375, 3413, 3431 of this title.

§ 3313. Ceiling price for new, onshore production wells

(a) Application

In the case of natural gas determined in accordance with section 3413 of this title to be produced from any new, onshore production well, the maximum lawful price computed under subsection (b) of this section 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 3312 of this title (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 [15 U.S.C. 719 et seq.].

(Pub. L. 95-621, title I, § 103, Nov. 9, 1978, 92 Stat. 3361.)

**REFERENCES IN TEXT**

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (d), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3315, 3331, 3332, 3343, 3375, 3413, 3431 of this title; title 26 section 44D.

**§ 3314. 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 November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act [15 U.S.C. 717 et seq.] was in effect on such date for the first sale of such natural gas, the maximum lawful price computed under subsection (b) of this section 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 27, 1977, and before November 9, 1978, 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 [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title I, § 104, Nov. 9, 1978, 92 Stat. 3362.)

**REFERENCES IN TEXT**

The Natural Gas Act, referred to in subsecs. (a) and (b)(2)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

**§ 3315. Ceiling price for sales under existing intrastate contracts**

**(a) Application**

The maximum lawful price computed under subsection (b) of this section 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 November 8, 1978.

**(b) Maximum lawful price**

**(1) General rule**

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 November 9, 1978, 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 3312 of this title (relating to new natural gas).

**(2) Contract price exceeding new gas ceiling price on November 9, 1978**

In the case of any natural gas described in subsection (a) of this section for which the contract price applicable on November 9, 1978, exceeds the maximum lawful price, per million Btu's, computed for such date under section 3312 of this title (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 3312 of this title; or

(B)(i) the contract price on November 9, 1978, in the case of November 1978; 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

<sup>2</sup>So in original. Probably should be "contract".

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 3312 of this title (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 3312(c) of this title), stripper well natural gas (as defined in section 3318(b) of this title), high-cost natural gas (as defined in section 3317(c) of this title), natural gas produced from a new, onshore production well (as defined in section 3313(c) of this title) 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 3332 of this title, natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title) 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.

(Pub. L. 95-621, title I, § 105, Nov. 9, 1978, 92 Stat. 3363.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3331, 3373, 3411 of this title.

**§ 3316. 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 November 8, 1978, 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) \$0.54 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 November 8, 1978.

**(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 November 8, 1978, 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 November 8, 1978, 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 November 9, 1978, 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 3312 of this title (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 November 9, 1978).

(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 price 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 [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title I, § 106, Nov. 9, 1978, 92 Stat. 3365.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (c)(2), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3320, 3411 of this title; title 26 section 4996.

§ 3317. 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 3312 of this title (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 3413 of this title 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 November 9, 1978, the provisions of subsections (a) and (b) of this section and the provisions of part B of this subchapter 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 November 9, 1978, under which such credit, exemption, deduction, or adjustment is provided; or

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

(Pub. L. 95-621, title I, § 107, Nov. 9, 1978, 92 Stat. 3366.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3343, 3373, 3375, 3413, 3431 of this title; title 26 section 44D.

### § 3318. Ceiling price for stripper well natural gas

#### (a) General rule

In the case of any first sale of 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 3413 of this title 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.

(Pub. L. 95-621, title I, § 108, Nov. 9, 1978, 92 Stat. 3367.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3343, 3413 of this title.

### § 3319. Ceiling price for other categories of natural gas

#### (a) Application

The maximum lawful price computed under subsection (b) of this section 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 part, including—

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

(2) natural gas committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the Natural Gas Act [15 U.S.C. 717 et seq.] 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 November 8, 1978, 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 [15 U.S.C. 719 et seq.].

#### (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

lent of the annual inflation adjustment<sup>3</sup> factor applicable for such month.

(2) 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 [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title I, § 109, Nov. 9, 1978, 92 Stat. 3368.)

#### REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (a)(2) and (b)(2)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(4), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3411, 3413 of this title.

§ 3320. 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) of this section, 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 part 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) of this section; 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) of this section with respect to the production of any natural gas may not include 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.

<sup>3</sup>So in original. Probably should be "adjustment".

(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 in section 3316(b)(2)(B)(ii) of this title); 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.

(Pub. L. 95-621, title I, § 110, Nov. 9, 1978, 92 Stat. 3368.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3332, 3343 of this title.

### PART B—DECONTROL OF CERTAIN NATURAL GAS PRICES

#### PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3311, 3317, 3431 of this title; title 26 section 44D.

§ 3331. Elimination of price controls for certain natural gas sales

(a) General rule

Subject to the reimposition of price controls as provided in section 3332 of this title, the provisions of part A of this subchapter 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) of this section, cease to apply effective January 1, 1985:

(1) New natural gas

New natural gas (as defined in section 3312(c) of the title).

(2) New, onshore production wells

Natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), 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 November 8, 1978; 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 3341 of this title, the provisions of part A of this subchapter 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 3317(c)(1), (2), (3), or (4) of this title.

**(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 3332 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d) of this section, cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), 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) 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 [15 U.S.C. 719 et seq.].

**(e) Limitation on indefinite price escalators**

Natural gas which is not subject to maximum lawful prices under part A of this subchapter solely by reason of subsection (a)(3) of this section 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 3315(b)(3)(B) of this title) shall be subject to the provisions of section 3315(b)(3) of this title.

(Pub. L. 95-621, title I, § 121, Nov. 9, 1978, 92 Stat. 3369.)

**REFERENCES IN TEXT**

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (d), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3332 of this title.

**§ 3332. Standby price control authority**

**(a) Reimposition of price controls**

The President, in accordance with subsection (c)(1) of this section, or the Congress, in accordance with subsection (c)(2) of this section, may reimpose maximum lawful prices for first sales of natural gas to which section 3331(a) of this title 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) of this section shall be by written order issued after May 31, 1985, and, subject to subsection (b) of this section, 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 3417(b) of this title) 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 3417(c)(1) of this title.

**(2) Congressional reimposition**

Any exercise of authority by the Congress under subsection (a) of this section shall be by the adoption of a concurrent resolution after May 31, 1985, described in section 3417(c)(2) of this title and, subject to subsection (b) of this section, 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 3331(a) of this title 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 3312 of this title (relating to new natural gas); and

(2) the maximum lawful price, per million Btu's, computed for such month under section 3313(b)(2) of this title (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 3313(c) of this title) 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 3320 of this title with respect to maximum lawful prices under part A of this subchapter.

**(f) Limitation**

Maximum lawful prices may be reimposed only once under this section.

(Pub. L. 95-621, title I, § 122, Nov. 9, 1978, 92 Stat. 3370.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 3331, 3417 of this title.

## § 3333. 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) of this section, the Department of Energy shall provide an opportunity for public comment with respect to matters required under subsection (a) of this section to be included in such report.

(Pub. L. 95-621, title I, § 123, Nov. 9, 1978, 92 Stat. 3371.)

## SUBCHAPTER II—INCREMENTAL PRICING

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 Section 8235e.

## § 3341. Industrial boiler fuel use

## (a) In general

Not later than 12 months after November 9, 1978, 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 subchapter, of the costs of natural gas which are—

- (1) described in section 3343 of this title; 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 3346 of this title.

## (2) Boiler fuel use

The term "boiler fuel use" means the use of any fuel for the generation of steam or electricity.

(Pub. L. 95-621, title II, § 201, Nov. 9, 1978, 92 Stat. 3371.)

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3331, 3342, 3343, 3344, 3346 of this title.

## § 3342. Amendment expanding application for other industrial uses

## (a) In general

## (1) Commission rule

Not later than 18 months after November 9, 1978, the Commission shall, by rule, prescribe an amendment to the rule required under section 3341 of this title designed to provide for the passthrough, in accordance with the provisions of this subchapter, of the costs of natural gas which are—

- (A) described in section 3343 of this title; and
- (B) incurred by any interstate pipeline.

## (2) Effectiveness

The amendment required by this section, and any amendment to the rule under section 3341 of this title 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) of this section.

## (b) Expanded application

The requirements of the rule under section 3341 of this title, as amended under subsection (a) of this section, 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 3341(c)(2) of this title) by—

- (1) any industrial boiler fuel facility (as defined in section 3341(c)(1) of this title); 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 3346 of this title.

## (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 3417(b) of this title<sup>1</sup> 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 3417(c)(3) of this title 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

<sup>1</sup>So in original. Probably should be followed by a closing parenthesis.



the amendment required under subsection (a) of this section (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) of this section, 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 3417(c)(3) of this title with respect to the amendment required under subsection (a) of this section.

(Pub. L. 95-621, title II, § 202, Nov. 9, 1978, 92 Stat. 3372.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3343, 3344, 3346, 3417 of this title.

**§ 3343. Acquisition costs subject to passthrough**

**(a) In general**

The following costs shall be subject to the passthrough requirements of the rule prescribed under section 3341 of this title (including any amendment under section 3342 of this title):

**(1) New natural gas**

In the case of new natural gas (as defined in section 3312(c) of this title), 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 November 8, 1978, 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 3313(c) of this title), 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 3347 of this title, 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 3347 of this title, 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 3312 of this title (relating to new natural gas) for the month in which such natural gas enters the United States, without regard to section 3320 of this title.

**(6) Stripper well natural gas**

In the case of stripper well natural gas (as defined in section 3318(b) of this title), 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 3312 of this title (relating to new natural gas) for the month in which the delivery of such natural gas occurs, without regard to section 3320 of this title.

**(7) High-cost natural gas**

In the case of high-cost natural gas (as defined in section 3317(c) of this title), 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<sup>2</sup> 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 1978 [15 U.S.C. 719 et seq.]—

(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 3319 of this title (relating to other categories of natural gas) for the month in which delivery of such natural gas occurs, without regard to section 3320 of this title; 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.

<sup>2</sup>So in original. Probably should be "million".

**(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 3320(c) of this title) 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 interstate 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 3371 of this title**

In the case of any sale of natural gas authorized under section 3371 of this title, 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 3344(c)(3) of this title) 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 3311(a) of this title) 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) of this section, 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 pass-through requirements of this subchapter, based upon the classification of such natural gas under which the price of such natural gas is determined under subchapter I of this chapter.

(Pub. L. 95-621, title II, § 203, Nov. 9, 1978, 92 Stat. 3373.)

**REFERENCES IN TEXT**

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(8), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3341, 3342, 3344, 3347 of this title.

**§ 3344. Method of passthrough****(a) Establishment of incremental pricing account**

The rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide that any interstate pipeline subject to such rule shall establish and maintain an incremental pricing account (hereinafter in this subchapter referred to as the "account").

**(b) Credits to account**

The rule required under section 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide

<sup>3</sup>So in original. Probably should be "natural".

that any costs subject to the passthrough requirements of this subchapter under section 3343 of this title (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 3341 of this title (including any amendment under section 3342 of this title 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 3341 of this title (including any amendment under section 3342 of this title) 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 subchapter.

**(B) Elimination or reduction of surcharge applicable to a facility**

The rule under section 3341 of this title (including any amendment under section 3342 of this title 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 3341 of this title (including any amendment under section 3342 of this title to such rule) shall provide one or more methods by which, in any case in which the surcharge is eliminated or reduced under subparagraph (5) 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 subchapter.

**(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 subchapter under section 3343 of this title or otherwise directly incurs any other cost subject to such requirements under sections 4 3343(a)(8)(B), (9), or (10) of this title, such local distribution company shall, with respect to the natural gas involved, be treated for purposes of this subchapter 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 3341 of this title (including any amendment under section 3342 of this title 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 applying subsection (d)(2) of this section.

<sup>4</sup>So in original. Probably should be "section".

**(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 delivered, directly or indirectly, by any interstate pipeline for industrial use to incrementally priced industrial facilities subject to the rule required under section 3341 of this title (including any amendment under section 3342 of this title 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 subchapter.

**(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 3341 of this title (including any amendment under section 3342 of this title 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 than 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

appropriate alternative fuel cost were not so reduced.

**(f) Determination of appropriate accounting period**

The rule required to be prescribed in section 3341 of this title shall specify the appropriate calendar periods used for purposes of such rule (including any amendment under section 3342 of this title 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 3341 of this title (including any amendment under section 3342 of this title 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 3341(c)(2) of this title) and any other use defined, by rule, by the Commission as an industrial use.

(Pub. L. 95-621, title II, § 204, Nov. 9, 1978, 92 Stat. 3375.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3343, 3414 of this title.

**§ 3345. Local distribution company passthrough requirements****(a) General rule**

Any surcharge under this subchapter, 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.

**(h) 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 November 9, 1978, is prohibited if a court, in any action brought under section 3414(b)(3) of this title, 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 subchapter 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 3414(b)(3) of this title.

**(d) Preemption of State or local law**

The requirements of this subchapter 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 subchapter 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 any agency of either, having jurisdiction with respect to the rates and charges of any local distribution company.

(Pub. L. 95-621, title II, § 205, Nov. 9, 1978, 92 Stat. 3378.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3414 of this title.

**§ 3346. 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 3341 of this title shall not apply with respect to any boiler fuel use of natural gas by any industrial boiler fuel facility in existence on November 9, 1978, 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 November 9, 1978, the Commission shall prescribe and make effective a rule providing for the exemption of any small industrial boiler fuel facility from the rule required under section 3341 of this title (including any amendment under section 3342 of this title 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 November 9, 1978, 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 3341 of this title 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 November 9, 1978, the Commission shall prescribe and make effective a rule providing for the exemption from the rule required under section 3341 of this title (including any amendment under section 3342 of this title 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 3341 of this title (including any amendment to such rule under section 3342 of this title) 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 796(18)(B) of title 16.

**(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 3341 of this title (including any amendment under section 3342 of this title 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 3417(b) of this title) 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 3417(c)(3) of this title, with respect to such rule.

(Pub. L. 95-621, title II, § 206, Nov. 9, 1978, 92 Stat. 3379.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3341, 3342, 3417 of this title.

**§ 3347. Treatment of certain imports**

**(a) Certain LNG imports**

Except to the extent of a determination otherwise under subsection (c)(1) of this section, the provisions of section 3343(a)(4) of this title 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 [15 U.S.C. 717b] 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 [15 U.S.C. 717 et seq.] 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 [42 U.S.C. 7101 et seq.] (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 LNG)**

Subject to subsection (c)(2) of this section, the provisions of section 3343(a)(5) of this title 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) of this section 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 [15 U.S.C. 717 et seq.] 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 [42 U.S.C. 7101 et seq.], determines that the provisions of section 3343(a)(4) of this title shall apply with respect to such liquefied natural gas imports.

**(2) Natural gas imports (other than LNG)**

The provisions of section 3343(a)(5) of this title 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 [15 U.S.C. 717 et seq.] 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 [42 U.S.C. 7101 et seq.], determines that the provisions of section 3343(a)(5) of this title shall apply with respect to such natural gas imports.

(Pub. L. 95-621, title II, § 207, Nov. 9, 1978, 92 Stat. 3380.)

**REFERENCES IN TEXT**

The Natural Gas Act, referred to in subsecs. (a)(3) and (c), is act June 21, 1938, ch. 558, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Department of Energy Organization Act, referred to in subsecs. (a)(3) and (c), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3343, 3412, 3416 of this title.

**§ 3348. 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 [15 U.S.C. 719 et seq.]—

(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 subchapter, 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 November 9, 1978, for establishing rates in connection with the issuing of certificates under the Natural Gas Act [15 U.S.C. 717 et seq.] for interstate pipelines.

(Pub. L. 95-621, title II, § 208, Nov. 9, 1978, 92 Stat. 3381.)

**REFERENCES IN TEXT**

The Alaska Natural Gas Transportation Act of 1976, referred to in text, is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete

classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

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

### SUBCHAPTER III—ADDITIONAL AUTHORITIES AND REQUIREMENTS

#### PART A—EMERGENCY AUTHORITY

#### § 3361. Declaration of emergency

##### (a) Presidential declaration

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

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

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

##### (b) Limitation

###### (1) Expiration

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

(A) the date on which the President finds that any shortage described in subsection (a) of this section 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) of this section, any emergency (or extension thereof), previously declared under subsection (a) of this section, upon the expiration of such declaration of emergency (or extension thereof) under paragraph (1)(B).

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

#### DELEGATION OF FUNCTIONS

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3362, 3363, 3364, 3412, 3416 of this title.

#### § 3362. Emergency purchase authority

##### (a) Presidential authorization

During any natural gas supply emergency declared under section 3361 of this title, the President may, by rule or order, authorize any interstate pipeline or local distribution company served by any interstate pipeline to contract,

upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for the purchase of emergency supplies of natural gas—

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

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

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

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

##### (b) Contract duration

The duration of any contract authorized under subsection (a) of this section may not exceed 4 months. The preceding sentence shall not prohibit the President from authorizing under subsection (a) of this section 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) of this section. The costs of any construction or transportation ordered under this subsection shall be paid by the purchaser of natural gas under the contract with respect to which such order is issued. No order to transport natural gas under this subsection shall require any pipeline to transport natural gas in excess of such pipeline's available capacity.

##### (d) Maintenance of adequate records

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

##### (e) Special limitation

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

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

#### REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as

amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3361, 3363, 3364, 3373, 3374, 3412, 3414, 3416, 3417, 3431, 3432 of this title.

### § 3363. Emergency allocation authority

#### (a) In general

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

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

#### (b) Allocation of certain boiler fuel gas

##### (1) Required finding

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

- (A) to the maximum extent practicable, emergency purchase authority under section 3362 of this title has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;
- (B) emergency purchases of natural gas supplies under section 3362 of this title are not likely to satisfy the natural gas requirements for such high-priority uses;
- (C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses; and
- (D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to 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 717z of this title (relating to the use of natural gas as a boiler fuel during any natural gas supply emergency).

#### (c) Allocation of general pipeline supply

##### (1) Required findings

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

- (A) to the maximum extent practicable, allocation of supplies of natural gas under subsection (b) of this section has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;
- (B) the exercise of such authority is not likely to satisfy the natural gas requirements for such high-priority uses;
- (C) the exercise of authority under this subsection is reasonably necessary to assist in meeting natural gas requirements for such high-priority uses;
- (D) any interstate pipeline or local distribution company receiving such natural gas has ordered the termination of all deliveries of natural gas for other than high-priority uses and attempted to the maximum extent practicable to terminate such deliveries;
- (E) such allocation will not create, for the interstate pipeline delivering certificated natural gas, a supply shortage which will cause such pipeline to be unable to meet the natural gas requirements for high-priority uses of natural gas served, directly or indirectly, by such pipeline; and
- (F) such allocation will not result in a disproportionate share of deliveries and resulting curtailments of natural gas being experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders issued under this subsection applicable to other interstate pipelines (as determined by the President).

##### (2) Required notification from State

###### (A)<sup>2</sup> 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;

<sup>1</sup>So in original.

<sup>2</sup>So in original. Par. (2) enacted without a subpar. (B).



(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) of this section has been utilized to assist in meeting natural gas requirements for high-priority uses of natural gas;

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

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

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

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

**(2) Allocation authority**

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

**(3) Consideration of economic feasibility of alternative fuels**

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

**(e) Limitation**

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

**(f) Industry assistance**

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

**(g) Compensation**

**(1) In general**

If the parties to any order issued under subsection (b), (c), (d), or (h) of this section 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) of this section, the President shall calculate the amount of compensation—

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

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

**(3) Compensation for other natural gas allocated**

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

(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 compa-

nies whole, in the case of any order under subsection (c) of this section, or to make the user from whom natural gas is allocated whole, in the case of any order under subsection (d) of this section including any amount actually paid by such pipeline and its local distribution companies or such user for volumes of natural gas or higher cost synthetic gas acquired to replace natural gas subject to an order under subsection (c) or (a) of this section: 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) of this section. Compensation for the costs of any construction or transportation ordered under this subsection shall be determined under subsection (g) of this section and shall be paid by the person to whom supplies of natural gas are ordered allocated under this section.

**(i) Monitoring**

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

**(j) Commission study**

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

**(k) 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.

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

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 717z, 3361, 3364, 3373, 3374, 3412, 3414, 3416, 3431, 3432 of this title.

**§ 3364. Miscellaneous provisions**

**(a) Information**

**(1) Obtaining of information**

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

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

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

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

**(2) Enforcement of subpoenas and orders**

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

**(b) Reporting of prices and volumes**

In issuing any order under section 3362 or 3363 of this title, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order shall be reported to him on a weekly basis. Such reports shall be made available to the Congress.

**(c) Presidential reports to Congress**

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

**(d) Delegation of authorities**

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

<sup>3</sup> So in original. Probably should be "(C)".

**(e) Antitrust protections****(1) Defenses**

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

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

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

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

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

**(2) Requirements of meetings**

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

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

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

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 3363 of this title, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anti-competitive effects while achieving substantially the purposes of section 3363 of this title 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 3363 of this title.

**(g) Preemption**

Any order issued pursuant to this subchapter 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.

(Pub. L. 95-621, title III, § 304, Nov. 9, 1978, 92 Stat. 3387.)

**EX. ORD. NO. 12235. ASSIGNMENT OF MANAGEMENT RESPONSIBILITY IN CASES OF NATURAL GAS EMERGENCIES**

Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 304(d) of the Natural Gas Policy Act of 1978 (92 Stat. 3387; 15 U.S.C. 3364(d)) and Section 301 of Title 3 of the United States Code, and in order to assign management responsibility in case of a natural gas supply emergency, it is hereby ordered as follows:

1-101. The functions vested in the President by Sections 301 through 304(c) of the Natural Gas Policy Act of 1978 (92 Stat. 3381-3387; 15 U.S.C. 3361-3364(c)) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 301 thereof (15 U.S.C. 3361).

1-102. The functions vested in the President by Section 607 of the Public Utility Regulatory Policies Act of 1978 (92 Stat. 3171; 15 U.S.C. 717z) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 607(a) and (b) thereof (15 U.S.C. 717z(a) and (b)).

1-103. The Secretary shall consult with the Administrator of the Environmental Protection Agency, the Director of the Federal Emergency Management Agency, and the heads of other executive agencies in exercising the functions delegated to him by this Order.

1-104. All functions delegated to the Secretary by this Order may be redelegated, in whole or in part, to the head of any other agency.

1-105. All Executive agencies shall, to the extent permitted by law, cooperate with and assist the Secretary in carrying out the functions delegated to him by this Order.

JIMMY CARTER.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3416 of this title.

**PART B—OTHER AUTHORITIES AND REQUIREMENTS****§ 3371. 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 [15 U.S.C. 717 et seq.]).

**(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.

**(h) 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—

(1) 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 chapter.

**(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 chapter.

**(c) Terms and conditions**

Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

(Pub. L. 95-621, title III, § 311, Nov. 9, 1978, 92 Stat. 3388.)

**REFERENCES IN TEXT**

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

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3343, 3374, 3431, 3432 of this title.

**§ 3372. 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) of this section, see section 3431 of this title (relating to the coordination of this chapter with the Natural Gas Act [15 U.S.C. 717 et seq.]).

**(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 November 8, 1978;

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

(3) which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

(Pub. L. 95-621, title III, § 312, Nov. 9, 1978, 92 Stat. 3392.)

#### REFERENCES IN TEXT

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

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3374, 3431 of this title.

§ 3373. 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 3317(c) of this title) may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) of this title) with respect to any first sale of any natural gas other than high-cost natural gas (as defined in section 3317(c) of this title).

#### (b) Other transactions

No price paid—

(1) in any sale authorized under section 3362(a) of this title, or

(2) pursuant to any order issued under section 3363(b), (c), (d), or (g) of this title,

may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B) of this title).

(Pub. L. 95-621, title III, § 313, Nov. 9, 1978, 92 Stat. 3392.)

§ 3374. 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 chapter 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 [15 U.S.C. 717 et seq.];

(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 [15 U.S.C. 717 et seq.], 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 chapter

For purposes of subsection (a) of this section, the term "natural gas covered by this chapter" means—

(1) natural gas which is not committed or dedicated to interstate commerce as of November 8, 1978;

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

(A) is authorized under section 3362(a) or 3371(b) of this title; or

(B) is pursuant to an assignment under section 3372(a) of this title; and,

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

(A) pursuant to any order under section 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(B) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95-621, title III, § 314, Nov. 9, 1978, 92 Stat. 3392.)

#### REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1), (2), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3375. Contract duration; 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 3431(a)(1)(A) or (B) of this title 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 3312(b) of this title) or high-cost natural gas (as defined in section 3317(c)(1), (2), (3), or (4) of this title) 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 November 8, 1978, and which is—

(A) high-cost natural gas (as defined in section 3317(c)(1), (2), (3), or (4) of this title);

(B) new natural gas (as defined in section 3312(c) of this title); or

(C) natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title).

This subsection shall not apply to any natural gas committed or dedicated to interstate commerce solely by reason of section 3301(18)(A)(i) of this title.

## (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 November 9, 1978, a bona fide offer to sell such natural gas must be made to the person who, but for the provisions of section 3431(a)(1)(B) of this title (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 section 3431(a)(1)(B) of this title (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 exer-

cise 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.

(Pub. L. 95-621, title III, § 315, Nov. 9, 1978, 92 Stat. 3393.)

SUBCHAPTER IV—NATURAL GAS  
CURTAILMENT POLICIES

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 8235e.

## § 3391. Natural gas for essential agricultural uses

## (a) General rule

Not later than 120 days after November 9, 1978, 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) of this section) 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) of this section; 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) of this section 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) of this section.

(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.

(Pub. L. 95-621, title IV, § 401, Nov. 9, 1978, 92 Stat. 3394.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3391a, 3392, 3393 of this title.

§ 3391a. Essential agricultural use defined

For the purposes of section 3391 of this title, the term "essential agricultural use" shall—

(1) include use of natural gas in sugar refining for production of alcohol;

(2) include use of natural gas for agricultural production on set-aside acreage or acreage diverted from the production of a commodity (as provided under the Agricultural Act of 1949 [7 U.S.C. 1421 et seq.]) to be devoted to the production of any commodity for conversion into alcohol or hydrocarbons for use as motor fuel or other fuels; and

(3) for the 5-year period beginning on June 30, 1980, include use of natural gas in the distillation of fuel-grade alcohol from food grains or other biomass by facilities in existence on June 30, 1980, which do not have the installed capability to burn coal lawfully.

(Pub. L. 96-294, title 11, § 273, June 30, 1980, 94 Stat. 711.)

REFERENCES IN TEXT

The Agricultural Act of 1949, referred to in par. (2), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Biomass Energy and Alcohol Fuels Act of 1980 which is title II of the Energy Security Act, and not as part of the Natural Gas Policy Act of 1978 which comprises this chapter.

§ 3392. 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) of this section) 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) of this section;

(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 3391 of this title.

(b) Curtailment priority applicable only if alternative fuel not available

The provisions of subsection (a) of this section 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 industrial process and feedstock uses (other than those referred to in section 3391(f)(1)(B) of this title).

(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 3391(f)(2) of this title.



(Pub. L. 95-621, title IV, § 402, Nov. 9, 1978, 92 Stat. 3395.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3393 of this title.

**§ 3393. Establishment and implementation of priorities**

**(a) Establishment of priorities**

The Secretary of Energy shall prescribe the rules under sections 3391 and 3392 of this title pursuant to his authority under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.] to establish and review priorities for curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

**(b) Implementation of priorities**

The Commission shall implement the rules prescribed under sections 3391 and 3392 of this title pursuant to its authority under the Department of Energy Organization Act [42 U.S.C. 7101 et seq.] to establish, review, and enforce curtailments under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title IV, § 403, Nov. 9, 1978, 92 Stat. 3396.)

**REFERENCES IN TEXT**

The Department of Energy Organization Act, referred to in subsections (a) and (b), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§ 7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

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

**§ 3394. 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 November 9, 1978, revoke or amend any certificate of public convenience and necessity issued before January 1, 1969, under section 7 of the Natural Gas Act [15 U.S.C. 717f] 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) of this section shall not affect the authority of the Commission to enforce any curtailment of deliveries of natural gas under the Natural Gas Act [15 U.S.C. 717 et seq.].

(Pub. L. 95-621, title IV, § 404, Nov. 9, 1978, 92 Stat. 3396.)

**REFERENCES IN TEXT**

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of

this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

**SUBCHAPTER V—ADMINISTRATION, ENFORCEMENT, AND REVIEW**

**§ 3411. General rulemaking authority**

**(a) In general**

Except where expressly provided otherwise, the Commission shall administer this chapter. The Commission, or any other Federal officer or agency in which any function under this chapter 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 chapter.

**(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 chapter. Any such definition shall be consistent with the definitions set forth in this chapter.

**(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 sections 3315, 3316(b), and 3319(a)(1) and (3) of this title.

(Pub. L. 95-621, title V, § 501, Nov. 9, 1978, 92 Stat. 3396.)

**§ 3412. Administrative procedure**

**(a) Administrative Procedure Act**

Subject to subsection (b) of this section, the provisions of subchapter II of chapter 5 of title 5 shall apply to any rule or order issued under this chapter having the applicability and effect of a rule as defined in section 551(4) of title 5; except that sections 554, 556, and 557 of such title 5 shall not apply to any order under such section 3361, 3362, or 3363 of this title.

**(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) of this section (other than an order under section 3361, 3362, or 3363 of this title). 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, 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) of this section (other than an order under section 3361, 3362, or 3363 of this title) shall, by rule, provide for the making of such adjustments, consistent with

the other purposes of this chapter, 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 3416 of this title 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 3347(c) of this title shall be made in accordance with the procedures applicable to the granting of any authority under the Natural Gas Act [15 U.S.C. 717 et seq.] to import natural gas or liquefied natural gas (as the case may be).

(Pub. L. 95-621, title V, § 502, Nov. 9, 1978, 92 Stat. 3397.)

**REFERENCES IN TEXT**

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

**§ 3413. 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) of this section for purposes of—

(A) applying the definition of new natural gas under section 3312(c) of this title;

(B) deciding if certain natural gas produced from the Outer Continental Shelf qualifies under section 3312(d) of this title for the new natural gas ceiling price;

(C) applying the definition of new, on-shore production well under section 3313(c) of this title;

(D) applying the definition of high-cost natural gas under section 3317(c) of this title; or

(E) applying the definition of stripper well natural gas under section 3318(b) of this title;

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

**(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) of this section 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) of this section 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) of this section 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) of this section.

**(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) of this section 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) of this section.

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) of this section 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) of this section 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) of this section.

**(d) Effect of determinations**

For purposes of this chapter—

**(1) General rule**

Any final determination referred to in subsection (a)(1) of this section made by a Federal or State agency (or by the Commission under subsection (c)(2) of this section) 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.

**(e) Interim collection of maximum lawful price**

**(1) Collection of section 3319 price**

**(A) General rule**

Effective beginning on the first day of the first month beginning after November 9, 1978, 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 3319 of this title 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:

**(1) 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) of this section, a written sworn statement that such natu-

ral gas is produced from a new well and that such seller believes in good faith that such natural gas is eligible under this chapter to be sold at a price not less than the appropriate maximum lawful price under section 3319 of this title.

(ii) **Petition for determination**

Within 90 days after November 9, 1978, 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 maximum lawful price is lower than that provided under section 3319 of this title.

(2) **Alternate interim collection authority**

(A) **General rule**

Promptly after November 9, 1978, the Commission 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 subchapter I of this chapter 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 3319 of this title.

(B) **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. Such refund with interest shall be paid, in accordance with the rule under subparagraph (A), unless it is determined under this chapter 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 subchapter I of this chapter 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) of this section, 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 chapter that the applicable maximum lawful price is lower than that provided under section 3319 of this title.

(Pub. L. 95-621, title V, § 503, Nov. 9, 1978, 92 Stat. 3397.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3312, 3313, 3317, 3318 of this title; title 26 sections 44D, 613A.

**§ 3414. 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 chapter; or

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

(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 chapter, 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 Columbia or any other appropriate district court of the United States to enjoin such act or practice and to enforce compliance with this chapter, 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 3362 of this title or any order or supplemental order issued under section 3363 of this title, 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 3345 of this title requiring the passthrough of surcharges paid under section 3344 of this title by any local distribution company with respect to natural gas delivered to incre-

<sup>1</sup>So in original. Probably should be "natural".

mentally 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 chapter, or any provision of any rule or order under this chapter, 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 3362 of this title or an order or supplemental order under section 3363 of this title.

**(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<sup>2</sup> 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 chapter**

Except in the case of violations covered under paragraph (3), any person who knowingly and willfully violates any provision of this chapter 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 chapter (other than an order of the Commission assessing a civil penalty under subsection (b)(4)(E) of this section), 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 3362 of this title or an order or supplemental order under section 3363 of this title 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

<sup>2</sup>So in original. Probably should be "assess".

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

(Pub. L. 95-621, title V, § 504, Nov. 9, 1978, 92 Stat. 3401.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3345, 3416 of this title.

### § 3415. 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) of this section, 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.

#### (h) 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) of this section 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 as an *amicus curiae* in any judicial review of any proceeding described in subsection (a)(1) of this section.

(Pub. L. 95-621, title V, § 505, Nov. 9, 1978, 92 Stat. 3403.)

### § 3416. 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 (other than an order assessing a civil penalty under section 3414(b)(4) of this title or any order under section 3362 of this title or any order under section 3363 of this title), issued under

this chapter and to any final agency action under this chapter 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 chapter 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 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 chapter.

##### (4) Judicial review

Any person who is a party to a proceeding under this chapter 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. 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 consid-

<sup>3</sup>So in original. Probably should be "as".

ered 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.

**(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) of this section, judicial review of any rule or order, within the meaning of section 551(4) of title 5, issued under this chapter may be obtained in the United States Court of Appeals for any appropriate circuit pursuant to the provisions of chapter 7 of title 5, 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 subpoenas under section 3364(a) of this title, 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 3361, 3362 or 3363 of this title, 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 3364(a)(2) of this title; 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 3361, 3362, or 3363 of this title.

**(d) Judicial review of certain incremental pricing determinations**

Notwithstanding the preceding provisions of this section, any final determination made under section 3347(c) of this title shall be subject to judicial review in accordance with the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] applicable to judicial review of any final determination respecting the grant or denial of any authority to import natural gas or liquefied natural gas.

(Pub. L. 95-621, title V, § 506, Nov. 9, 1978, 92 Stat. 3404.)

**REFERENCES IN TEXT**

Section 211(b) of the Economic Stabilization Act of 1970, as amended, referred to in subsec. (c), is section 211(b) of Pub. L. 91-379, title II, Aug. 15, 1970, 84 Stat. 799, formerly set out as an Economic Stabilization Provisions note under section 1904 of Title 12, Banks and Banking.

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

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 3412 of this title.

**§ 3417. 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 3332 of this title;
- (2) any congressional reimposition by concurrent resolution of maximum lawful prices under section 3332 of this title; and
- (3) any resolution of disapproval relating to incremental pricing under section 3342(c) or 3346(d)(2) of this title.

**(b) Determination of calendar days of continuous session**

In determining calendar days of continuous session for purposes of provisions of this chapter 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 ses-

sion. 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 3332, 3342, and 3346 of this title—

(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 3332(c)(1) of this title, 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 [15 U.S.C. 3332(c)(1)] 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 3332(c)(2) of this title, means a resolution the matter after the resolving clause of which is as follows: That<sup>4</sup> 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 [15 U.S.C. 3332(c)(2)]".

(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 [15 U.S.C. 3301 et seq.] (relating to incremental pricing of natural gas) . copy of which was transmitted<sup>5</sup> 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<sup>6</sup> 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

<sup>4</sup>So in original. Probably should be preceded by a quotation mark.

<sup>5</sup>So in original. Probably should be "transmitted".

<sup>6</sup>So in original. Probably should be "with".



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)<sup>7</sup> 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.

(Pub. L. 95-621, title V, § 507, Nov. 9, 1978, 92 Stat. 3406.)

**REFERENCES IN TEXT**

The Natural Gas Policy Act of 1978, referred to in subsec. (c)(3), is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to this chapter (§ 3301 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 3332, 3342, 3346 of this title.

**§ 3418. Applicability of other Federal statutory provisions relating to information-gathering**

In order to obtain information for the purpose of carrying out its functions under this chapter, the Commission shall have the same authority as is vested in the Secretary under 7151(a) of title 42 with respect to the exercise of authority under section 796(b) of this title and section 772(b), (c), and (d) of this title.

(Pub. L. 95-621, title V, § 508(b), Nov. 9, 1978, 92 Stat. 3408.)

<sup>7</sup>So in original. Subsec. (d) was enacted without a par. (5).

**SUBCHAPTER VI—COORDINATION WITH NATURAL GAS ACT; MISCELLANEOUS PROVISIONS**

**§ 3431. 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 [15 U.S.C. 717(b)], effective on the first day of the first month beginning after November 9, 1978, the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] 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 November 8, 1978, 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 November 9, 1978, for purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of such Act [15 U.S.C. 717 et seq.] 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 November 8, 1978, and which is—

- (i) high-cost natural gas (as defined in section 3317(c)(1), (2), (3), or (4) of this title);
- (ii) new natural gas (as defined in section 3312(c) of this title); or
- (iii) natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title).

**(C) Authorized sales or assignments**

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)], the provisions of the Natural Gas Act [15 U.S.C. 717 et seq.] and the jurisdiction of the Commission under such Act shall not apply by reason of any sale of natural gas—

- (i) authorized under section 3362(a) or 3371(b) of this title; or
- (ii) pursuant to any assigned authorized under section 3372(a) of this title.

**(D) Natural-gas company**

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6) et seq.]) 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 [15 U.S.C. 719 et seq.].

**(2) Transportation**

**(A) Jurisdiction of the Commission**

For purposes of section 1(b) of the Natural Gas Act [15 U.S.C. 717(b)] the provisions of such Act [15 U.S.C. 717 et seq.] and the 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 3362(c) or section 3363(b), (c), (d), or (h) of this title; or

(ii) authorized by the Commission under section 3371(a) of this title.

**(B) Natural-gas company**

For purposes of the Natural Gas Act [15 U.S.C. 717 et seq.], the term "natural-gas company" (as defined in section 2(6) of such Act [15 U.S.C. 717a(6)]) 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 [15 U.S.C. 717c, 717d], 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 subchapter I of this chapter; or

(ii) there is no applicable maximum lawful price solely by reason of the elimination of price controls pursuant to part B of subchapter I of this chapter.

**(B) Emergency sales**

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid in any sale authorized under section 3362(a) of this title 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 [15 U.S.C. 717c, 717d] any amount paid in any sale authorized by the Commission under section 3371(b) of this title 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 [15 U.S.C. 717c, 717d], 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 3372(a) of this title shall be deemed to be just and reasonable if such amount does not exceed the applicable maximum lawful price established under subchapter I of this chapter.

**(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 [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for transportation, storage, delivery or other services provided pursuant to any order under section 3363(b), (c), or (d) of this title shall be deemed to be just and reasonable if such amount is prescribed by the President under section 3363(h)(1) of this title.

**(B) Transportation**

For purposes of sections 4 and 5 of the Natural Gas Act [15 U.S.C. 717c, 717d], any amount paid by any interstate pipeline for any transportation authorized by the Commission under section 3371(a) of this title 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 [15 U.S.C. 717f] 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 [15 U.S.C. 717c, 717d], 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 [15 U.S.C. 717c, 717d], and

(B) such recovery is not inconsistent with any requirement of any rule under section 3341 of this title (including any amendment under section 3342 of this title),

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

(Pub. L. 95-621, title VI, § 601, Nov. 9, 1978, 92 Stat. 3409.)

#### REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(A), (B), (C), (1) (2)(A), (B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

The Alaska Natural Gas Transportation Act of 1976, referred to in subsec. (a)(1)(E), is Pub. L. 94-586, Oct. 22, 1976, 90 Stat. 2903, as amended, which is classified generally to chapter 15C (§ 719 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 719 of this title and Tables.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3372, 3375 of this title.

#### § 3432. Effect on State laws

(a) Authority to prescribe lower maximum lawful prices

Nothing in this chapter 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 subchapter I of this chapter.

(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 3362(c) or section 3363(b), (c), (d), or (i) of this title; or

(2) authorized by the Commission under section 3371(a) of this title.

(Pub. L. 95-621, title VI, § 602, Nov. 9, 1978, 92 Stat. 3411.)

### CHAPTER 61—SOFT DRINK INTERBRAND COMPETITION

Sec.

3501. Exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products; ultimate resale to consumers; substantial and effective competition.

3502. Price fixing agreements, horizontal restraints of trade, or group boycotts.

3503. Definition.

§ 3501. Exclusive territorial licenses to manufacture, distribute, and sell trademarked soft drink products; ultimate resale to consumers; substantial and effective competition

Nothing contained in any antitrust law shall render unlawful the inclusion and enforcement in any trademark licensing contract or agreement, pursuant to which the licensee engages in the manufacture (including manufacture by a sublicensee, agent, or subcontractor), distribution, and sale of a trademarked soft drink product, of provisions granting the licensee the sole and exclusive right to manufacture, distribute, and sell such product in a defined geographic area or limiting the licensee, directly or indirectly, to the manufacture, distribution, and sale of such product only for ultimate resale to

consumers within a defined geographic area: *Provided*, That such product is in substantial and effective competition with other products of the same general class in the relevant market or markets.

(Pub. L. 96-308, § 2, July 9, 1980, 94 Stat. 939.)

#### SHORT TITLE

Section 1 of Pub. L. 96-308 provided that: "This Act [enacting this chapter] may be cited as the 'Soft Drink Interbrand Competition Act'."

#### SUSPENSION OF STATUTE OF LIMITATIONS ON INSTITUTION OF ANTITRUST PROCEEDINGS BY UNITED STATES; ENFORCEMENT OF TRADEMARK LICENSING AGREEMENT PROVISIONS CONCERNING SOFT DRINK PRODUCTS

Section 4 of Pub. L. 96-308 provided that: "In the case of any proceeding instituted by the United States described in subsection (i) of section 5 of the Clayton Act (relating to suspension of the statute of limitations on the institution of proceedings by the United States) (15 U.S.C. 16(i)) which is pending on the date of the enactment of this Act [July 9, 1980], that subsection shall not apply with respect to any right of action referred to in that subsection based in whole or in part on any matter complained of in that proceeding consisting of the existence or enforcement of any provision described in section 2 of this Act [this section] in any trademark licensing contract or agreement described in that section."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3502 of this title.

§ 3502. Price fixing agreements, horizontal restraints of trade, or group boycotts

Nothing in this chapter shall be construed to legalize the enforcement of provisions described in section 3501 of this title in trademark licensing contracts or agreements described in that section by means of price fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

(Pub. L. 96-308, § 3, July 9, 1980, 94 Stat. 939.)

#### § 3503. Definition

As used in this chapter, the term "antitrust law" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), and the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(Pub. L. 96-308, § 5, July 9, 1980, 94 Stat. 939.)

#### REFERENCES IN TEXT

The Sherman Act (15 U.S.C. 1 et seq.), referred to in text, is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Clayton Act (15 U.S.C. 12 et seq.), referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.), referred to in text, is act Sept. 26, 1914, ch. 311,