

Public Law 101-383
101st Congress

An Act

To extend titles I and II of the Energy Policy and Conservation Act, and for other purposes.

Sept. 15, 1990
[S. 2088]

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

SECTION 1. SHORT TITLE.

This Act may be referred to as the “Energy Policy and Conservation Act Amendments of 1990”.

SEC. 2. EXTENSION OF AUTHORITY.

The Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) is amended—

(1) in section 104(b)(1) by striking out “September 15, 1990” and inserting in lieu thereof “September 30, 1994”;

(2) in section 171, by striking out “September 15, 1990” each place it appears and inserting in lieu thereof “September 30, 1994”; and

(3) in section 281, by striking out “September 15, 1990” each place it appears and inserting in lieu thereof “September 30, 1994”.

Energy Policy and Conservation Act Amendments of 1990. Petroleum and petroleum products. 42 USC 6201 note. 50 USC app. 2071 note.

42 USC 6251.

42 USC 6285.

SEC. 3. SEVERE DOMESTIC ENERGY SUPPLY INTERRUPTIONS.

(a) DEFINITIONS.—Section 3(8)(C) of the Energy Policy and Conservation Act (42 U.S.C. 6202(8)(C)) is amended—

(1) by inserting “(i)” after “from” the first place it appears; and

(2) by striking out “or from” and inserting in lieu thereof: “(ii) an interruption in the supply of domestic petroleum products, or (iii)”.

(b) DRAWDOWN.—Section 161 of such Act (42 U.S.C. 6241) is amended by adding at the end the following:

“(h)(1) If the President finds that—

“(A) a circumstance, other than those described in subsection (d), exists that constitutes, or is likely to become, a domestic energy supply shortage of significant scope or duration; and

“(B) action taken under this subsection would assist directly and significantly in preventing or reducing the adverse impact of such shortage,

then the Secretary may, subject to the limitations of paragraph (2), draw down and distribute the Strategic Petroleum Reserve.

“(2) In no case may the Reserve be drawn down under this subsection—

“(A) in excess of an aggregate of 30,000,000 barrels with respect to each such shortage;

“(B) for more than 60 days with respect to each such shortage;

“(C) if there are fewer than 500,000,000 barrels of petroleum product stored in the Reserve; or

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“(D) below the level of an aggregate of 500,000,000 barrels of petroleum product stored in the Reserve.

“(3) During any period in which there is a drawdown and distribution of the Reserve in effect under this subsection, the Secretary shall transmit a monthly report to the Congress containing an account of the drawdown and distribution of petroleum products under this subsection and an assessment of its effect.

“(4) In no case may the drawdown under this subsection be extended beyond 60 days with respect to any domestic energy supply shortage.”.

SEC. 4. ENLARGEMENT OF SPR TO ONE BILLION BARRELS.

Reports.

(a) IN GENERAL.—Section 159 of the Energy Policy and Conservation Act (42 U.S.C. 6239) is amended by adding at the end the following new subsections:

“(i) No later than 18 months after the date of the enactment of the Energy Policy and Conservation Act Amendments of 1990, the Secretary shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of negotiations undertaken pursuant to part C. The report shall—

“(1) describe the terms of any contracts negotiated pursuant to part C and any cost savings that would result from such contracts relative to the costs of acquisition pursuant to part B; and

“(2) give all available information on any cost savings that would likely result from additional contracts that could be negotiated pursuant to part C for completion of the storage of one billion barrels of petroleum product in the Reserve relative to the costs of acquisition pursuant to part B.

“(j) No later than 24 months after the date of the enactment of the Energy Policy and Conservation Act Amendments of 1990, the Secretary shall amend the Strategic Petroleum Reserve Plan to prescribe plans for completion of storage of one billion barrels of petroleum product in the Reserve. Such amendment shall comply with the provisions of this section and shall detail the Secretary's plans for the design, construction, leasing or other acquisition, and fill of storage and related facilities of the Reserve to achieve such one billion barrels of storage. Such amendment shall not be subject to the congressional review procedures contained in section 551. In assessing alternatives in the development of such plans, the Secretary shall consider leasing privately owned storage facilities.”.

(b) CONFORMING AMENDMENTS.—Section 160 of the Energy Policy and Conservation Act (42 U.S.C. 6240) is amended—

(1) in subsection (c)(3)—

(A) by striking out “fiscal years 1988 and 1989” and inserting in lieu thereof “fiscal year 1994”; and

(B) by striking out “at least 750,000,000” and inserting in lieu thereof “1,000,000,000”; and

(2) in subsection (d)(1), by inserting before the period at the end of subparagraph (B) the following: “and the Secretary has amended the Strategic Petroleum Reserve Plan as required by section 159(j)”.

(c) FACILITIES.—Section 160(d)(1)(A) of such Act (42 U.S.C. 6240(d)(1)(A)) is amended by inserting after “within” the following: “Government owned facilities of”.

SEC. 5. PREDRAWDOWN DIVERSION OF SPR OIL.

(a) **IN GENERAL.**—Section 160 of the Energy Policy and Conservation Act (42 U.S.C. 6240) is amended by adding at the end the following:

“(f) If the Secretary finds that a severe energy supply interruption may be imminent, the Secretary may suspend the acquisition of petroleum product for, and the injection of petroleum product into, the Reserve and may sell any petroleum product acquired for and in transit to, but not injected into, the Reserve.”

(b) **CONFORMING AMENDMENTS.**—(1) Section 167(b)(3) of such Act (42 U.S.C. 6247(b)(3)) is amended by inserting after “(g) of such section” the following: “, or from the sale of petroleum products under section 160(f)”.

(2) Section 167(d) of such Act (42 U.S.C. 6247(d)) is amended by inserting after “(g) of such section” the following: “, and from the sale of petroleum products under section 160(f)”.

(3) Section 160(d) of such Act (42 U.S.C. 6240(d)) is amended by adding at the end the following:

“(4) For any fiscal year in which purchases of petroleum products are suspended, or the sale of petroleum products is carried out, under subsection (f), the fill-rate requirements of paragraph (1)(B) shall be reduced by—

“(A) the amount of petroleum products are acquired for such fiscal year as a result of such suspension; plus

“(B) the amount of petroleum products sold under such subsection during such fiscal year.”

SEC. 6. LEASING AUTHORITY.

(a) **IN GENERAL.**—Title I of the Energy Policy and Conservation Act (42 U.S.C. 6211 et seq.) is amended—

(1) in section 152, by inserting “and part C” after “this part” in the material preceding paragraph (1); 42 USC 6232.

(2) by redesignating part C as part D;

(3) by redesignating section 171 (after the amendment is made by section 2(2) of this Act) as section 181; and 42 USC 6251.

(4) by adding the following new part after part B:

“PART C—AUTHORITY TO CONTRACT FOR PETROLEUM PRODUCT NOT OWNED BY THE UNITED STATES

“CONTRACTING FOR PETROLEUM PRODUCT AND FACILITIES

“SEC. 171. (a) **IN GENERAL.**—Subject to the other provisions of this part, the Secretary may contract— 42 USC 6249.

“(1) for storage, in otherwise unused Strategic Petroleum Reserve facilities, of petroleum product not owned by the United States; and

“(2) for storage, in storage facilities other than those of the Reserve, of petroleum product either owned or not owned by the United States.

“(b) **CONDITIONS.**—(1) Petroleum product stored pursuant to such a contract shall, until the expiration, termination, or other conclusion of the contract, be a part of the Reserve and subject to the Secretary’s authority under part B.

“(2) The Secretary may enter into a contract for storage of petroleum product under subsection (a) only if—

“(A) the Secretary determines (i) that entering into one or more contracts under such subsection would achieve benefits comparable to the acquisition of an equivalent amount of petroleum product, or an equivalent volume of storage capacity, for the Reserve under part B, and (ii) that, because of budgetary constraints, the acquisition of an equivalent amount of petroleum product or volume of storage space for the Reserve cannot be accomplished under part B; and

“(B) the Secretary notifies each House of the Congress of such determination and includes in such notification the same information required under section 154(e) with regard to storage and related facilities proposed to be included, or petroleum product proposed to be stored, in the Reserve.

“(3) A contract entered into under subsection (a) shall not limit the discretion of the President or the Secretary to conduct a drawdown and distribution of the Reserve.

“(4) A contract entered into under subsection (a) shall include a provision that the obligation of the United States to make payments under the contract in any fiscal year is subject to the availability of appropriations.

“(c) CHARGE FOR STORAGE.—The Secretary may store petroleum product pursuant to a contract entered into under subsection (a)(1) with or without charge or may pay a fee for its storage.

“(d) DURATION.—Contracts entered into under subsection (a) may be of such duration as the Secretary considers necessary or appropriate.

“(e) BINDING ARBITRATION.—The Secretary may agree to binding arbitration of disputes under any contract entered into under subsection (a).

“IMPLEMENTATION

42 USC 6249a.

“SEC. 172. (a) AMENDMENT TO PLAN NOT REQUIRED.—An amendment of the Strategic Petroleum Reserve Plan is not required for any action taken under this part.

“(b) FILL RATE REQUIREMENT.—For purposes of section 160(d)(1), any petroleum product stored in the Reserve under this part that is removed from the Reserve at the expiration, termination, or other conclusion of the agreement shall be considered to be part of the Reserve until the beginning of the fiscal year following the fiscal year in which the petroleum product was removed.

“(c) LEGAL STATUS REGARDING OTHER LAW.—Petroleum product and facilities contracted for under this part have the same status as petroleum product and facilities owned by the United States for all purposes associated with the exercise of the laws of any State or political subdivision thereof.

“(d) RETURN OF PRODUCT.—At such time as the petroleum product contracted for under this part is withdrawn from the Reserve upon the expiration, termination, or other conclusion of the contract, such petroleum product (or the equivalent quantity of petroleum product withdrawn from the Reserve pursuant to the contract) shall be deemed, for purposes of determining the extent to which such product is thereafter subject to any Federal, State, or local law or regulation, not to have left the place where such petroleum product was located at the time it was originally committed to a contract under this part.

“CONTRACTS FOR WHICH NO IMPLEMENTING LEGISLATION IS NEEDED

“SEC. 173. (a) CONGRESSIONAL REVIEW.—In the case of contracts entered into under this part, and amendments to such contracts, for which no implementing legislation is needed, the Secretary shall transmit each such contract and each such amendment to the Committee on Appropriations and the Committee on Energy and Natural Resources of the Senate and to the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives within 30 days after the signing thereof. 42 USC 6249b.

“(b) EFFECTIVE DATE.—(1) Any such contract, and any such amendment, shall not become effective until the end of the 30-day period of continuous session of Congress after the date of such transmittal, except that such contract may become effective without regard to such period if the President determines that such contract is required as a result of a severe energy supply interruption or by obligations of the United States under the international energy program.

“(2) For purposes of paragraph (1)—

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

“(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the calendar-day period involved.

“CONTRACTS FOR WHICH IMPLEMENTING LEGISLATION IS NEEDED

“SEC. 174. (a) IN GENERAL.—(1) In the case of contracts entered into under this part, and amendments to such contracts, for which implementing legislation will be needed, the Secretary may transmit an implementing bill to both Houses of the Congress. 42 USC 6249c.

“(2) In the Senate, any such bill shall be considered in accordance with the provisions of this section.

“(3) For purposes of this section—

“(A) the term ‘implementing bill’ means a bill introduced in either House of Congress with respect to one or more contracts or amendments to contracts submitted to the House of Representatives and the Senate under this section and which contains—

“(i) a provision approving such contracts or amendments, or both; and

“(ii) legislative provisions that are necessary or appropriate for the implementation of such contracts or amendments, or both; and

“(B) the term ‘implementing revenue bill’ means an implementing bill which contains one or more revenue measures by reason of which it must originate in the House of Representatives.

“(b) CONSULTATION.—The Secretary shall consult, at the earliest possible time and on a continuing basis, with each committee of the House and the Senate that has jurisdiction over all matters expected to be affected by legislation needed to implement any such contract.

“(c) EFFECTIVE DATE.—Each contract and each amendment to a contract for which an implementing bill is necessary may become effective only if—

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"(1) the Secretary, not less than 30 days before the day on which such contract is entered into, notifies the House of Representatives and the Senate of the intention to enter into such a contract and promptly thereafter publishes notice of such intention in the Federal Register;

"(2) after entering into the contract, the Secretary transmits a report to the House of Representatives and to the Senate containing a copy of the final text of such contract together with—

"(A) the implementing bill, and an explanation of how the implementing bill changes or affects existing law; and

"(B) a statement of the reasons why the contract serves the interests of the United States and why the implementing bill is required or appropriate to implement the contract; and

"(3) the implementing bill is enacted into law.

"(d) RULES OF THE SENATE.—Subsections (e) through (h) are enacted by the Congress—

"(1) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate but applicable only with respect to the procedure to be followed in the Senate in the case of implementing bills and implementing revenue bills described in subsection (a), and they supersede other rules only to the extent that they are inconsistent therewith; and

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

"(e) INTRODUCTION AND REFERRAL IN THE SENATE.—(1) On the day on which an implementing bill is transmitted to the Senate under this section, the implementing bill shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself or herself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

"(2) If the Senate is not in session on the day on which such an agreement is submitted, the implementing bill shall be introduced in the Senate, as provided in the paragraph (1), on the first day thereafter on which the Senate is in session.

"(3) Such bills shall be referred by the presiding officer of the Senate to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.

"(f) CONSIDERATION OF AMENDMENTS TO IMPLEMENTING BILL PROHIBITED IN THE SENATE.—(1) No amendments to an implementing bill shall be in order in the Senate, and it shall not be in order in the Senate to consider an implementing bill that originated in the House if such bill passed the House containing any amendment to the introduced bill.

"(2) No motion to suspend the application of this subsection shall be in order in the Senate; nor shall it be in order in the Senate for the Presiding Officer to entertain a request to suspend the application of this subsection by unanimous consent.

"(g) DISCHARGE IN THE SENATE.—(1) Except as provided in paragraph (3), if the committee or committees of the Senate to which an

implementing bill has been referred have not reported it at the close of the 30th day after its introduction, such committee or committees shall be automatically discharged from further consideration of the bill, and it shall be placed on the appropriate calendar.

"(2) A vote on final passage of the bill shall be taken in the Senate on or before the close of the 15th day after the bill is reported by the committee or committees to which it was referred or after such committee or committees have been discharged from further consideration of the bill.

"(3) The provisions of paragraphs (1) and (2) shall not apply in the Senate to an implementing revenue bill. An implementing revenue bill received from the House shall be, subject to subsection (f)(1), referred to the appropriate committee or committees of the Senate. If such committee or committees have not reported such bill at the close of the 15th day after its receipt by the Senate, such committee or committees shall be automatically discharged from further consideration of such bill and it shall be placed on the calendar. A vote on final passage of such bill shall be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee or committees of the Senate to which it was referred, or after such committee or committees have been discharged from further consideration of such bill.

"(4) For purposes of this subsection, in computing a number of days in the Senate, there shall be excluded any day on which the Senate is not in session.

"(h) FLOOR CONSIDERATION IN THE SENATE.—(1) A motion in the Senate to proceed to the consideration of an implementing bill shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(2) Debate in the Senate on an implementing bill, and all debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(3) Debate in the Senate on any debatable motion or appeal in connection with an implementing bill shall be limited to not more than one hour to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of an implementing bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(4) A motion in the Senate to further limit debate is not debatable. A motion to recommit an implementing bill is not in order."

(b) CONFORMING AMENDMENTS.—The table of contents of the Energy Policy and Conservation Act is amended—

(1) by adding at the end of the items for title I the following items:

"PART C—AUTHORITY TO CONTRACT FOR PETROLEUM PRODUCT NOT OWNED BY THE UNITED STATES

"Sec. 171. Contracting for petroleum product and facilities.

"Sec. 172. Implementation.

"Sec. 173. Contracts for which no implementing legislation is needed.

"Sec. 174. Contracts for which implementing legislation is needed.";

- (2) by redesignating part C in the items for title I as part D; and
- (3) by redesignating the item for section 171 as the item for section 181.

SEC. 7. REFINED PETROLEUM PRODUCT RESERVE.

Section 160 of the Energy Policy and Conservation Act (42 U.S.C. 6240) is amended by adding at the end the following after the subsection added by section 5(a) of this Act:

“(g)(1) The Secretary shall conduct a test program of storage of refined petroleum products within the Reserve. The test program shall commence during fiscal year 1992 and continue through fiscal year 1994. The test program shall demonstrate mechanisms for storage of refined petroleum products within the Reserve which may be drawn down in accordance with this part.

“(2) The mechanisms demonstrated under paragraph (1)—

Contracts.

“(A) shall include the acquisition by lease or purchase, or both, of refined petroleum products for storage in the Reserve and shall include the acquisition by lease of storage facilities; and

“(B) may include other mechanisms including, but not limited to, industrial petroleum reserves pursuant to section 156 and State set-aside programs, except that such mechanisms must provide equivalent control over the drawdown and distribution of such refined petroleum products as is provided under this part.

“(3) Any refined petroleum products stored in the Reserve under this subsection shall be stored in locations to be determined by the Secretary, taking into account the proximity of existing distribution systems, the proximity of the area or areas of the United States most dependent on imported petroleum products or likely to experience shortages of refined petroleum products, and the capability for expeditious distribution to such area or areas.

“(4) In the conduct of the test program under paragraph (1), the Secretary shall increase the quantity of refined petroleum products acquired for storage in the Reserve by an amount equal to 10 percent of the fill of the Reserve during each of the fiscal years 1992, 1993, and 1994, except that the Secretary may not expend more than 10 percent of the funds appropriated for the acquisition, transportation and injection of petroleum products into the Reserve during each of the fiscal years covered by the test program.

“(5) In the conduct of the test program under paragraph (1), the Secretary may not construct or purchase facilities for the storage of refined petroleum products.

“(6) Refined petroleum products stored in the Reserve under the test program may be withdrawn from the Reserve before the conclusion of the test program—

“(A) as may be necessary to turn such products over because of changes in the physical characteristics of the product; or

“(B) on the basis of a finding made under section 161.

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“(7) No later than January 31, 1994, the Secretary shall transmit to the Congress a report on the test program. The report shall evaluate the mechanisms demonstrated under the test program, other potential mechanisms, and the purchase of facilities. The report shall include an assessment of the costs and benefits of the various mechanisms. The report shall also make recommendations with regard to future storage of refined petroleum products and

contain drafts of any legislative provisions which the Secretary wishes to recommend.”.

SEC. 8. TEST DRAWDOWN.

Paragraph (1) of section 161(g) of the Energy Policy and Conservation Act (42 U.S.C. 6241(g)(1)) is amended to read as follows:

“(1) The Secretary shall conduct a continuing evaluation of the Distribution Plan. In the conduct of such evaluation, the Secretary is authorized to carry out test drawdown and distribution of crude oil from the Reserve. If any such test drawdown includes the sale or exchange of crude oil, then the aggregate quantity of crude oil withdrawn from the Reserve may not exceed 5,000,000 barrels during any such test drawdown or distribution.”.

SEC. 9. EXEMPTION FROM INTERSTATE COMMERCE ACT.

Section 159 of the Energy Policy and Conservation Act (42 U.S.C. 6239), is amended by adding at the end the following new subsection after the subsection added by section 4(a) of this Act:

“(k) A storage or related facility of the Strategic Petroleum Reserve owned by or leased to the United States is not subject to the Interstate Commerce Act.”.

SEC. 10. AUTHORITY TO ALLOW EXCHANGE OF SPR OIL.

Section 161 of the Energy Policy and Conservation Act (42 U.S.C. 6241) is amended by adding at the end the following new subsection after the subsection added by section 3(b) of this Act:

“(i) Notwithstanding any other law, the President may permit any petroleum products withdrawn from the Strategic Petroleum Reserve in accordance with this section to be sold and delivered for refining or exchange outside of the United States, in connection with an arrangement for the delivery of refined petroleum products to the United States.”.

SEC. 11. DRAWDOWN PLAN AMENDMENTS DURING IMPLEMENTATION.

Section 159 of the Energy Policy and Conservation Act (42 U.S.C. 6239) is amended by inserting at the end of the section the following new subsection after the subsection added by section 9 of this Act:

“(l) Notwithstanding subsection (d), during any period in which the Distribution Plan is being implemented, the Secretary may amend the plan and promulgate rules, regulations, or orders to implement such amendments in accordance with section 523 of this Act, without regard to the requirements of section 553 of title 5,

United States Code, and section 501 of the Department of Energy Organization Act (42 U.S.C. 7191). Such amendments shall be transmitted to the Congress together with a statement explaining the need for such amendments.”.

Approved September 15, 1990.

LEGISLATIVE HISTORY—S. 2088 (H.R. 3193):

HOUSE REPORTS: No. 101-604 accompanying H.R. 3193 (Comm. on Energy and Commerce) and No. 101-698 (Comm. of Conference).

SENATE REPORTS: No. 101-289 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 136 (1990):

May 22, considered and passed Senate.

July 16, H.R. 3193 considered and passed House; S. 2088, amended, passed in lieu.

Sept. 13, House and Senate agreed to conference report.