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CABINET ECONOMIC POLICY GROUP



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 11, 1979

MEMORANDUM FOR THE PRESIDENT

From: EPG Executive Committee

Subject: Labor Consultations on Second Year Pay and Price Guidelines

Pay and price guidelines for the second program year are widely expected to be published tomorrow, and we need your guidance on how to proceed. During the previous month we have been conducting intensive consultations with labor leaders on a range of issues -- macroeconomic policy, the pay increase for Federal employees, maritime policy, trade adjustment assistance, and the guidelines themselves. Our hope has been to reach an accord with labor and fashion an anti-inflation program which will be broadly supported. Our recommendation of the alternative plan of the 7 percent Federal pay increase was made in the context of our consultations with labor.

Our discussions with labor on the structure of the guidelines themselves have now reached a critical stage. At a meeting yesterday with senior labor officials and an Administration team led by Vice President Monrath and Secretary Miller, we were unable to agree on a program which provided for a committee consisting of labor, management, and public members. The committee would play an important role in recommending flexible second program year standards, subject to an understanding that the committee's decisions, though guided by considerations of equity and future price increases, would also be consistent with the following two major concerns of the Administrations:

- (1) Responsible increases in wages during the second program year should result, in the aggregate, in a maximum economy wide increase no greater than the actual aggregate increase during the first program year. (This number is approximately 3 1/2 percent.)
- (2) The second year guidelines should rectify the inequity that has developed between workers with cost-of-living-adjustment (COLA) contracts and those without. This inequity has developed because of the unrealistically low inflation assumption (6%) used to evaluate COLA contracts in the first program year.

Charlie Schultze and Fred Kahn are working today to see whether the differences between the Administration and labor on those points can be bridged by focusing on specific language. Landon Butler will also be discussing with labor the seriousness of the demand made by them late in the consultations that the use of sanctions by the Administration must be dropped from the second year program. After hearing their report, you will have two broad options.

Option 1: Defer publication of standards until labor accord is reached but in no event later than October 1.

Under Option 1, standards would not be published by September 15. Rather, the Administration would announce publicly that we are endeavouring to explore the feasibility of a committee reflecting broad participation from labor, management, and the public which would recommend changes to the standards. The feasibility of this option depends critically on reaching agreement with organized labor today on the wording of the statement describing the committee and its mandate. The Administration would issue the statement only after reaching accord with labor on all the issues we are negotiating on. If no accord is reached by October 1, the guidelines we have prepared would be published.

PRO:

- Provides the prospect of broad based support from labor on the wage price program and other Administration programs and initiatives
- Provides a sense of participation by many elements of society

CON:

- Provides labor with opportunity to walk away from the committee at an inopportune time
- Possibly subjects Administration to charge of "selling out" to labor
- Carries the risk that discipline imposed by guidelines will be diluted by the committee and anti-inflation commitment weakened

Approve Option 1

Disapprove Option 1

Option 2: Publish Administration's Own Standards as scheduled by September 15, 1979

We have developed our own standards for the second program year. Our decisions were made after careful consideration of more than 450 written comments from labor groups, business entities, State and local governments, public interest groups, and concerned individuals. We disagree on only one part of the new standards, and so seek your guidance.

The major features of the Administration's second year standards are:

- 7 1/2 percent overall wage standard
- Either an 8 percent or 7 percent assumption for valuing COLA contracts
- automatic 1 percent "catch up" increase allowable for non-COLA workers, with more than 1 percent allowable on a case by case approach
- 7 percent overall price standard

PRO:

- Publication on schedule will demonstrate decisiveness and leadership
- Guidance on setting wages and prices is needed immediately by employers
- Administration's guidelines will aid in restraining wages of non-union workers (80 percent of the labor force) to responsible levels
- Administration's guidelines equitably distribute the burden caused by inflation

CON:

- Organized labor will denounce the Administration and will not participate in the program
- Chances for a broad accord with organized labor on a range of issues will be lost

Approve Option 2

Disapprove Option 2

If you decide on Option 2, the Vice President, Stu Eizenstat, and Ray Marshall recommend that you agree to the proposal to evaluate COLA contracts at 7 percent.

PRO:

- 8 percent COLA Valuation represents a sharp tightening of the wage standard for contracts with COLA's in an environment where inflation remains high
- A 7 percent valuation, on the other hand, when coupled with a 7.5 percent overall wage standard will, on the average, neither tighten nor loosen the wage standard for COLA workers
- There are over 100 contracts covering over 1.5 million workers coming up in 1980 where COLAs are important, and it will be difficult to explain to them why contracts which would have complied during 1979 no longer will comply, even though inflation has not abated

CON:

- The wage standard would be somewhat more lenient using a 7 percent COLA valuation and might induce greater use of COLAs than an 8 percent valuation
- Non-COLA workers might feel the new standards provided insufficient "catch up" for their relative losses of last year

Re: Labor Consultations on Second Year Pay and Price Guidelines signed by Secretary Miller, 9/13/79. Pages 1-3 was sent to the President through normal channels and the Secretary carried page 4 with him to the 4 p.m. meeting re wage-price guidelines.

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Rovc.

CABINET ECONOMIC POLICY GROUP



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 25, 1979

MEMORANDUM FOR THE PRESIDENT

From: G. William Miller *Bill*
Chairman, Economic Policy Group

Subject: Labor Consultations and Wage Price Program

On September 15, publication of the second year wage price program was deferred for 15 days, and you instructed us to use the time to complete consultations on expanded participation by labor, business, and public representatives in the program. We have reached tentative agreement with major elements of the private sector on the design of the wage price program. We have also agreed with American labor leadership on an overall national accord.

Wage Price Program

The significant features of the wage price program for the second year are the following:

- On September 28, extend the first year pay standard and publish a price standard which holds price increases of a company to an amount no greater than the historical rate of price increase during 1976-1977.
- On September 28, announce the establishment of a Pay Advisory Committee and a Price Advisory Committee.
- The Pay Advisory Committee will be composed of 15 members, five each from labor, business, and the public; each member and its chairman will be named by you.
- The Pay Advisory Committee will be charged with making recommendations to the Council on Wage and Price Stability (Council) on:
 - Modifications to the pay standard, including four specific problem areas identified during the public comment period;
 - Changes, if any, to pay exception and noncompliance decisions of the Council;

- . New or revised interpretations of the pay standard; and
- . Such other matters that assure fairness and equity in individual cases and that are consistent with the overall objective of the anti-inflation program.

We have agreed with Labor that the Council will adopt all recommendations of the Pay Advisory Committee that are consistent with the overall objective of the anti-inflation program. Our agreement with Labor, however, does not include an agreement on a specific numerical standard or target for wage settlements.

- The Price Advisory Committee will be composed of nine members of the public named by you; one of those members will also be designated by you as Chairman.
- The Price Advisory Committee will be charged with making recommendations to the Council on:
 - . Changes, if any, to price exception and price noncompliance decisions of the Council;
 - . New or revised interpretations of the price standard; and
 - . Such other matters that assure fairness and equity in individual cases and that are consistent with the overall objective of the anti-inflation program.

Overall Natural Accord

Attached is a statement embodying the principles of a National Accord between the Administration and American Labor Leadership. The terms of the National Accord have been discussed with Lane Kirkland of the AFL-CIO and Doug Fraser of the UAW. I will be meeting with Frank Fitzsimmons of the Teamsters on Thursday. The statement sets forth principles which will guide the Administration's economic policy on inflation, countercyclical programs, pay-price policies, international matters, and energy. Although a number of specific programs and initiatives were raised in

the consultations and remain unresolved, the essence of the National Accord is an ongoing process of involvement and cooperation by the Administration with American labor leadership.

RECOMMENDATION: That you approve the second year wage price program, the organization of the pay and price committees, and the terms of the National Accord.

PRO:

- . Provides for a broad base of support for the Administration's anti-inflation program and economic policy generally.

CON:

- . Price and Pay Committees may erode the restraint provided by numerical standards.

Approve

Disapprove

A NATIONAL ACCORD

The Administration -- American Labor Leadership
September , 1979

- To provide for American labor's involvement and cooperation with the Administration on important national issues.
- To deal effectively with inflation in an equitable manner, consistent with the historic values of our nation.
- To assure that the austerity arising from battling inflation is fairly shared, while protecting those members of society who are least able to bear the burden.
- To pursue our established national goals of full employment, price stability and balanced growth.
- To maintain and enhance the preeminence of America at home and abroad.

All Americans share a common commitment to achieve our Nation's economic goals of full employment, price stability and balanced growth as set forth in the Full Employment and Balanced Growth Act of 1978.

Recently, progress has been impaired by high and persistent rates of inflation. Inflation has built up over the past fifteen years, and in the last six has been aggravated by extraordinary increases in world petroleum and other energy prices.

The causes of inflation are many. But it is now deeply embedded in our economic structure. Inflation is a clear and present danger. It threatens our ability to achieve full employment; it reduces real incomes and values; it dries up job creating investments; it impedes productivity; it breeds recession;

and it falls most heavily on those least able to bear the burden.

The war against inflation must be the top priority of government and of private individuals and institutions. There is no quick or simple solution. The war must be waged through a comprehensive strategy on all fronts on a continuing basis. But it should not mean acceptance of higher than otherwise levels of unemployment.

To accept such levels of unemployment in the name of fighting inflation is inconsistent with the equitable sharing of sacrifice. The pursuit of full employment and balanced growth as set forth in the 1978 Act is essential to the ultimate elimination of budget deficits, the achievement of economic stability and the realization of social and economic justice.

It is imperative that we overcome inflation in order to provide adequately for the general welfare and for the national security. It is also essential in order to assure our continued technological, industrial and humanitarian leadership.

To deal effectively with inflation requires discipline and restraint. This will mean a period of

austerity for Americans -- individual and collective sacrifices for a time so that we may then enjoy the greater bounty of our land in the years to come.

Such austerity must be fairly shared. The burdens need to be distributed equitably. And in the process we must protect those least advantaged in our society, who are not able to bear the costs.

Full involvement and cooperation of the private sector is necessary in order to wring out inflation and to attain our goals of full employment and price stability.

Therefore, this National Accord has been undertaken to evidence and provide for the continued involvement and cooperation of American labor leadership with the Administration for this purpose.

1. General Economic Policies. It is recognized that a disciplined fiscal policy is needed to counter inflation. Close control should be exercised over Federal expenditures; and budget deficits should be minimized, giving due regard to the state of the business cycle and the social and economic needs of our society. The revenues required for targeted programs and pressing national needs should not be dissipated by general tax cuts in

conflict with the principle of shared austerity. Spending and taxing decisions within this framework must be and can be made consistent with the long-term goals of full employment, price stability and balanced growth.

2. Countercyclical Economic Policies. The current recessionary conditions developed following the large increase in world oil prices in the second quarter. Policies should be directed toward moderating and reversing the resulting down-turn. Established countercyclical programs will automatically come into play to help in this regard. Further counter actions need to be approached with care, so as to avoid new inflationary pressures. Nevertheless, if the recession deepens, well balanced responses of appropriate scale should be prepared and ready for action giving due regard to any required Congressional approvals, to emphasize on actions that have anti-inflation as well as anti-unemployment characteristics, and to practical operational limitations. These include:

- Programs to shelter the poor and needy from the twin ravages of inflation and recession.

- Additional skills training to help remedy structural unemployment.
- Public works that provide jobs while at the same time contributing to anti-inflation objectives, such as public transit projects funded by the proposed oil windfall profits tax.
- Improved implementation and expansion of jobs programs.
- Policies to assure access to capital for the housing industry, with emphasis upon availability of financing, at reasonable cost, to low and moderate income families.
- Appropriate tax relief targeted to offset inflation on the one hand while on the other contributing to anti-inflation through job creation, productivity improvement and cost reduction -- particularly in areas most severely affected by high unemployment and economic adversity.

3. Pay-Price Policies. An important aspect of the anti-inflation effort is responsible behavior with respect to pay and prices. For the past year, a voluntary program of pay and price restraint has been used.

In the present circumstances, continued constraint is required on the overall levels

of price and compensation increases consistent with achieving a reduction in the rate of inflation. After extensive public consultations, the program for the second year has been established with provision for greater public participation, while maintaining the clear objectives of containment and deceleration of inflation.

Direct participation by labor, business and other public representatives will make a major contribution toward a fair and workable program which will achieve the overall goals.

The Federal Government must continue to show leadership in moderation. Federal pay action for fiscal 1980 has therefore been taken in the context of both fairness and continued restraint.

4. International. International developments in the post war era have led to greater economic interdependence among nations. In this environment, a demonstrated commitment to an effective anti-inflation program and to bringing our current account into balance is necessary in order to avoid adding to domestic

inflation and to prevent disturbances in international trade and finance.

We must therefore seek both a reduction in dependence upon imported oil and an expansion of exports. An increase in exports will create additional American jobs. At the same time, all international trade must be fair so that American jobs are not threatened by unfair restrictions on American goods and services of other countries.

Where American jobs are impacted by unfair international trade developments, adjustment assistance for American workers needs to be prompt and adequate.

The United States also should pursue maritime policies which will promote a strong merchant marine and assure that expanding American flag shipping services will make a growing contribution to the reduction of our balance of payments deficit.

5. Energy. In view of the availability, location and cost of oil and gas, our nation

must reduce its dependence on petroleum as an energy source and particularly its dependence on imported petroleum.

Toward that end, the President has proposed a comprehensive energy program, which includes conservation measures, limitations on oil imports and a windfall profits tax to capture some of the increased revenues from higher oil prices for public purposes. Proceeds from the windfall profits tax will be used to help finance the development of unconventional energy sources, such as synthetic fuels; to carry out projects which conserve overall energy requirements, such as expanded public transit facilities; to provide incentives for greater conservation; and to extend financial relief from higher energy costs for the poor and needy.

These vital features of the President's energy program are of critical importance and should be carried out by Congressional and other actions as rapidly as possible.

6. Human Environment. It is also important to continue pursuit of the goal of improving the quality of the human environment.

This includes cooperation on programs to assure safe living and working places and to improve health services available to Americans.

7. Other Matters. The specific areas set forth in this Accord are not intended to be exhaustive. There are other matters which currently deserve mutual consideration and others will arise in the future. Those will be part of an on-going agenda.

8. Continuing Consultations. The essence of this National Accord is involvement and cooperation. The process is by its nature dynamic and evolutionary. It is our purpose to establish procedures for continuing consultations between American labor leadership and the Administration on these and other issues of vital concern to working people, as workers and as citizens.

THE WHITE HOUSE
WASHINGTON

→ Judy
for files
handed to GWM
9/28/79 before press
meeting; GWM
made press
announcement RCK

MEMORANDUM FOR SECRETARY MILLER

FROM: LONDON BUTLER 

DATE: SEPTEMBER 28, 1979

SUBJECT: NATIONAL ACCORD ENDORSEMENT FOR
TEAMSTERS AND UNITED AUTO WORKERS

I have cleared with Frank Fitzsimmons and Doug Fraser the following statements for your use at today's press conference:

"I have met with the leadership of the International Brotherhood of Teamsters, and I am authorized by Frank Fitzsimmons to tell you that the Teamsters endorse the National Accord and will participate in our ongoing discussions.

"I have also met with the leadership of the United Auto Workers. Doug Fraser has authorized me to say that the United Auto Workers agrees in principle with the National Accord, and he will review the details with the UAW Board at his earliest opportunity."

cc: Al McDonald

A NATIONAL ACCORD

The Administration -- American Labor Leadership September 28, 1979

- To provide for American labor's involvement and cooperation with the Administration on important national issues.
- To deal effectively with inflation in an equitable manner, consistent with the historic values of our nation.
- To assure that the austerity arising from battling inflation is fairly shared, while protecting those members of society who are least able to bear the burden.
- To pursue our established national goals of full employment, price stability and balanced growth.
- To maintain and enhance the preeminence of America at home and abroad.

All Americans share a common commitment to achieve our Nation's economic goals of full employment, price stability and balanced growth as set forth in the Full Employment and Balanced Growth Act of 1978.

Recently, progress has been impaired by high and persistent rates of inflation. Inflation has built up over the past fifteen years, and in the last six has been aggravated by extraordinary increases in world petroleum and other energy prices.

The causes of inflation are many. But it is now deeply embedded in our economic structure. Inflation is a clear and present danger. It threatens our ability to achieve full employment; it reduces real incomes and values; it dries up job creating investments; it impedes productivity; it breeds recession;

and it falls most heavily on those least able to bear the burden.

The war against inflation must be the top priority of government and of private individuals and institutions. There is no quick or simple solution. The war must be waged through a comprehensive strategy on all fronts on a continuing basis. But it should not mean acceptance of higher than otherwise levels of unemployment.

To accept such levels of unemployment in the name of fighting inflation is inconsistent with the equitable sharing of sacrifice. The pursuit of full employment and balanced growth as set forth in the 1978 Act is essential to the ultimate elimination of budget deficits, the achievement of economic stability and the realization of social and economic justice.

It is imperative that we overcome inflation in order to provide adequately for the general welfare and for the national security. It is also essential in order to assure our continued technological, industrial and humanitarian leadership.

To deal effectively with inflation requires discipline and restraint. This will mean a period of

austerity for Americans -- individual and collective sacrifices for a time so that we may then enjoy the greater bounty of our land in the years to come.

Such austerity must be fairly shared. The burdens need to be distributed equitably. And in the process we must protect those least advantaged in our society, who are not able to bear the costs.

Full involvement and cooperation of the private sector is necessary in order to wring out inflation and to attain our goals of full employment and price stability.

Therefore, this National Accord has been undertaken to evidence and provide for the continued involvement and cooperation of American labor leadership with the Administration for this purpose.

1. General Economic Policies. It is recognized that a disciplined fiscal policy is needed to counter inflation. Close control should be exercised over Federal expenditures; and budget deficits should be minimized, giving due regard to the state of the business cycle and the social and economic needs of our society. The revenues required for targeted programs and pressing national needs should not be dissipated by general tax cuts in

conflict with the principle of shared austerity. Spending and taxing decisions within this framework must be and can be made consistent with the long-term goals of full employment, price stability and balanced growth.

2. Countercyclical Economic Policies. The current recessionary conditions developed following the large increase in world oil prices in the second quarter. Policies should be directed toward moderating and reversing the resulting down-turn. Established countercyclical programs will automatically come into play to help in this regard. Further counter actions need to be approached with care, so as to avoid new inflationary pressures. Nevertheless, if the recession deepens, well balanced responses of appropriate scale should be prepared and ready for action giving due regard to any required Congressional approvals, to emphasis on actions that have anti-inflation as well as anti-unemployment characteristics, and to practical operational limitations. These include:

- Programs to shelter the poor and needy from the twin ravages of inflation and recession.

- Additional skills training to help remedy structural unemployment.
- Public works that provide jobs while at the same time contributing to anti-inflation objectives, such as public transit projects funded by the proposed oil windfall profits tax.
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- Policies to assure access to capital for the housing industry, with emphasis upon availability of financing, at reasonable cost, to low and moderate income families.
- Appropriate tax relief targeted to offset inflation on the one hand while on the other contributing to anti-inflation through job creation, productivity improvement and cost reduction -- particularly in areas most severely affected by high unemployment and economic adversity.

3. Pay-Price Policies. An important aspect of the anti-inflation effort is responsible behavior with respect to pay and prices. For the past year, a voluntary program of pay and price restraint has been used.

In the present circumstances, continued constraint is required on the overall levels

of price and compensation increases consistent with achieving a reduction in the rate of inflation. After extensive public consultations, the program for the second year has been established with provision for greater public participation, while maintaining the clear objectives of containment and deceleration of inflation.

Direct participation by labor, business and other public representatives will make a major contribution toward a fair and workable program which will achieve the overall goals.

The Federal Government must continue to show leadership in moderation. Federal pay action for fiscal 1980 has therefore been taken in the context of both fairness and continued restraint.

4. International. International developments in the post war era have led to greater economic interdependence among nations. In this environment, a demonstrated commitment to an effective anti-inflation program and to bringing our current account into balance is necessary in order to avoid adding to domestic

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We must therefore seek both a reduction in dependence upon imported oil and an expansion of exports. An increase in exports will create additional American jobs. At the same time, all international trade must be fair so that American jobs are not threatened by unfair restrictions on American goods and services or by unfair subsidies for goods and services of other countries.

Where American jobs are impacted by international trade developments, adjustment assistance for American workers needs to be prompt and adequate.

The United States also should pursue maritime policies which will promote a strong merchant marine and assure that expanding American flag shipping services will make a growing contribution to the reduction of our balance of payments deficit.

5. Energy. In view of the availability, location and cost of oil and gas, our nation

must reduce its dependence on petroleum as an energy source and particularly its dependence on imported petroleum.

Toward that end, the President has proposed a comprehensive energy program, which includes conservation measures, limitations on oil imports and a windfall profits tax to capture some of the increased revenues from higher oil prices for public purposes. Proceeds from the windfall profits tax will be used to help finance the development of unconventional energy sources, such as synthetic fuels; to carry out projects which conserve overall energy requirements, such as expanded public transit facilities; to provide incentives for greater conservation; and to extend financial relief from higher energy costs for the poor and needy.

These vital features of the President's energy program are of critical importance and should be carried out by Congressional and other actions as rapidly as possible.

6. Human Environment. It is also important to continue pursuit of the goal of improving the quality of the human environment.

This includes cooperation on programs to assure safe living and working places and to improve health services available to Americans.

7. Other Matters. The specific areas set forth in this Accord are not intended to be exhaustive. There are other matters which currently deserve mutual consideration and others will arise in the future. Those will be part of an on-going agenda.

8. Continuing Consultations. The essence of this National Accord is involvement and cooperation. The process is by its nature dynamic and evolutionary. It is our purpose to establish procedures for continuing consultations between American labor leadership and the Administration on these and other issues of vital concern to working people, as workers and as citizens.

10856

THE WHITE HOUSE
WASHINGTON

10/18/79

SECRETARY MILLER--

You might be interested in
reading Senator Byrd's comments
on the National Accord.



Landon



10/22/79

Landon:

Thanks. The National
Accord will, like good
wine, improve with
age. Best.

Bill

TREASURY DOCUMENT PROFILE

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SOURCE/DESCRIPTION

TO: PRESIDENT
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 OTHER (Specify) _____

FROM: White House/~~London~~ Butler, Landon

REFS: _____

SUBJECT: Sends copy of Senator Byrd's comments on the National Accord

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17. TREASURER (T)								

ACTION REQUIRED

DUE DATE: _____

APPROPRIATE ACTION DIRECT REPLY COME BACK COPY TO EXEC SEC (SE)

MEMO TO: _____ REPLY FOR SIG. BY: _____

SCHEDULE PROPOSAL FOR: _____ BRIEFING PAPER FOR: _____

COMMENTS/SPECIAL INSTRUCTIONS

SUBSEQUENT ROUTING/ACTION

DATE	FROM	TO	SUBSEQUENT ACTION TAKEN/REQUIRED	DUE	COPY TO

DISP/FILE INSTRUCTION

DISPATCH TO: _____ NOTIFY: _____

SPECIAL DISPOSITION: _____

WHITE HOUSE ALPHA
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United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

Vol. 125

WASHINGTON, TUESDAY, OCTOBER 9, 1979

No. 135

Senate

Legislative day of Thursday, October 4, 1979

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by HON. ALAN CRANSTON, a Senator from the State of California.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Let us pray.
O God of history and of grace help us to know Thee now, when peace and prosperity are our portion that we may look to Thee in the hour of need. We know, not what a day may bring—the hidden forces which might arise to obstruct justice, the overt actions which might frustrate peace, the infidelities which can infect our common life. Only this we know; we must live one day at a time under Thy judgment. Then help us to store our minds with Thy truth, our hearts with Thy love, that we may be strong under stress, calm in a crisis, guided always by Thy inner light which never fails.

We pray in His name who is the Way, the Truth, and the Life. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (MR. MAGNUSON).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., October 9, 1979.

To the Senate:
Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable ALAN CRANSTON, a Senator from the State of California, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

Mr. CRANSTON thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

A NATIONAL ACCORD

Mr. ROBERT C. BYRD. Mr. President, on Thursday, September 27, the Carter administration and the AFL-CIO reached agreement on creation of a tripartite board to help establish wage restraint guidelines for the coming years. The advisory board, composed of 15 members—5 each from labor, management, and the public—will have responsibility for shaping the Government's wage policies.

This agreement was reached after many months of meetings and negotiations. Accompanied by a statement of economic policy objectives titled "A National Accord," the pay board plan received the unanimous approval of the AFL-CIO executive council. This is a propitious step, because the second year of the voluntary wage guidelines began on Monday, October 1. New guidelines are expected to be announced shortly, and they will be subject to modification after review by the pay board.

Creation of the pay board represents an important step in the effort to control one of the causes of inflation—spiraling wage increases. In addition, it provides a forum for business, labor, and private citizens to formulate ideas for dealing with other inflationary pressures, such as increasing energy costs. It is my hope that this kind of participation will assist the Government in reaching a consensus on methods for dealing with inflation.

In addition to endorsing the pay board,

the accord sets forth economic policy objectives designed to help achieve the national goals of full employment, price stability, and balanced growth set forth in the Full Employment and Balanced Growth Act of 1978.

The accord identifies "high and persistent rates of inflation" as the major impediment to realization of the expressed goals of the Full Employment and Balanced Growth Act. It states that inflation threatens our ability to achieve full employment; it reduces real income and values; it dries up job-creating investments; it impedes productivity; it breeds recession; and it falls most heavily on those least able to bear the burden.

The accord calls for American labor's involvement and cooperation with the administration to combat inflation so that the goals of full employment, price stability, and balanced growth can be achieved concurrently. It notes that an important aspect of the anti-inflation effort is responsible behavior with respect to both pay and prices. In addition, we must continue efforts to reduce our dependence on foreign oil, spur increased production of domestic sources of energy, and encourage conservation.

Finally, the accord states that: Direct participation by labor, business and other public representatives will make a major contribution toward a fair and workable program which will achieve the overall goals.

Mr. President, the Congress must continue its participation in overall efforts to combat inflation. On the energy front, the Senate just passed legislation to establish an Energy Mobilization Board. The Board will help expedite priority energy projects, and these steps should go far to lessen our dependence on foreign oil. On the economic front, the Senate recently confirmed its commitment to reducing the Federal deficit and controlling Federal spending with passage of the second budget resolution.

If we are to bring inflation under control, we must have a concerted effort from all sectors of the economy. The AFL-CIO accord calls for such an effort;

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

the newly created pay board should encourage such an effort; and the Congress will continue to do its part.

The agreement reached by the administration and labor seems a fitting culmination to the long and fruitful career of George Meany, president of the AFL-CIO since 1955. Mr. Meany was an able and commanding figure in the labor movement. He helped to build a strong foundation for labor to stand on, and I am sure the AFL-CIO will continue on this strong footing.

Mr. President, if I have any time remaining, I reserve it.

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WAGE - PRICE PROGRAM
for Friday, September 28

Planned "Accord" Scenario

10:00 a.m. - Executive Board Meeting of AFL/CIO;
AFL/CIO leadership conveys results to
White House and announces their decision

A. Announcement of Accord and Pay/Price Advisory Committees
(Room 450, OEOB)

1:00 p.m. - President makes Inflation Statement/
announcement of accord

1:05 p.m. - President leaves

1:05-1:45 p.m.- Secy Miller conducts press briefing,
accompanied by Kahn, Kirkland, Marshall,
Schultze

B. Announcement of Next Year's Anti-Inflation Program

3:00 p.m. - (Room 450, OEOB) Kahn and Russell make
announcement and conduct press briefing

ADMINISTRATIVELY CONFIDENTIAL

COMMUNICATIONS PLAN

BRIEFINGS

A. Selective Congressional Group

Friday, 8:30 am - with Miller, McIntyre
Kahn
(confirmed: Roosevelt Rm., White House)

B. Business

1. Shapiro, Wriston, Murphy, Seibert
2. NAM, NFIB, Business Roundtable
3. Other labor advisors

C. White House Contacts

1. Outreach Group
2. Political
3. Cabinet, state and local
4. Other key Hill contacts

D. Cable for U.S. Embassies

(based on Presidential announcement)

E. Supplemental Press Communications

(with specialized press and
editorial boards, as appropriate)

Responsibilities

Arrangements by
Al Fromm

Miller

Schultze

Marshall

Wexler

Weddington

Watson

Moore

Katz

Miller, Katz,
Schultze, Marshall

9/27/79 9:30 pm

ACTIVITIES UNDERWAY

Thursday Activities (9/27/79, as of 9:30 pm)

Responsibility

- | | |
|---|---|
| 1. Lead discussions with labor
(Kirkland, Fraser, Fitzsimmons) | Completed |
| 2. Preparation of President's announcement
of favorable result | 2nd draft circulated
by McDonald: comments
due 9:00 am Friday |
| 3. President's Executive Orders | Kau (with WH Counsel
and Justice) |
| 4. Price Committee Proposal | Miller draft
circulated
8:30 pm Thursday |
| 5. Draft Q & A paper | Draft circulated;
comments in; rewrite
circulated 9:30 pm |
| 6. Summarized talking points (one page)
for briefers and callers
(from Q&A paper) | Redraft circulated
8:00 pm Thursday |
| 7. Charters for both Committees (with
adaptations from price proposal) | COWPS (Sally Katzen)
Drafts circulated
8:00 pm and 9:30 pm |
| 8. Fact Sheets | Drafts circulated
9:30 pm Thursday |

Office of the White House Press Secretary

THE WHITE HOUSE

REMARKS OF THE PRESIDENT
ON THE
WAGE PRICE GUIDELINES

Room 450,
Old Executive Office Building

1:47 P.M. EDT

Thank you very much.

In my Sunday night speech to the Nation in July, I said that the people of our country want to see Government and our great institutions pulled together to face the complex challenges which confront us as a people. Inflation is the most persistent challenge to our economy primarily fed by escalating energy costs which are predominantly controlled by others in foreign countries. Inflation tends to pit our people and our institutions against each other and contributes to a sense of frustration and doubt and concern which is so worrisome to our people. Ultimately if not curbed, inflation will sap our confidence as a Nation; will erode our faith in the future and will threaten those basic human values which make our country great.

I have called for our institutions and our people to regain a sense of shared purpose and shared cooperation and to join in a successful fight against inflation. Today I am very pleased to announce that enormous progress toward that goal has been made.

I am pleased and proud to announce that this Administration has achieved a new national accord with the broadest possible impact in order to fight against inflation.

This accord is represented by a statement of principles which we have been pursuing since July in discussions with representatives of organized labor. Parallel discussions have also been held with the leaders in the business community.

The communication from President George Meany that the AFL-CIO Executive Council has today endorsed the statement of principles means that for the first time in history, such an accord has been reached on a voluntary basis. I would like to say that President Meany, who is announcing he will not seek re-election today, has contributed with his heart and his mind and his experience and his inspirational leadership to the reaching of this agreement and I am deeply grateful to him.

MORE

I also want to commend especially Secretary William Miller and the members of my economic policy group, the key labor leaders in addition to Mr. Meany, of our major labor organizations, and representatives of the business community for working so constructively together in search of this understanding.

As part of our national accord, we will be establishing a Pay Advisory Committee and a Price Advisory Committee. Organized labor leadership has agreed to serve on the Pay Advisory Committee and I am counting on business leaders to join it also.

This committee, which will play an important role in assuring restrained but equitable pay increases, is to be made up of 15 members, five each from labor, business and the public. John Dunlop has accepted my invitation to serve as chairman of this Pay Committee and others members will be announced in the near future.

The Price Advisory Committee will consist of five public members whom I will name in a few weeks. I want to emphasize again that if substantial progress is to be made to reduce inflation in this country -- and this will obviously take time and sustained effort -- we will need the active and dedicated support for Government of both business and labor.

The developments of today provide us the initial framework for such an effort and I pledge to do my utmost to follow through and to make this initiative a significant forward step in our continuing and determined fight against inflation in the United States.

I would like now to introduce Secretary of Treasury, William Miller, who along with others on the stage with me will be glad to answer your questions.

Bill Miller.

END

(AT 1:53 P.M. EDT)

SEPTEMBER 28, 1979

Office of the White House Press Secretary

THE WHITE HOUSE

FACT SHEET

A NATIONAL ACCORD BETWEEN THE ADMINISTRATION
AND AFL-CIO LEADERSHIP

The essence of this National Accord is involvement and cooperation.

Purpose: To establish procedures for continuing consultations between American Labor Leadership and the Administration on issues of vital concern to working people as workers and as citizens.

Basic Agreement: Fighting inflation is top priority. This fight requires a comprehensive strategy that is consistent with an equitable sharing of sacrifice.

Elements of the Agreement

1. General economic policies

- Necessity of disciplined fiscal policy.
- Budget deficits as small as possible given economic reality and important national needs.
- Spending and taxing decisions consistent with long-term goals of full employment, price stability, and balanced growth.

2. Countercyclical economic policies

- Current recessionary conditions follow the large increase in world oil prices in the second quarter.
- Recognition that established countercyclical programs automatically provide assistance in moderating the downturn.
- Further countercyclical actions must be approached with care so as to avoid new inflationary pressures.
- If the recession deepens, we must be prepared with appropriately scaled responses that have both anti-inflation and anti-unemployment characteristics. Proposals must recognize operational limits and Congressional concerns.

3. Pay and price policies

- Responsible behavior with respect to pay and prices is an important part of the anti-inflation effort. Continued restraint is appropriate in current economic circumstances.
- The second year program has been designed after extensive public consultations and with provision for greater public participation.
- The clear objectives of the program are containment and deceleration of inflation.
- Direct participation by representatives of business, labor and the public will assist in the operation of a fair and workable program consistent with our overall goals.

MORE

4. International

- Increased interdependence among nations requires an effective anti-inflation program and a reduction in our current account deficit.
- Reduction in dependence on imported oil is critical.
- Recognition of the importance for jobs of
 - o increased exports
 - o insuring fair international trade so American jobs are not threatened by unfair restrictions on American goods and services
 - o need for prompt and appropriate assistance where American jobs are impacted by unfair restrictions.
- Strong merchant marines.

5. Energy

- We must reduce our dependence on petroleum and especially on imported petroleum.
- The vital features of the President's energy program (windfall profits tax, development of alternative energy sources, conservation, mass transit, and relief to the poor) are of critical importance.

6. Human environment

- Continued cooperation on programs to assure safe living and working places and to improve health services available to Americans.

• • •

A NATIONAL ACCORD

The Administration -- American Labor Leadership
September 28, 1979

- **To provide for American labor's involvement and cooperation with the Administration on important national issues.**
- **To deal effectively with inflation in an equitable manner, consistent with the historic values of our nation.**
- **To assure that the austerity arising from battling inflation is fairly shared, while protecting those members of society who are least able to bear the burden.**
- **To pursue our established national goals of full employment, price stability and balanced growth.**
- **To maintain and enhance the preeminence of America at home and abroad.**

All Americans share a common commitment to achieve our Nation's economic goals of full employment, price stability and balanced growth as set forth in the Full Employment and Balanced Growth Act of 1978.

Recently, progress has been impaired by high and persistent rates of inflation. Inflation has built up over the past fifteen years, and in the last six has been aggravated by extraordinary increases in world petroleum and other energy prices.

The causes of inflation are many. But it is now deeply embedded in our economic structure. Inflation is a clear and present danger. It threatens our ability to achieve full employment; it reduces real incomes and values; it dries up job creating investments; it impedes productivity; it breeds recession;

and it falls most heavily on those least able to bear the burden.

The war against inflation must be the top priority of government and of private individuals and institutions. There is no quick or simple solution. The war must be waged through a comprehensive strategy on all fronts on a continuing basis. But it should not mean acceptance of higher than otherwise levels of unemployment.

To accept such levels of unemployment in the name of fighting inflation is inconsistent with the equitable sharing of sacrifice. The pursuit of full employment and balanced growth as set forth in the 1978 Act is essential to the ultimate elimination of budget deficits, the achievement of economic stability and the realization of social and economic justice.

It is imperative that we overcome inflation in order to provide adequately for the general welfare and for the national security. It is also essential in order to assure our continued technological, industrial and humanitarian leadership.

To deal effectively with inflation requires discipline and restraint. This will mean a period of

austerity for Americans -- individual and collective sacrifices for a time so that we may then enjoy the greater bounty of our land in the years to come.

Such austerity must be fairly shared. The burdens need to be distributed equitably. And in the process we must protect those least advantaged in our society, who are not able to bear the costs.

Full involvement and cooperation of the private sector is necessary in order to wring out inflation and to attain our goals of full employment and price stability.

Therefore, this National Accord has been undertaken to evidence and provide for the continued involvement and cooperation of American labor leadership with the Administration for this purpose.

1. General Economic Policies. It is recognized that a disciplined fiscal policy is needed to counter inflation. Close control should be exercised over Federal expenditures; and budget deficits should be minimized, giving due regard to the state of the business cycle and the social and economic needs of our society. The revenues required for targeted programs and pressing national needs should not be dissipated by general tax cuts in

conflict with the principle of shared austerity. Spending and taxing decisions within this framework must be and can be made consistent with the long-term goals of full employment, price stability and balanced growth.

2. Countercyclical Economic Policies. The current recessionary conditions developed following the large increase in world oil prices in the second quarter. Policies should be directed toward moderating and reversing the resulting down-turn. Established countercyclical programs will automatically come into play to help in this regard. Further counter actions need to be approached with care, so as to avoid new inflationary pressures. Nevertheless, if the recession deepens, well balanced responses of appropriate scale should be prepared and ready for action giving due regard to any required Congressional approvals, to emphasis on actions that have anti-inflation as well as anti-unemployment characteristics, and to practical operational limitations. These include:

- Programs to shelter the poor and needy from the twin ravages of inflation and recession.

- Additional skills training to help remedy structural unemployment.
- Public works that provide jobs while at the same time contributing to anti-inflation objectives, such as public transit projects funded by the proposed oil windfall profits tax.
- Improved implementation and expansion of jobs programs.
- Policies to assure access to capital for the housing industry, with emphasis upon availability of financing, at reasonable cost, to low and moderate income families.
- Appropriate tax relief targeted to offset inflation on the one hand while on the other contributing to anti-inflation through job creation, productivity improvement and cost reduction -- particularly in areas most severely affected by high unemployment and economic adversity.

3. Pay-Price Policies. An important aspect of the anti-inflation effort is responsible behavior with respect to pay and prices. For the past year, a voluntary program of pay and price restraint has been used.

In the present circumstances, continued constraint is required on the overall levels

of price and compensation increases consistent with achieving a reduction in the rate of inflation. After extensive public consultations, the program for the second year has been established with provision for greater public participation, while maintaining the clear objectives of containment and deceleration of inflation.

Direct participation by labor, business and other public representatives will make a major contribution toward a fair and workable program which will achieve the overall goals.

The Federal Government must continue to show leadership in moderation. Federal pay action for fiscal 1980 has therefore been taken in the context of both fairness and continued restraint.

4. International. International developments in the post war era have led to greater economic interdependence among nations. In this environment, a demonstrated commitment to an effective anti-inflation program and to bringing our current account into balance is necessary in order to avoid adding to domestic

inflation and to prevent disturbances in international trade and finance.

We must therefore seek both a reduction in dependence upon imported oil and an expansion of exports. An increase in exports will create additional American jobs. At the same time, all international trade must be fair so that American jobs are not threatened by unfair restrictions on American goods and services or by unfair subsidies for goods and services of other countries.

Where American jobs are impacted by international trade developments, adjustment assistance for American workers needs to be prompt and adequate.

The United States also should pursue maritime policies which will promote a strong merchant marine and assure that expanding American flag shipping services will make a growing contribution to the reduction of our balance of payments deficit.

5. Energy. In view of the availability, location and cost of oil and gas, our nation

must reduce its dependence on petroleum as an energy source and particularly its dependence on imported petroleum.

Toward that end, the President has proposed a comprehensive energy program, which includes conservation measures, limitations on oil imports and a windfall profits tax to capture some of the increased revenues from higher oil prices for public purposes. Proceeds from the windfall profits tax will be used to help finance the development of unconventional energy sources, such as synthetic fuels; to carry out projects which conserve overall energy requirements, such as expanded public transit facilities; to provide incentives for greater conservation; and to extend financial relief from higher energy costs for the poor and needy.

These vital features of the President's energy program are of critical importance and should be carried out by Congressional and other actions as rapidly as possible.

6. Human Environment. It is also important to continue pursuit of the goal of improving the quality of the human environment.

This includes cooperation on programs to assure safe living and working places and to improve health services available to Americans.

7. Other Matters. The specific areas set forth in this Accord are not intended to be exhaustive. There are other matters which currently deserve mutual consideration and others will arise in the future. Those will be part of an on-going agenda.

8. Continuing Consultations. The essence of this National Accord is involvement and cooperation. The process is by its nature dynamic and evolutionary. It is our purpose to establish procedures for continuing consultations between American labor leadership and the Administration on these and other issues of vital concern to working people, as workers and as citizens.

SEPTEMBER 28, 1979

Office of the White House Press Secretary

THE WHITE HOUSE

PRESS BRIEFING
BY

SECRETARY OF THE TREASURY, G. WILLIAM MILLER
SECRETARY OF LABOR, F. RAY MARSHALL
CHARLES L. SCHULTZE,
CHAIRMAN, COUNCIL OF ECONOMIC ADVISERS
JAMES T. MCINTYRE, JR.,
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
ALFRED E. KAHN,
ADVISER TO THE PRESIDENT FOR INFLATION
LANE KIRKLAND, AFL-CIO

Room 450,
Old Executive Office Building

1:54 P.M. EDT

SECRETARY MILLER: Ladies and gentlemen, we have Lane Kirkland, of the AFL-CIO here also, along with the Administration and we would be happy to respond to your questions.

Q Where do you stand on your negotiations with business to participate in this Pay Advisory Committee?

SECRETARY MILLER: We have kept the business community fully apprised and the business community being a very large and spread out organization, we tried to keep principal business leaders and organizations informed. I believe they will cooperate as they have during the past year in the Pay, Wage and Price Program which I think is what you are talking about. They have been kept also advised of the effort we have to come to the broader understanding with the labor leadership in the form of a national accord and they have been aware of our results in that regard.

Q Would you be more specific, Secretary Miller? As you may know, various business organizations claim that they have not had the opportunity to comment or discuss these matters with you. Could you be specific as to some of the people you have been in contact with?

SECRETARY MILLER: Well, I think it is true that we were not able to consult just because of the time constraints, as we have worked for some weeks intensely to try to arrive at understandings on principles and on the specific nature of our ongoing program. It hasn't been possible to touch base with everyone for which I am sorry and we will try to keep everyone apprised. But mainly we had been talking with individual members of the business community, a fairly large number, and many of who are members of the kind of organizations that we perhaps weren't able to keep just fully up to date. That is just one of the frailties of time and distance, but of no intention on our part other than to have the broadest

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possible opportunity for the business community to give us their suggestions and to be aware of our progress.

Q Can you tell us what authority this Pay Advisory Board will have regarding the second-year standard?

SECRETARY MILLER: Well, I will ask -- the Pay Advisory Committee -- I will ask Fred Kahn to tell you about its responsibilities, although I believe that later on today, Fred, you will be having a press conference to go into more details. You might just outline generally what it is now.

MR. KAHN: I will be very brief now. That is an advisory committee only, but of course we wouldn't put the committee together if we were not prepared to pay very good attention to the advice they give us. They will have the responsibility of first proposing, recommending possible changes in the wage standards. We are carrying over the first year's standards until the committee has had a chance to organize itself. It is charged within the first month -- that is, by the end of October -- to make recommendations on a number of topics, specifically any possible change in the standard, methods of redressing the inequity that seems to have arisen between workers protected by COLA clauses and those not so protected, possibly resetting the low wage exemption, redefining problems arising out of tandem relationships, the definition of increments which are paid mainly to public workers, and also proposing a more realistic assessment of the value of the Cost of Living Adjustment Clause.

So, recommended changes in the standards, as well as to take under their scrutiny, individual cases and to make recommendations on the basis of those as well.

SECRETARY MILLER: This young lady back there had a question, I think. Yes?

Q I was asking the same one.

Q The accord speaks of austerity, an equal share. Could you spell that out a little bit? What do you expect will happen to real incomes under what you are proposing and, on the business side, profits?

SECRETARY MILLER: Inflation is our most serious problem. It has built up over the last 15 years. It has become deeply embedded in our system. It does erode real values and real incomes. It does impair our capacity to achieve full employment. It does impair the creation of capital and the job-creating investment we need. It does breed recession. It does fall heavily on those least able to bear it.

We have seen in this year that our strategy for dealing with inflation has been interrupted by the oil price shock in the second quarter with a 60 percent increase in oil prices which adds 2 percent to our inflation this year and which created a drag out of our economy that erodes all of our real incomes. That is a reality we must face and we must address the broader issues of achieving energy independence which we are determined to do. But since that takes time, we must all recognize that in the meantime, we will need to tighten our belts to perhaps accept less than we otherwise would enjoy so that we can later enjoy the greater bounty of this Nation as we do win the war against inflation.

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The important thing and one of the fundamentals of this accord is to recognize that we have a problem as a Nation. We are committed and labor leadership is committed to addressing that problem forthrightly, addressing the fundamentals, not just treating the symptoms, and recognize that means we all will suffer austerity, but the fundamental principle is that we will suffer that austerity fairly. We will have it evenly distributed. We will not ask one sector of the economy or one group of people to bear more of the burden than necessary.

I might ask Lane Kirkland if he would like to comment on this aspect of the accord.

MR. KIRKLAND: We now view austerity as imposed by inflation as well as by the tax system. Our task, our problem here is to see that austerity is shared properly, distributed properly and that the right people are exempt. Unless specific steps are taken and unless a strong initiative of this kind and the kind of programs that are warranted under the broad rubric of national economic policy--it is going to rest most heavily upon those who are least able to bear it.

I think the task here is to make certain that if there is anyone to be exempt from that burden, it is those weakest in our society. That is a very important element of that accord to us.

The other point I want to stress, if I may use the term -- that is, the complete linkage between our understanding and the basis of our participation and cooperation with the wage program and the total national accord. We will be weighing the steps taken in light of the principles set forth in that accord. We regard it not as, the whole matter not as an end to something, but as the beginning of something.

Thank you.

SECRETARY MILLER: That, of course, is a very important point, that this is an ongoing process and we intend to faithfully pursue the opportunities for consultation and to therefore have concrete results as we go along.

Yes, sir?

Q May we ask Mr. Kirkland, one, what an acceptable austere level of unemployment is, and whether you feel the Administration can carry its side of the bargain with Mr. Volcker as Chairman of the Federal Reserve?

MR. KIRKLAND: Very good question. (Laughter)

SECRETARY MILLER: There are three or four questions there, but --

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MR. KIRKLAND: There is a law on the books called the Balanced Growth and Full Employment Act which sets forth certain acceptable goals for levels of employment and we take those seriously. With regard to Mr. Volcker--what was the second part of your question? (Laughter)

Q Volcker as Chairman of the Federal Reserve, will the Administration be able to come through and be able to hold down inflation, but also hold down unemployment?

MR. KIRKLAND: Mr. Volcker is powerful, but he is not all-powerful. There are many other avenues of approach to our national economic problems that are not wholly controlled by the Federal Reserve System. In the area of interest rates and access to capital, with the money, there are other ways of sheltering those elements of society that are suffering most and who don't have the advantage of having Uncle Sam pay half of their interest bills, by means of programs that make -- referred to in the accord -- that make money for housing, for example, available at reasonable rates of interest, with the emphasis on low- and middle-income families.

Q Mr. Kirkland, why did your organization decide at this time to enter into a national accord when you have been criticizing the voluntary program for over a year and have been calling for mandatory wage price controls during that same period of time?

MR. KIRKLAND: I assure you we would have been prepared to negotiate on this same basis last year. We were disturbed by the manner in which the other prior program evolved. We felt that we had been, on occasion, vouchsafed an audience, but not really; we were not part of the process. We did not suddenly enter into this process. This is a product of discussions that have been going on since the meeting with the President last January and in the course of that we made perfectly -- excuse me, made very clear -- (Laughter) --

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MR. MILLER: Prior Administration.

MR. KIRKLAND: -- made it very clear that we were in a negotiating mode and we exist to negotiate and we are prepared to negotiate and if we were genuinely part of it, we had to negotiate these things in the context of a broad range of issues. That is exactly what was done.

Q Sir, it seems implicit in your answer there that you would have been willing to go along with the wage and price guidelines last year if you had been consulted more and it seems, though, what you are saying is the President has wasted a year.

MR. KIRKLAND: Well, you can draw your own conclusion.

Q Is that a correct conclusion?

MR. KIRKLAND: Possibly.

Q Did you seek to enter into these negotiations a year ago and were you rebuffed in any way by the Administration?

MR. KIRKLAND: I don't want to particularly rehash it, but we felt we were held very much at arms length and that what we had to say had very little impact on the product.

Q Mr. Kirkland, should this accord with the Administration be seen in any way as an AFL-CIO background endorsement, politically speaking, with President Carter?

MR. KIRKLAND: Not at all. The AFL-CIO is and expects to remain entirely neutral as between the Presidential candidates, the ones that may emerge. We would be prepared to enter into this approach to our national problems with any Administration.

Q Mr. Kirkland, what happens if the recommendations are not followed on the Pay Advisory Board?

MR. KIRKLAND: I want to emphasize that this ought to be viewed in the broader context and not simply what happens on the Pay Advisory Board. As long as the undertakings which we take seriously of the basic national accord are followed on the Administration's side, we expect to follow, live up to our commitments on our side.

Q Mr. Kirkland, are you prepared to come forth at this moment with some measure of optimism aside from your natural realism?

MR. KIRKLAND: If I weren't an optimist, I wouldn't be in the business I am in.

Q Mr. Kirkland, a moment ago you said you took the unemployment goal seriously as stated in the Humphrey-Hawkins Bill and in the accord here, it mentions that higher than normal levels of unemployment in the name of fighting inflation, a matter consistent -- is inconsistent with the efforts of the sacrifice. But isn't it, and do you consider

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it to be also in effect a violation of the law to do that and in that same vein, do you think the Administration is in technical violation of Humphrey-Hawkins because of the policies that they have been pursuing?

MR. KIRKLAND: I never practiced law. I never put myself forth as a legal expert. That is a matter that I would defer to wiser counsel on strict legalities in that. All I can say to you is that we take those goals seriously. In fact, in the legislative process, they were softened a bit from what we would have and initially advocated. We also firmly believe that the goal of full employment is essential to real success in the long run fight against inflation. I don't think we are ever going to get a balanced budget in this country except on a full employment basis.

Q But, Mr. Kirkland, are you prepared to say it is your belief that this national accord is a wiser approach to the economic problems of today than mandatory wage price controls?

MR. KIRKLAND: I don't know. All I know is that we are prepared to try and see.

Q Secretary Miller, when do you expect to have this Advisory Committee constituted?

SECRETARY MILLER: The Pay Advisory Committee?

Q The members named.

SECRETARY MILLER: You heard the President say John Dunlop has accepted the invitation to be chairman, and I would hope that since the mandate to the committee is to come up with recommendations for any revision of standards for the second year by the end of October, that it will be organized very promptly.

Q But you don't have members lined up yet?

SECRETARY MILLER: No, because, of course, it was not possible to approach and to offer invitations to other members until we could complete these determinations.

Q Mr. Miller, does this accord preclude any recommendation for mandatory wage price controls?

SECRETARY MILLER: As you know, the Administration has opposed mandatory wage and price controls and we still do, and as Mr. Kirkland has said, whatever may be our individual views on that sort of thing, this we believe to be a worthwhile effort jointly, mutually, to seek ways to work to control inflation and to win the battle against inflation.

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I must say while I have the opportunity that this has, since it is an accord that involves such fundamental principles, it has been, as you would imagine, time-consuming and I think has involved a considerable amount of statesmanship on the part of Mr. Meany and Mr. Kirkland to accomplish it and I believe that we should set aside what alternatives might be and our commitment is, I believe their commitment is, to make this work and to have an ongoing dynamic process from which we recognize the peril to the Nation of inflation, to which we are mutually committed to strive in this framework to achieve our goals.

Q Mr. Secretary, could you tell us something of the Price Commission, Committee, it is called?

SECRETARY MILLER: Price Committee.

Q What will its role be and will it have the similar powers relative to prices that the Pay Commission has to deal with?

SECRETARY MILLER: There is a slight difference in approach between pay and price and perhaps I am getting into Fred's territory here. Maybe he could answer that question.

MR. KAEN: Again, I will be brief. The Price Committee is charged with making recommendations. In that sense, it is advisory just as the Pay Committee. On the price standard itself, possible changes, possible modifications, in that it is in the same status as the Pay Committee but the Price Committee will not examine individual cases of possible non-compliance--compliance or non-compliance.

It will not look into individual cases. We have one of the main problems which is one of confidentiality of business income. So that is the major distinction between the two. The other is that the price standard will in fact be published in full this afternoon thanks to some people who can't keep their eyes open right now. (Laughter) Whereas, and it incorporates a large number of revisions that were based on our experiences of the first year. The pay standard itself will not--there is not a new pay standard. There is carryover during the transition period with adjustments in the interest of equity and the redress of particular problems, but we will keep the old pay standards until the new board comes down. In that sense, the Pay Board or the Pay Committee has more of a clean slate on which to work.

Q Will any legislation be needed to put this new machinery into effect?

SECRETARY MILLER: No. The process will be an Executive Order which will be issued this afternoon or tomorrow--I think this afternoon, Fred. It will be issued this afternoon that will set up the new standards and we will reactivate the committees and then the COWPS, Council on Wage and Price Stability, will issue the necessary regulations to carry this out. There are many people who deserve credit for making this rather unique process come to a successful conclusion and certainly the Council on Wage and Price Stability has to be given high credit. Bob Russell, the head of the Council, and Fred Kahn, the Chairman, and all of the staff has done, I think, a superb job in trying to implement in the time

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where we have had such a short time to make it possible to implement and they are doing so without statutory.

Let me say that this accord, we have worked, as I say, in this time frame to accomplish this broad understanding. I think you should know that we have discussed it with other major labor organizations. I have met with the leadership of the International Brotherhood of Teamsters and Mr. Frank Fitzsimmons has authorized me to say to you that the Teamsters endorse this accord and that he intends to present it to his board for approval and they hope to participate in our ongoing discussions.

But I want to complete by saying we have also met with the leadership of the United Auto Workers and Doug Fraser has authorized me to say that they agree with this accord in principle and that he is taking it up with his board at the earliest possible opportunity to seek their endorsement.

So it becomes much broader-based.

Q Sir, have you talked with the machinists, Mr. Winpingsinger?

SECRETARY MILLER: I have not had an opportunity, though I believe he is part of an organization that has already endorsed it. Lane, if you could tell us whether -- I understand that the council has approved this explicitly this morning.

Q But there were 12 people, Mr. Kirkland. Was Mr. Winpingsinger one of them and who else was not there?

MR. KIRKLAND: Let me see if I have the list. I guess I don't have the list, but Mr. Winpingsinger was absent. I thought I had it in my pocket, but there were 12 members absent. Otherwise, the action of the council was unanimous.

SECRETARY MILLER: I think we can have one final question.

Q Secretary, what do you expect this will do to the rate of inflation? What effect will it have?

SECRETARY MILLER: Inflation is deeply embedded in our economy. It is influenced not only by our own domestic-economic policies, but by things outside of our Nation which we cannot control such as the pricing of world oil through cartel action. It is apparent to all of us. The reason we so frankly state that we are in for a period of austerity, that we must share and share fairly, is our belief that it will take a number of years to ring inflation out. What this will do will bring us into a more unified opportunity to face the individual issues within the framework of the agreed upon principles and a mutual commitment which I believe is a deep commitment to keep at it, consistently, with determination, with will until we have rung inflation out of the system which will take a number of years.

Thank you all very much.

END (AT 2:15 P.M. EDT)

Office of the White House Press Secretary

EXECUTIVE ORDER

SECOND YEAR OF ANTI-INFLATION PROGRAM

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and statutes of the United States of America, including the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note), and the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486 (a)), and in order to supplement the anti-inflation program established on November 3, 1978, Section 1-102 of Executive Order No. 12092 is hereby amended to read as follows:

*1-102. Anti-inflationary wage and price behavior shall be measured by the following standards:

(a) For prices, anti-inflationary price behavior of a company is a current rate of average price increase no greater than its historical rate of price increase during 1976-1977, except where the company experiences uncontrollable increases in the prices of the goods and services it buys, and subject to the provisions of paragraphs (c) and (d).

(b) For pay, anti-inflationary pay behavior is the holding of pay increases to not more than 7 percent annually above their recent historical levels, subject to the provisions of paragraphs (c) and (d).

(c) These standards, which shall be further defined or modified by the Chairman of the Council on Wage and Price Stability, shall be subject to limitations and exceptions as determined by the Chairman and shall be administered so as to take into account any inequities that may have been created by the standards during the past year.

(d) The Council is directed to reconstitute in accordance with the Federal Advisory Committee Act, as amended, a Pay Advisory Committee and a Price Advisory Committee in order to provide greater participation by the public in the anti-inflation program. The Pay Advisory Committee and the Price Advisory Committee will advise the Council on developing policies that encourage anti-inflationary pay and price behavior by private industry, employers, and labor, that decelerate the rate of inflation and that provide for a fair and equitable distribution of the burden of restraint. To the extent permitted by law, the Council is directed to provide the Pay and Price Advisory Committees with all information required to perform their duties."

JIMMY CARTER

THE WHITE HOUSE,
September 28, 1979.

PAY COMMITTEE CHARTER PREAMBLE

EXECUTIVE OFFICE OF THE PRESIDENT
Council on Wage and Price Stability
Amendment of Charter of Wage Advisory Committee

In accordance with Executive Order _____, the Council on Wage and Price Stability is amending the charter of its Wage Advisory Committee (see 44 F.R. 36447 (June 22, 1979)) to redesignate the Committee as a Pay Advisory Committee, to enlarge its scope, and to provide greater participation by the public in the development and administration of the pay standard for the second year of the anti-inflation program. The Pay Advisory Committee will advise the Council on developing policies that encourage anti-inflationary pay behavior by private industry, employers and labor, that decelerate the rate of inflation, and that provide for fair and equitable distribution of the burden of restraint. Specifically, the Pay Advisory Committee will recommend modifications to the pay standard, recommend changes, if any, to pay exception and noncompliance decisions of the Council, and recommend new or revised interpretations of the pay standard.

To provide representation of a broad range of viewpoints, the Committee will be composed of fifteen members -- five representatives of labor, five business representatives and five representatives of the general public. These members and the Committee's Chairman will be selected by the President. The Chairman and each member from labor and business will be permitted to designate an alternate of his or her choice.

The Council shall provide support for the Committee and, consistent with applicable statutes and regulations, shall furnish all information as may be required by the Committee to carry out its duties and responsibilities.

For further information contact Sally Katzen, General Counsel, Council on Wage and Price Stability (456-6286).

Date: September 28, 1979



R. Robert Russell
Director, Council on Wage and
Price Stability

PAY COMMITTEE CHARTER

**COUNCIL ON WAGE AND PRICE STABILITY
REVISED CHARTER
for the
PAY ADVISORY COMMITTEE**

(1) The Official Designation

This Committee will be designated as the Pay Advisory Committee.

(2) The Objectives and Scope of Activities

The function of the Committee is to provide public participation and advice to the Council on Wage and Price Stability (Council) on encouraging anti-inflationary pay behavior by private industry, employers, and labor, decelerating the rate of inflation, and providing for a fair and equitable distribution of the burden of restraint.

(3) Description of Duties of the Committee

The duties and responsibilities of the Committee are:

- (a) To submit, by October 31, 1979, its recommendations for modifications, if any, to the pay standard, including specifically the basic pay standard, the inflation assumption for evaluating cost-of-living adjustment clauses, the threshold for the low-wage exemption, the treatment of increments and tandem relationships, and the appropriate adjustment for employee units not covered by cost-of-living adjustment clauses;
- (b) To recommend changes, if any, to pay exception and noncompliance decisions of the Council;
- (c) To recommend new or revised interpretations of the pay standard;
- (d) To make such other recommendations with respect to the voluntary compliance program that assure fairness and equity in individual cases and that are consistent with the overall objective of the anti-inflation program.

(4) Membership

The Committee shall consist of fifteen members, five each from labor, business, and the public, to be selected by the President. The President will also designate one of the public members as Chairman. The Chairman and each member from labor and business may designate an alternate to serve in his or her stead with respect to recommendations under Paragraph 3(b), (c), and (d).

(5) Estimated Number and Frequency of Meetings

The Committee will meet regularly once a month and at such other times as the Chairman may determine.

(6) Procedures of the Committee

(a) Quorum.

Nine members of the Committee, three each from labor, business, and the public, shall constitute a quorum. Recommendations of the Committee shall require the affirmative vote of eight or more members.

(b) Conflict of Interest.

No member shall participate in the consideration of any matter if such participation would create a conflict of interest under applicable statutes and regulations.

(7) Designated Agency Official

The designated agency official who will attend each meeting of the Committee and perform such other functions as are required by law is the Chairman of the Council (or his designee).

(8) Agency Responsibility for Providing Support

The Council shall provide support for the Committee and, consistent with applicable statutes and regulations, shall furnish all information as may be required by the Committee to carry out its duties and responsibilities. The Office of Pay Monitoring of the Council will furnish staff support for the Committee.

(9) Duration of the Committee

The Committee will continue until September 30, 1980, unless the Council terminates the Committee earlier, or extends it, in accordance with need and the public interest.

(10) Estimated Annual Operating Costs

The Committee may require an expenditure of approximately \$5,000 (one fifth of a man-year) in Fiscal Year 1980.

(11) Approval of Revised Charter

Sally Katzen

Sally Katzen
Advisory Committee Management
Officer

Date Filed: September 28, 1979

PRICE COMMITTEE CHARTER

**COUNCIL ON WAGE AND PRICE STABILITY
REVISED CHARTER
for the
PRICE ADVISORY COMMITTEE**

(1) The Official Designation

This Committee will be designated as the Price Advisory Committee.

(2) The Objectives and Scope of Activities

The function of the Committee is to provide public participation and advice to the Council on Wage and Price Stability (Council) on encouraging anti-inflationary price behavior by private industry, decelerating the rate of inflation, and providing for a fair and equitable distribution of the burden of restraint.

(3) Description of Duties of the Committee

The duties and responsibilities of the Committee are:

- (a) To recommend from time to time modifications, if any, to the price standard;
- (b) To recommend new or revised interpretations of the price standard; and
- (c) To make such other recommendations with respect to the voluntary compliance program that assure fairness and equity, consistent with the overall objective of the anti-inflation program.

(4) Membership

The Committee shall consist of five members of the general public to be selected by the President. The President will also designate one of the members as Chairman.

(5) Estimated Number and Frequency of Meetings

The Committee will meet regularly once a month and at such other times as the Chairman may determine.

(6) Procedures of the Committee

(a) Quorum.

The quorum for conducting business shall be three members of the Committee. Recommendations of the Committee shall require the affirmative vote of three or more members.

(b) Conflict of Interest.

No member shall participate in the consideration of any matter if such participation would create a conflict of interest under applicable statutes and regulations.

(7) Designated Agency Official

The designated agency official, who will attend each meeting of the Committee and perform such other functions as are required by law, is the Chairman of the Council (or his designee).

(8) Agency Responsibility for Providing Support

The Council shall provide support for the Committee and, consistent with applicable statutes and regulations, shall furnish all information as may be required by the Committee to carry out its duties and responsibilities. The Office of Price Monitoring of the Council will furnish staff support for the Committee.

(9) Duration of the Committee

The Committee will continue until September 30, 1980, unless the Council terminates the Committee earlier, or extends it, in accordance with need and the public interest.

(10) Estimated Annual Operating Costs

The Committee may require an expenditure of approximately \$2,500 (one-tenth of a man-year) in Fiscal Year 1980.

(11) Approval of Revised Charter

Sally Katzen

Sally Katzen
Advisory Committee Management
Officer

Date Filed: September 28, 1979

PRICE COMMITTEE CHARTER PREAMBLE

EXECUTIVE OFFICE OF THE PRESIDENT
Council on Wage and Price Stability
Amendment of Charter of Price Advisory Committee

In accordance with Executive Order _____, the Council on Wage and Price Stability is amending the charter of its Price Advisory Committee to enlarge the scope of the previously described Committee (see 44 F.R. 36447 (June 22, 1979)) and to provide greater participation by the public in development and administration of the price standard for the second year of the anti-inflation program. The Price Advisory Committee will advise the Council on developing policies that encourage anti-inflationary price behavior by private industry, that decelerate the rate of inflation, and that provide for fair and equitable distribution of the burden of restraint. Specifically, the Price Advisory Committee will recommend possible modifications to the price standard, and new or revised interpretations of the price standard.

The membership of the Committee will be composed of five representatives of the general public. These members and the Committee's Chairman will be selected by the President.

The Council shall provide support for the Committee and, consistent with applicable statutes and regulations, shall furnish all information as may be required by the Committee to carry out its duties and responsibilities.

For further information contact Sally Katzen, General Counsel, Council on Wage and Price Stability (456-6286).

Date: September 28, 1979



R. Robert Russell
Director, Council on Wage and
Price Stability

SEPTEMBER 28, 1979

FACT SHEET

SECOND-YEAR ANTI-INFLATION PROGRAM

The Council on Wage and Price Stability today released modified pay and price standards for the second year of the anti-inflation program. On the basis of comments received during the public comment period that began August 7, the Council will continue to use the basic structure of the first-year standards, with modifications to correct specific problems and to broaden public support for the program.

Many modifications resulted from suggestions received in response to the Council's Issue Paper. There were more than 600 comments from labor groups, business entities, State and local governments, public interest groups, and concerned individuals. Among proponents and opponents of the standards, there was widespread recognition that the program has clearly helped to restrain inflation. The annual rate of increase in the sectors of the economy to which the basic price deceleration standard applies -- basically the industrial and service sectors -- has been a little above 7 percent, or about 1 percentage point above the rate we would have experienced if all firms in these sectors had been able to adhere to that particular standard.

Following are the most significant changes in the program:

TRIPARITE PAY ADVISORY COMMITTEE

The President will appoint a 15-member Pay Advisory Committee to provide greater public participation and advice to the Council on Wage and Price Stability. It will be composed of five representatives each of the business, labor and general public. The Committee will:

- Submit to the Council by October 31, recommendations for modifications, if any, to the pay standard -- specifically including the basic pay standard, the inflation assumption evaluating COLA clauses, the threshold for low-wage exemption, the treatment of increments and tandem relationships and equitable pay adjustments for non-COLA protected workers. The Committee will also recommend changes, if any, in pay exception and noncompliance decisions of the Council.
- Recommend new or revised interpretations of the pay standard.
- Make other recommendations with respect to voluntary compliance that assure fairness and equity in individual cases and that are consistent with the overall objectives of the anti-inflation program.

Until the Committee submits its recommendations, the first-year standards will remain in effect and the Council will continue its current policy of using gross-inequity exceptions to remedy inequities that have arisen during the first program year.

THE PRICE STANDARD

- Companies are expected to limit their price increases during the two program years beginning October 2, 1978 and ending September 30, 1980, to the percentage price change during the 1976-77 base period.
- The President will appoint five representatives of the general public to a Price Advisory Committee, which will recommend possible modifications to the price standard and new or revised interpretations of it.
- A company whose prices go-up 3.5 percent or less during the second program year will be in compliance with the price standard regardless of its base period price change. (This compares with a 1.5 percent floor in the first year). The upper limit on price increases will be reduced from 9.5 percent to 8.5 percent.
- Measures have been taken to tighten the profit-margin limitation, which applies to companies unable to comply with the basic price standard because they have experienced uncontrollable increases in costs. Growth of dollar profits over the two-year-program will be limited to 13.5 percent. In addition, the special adjustment for firms whose base year profit margin is below the profit margin in the best two of the last 3 years, will be cut in half.
- The insufficient-product-coverage rule, which excused companies that derived more than 75 percent of their revenues from excluded products from the program, has been eliminated because it opened an excessively wide loophole in the program.

At the same time, rules concerning discontinued and custom products have been made more explicit.

-- The base period October 1, 1975 to October 1, 1977, remains in effect.

COUNCIL ON WAGE AND PRICE STABILITY

6 C.F.R. Part 705

ANTI-INFLATIONARY PAY AND PRICE STANDARDS

AGENCY: -Council on Wage and Price Stability

ACTION: Interim Final Standards for the Second Program Year

SUMMARY: On August 10, 1979, the Council published an Issue Paper (44 FR 47232) soliciting public comment on issues that arose with the pay and price standards during the first program year. In view of these comments, which are discussed in detail below, the Council is revising Subparts A, C and D of Part 705 for the second program year. Because the second program year begins on or before October 1 for all companies, the Council is publishing these revisions in interim final form, effective October 1, and public comment is solicited on an expedited basis. Any changes suggested by the comments that are ultimately incorporated in the final standards will be effective as of October 1, but no one who relies on the standards set forth herein will be found out of compliance with the final standards for the interim period.

Subpart B of Part 705, which is the pay standard, is unchanged pending the receipt of recommendations from the reconstituted Pay Advisory Committee. The Council, however, will continue its policy of administering the pay standard to remedy certain inequities that arose during the first program year.

DATES: The effective date of the revised Part 705 is October 1, 1979. Comments must be received on or before October 17, 1979.

ADDRESS: Written comments should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D. C. 20506. TTTAJFKI-ITKA

FOR FURTHER INFORMATION CONTACT:

<u>Industries</u>	<u>Contact Person</u>	<u>Telephone Number</u>
Metals, Machinery & Equipment	Eugene Roberts	456-7784
Food, Agriculture & Trade	Steve Hiemstra	456-7740
Energy, Chemicals, Utilities & Transportation	John Keith	456-7747
Construction & Building Materials	Joseph Lackey	456-7156
Health Insurance & Other Services	Arthur Corazzini	456-7730

ANALYSIS OF COMMENTS AND CHANGES:

SECOND-YEAR PAY AND PRICE STANDARDS

Introduction

The voluntary pay and price standards announced on October 24, 1978, were one element of the President's anti-inflation program. As the first year of the program drew to a close, the Council undertook to evaluate the performance of the standards and to consider various modifications for the second year. The Council's preliminary analysis led to the release, on August 7, 1979, of an Issue Paper: Pay and Price Standards (44 Fed. Reg. 47232, August 10, 1979). Public comments on the questions raised in that paper were due September 5.

The public response to the Issue Paper was encouraging, particularly in view of the relatively short time for filing comments. Over 600 were filed, on behalf of labor groups, business entities, State and local governments, public interest groups, and concerned individuals. While the perspectives differed and the suggestions covered a wide range, there were certain recurrent themes.

Most important, there was widespread recognition among both proponents and opponents of the standards that they have been at least moderately successful in restraining inflation, even in the face of sharp accelerations in food and energy prices. The annual rate of increase in those sectors of the economy to which the basic price deceleration standard is applicable has been a little

above 7 percent, or about one percentage point above the rate anticipated if all firms in these sectors had been able to adhere to that particular standard. The overall rate of increase in pay rates (hourly wages plus private fringe benefits) has also run about one percentage point above the target rate; the actual annual rate during the first program year has been about 8-1/2 percent.

The comments also stressed the importance of continuity and consistency to the continued effectiveness of the standards; many entities have devoted a large amount of time and expense to developing compliance programs, and major changes in the standards could nullify these efforts. At the same time, the comments emphasized certain problems with the first-year standards, most of which were identified in the Issue Paper. Those most prominently mentioned were that: (1) as a result of certain companies' having had abnormally depressed base periods and/or unusual program-year cost increases, the profit-margin exception has been more frequently used than was initially contemplated; and (2) there has been a growing disparity between pay increases of employee units covered by cost-of-living adjustment (COLA) clauses and those not covered. In addition, it was noted that, unlike previous instances in which the government has been involved in developing pay policies, this program has not included a clearly defined role for representatives of labor, management, and the public.

In response to these comments, the President has announced that the Pay Advisory Committee has been reconstituted to provide

greater participation by the public in the anti-inflation program. The Committee, which will be composed of fifteen members -- five representatives of labor, five business representatives, and five representatives of the general public -- will advise the Council on developing policies that encourage anti-inflationary pay behavior by employers and labor, that decelerate the rate of inflation, and that provide for a fair and equitable distribution of the burden of restraint. The amended charter provides that the Committee will recommend new or revised interpretations of the pay standard and changes, if any, in pay exception and noncompliance decisions of the Council. Most importantly, the Committee is charged to submit, by October 31, 1979, its recommendations for modifications, if any, to the pay standard itself, including specifically the basic pay standard, the inflation assumption for evaluating cost-of-living adjustment clauses, the threshold for the low-wage exemption, the treatment of increments and tandem relationships, and the appropriate adjustment for employee units not covered by cost-of-living adjustment clauses. Rather than unduly restrict the options available at the outset to the Committee, we are not now publishing any modifications to the current pay standard. Until the Committee submits its recommendations, the first-year standards (presently found in 705B) remain in effect, and the Council will continue its current policy of using the gross-inequity exception to remedy certain inequities that have arisen during the first program year.

The President has also directed that the Price Advisory Committee be reconstituted with five members representative of the general public. While it will have the same objectives and many of the same responsibilities as the Pay Advisory Committee, it will be asked to work with revised price standard that has been developed by the Council. As will be discussed in more detail below, the revised standard will be cast as a company-specific cumulative standard that limits the increase during the first two program years to the cumulative base-period price change. Semi-annual limitations will also be imposed. An exception for uncontrollable cost increases will again be available, but the resulting profit limitation will be appreciably more restrictive than it was in the first year.

There follows a discussion of the design of the second-year price standard. The issues considered by the Council are numbered as they appeared in the Issue Paper. After each issue, we summarize the public comments relating to that issue, and explain the Council's conclusions. The proposed standards are then reproduced as 705A ("The Price Standard"), 705C ("Modified Price Standards for Selected Industries"), and 705D ("Definitions") (with revised definitions for the price standard and the first-year definitions for the pay standard).

1. The Aggregate Price Standard. The people who commented on this subject generally supported the approach taken by the Council in the first program year, which linked the aggregate price standard to the pay standard. The Council will retain the linkage between the pay and price standards, although the tentativeness of the second-year pay standard makes that nexus less precise.

No changes will be made in the assumptions underlying the linkage. However, the Council's present policy of allowing catch-up adjustments for workers without cost-of-living adjustments who complied with the first-year standard constitutes an effective relaxation in the pay standard. While qualifying workers can expect up to one percentage point automatically, not all workers will qualify. On the other hand, allowances of more than one percentage point may be approved in extraordinary cases. On balance, the Council believes that this relaxation in the pay standard amounts to an average of about one percentage point. Maintenance of the same nexus between the price and pay standards requires that the aggregate price standard in the second year be one percentage point higher than the 5-3/4 percent first-year standard. Any further quantifiable changes of the pay standard during the second program year may be the basis for further changes of the price standard.

For the present, compounding the first-year aggregate price standard of 5-3/4 percent with the second-year's 6-3/4 percent, we obtain a two-year aggregate standard of 13 percent. The two-year cumulative increase over the 1976-77 base period (see issue A.3) in those sectors covered by the price standard was also 13

percent. The two-year company-specific price standard (see issue A.4), therefore, limits the cumulative price increase for each company over the two program years to its cumulative 1976-77 increase.

2. Range of Allowable Price Increases. The first program year's price limitations for individual companies were limited to the range between 1-1/2 percent and 9-1/2 percent, regardless of the company's actual rate of price change during the base-period. Many commentators recognized the inequities created by so wide a range, and there was substantial support for raising the bottom limit on the ground that for many companies the base-period rate of price increase was abnormally low. Only a few comments discussed the upper limit.

For the second year, the Council has decided to narrow the range of stipulated price increases, and to raise the bottom by more than it lowers the top. The lower bound will be raised from 1-1/2 percent to 3-1/2 percent, which should reduce inequities for firms whose markets were depressed (or who showed especial restraint) during the 1976-77 base period, without adversely affecting next year's inflation rate (since most firms with low base-period rates of price change will be constrained now, as they were in the past, much more by market forces than by the price standard). The upper bound will be lowered from 9-1/2 percent to 8-1/2 percent. Such a tightening of the standard is equitable in view of the continued availability of an exception (the profit-limitation) to accommodate

firms subjected to genuinely uncontrollable cost pressures necessitating average price increases greater than 8-1/2 percent. A 3-1/2 to 8-1/2 percent price band for the second year on top of 1-1/2 to 9-1/2 percent for the first, translates into a compound 5-to-19-percent band for the cumulative two-year period.

3. The Choice of the Base Period. The price standard is based on an assumption that there is some continuity over time in the differences among companies and industries in their respective productivity and cost trends, and that their relative price changes in the recent past adequately reflect these differences. For the first program year, 1976-77 was selected as the reference period for measuring these underlying relative cost trends. A more recent base period would have penalized firms that cooperated with the Administration's informal program to restrain price increases (announced January 1978); and an earlier base period would have been less representative because of the 1974-75 recession and the 1973-74 surge in energy prices.

A few companies suggested changing the base period because of circumstances peculiar to their own companies or industries. Most comments, however, argued against a change on the grounds that: (1) the present base is at least as good as any other; (2) a good deal of effort has gone into developing figures for that period; and (3) changing it would impose additional costs and create unnecessary confusion.

The Council has decided to retain the 1976-77 base period for the second program year. Although large increases in the costs of

energy and raw materials since 1977 have sharply altered cost trends for some industries, expanding the base would not do much to make the cost experience more representative, since crude-material prices did not take off dramatically until early 1979, and including the first program year -- in hope of bringing the base more nearly up to date -- would reward companies that raised their prices sharply and penalize those that had practiced restraint. Moreover, as reflected in the comments, since firms have already computed their base-period price changes, retaining the 1976-77 base period minimizes calculation costs. Compliance costs were substantial for some firms in the first year, and increasing those costs would provide a disincentive for compliance with a voluntary program.

4. One-Year vs. Two-Year Standard. The Issue Paper suggested two alternatives for measuring compliance for the second program year -- a one-year or a two-year standard. Most of the commentators supported a two-year cumulative price standard on the ground that this would permit the carrying forward of unused allowable price increases from the first program year. Many of those recommending a one-year standard also argued for a carry-forward provision, thereby essentially endorsing the crucial aspect of a two-year standard.

Since there is overwhelming support for a two-year standard, the Council will cast the price standard as a cumulative two-year price limitation measured from the base quarter in 1978 to the corresponding quarter in 1980. This approach has the virtue of

greater comparability to the 1976-77 base period, since the large increases in crude-material costs experienced in the first program year are likely to subside during the second. Moreover, a two-year standard will reward companies that showed restraint in the first year, or, to put it another way, will eliminate any incentive for firms to use all of their allowable increases in each program year.

One difficulty with the two-year price limitation is that some companies were granted or properly self-administered profit-margin exceptions during the first year and then legitimately increased their prices by more than what would have been allowable under the basic price standard. To enable these companies to return to the price standard, the Council has decided to permit them to exceed the amount that would otherwise be permitted under that standard in the first six months of the second program year, so long as they do not use more than one half of the difference between their actual first-year price increase and their full two-year limitation.

5. Excluded Products. During the first program year, most crude and raw materials were excluded from the program. Most of those who commented on this issue urged no change in these provisions, although isolated commentators suggested also excluding natural gas liquids, forest and lumber products, lead, and zinc. A related issue raised by some is whether new products should continue to be excluded and, if so, how to do the calculations.

Although much of the inflation during the past year has been in the excluded areas, no major changes are proposed for the second program year. As noted in the Issue Paper and reflected in the

comments, it is imprudent to apply price standards to sectors where price increases are the result of supply shortages, and it is difficult to apply rigid standards where sellers lack discretion in setting prices for their goods. Moreover, the current economic slowdown is expected to continue into the second program year, and thus the present price pressures in the excluded sectors are expected to decrease in any event.

To reflect the Council's actual policy during the first program year, two exclusions are being made explicit in the standards -- for non-Federal hospitals (which are monitored by the Department of Health, Education, and Welfare) and health maintenance organizations. Another change to reflect existing policy is more precise definitions for custom products, new products, organized exchange markets, and health maintenance organizations. Finally, in response to the public comments, the standards will provide that new or discontinued and custom products that were excluded during the first program year can also be excluded during the second.

6. Special-Sector Standards. During the first program year, special standards were adopted for several sectors: retailing, wholesaling, food processing, petroleum refining, electric and gas utilities, insurance, some professions, financial institutions, government enterprises, and government-subsidized private companies. In general, the comments recommended that these standards be retained in their present form, with some minor modifications and clarifications.

The Council has decided to keep the basic structure of the wholesale/retail standard unchanged. In the second year, as in the first, wholesale/retail units can increase their percentage gross margins in accordance with their base-period margin trend. As with the price standard, the base year remains the same and the standard is cast as a two-year cumulative limitation. Some commentators suggested that companies with a negative margin trend should be allowed to increase their percentage margins in the second year by some stipulated amount. This suggestion has not been adopted since the standard already allows such companies to maintain a constant percentage margin, and therefore allows dollar gross margins to expand at the same rate as the cost of goods purchased for resale, plus growth in physical volume.

The wholesale/retail standard is being altered to bar the inclusion of significant vertically integrated manufacturing operations under the percentage-gross-margin standard. This change is required because the rationale underlying the creation of this special standard for wholesale/retail trade (i.e., that the prices of goods are determined primarily by the cost of the goods purchased for resale) does not apply to manufacturing operations.

Three different dollar-gross-margin standards are available for food processors, petroleum-refinery operations, and utilities, respectively. In the first program year, these standards limited the growth in gross margins from the base quarter to the last quarter of the program year. Many commentators suggested that

reliance on data for individual quarters is inappropriate because of the volatility of quarterly gross-margin data. In response to these comments, all three standards have been changed -- they will now all compare annual gross margins in the second program year with gross margins in the base year. As with the price standard, the base year remains the same and the standard is cumulative over the two-year period.

All of the dollar gross-margin standards limit growth in dollar margins to no more than 13-1/2 percent (6-1/2 percent compounded), with adjustment for physical volume growth. Some commentators suggested that gross margins be redefined to add items to the cost of goods sold (in particular, food processors suggested excluding energy and packaging costs from their gross margin). This suggestion was rejected because the uncontrollable-cost exception is available for companies experiencing rapid increases in costs of inputs other than those purchased for processing, and, in order to encourage cost-saving input substitution when relative prices change, it is desirable to limit the number of inputs that are eligible for cost passthrough.

During the first year, the food-processors standard imposed explicit 6-month and 9-month limitations on gross-margin growth. The remaining three margin standards contained no explicit intermediate limitations. Experience during the first year indicates that such limitations are desirable (other than for utilities, whose rates are regulated and typically adjusted infrequently) to

permit evaluations of compliance on a timely basis. Accordingly, the second-year standards will contain semi-annual margin limitations. The numerical values of these limitations are derived by assuming a linear movement of the margin from the base-year average to the second-program-year annual limit, with the average values being reached at mid-year.

Again as under the price standard, companies in these sectors that were granted or properly self-administered profit-margin exceptions during the first year are permitted to adjust their gross margins to the second-year limitation in a gradual fashion. However, the Council has decided that companies that wish to remain subject to the profit-margin limitation (as well as those that wish to move to that limitation during the second program year) must demonstrate first that they cannot comply with the gross-margin standard. Some of those commenting on this issue urged that companies be permitted to go directly to the profit margin, but, as noted in the Issue Paper and not disputed in any of the comments, many of them have sought to qualify for the profit-margin limitation for the precise reasons for which the gross-margin standard was designed.

The first-year standards for petroleum-refinery operations allowed dollar margins to increase by 6.5 percent, plus any positive percentage growth in physical volume, and required only input mix adjustments. In order to make the volume adjustment symmetrical, and because there is a good measure of physical volume for this industry, the second-year standard is cast in terms of the gross

margin per barrel of output. Also for symmetry, and to avoid distortions in the gross-margin changes as a result of mix changes, the second-year standard requires both input and output mix adjustments.

In the first-year standard for gas and electric utilities, the last three paragraphs dealt with its administration by public utility commissions. Although the Council remains committed to the approach spelled out in that paragraph, such matters are not appropriately included in the standards themselves and have therefore been deleted. Also, the coverage of this standard has been expanded to include water and sewer utilities.

The professional-fee standard is being extended to the second year in much the same way as the gross margin tests: It is cast as a cumulative limitation by compounding 6-1/2 percent over two years.

The standard for government enterprises and private companies receiving government subsidies also remains substantially unchanged, but one change in the coverage criterion is being made in response to public comment. Specifically, the criterion based upon eligibility to disaggregate has been replaced by a criterion based upon availability of required data. In addition, the section has been expanded to cover nonprofit organizations.

The special-sector standards for the insurance and banking industries run on a calendar-year basis. The Council is still gaining valuable experience with these standards. As a result, the second-year revisions will not be proposed until later this year.

7. The Insufficient-Product-Coverage Rule. In the first program year, a company that derived 75 percent or more of its revenue from excluded products was not covered by the program. This provision was intended to avoid imposing unnecessary compliance burdens on companies for which only a small fraction of total operations would be covered. But the 75-percent rule, combined with the flexibility afforded companies in organizing for compliance purposes, resulted in considerable slippage in the price standard. This occurred because companies were able to disaggregate their operations in such a way that products normally covered by the program, and for which large price increases were taken, were placed in compliance units that qualified for exclusion under the 75-percent rule. Moreover, although the revenue excluded from the program as a result of the rule might be a small percentage of a company's total revenue, it could amount to several hundred million dollars for large firms, a dollar value large enough to warrant monitoring by the Council. For these reasons, the Council has eliminated the 75-percent rule from the second-year program, notwithstanding the fact that most commentators favored its retention.

The Council has also made more explicit its interpretation of the portion of the insufficient-product-coverage rule that applies when revenue from new, discontinued, and custom products, and products exchanged in non-arms-length transactions, account for one third or more of the company's revenue after deducting the other excluded products. In these cases, the company as a whole should

comply with the two-part profit limitation, and, in addition, it should comply with the two-year and intermediate price limitations for nonexcluded products unless the revenue from those products is less than \$50 million. This two-part requirement for compliance does not reflect any change in the Council's policies; the dollar threshold has been inserted, however, in response to public concern that otherwise there would be computational burdens imposed in situations where compliance with the price standard would have only negligible anti-inflationary benefits.

The insufficient-product-coverage rule has been incorporated in a new section, called "Special Situations." This section also sets forth the treatment of acquisitions and divestitures, which is essentially unchanged (but simplified) from what was previously incorporated in the "Definitions" section.

8. Adjusting the Profit-Margin Limitation. In the first-year standards, the profit-margin limitation was intended to constrain price changes to equal (approximately) cost changes in those cases where uncontrollable cost increases precluded compliance with the basic price standard. This limitation consisted of a two-part test:

(a) The profit margin (dollar profit as a percent of sales) in the first year was not to exceed the average profit margin of the best two of the three preceding years.

(b) Dollar-profit growth during the first year was restricted to 6-1/2 percent (plus an adjustment for any positive

growth in physical volume) over base-year profit. Base-year profit was allowed to be either actual profit earned during the base year or base-year sales multiplied by the best-two-out-of-three average profit margin. This choice was provided in recognition of the fact that profit is highly volatile from year to year.

In many cases, the choice of the alternative base-year profit measure allowed firms not only a passthrough of cost surges but also a catch-up from their actual base-year profit margin to their best-two-out-of-three margin. Because of the resulting serious potential for slippage, the Council imposed a condition on some profit-margin exceptions granted or self-administered during the first year. The condition had the effect of tightening up the dollar-profit-growth allowance by constraining dollar profits to an amount consistent with a passthrough of cost changes per unit of output from the base quarter to the fourth quarter of the program year. At the same time, it based allowable dollar-profit growth on a single quarter that might not have accurately reflected the firm's "normal" profit position.

The comments did not provide any consensus on how the limitation should be modified, if at all. Based on the Council's experience, the second-year standard will continue to provide a profit limitation in situations where companies cannot calculate their program-year price change or cannot satisfy the price limitations due to uncontrollable increases in the prices of goods and services they buy. If, however, a company cannot calculate its base-period price change

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 706

PROCEDURAL RULES

AGENCY: Council on Wage and Price Stability

ACTION: Interim Final Procedural Rules for the Second Program
Year

SUMMARY: The Council's rules in 6 CFR Part 706 are being revised to simplify and streamline the procedures for submitting materials to the Council, for requesting approval of exceptions to the pay and price standards, and for determining whether there is noncompliance with those standards.

On August 17, 1979, the Council published in the Federal Register (44 FR 48632) proposed revised procedures and solicited public comment, not only on those procedures, but also on all aspects of the administration of the standards. After considering the comments received, the procedures have been further modified and are being published in interim final form pending publication of final substantive standards. The changes from the procedures previously published in the Federal Register are explained in the narrative below.

DATES: The effective date of the revised Part 706 is October 1, 1979. Comments on these interim procedures must be received on or before October 17, 1979.

ADDRESS: Comments should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Jane Campana (202)456-6210.

ANALYSIS OF COMMENTS AND CHANGES:

SECOND-YEAR PROCEDURAL RULES

Introduction

In a separate document released today, the Council has set forth its conclusions about the substantive aspects of the second-year voluntary pay and price standards. The procedural aspects of the program have also been re-evaluated. The Council published in the Federal Register on August 17, 1979, proposed revisions of its rules, on the basis of its own experiences during the first year as well as suggestions offered during the year by those affected by the program. At the same time, we solicited public comments by September 17 on all aspects of the administration of the standards.

Over 40 comments were filed, most of which provided detailed and thoughtful analyses of our procedures. Although they included some criticism of the Council's early administration of the standards, their general tenor was that the Council's practices and decision-making processes had improved over the course of the year.

Some of the comments offered specific recommendations for further changes, many of which we have adopted. These will be discussed below. Two general comments, however, deserve special emphasis: (1) that the Council should explain more fully the basis for its decisions; and (2) that the Council should more frequently (or systematically) issue general interpretations of the standards. These suggestions are good ones, and, in the second program year,

the Council will continue to try to improve its performance in these respects. It should be recognized, however, that the factual basis for particular decisions (or even for interpretations) are usually confidential, and therefore it is often difficult to explain adequately the predicate for a particular result. Nonetheless, we expect to provide more guidance during the second program year through more effective use of questions and answers, which will demonstrate how general principles apply to particular (perhaps hypothetical) facts. To help in this effort, we encourage interested persons to submit written questions to the Council, along with proposed answers. We will publish the ones that appear to have general application.

There follows a detailed discussion of the revisions to the proposed procedural rules, and the rules themselves. These rules do not reflect the future roles of the Advisory Committees announced today. When these Committees develop formal operating procedures, they will be published in proposed form and public comment will be solicited. Any resulting rules will ultimately be incorporated in this Part 706. In addition, a new Part 707, specifying data and other information to be included in reports and exception requests, will be published for public comment in mid-October.

Subpart A -- General Provisions

One comment noted that the signature requirement for submissions to the Council differs from the one on the periodic reporting forms, PM-1 and PAY-1. In response, we have modified

the language of Section 706.5 to be consistent with Form PAY-1; Form PM-1 will be similarly modified.

Several comments indicated uncertainty as to whether persons should file multiple copies of documents. In order to minimize administrative burdens, we have decided that only a single copy of any document need be filed, unless it contains confidential information. In that event, Section 706.6 explicitly states that a duplicate copy from which the confidential information is expurgated should be submitted. This enables the Council to satisfy its public disclosure requirements without breaching the assurance of confidentiality for certain data.

Several persons asked whether, under Section 706.8, the Council intends to count only business days in computing time. The plain meaning of this section is that only business days are counted, unless another section specifically states that the time is to be counted in calendar days. Accordingly, unless otherwise specified, the three additional days added to any time period when notice of the Council's action is sent by mail are business days only.

Other comments suggested that the time period begin running on receipt of notice of the Council's action, rather than from the date it was taken. The date of the Council's action is the date of decision or notice, or the date of the cover letter, whichever is later. The Council's decisions and notices are generally sent the day they are dated. While a rule pegged to the receipt date might be preferable when there are unusual delays in the mail,

it would be difficult to administer and unusual delays of this kind may serve as a ground for a request for extension of time.

With respect to extensions of time, Section 706.9 will be modified in response to the public comments to state explicitly that extensions should be addressed to, and will be granted by, the Office of the General Counsel. In addition, the General Counsel's Office will continue its practice of granting extensions over the telephone, with confirmation in writing by the person making the request.

Subpart B -- Reports and Notifications

The Council has attempted to respond to the public comments on company-organization submissions by including a new paragraph (a) that makes explicit that a company may reorganize its compliance units and employee units at the outset of the second year, but not thereafter. As noted in the discussion of the design of the price standard (issue A.9), an initial opportunity to reorganize is necessary to remedy changed circumstances or past errors; but subsequent reorganizations might well be used to evade the standards and are thus not permitted.

The most critical comments concerned the provision of Section 706.21(b), which requested a statement of assurance that a company intends to comply with the pay standard. Most commentators thought the request was unnecessary; some believed it to be inconsistent with the spirit of a voluntary program; others said it was an affront to employees. On reflection, the Council agrees that

the request is unnecessary, and has deleted it. In that same section, the proposed request that a company state its method of computation for pay compliance has also been deleted, because it duplicates information requested on Form PAY-1.

With respect to periodic submissions -- specifically Forms PM-1 and PAY-1 -- the Council has made certain changes in response to the public comments, but it has rejected others. Specifically, we cannot accept the suggestion that there be no quarterly Form PM-1 reports since such data are necessary for the effective monitoring of price compliance. On the other hand, we have extended the time for filing these forms to 45 calendar days after the end of each quarter and 60 calendar days after the last quarter of the year. On the pay side, many comments objected to the increase in the number of units required to report: as drafted, the rules would have required a small compliance unit that is part of a large company to file Form PAY-1. In response to these comments, and to reduce reporting burdens, Section 706.22 has been redrafted to apply only to compliance units of 5,000 or more employees. Several comments also opposed the semi-annual submission of Form PAY-1. Again, in response to the expressed concerns, this section has been modified to call for prospective data by March 31, 1980, and actual program-year data within 60 calendar days after the end of the program year. Although we thus still contemplate two filings, the first simply calls for prospective data, which should not pose any additional burden on complying companies, who must make such projections in

any event. So too, we are not extending the time for filing year-end data to 90 days (even though it would permit more precise calculation of some executive bonus plans) since, as a general rule, a 60-calendar-day period should be adequate; those in any unusual situations can request an extension of time.

Finally most of the comments on Section 706.23, relating to submissions by State and local governments, suggested that there be a dollar threshold for reporting by government enterprises such as universities, water districts, etc." It was noted that requiring every government enterprise to report could create a monumental burden, not only on these enterprises, but also on the Council. These comments are well taken and, accordingly, we have decided to treat these entities as commercial entities are treated. In this connection, it should be noted that government enterprises are included in the definition of "company" in Subpart 705D, and therefore those with \$250 million or more in net sales or revenues would be subject to the same periodic price-reporting requirements as commercial entities; similarly, those with 5,000 or more employees would be subject to the same pay-reporting requirements as commercial entities.

Subpart C -- Requests for Approval of Exceptions

Most of the comments on Section 706.31 requested some guidance on whether first-year exceptions continue automatically into the second program year or whether a new request for an exception must be filed. A new paragraph (d) has been added to clarify the procedure: a compliance unit should submit a new request, but it need

not resubmit data already on file with the Council. On the other hand, we have rejected the suggestions that all exceptions be self-administered or that the threshold for requesting them be raised. We believe that the opportunity for us to review exception requests is an important element of the program; this review not only provides a check on companies' compliance but also contributes to our understanding of the program's effect on differently situated companies. Moreover, Section 706.32 has been modified to make clear that entities self-administering exceptions are expected to retain supporting documentation. The Council will continue to check their compliance and will not permit companies to use self-administration of an exception as a defense, unless it is supported by contemporaneous documentation.

With respect to the provisions for discretionary approvals of exceptions in paragraph (b), some of the comments asked what constitutes "good cause." Earlier Council statements have indicated that good cause would exist, for example, when a company has reached a labor settlement contingent on a determination of compliance or when uncertainty as to the application of the standards would have serious adverse effects on a company. Any attempt to provide a more specific definition would, we believe, be counterproductive, in that it might have the effect of foreclosing other equally meritorious, but unforeseen, situations.

In response to the comments, we have increased the page limitation in Section 706.33 to 15, exclusive of supporting documentation. We have not, however, adopted the suggestion that a conference should be scheduled before an exception is denied. On the other hand, a new paragraph (d) has been added to Section 706.31 to make clear that a request for a conference may be made at any time.

A significant number of comments recommended that companies be allowed to self-administer an exception if the Council has not acted within a certain period of time, citing the urgency of most requests and the pecuniary loss that could result from delay. In response to these comments, a new paragraph (c) has been added to Section 706.33, which provides a procedure for requesting an expedited decision. We recognize that our delay in processing exception requests was a problem in the first program year. We are committed to proceeding more expeditiously during the second year. Nonetheless, because there may be a very large number of requests filed at the beginning of the program year, it would not be prudent to set a strict deadline for Council action. This is particularly so since, during the first year, a significant contributor to the delay was the fact that many of the submissions did not contain all of the data necessary for processing the request.

Section 706.34, relating to notice to interested persons, has been revised to eliminate the requirement that companies serve unions (or employee units) and that unions (or employee units) serve companies with copies of pending requests. This request, while serving a useful function, adds unduly to the administrative burden of the program.

Comments on Section 706.35 urged the Council to notify a company of the purpose of any investigation; the suggestion is a good one and we have adopted it. Another comment suggested that any deadline for submission of information be reasonable; we have added language to this effect.

The statement in Section 706.36 that the Council may condition its approval of an exception in any manner that it considers appropriate was the focus of several strongly worded objections. Those commenting were concerned specifically about the Council's practice in the first program year of imposing a fourth-quarter condition in grants of profit-margin exceptions. The merits of that particular condition need not be debated for the second program year, since the standards themselves have been redrafted to achieve essentially the same objective. As a general proposition, however, we believe that the Council may impose any condition that furthers the objectives of the program, and we have modified the language of 706.37(b) accordingly.

A question has been raised as to whether companies that are denied an exception may submit additional exception requests based on the same facts or arguments. A new paragraph (c) of Section 706.37 states that, for the second program year, the issues raised at the time of the initial decision may not be resubmitted, but that new requests may be filed based upon new facts.

Subpart D -- Special Investigations

This Subpart received the fewest comments, and the only substantive change has been the addition of language to the effect that any request for information will be accompanied by a statement of the purpose of the request and the nature of the Council's need for the information.

Subpart E -- Determination of Noncompliance

The principal issue discussed in the comments on this Subpart was the Council's policy with respect to the release of the names of recipients of Notices of Probable Noncompliance. It was argued that this practice can seriously, irremediably and unfairly damage a company's good name. Some recommended that the Council not publicize names at all; others recommended that there be no publicity unless there is concrete evidence of noncompliance. Because of these concerns, the Council will continue its policy, adopted in the latter part of the first year, of not publicizing those who have received Notices unless there are compelling reasons to do so.

With respect to Section 706.52, "Notice and Reply," several comments pointed out the difficulty of serving notice on employee units. Here, as in the Subpart dealing with exceptions (and for the same reasons), the requirement has been eliminated.

Several comments stated that a conference should be provided routinely before a Notice of Probable Noncompliance is issued.

Section 706.52 provides that any recipient of a Notice may request a conference and that, if requested, the Council will arrange for one at a suitable time and location. No additional language is

required. So too, we are not extending the time in which to respond to a Notice of Probable Noncompliance; again, extensions are provided in those instances where good cause is shown.

Subpart F -- The List of Noncompliers

Only a few comments discussed this Subpart, urging that the Council afford longer time periods or provide a hearing and/or reconsideration as a matter of right. We have adopted neither of these suggestions -- the former for the reasons set forth above; the latter because it would unduly encumber the process without providing any appreciable advantage in terms of developing a full and fair record for decision-making.

Subpart G -- Reconsideration

We have reordered Sections 706.71 and 706.72 to clarify the process of requesting reconsideration. Once again, despite recommendations to the contrary, we have not extended the time period set forth in this Subpart. As in the case of exception requests and Notices of Probable Noncompliance, we have deleted the requirement that specified persons be served with copies of the request. We have also added a clause explicitly stating that facts and arguments not presented at the time of the initial decision may be presented on reconsideration, but that repeated requests based on essentially the same facts and arguments are not permitted.

Some comments suggested that both a hearing and a conference be provided upon request. Our procedures do precisely that, and

We have changed the wording slightly to make this clear. Others suggested that hearings and/or conferences automatically be held in the case of every request for reconsideration. We see no point in doing so, since our rules provide for hearings and conferences on request, and in many instances companies prefer to dispense with the formalities of a time-consuming hearing and opt, instead, for a more informal conference with Council officials.

Several other comments suggested various changes in the conduct of the hearings. Some suggested that issues of law and/or policy be made legitimate matters of contention in the hearings and that any restraints by the Hearing Officer on the facts or arguments presented be eliminated. This suggestion was rejected because it would unduly burden the process to permit the introduction of matters that are irrelevant or inappropriate for a Hearing Officer to decide.

Others called for specific procedures for each and every step in the process, including specification of the qualifications of the Hearing Officer. We believe the objectives of the program are better served by stressing the general principles of due process, leaving the details to be worked out on a case-by-case basis.

One suggestion that we believe is worthwhile is that the report of the Hearing Officer be made available to the party who requested the hearing, and Section 706.74 has been so amended.

Accordingly, 6 CFR Part 706 is revised on an interim basis to read as follows:

Part 706 Procedural Rules

Subpart A - General Provisions

- 706.1 Purpose and scope.
- 706.2 Definitions.
- 706.3 Appearances before the Council.
- 706.4 Actions by the Council.
- 706.5 Submission of documents.
- 706.6 Confidential material.
- 706.7 Service of documents.
- 706.8 Computation of time.
- 706.9 Extension of time.
- 706.10 Consolidations.

Subpart B - Reports and Notifications

- 706.20 Purpose and scope.
- 706.21 Submissions on company organization for purposes of compliance.
- 706.22 Periodic data submissions.
- 706.23 Submissions by State and local governments.

Subpart C - Requests for Approval of Exceptions

- 706.30 Purpose and scope.
- 706.31 Who should request approval.
- 706.32 Grounds for exceptions.
- 706.33 Contents of the request.

- 706.34 Notice to interested persons.
- 706.35 Additional information.
- 706.36 Conferences.
- 706.37 Decision.

Subpart D - Special Investigations

- 706.40 Purpose and scope.
- 706.41 Investigational policy.
- 706.42 Requests for information.

Subpart E - Determination of Noncompliance

- 706.50 Purpose and scope.
- 706.51 Notice and reply.
- 706.52 Decision.

Subpart F - The List of Noncompliers

- 706.60 Purpose and scope.
- 706.61 Listing of noncompliers.
- 706.62 Removal from list of noncompliers.

Subpart G - Reconsideration

- 706.70 Purpose and scope.
- 706.71 General.
- 706.72 Contents of the request.
- 706.73 Conference on reconsideration.
- 706.74 Hearing on reconsideration.
- 706.75 Decision.

706.76 Stays pending reconsideration.

AUTHORITY: Council on Wage and Price Stability Act, P.L. 93-387 (August 24, 1974), as amended by P.L. 94-78 (August 9, 1975) and P.L. 95-121 (October 5, 1977), 12 U.S.C. 1904 note; as last amended by P.L. 96-10 (May 10, 1979); E.O. 12092 (November 3, 1978); E.O. _____ (September 28, 1979).

because of a lack of historical records, it will be assigned a two-year price limitation of 10 percent. (If the company is eligible for a gross-margin standard, the Council may provide a constructive gross-margin limitation.)

In applying the profit limitation, the Council will retain the average best-two-out-of-three base for the profit-margin limitation and will impose a 13.5-percent (6.5 percent compounded) limit on dollar profit growth over the two program years. The fourth-quarter condition used during the first program year will not be continued. Instead, to reduce the potential for slippage, the amount of catch-up of dollar profits will be limited to 50 percent. This will be achieved by defining base-year profit as (1) actual base-year profit or (2) the average of actual base-year profit and the multiple of base-year revenue and the best-two-out-of-three margin (rather than the three-out-of-three margin mentioned in the Issue Paper).

In response to numerous public comments, the Council will consider in individual cases adjusting price limitations for particularly large increases in costs of raw materials and other particular inputs that the Council may specify, so as to reduce the pressures on companies with such cost increases to move to the profit limitation.

9. Company Organization. At the beginning of the first program year, companies were given the option of disaggregating their operations for compliance purposes (i.e., of reporting as one or more distinct compliance units) if certain accounting criteria were satisfied. The disaggregated reporting "company" as defined in the

first year will be called a "compliance unit" in the standards for the second year.

Most comments supported the proposition that companies should be permitted to reorganize for compliance purposes for the second program year. In spite of the fact that, in the first year, some companies organized themselves to take advantage of the various available exceptions and exemptions, the Council has decided to allow companies to reorganize for compliance purposes at the outset of the second program year but not thereafter. Changes within companies, changes in the economic circumstances of industries within which various parts of a large company may operate, simple mistakes in past choices of compliance structure, and modifications in the standards justify affording companies full latitude for reorganization. The Council does not believe that this will result in significant slippage because companies are not allowed to reorganize during the program year. This policy will be reflected in the Council's procedural rules.

10. A Product-Specific vs. A Company-Specific Price Standard.

Because the price standard establishes a limitation based on a company-wide average price increase and does not set limits on price increases for individual items, the standard is not easily monitored by consumers. Throughout the first program year, various groups voiced opposition to the company-wide standard for this reason and requested product-specific price standards. All but one of the public comments, however, strongly supported retention of the

company-wide standard. For the reasons set forth in the Issue Paper, the Council has decided to continue with the current approach. The Council is, however, pursuing the possibility of requesting companies to post base-period price levels of selected products.

11. Quarterly Limitations. The first-year standards included 6-month and 9-month limitations on average price increases in order to deter companies from taking all of their allowable price increase early in the program year. The Council contemplated adopting quarterly limitations in the second year for the same reason. The comments have, however, expressed vigorous opposition to quarterly limits in general and to a first-quarter test in particular. The principal argument is that such limits increase compliance burdens for those businesses whose pricing and production schedules extend beyond a quarter's length. The difficulty with a first-quarter test in particular is that, for many businesses, first-quarter pricing decisions have already been made on the assumption that, as in the first year, there would not be any difference between the first- and second-quarter limits in the second-year standards.

In response to these sentiments, the Council is not imposing different first- and second-quarter price limitations. In other words, compliance does not require that companies implement their price increases gradually, satisfying a first-quarter limitation that is more restrictive than the second-quarter limitation. On the other hand, the Council could not countenance the absence of any restrictions on first-quarter price increases. For this reason,

the standard is cast as a semi-annual limitation to be met on a quarterly basis. However, if price developments during the first quarter suggest the need for more restrictive quarterly limitations, the third quarter limitation may be adjusted downward.

Finally, the Council is eliminating the first-year requirement that companies that justify exceeding quarterly limits on the grounds of seasonality must comply not only with the price standard for the year but also with the profit limitation. The comments suggest, and we agree, that the profit restriction in this context is an unnecessary restraint in view of its limited anti-inflationary benefit.

* * * * *

Each of these changes has been incorporated in the standard, and editorial changes have been made to clarify the Council's interpretations. In addition the proposed language of the standard reflects the decision announced August 27 to begin a twelve-month second program year on October 1, 1979. As we explained earlier, a majority of the comments received on this issue preferred the present October 1 program year, in large part because companies have established compliance plans based on the present system. It was felt that a change at this time would cause unnecessary confusion and additional expense.

Accordingly, Subparts A, C, and D of Part 705, Title 6 CFR are adopted on an interim basis to read as follows:

Part 705A The Price Standard

- 705A-1 Compliance with the price standard.
 - 705A-2 The two-year price limitation.
 - 705A-3 Intermediate price limitations.
 - 705A-4 Exclusions.
 - 705A-5 Special situations.
 - 705A-6 Exceptions.
-
- 705C-1 General applicability of modified price standards.
 - 705C-2 Exceptions.
 - 705C-3 Percentage-gross-margin standard for wholesale and retail trade.
 - 705C-4 Gross-margin standard for food manufacturing and processing.
 - 705C-5 Gross-margin standard for petroleum-refinery operations.
 - 705C-6 Gross-margin standard for electric, gas, and water utilities.
 - 705C-7 Professional-fee standard.
 - 705C-8 Federal, state, and local government enterprises, private nonprofit enterprises, and government-subsidized private companies.
 - 705C-9 Price standard for medical and dental insurance providers.
 - 705C-10 Price standard for providers of insurance other than medical and dental insurance.

705C-11 Standard for financial institutions.

705D -- Definitions

AUTHORITY: Council on Wage and Price Stability Act, P.L. 93-387 (August 24, 1974), as amended by P.L. 94-78 (August 9, 1975) and P.L. 95-121 (October 5, 1977), 12 U.S.C. 1904 note; as last amended by P.L. 96-10 (May 10, 1979); E.O. 12092 (November 3, 1978); E.O. _____ (September 28, 1979).

705A THE PRICE STANDARD

705A-1 Compliance with the Price Standard.

A compliance unit complies with the price standard if and only if it satisfies the two-year and the intermediate price limitations in 705A-2 and 705A-3, subject to the applicable provisions of 705A-4, 705A-5, and 705A-6.

705A-2 The Two-Year Price Limitation.

A compliance unit complies with the two-year price limitation if its two-year price change is no greater than (1) the base-period price change or (2) 19 percent, whichever is less. However, a compliance unit will be in compliance with the two-year price limitation regardless of its base-period price change if its two-year price change is 5 percent or less.

(a) The base-period price change is the sales-weighted average of the percentage changes of a compliance unit's product prices from the last calendar or complete fiscal quarter of 1975 to the corresponding quarter of 1977.

(b) If a compliance unit cannot compute its base-period price change because of a lack of historical records, it is assigned a two-year price limitation of 10 percent.

(c) The two-year price change is the sales-weighted average of the percentage changes of a compliance unit's product prices from the last calendar or fiscal quarter completed before October 2, 1978, to the corresponding quarter of 1980.

705A-3 Intermediate Price Limitations.

(a) A compliance unit complies with the 18-month price limitation if the 18-month price change does not exceed three quarters of the two-year price limitation.

The 18-month price change is the sales-weighted average of the percentage changes of a compliance unit's product prices from the base quarter to the second quarter of the second program year.

(b) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it complies with the 18-month price limitation if the 18-month price change does not exceed the two-year price limitation less one half of the difference between the two-year price limitation and the price change realized during the first program year.

(c) The sales-weighted average price change from the base quarter to the first quarter of the second program year should not exceed the 18-month price limitation in

(a) or, if applicable, in (b). The sales-weighted average

price change from the base quarter to the third quarter of the second program year should not exceed the two-year price limitation.

(d) A compliance unit may exceed the intermediate price limitations if it can demonstrate that its price increases:

- (1) are justified on grounds of seasonal variations in business operations, historical business practices, or unusual business conditions; and
- (2) will not prevent compliance with the two-year price limitation by the end of the second program year.

705A-4 Exclusions.

(a) Producers of goods and services in the following categories should exclude the revenue from the sale of those goods or services from the calculation of the base-period price change and the two-year and intermediate price changes:

- (1) Agricultural, fishing, forestry, and mineral products included in the 1972 Standard Industrial Classification Major Groups 01, 02, 08 (except 085), 09, 10 (except 108), 11 (except 1112), 12 (except 1213), 13 (except 1321 and 138), and 14 (except 148).
- (2) Recyclable scrap materials, including, but not limited to, ferrous and nonferrous metal scrap, wastepaper, textile waste, scrap rubber, scrap plastics, and glass cullet.

(3) Commodities whose historical and current price changes are closely tied to price movements in an organized exchange market for that commodity, either domestic or foreign, including, but not necessarily limited to, gold, silver, oilseeds, and oil and protein meals.

(4) Interest received.

(5) Exports.

(6) Hospital services subject to price monitoring by the Department of Health, Education, and Welfare.

(7) Services of health maintenance organizations.

(8) Products exchanged in other than arms-length transactions.

(9) New or discontinued products, except that products that were sold by the compliance unit throughout the base period or throughout the first two program years should be included in the respective calculations of the price changes for those periods.

(10) Custom products, except that custom products produced and delivered throughout the base period or throughout the first two program years should be included in the respective calculations of the price changes for those periods.

(b) Deliveries during the two program years at prices determined by contracts in effect before October 2, 1978, should be excluded from the calculation of the two-year and

intermediate price changes. This exclusion applies only if the contract clearly specifies the final transaction prices or contains a nondiscretionary formula for determining the final transaction prices (i.e., only if there is no seller discretion to adjust those prices).

705A-5 Special Situations.

(a) Insufficient Product Coverage.

If products excluded under 705A-4(a)(8) through (10) account for one-third or more of a compliance unit's total revenue for the first two program years minus revenue from the sale of products excluded under 705A-4(a)(1) through (7) and 705A-4(b), the compliance unit should

(i) comply with the two-year and intermediate price limitations in 705A-2 and 705A-3 for those products not excluded under 705A-4, unless those products account for less than \$50 million in sales during each of the first two program years, and

(ii) comply with the profit limitation in 705A-6(a) for the compliance unit as a whole.

(b) Acquisitions.

A company acquired after September 30, 1975, may be combined with the acquiring company or may be treated as a separate compliance unit.

(c) Divestitures.

A company should exclude the data for any divested entity

from all calculations.

705A-6 Exceptions.

(a) Inability to Compute and Uncontrollable Costs.

If a compliance unit cannot calculate its two-year and intermediate price changes or cannot comply with the two-year or intermediate price limitations because of uncontrollable increases in the prices of the goods and services that it buys, it should satisfy the following two-part profit limitation:

(1) The profit margin in the second program year should not exceed the sales-weighted average profit margin for the best two of the compliance unit's last three fiscal years completed before October 2, 1978. In addition, the profit margin during each quarter of the second program year should not exceed the same sales-weighted average unless it can be demonstrated that any excess is consistent with an explicit plan, based on reasonable projections of economic conditions, to achieve compliance for the second program year as a whole.

(2) Second-program-year profit should not exceed base-year profit by more than 13.5 percent plus any positive percentage growth in physical volume from the base year to the second program year. Base-year profit can be either (i) actual base-year profit or (ii) base-year revenue times the average of the base-year profit margin and the

average profit margin determined in subparagraph (1) above.

(b) Undue Hardship and Gross Inequity.

The Council may except a compliance unit from, or make appropriate adjustments to, the price limitations or the profit limitation if their application would cause undue hardship or gross inequity.

(1) An undue hardship exists if application of the the price standards would seriously threaten the company's financial viability.

(2) A gross inequity is any situation that, in the Council's judgment, is manifestly unfair.

705C-1 General Applicability of Modified Price Standards.

This Subpart provides modified price standards for industries for which the price standard in 705A may be inappropriate.

705C-2 Exceptions.

(a) Except as noted in the following sections, a compliance unit eligible to apply a modified price standard may alternatively comply with the two-part profit limitation in 705A-6(a) if and only if it can demonstrate that: (1) it cannot make the calculations required for the modified standard; or (2) as a result of uncontrollable cost increases, compliance with the modified standard would cause a significant deterioration of the compliance unit's profit position.

(b) The Council may except a compliance unit from, or make appropriate adjustments to, the relevant modified standard if application of the relevant modified price standard would cause undue hardship or gross inequity within the meaning of 705A-6(b).

705C-3 Percentage-Gross-Margin Standard for Wholesale and Retail Trade.

(a) Eligibility.

(i) A compliance unit in the wholesale and retail trade industries (1972 Standard Industrial Classification Major Groups 50 through 59, including food service operations but excluding manufacturing sales branches and offices) is eligible for a percentage-gross-margin standard as an alternative to the price standard in 705A.

(ii) Notwithstanding the definition of "compliance unit" in Subpart 705D, manufacturing and processing operations of a compliance unit applying the percentage-gross-margin limitation must be treated as separate compliance units under 705A or the appropriate modified standard in 705C if the base-year sales of these operations exceeded either \$50 million or 10 percent of the 1978 sales of the wholesale and/or retail operations. The transfer-price policy of vertically integrated companies must be consistent over time.

(b) Definition.

(i) The gross margin is net sales (gross sales adjusted for discounts, returns coupons, and other allowances) less the cost of goods sold. For manufacturing or processing operations that are allowed to be aggregated with wholesale and retail operations, the gross margin is net sales less the cost of material inputs used in the manufacturing or processing operations.

(ii) The percentage gross margin is the gross margin divided by net sales.

(iii) The margin trend is the percentage change of the percentage gross margin between the base year and the corresponding year prior to October 2, 1976. If this percentage change is negative, then the margin trend is zero.

(iv) In computing its percentage gross margin, a compliance unit may adjust for changes in the composition of sales at any reasonable level of aggregation, such as division, department, product category, or individual product level, but such adjustments must be made consistently.

(c) Annual Percentage-Gross-Margin Limitation. A compliance unit complies with the annual percentage-gross-margin limitation if its percentage gross margin in the second program year does not exceed its percentage gross margin during the base year plus its margin trend.

(d) Intermediate Percentage-Gross-Margin Limitations. A compliance unit complies with the intermediate percentage-gross-margin limitations if

(i) its percentage gross margin in each of the first and second quarters of the second program year does not exceed its base-year percentage gross margin by more than 87.5 percent of its margin trend, and

(ii) its percentage gross margin in each of the third and fourth quarters of the second program year does not exceed its base-year percentage gross margin by more than 112.5 percent of its margin trend.

(e) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it need not comply with the intermediate

limitations in (d). However, during the second program year, any percentage-gross-margin increases allowable under (c) should be implemented in equal quarterly increments.

(f) A compliance unit may exceed the intermediate limitations in (d) if it can demonstrate that its percentage-gross-margin increases

(i) are justified on grounds of seasonal variations in business operations, historical business practices, or unusual business conditions, and

(ii) will not prevent compliance with the annual limitation in (c).

(g) Inability to Compute. If a compliance unit is unable to compute its percentage-gross-margin limitation because of a lack of historical data, the Council may assign it a gross-margin limitation.

705C-4 Gross-Margin Standard for Food Manufacturing and Processing.

(a) Eligibility.

A compliance unit in the food manufacturing and processing industries (1972 Standard Industrial Classification Major Group 20, excluding 2082, 2083, 2084, and 2085; i.e., including nonalcoholic but excluding alcoholic beverage industries) is eligible for a gross-margin standard as an alternative to the price standard in 705A.

(b) Definitions.

(i) The gross margin is equal to net sales (gross sales adjusted for discounts, returns, coupons, and other allowances) less the cost of food products used in food manufacturing and processing.

(ii) In computing its gross margin, a compliance unit may adjust for changes in the composition of sales at any reasonable level of aggregation, such as division, department, product category, or individual product level, but such adjustments must be made consistently.

(c) Annual Gross-Margin Limitation. A compliance unit complies with the annual gross-margin limitation if its gross margin in the second program year does not exceed its base-year gross margin by more than 13.5 percent plus any positive percentage growth in physical volume over base-year volume.

(d) Intermediate Gross-Margin Limitations. A compliance unit complies with the intermediate gross-margin limitations if

(i) its gross margin in each of the first and second quarters of the second program year does not exceed one-fourth of its base-year gross margin by more than 12 percent plus any positive percentage growth in physical volume over the base-year quarterly average volume, and

(ii) its gross margin in each of the third and fourth quarters of the second program year does not exceed one-fourth of its base-year gross margin by more than 15 percent plus any positive percentage growth in physical volume over the base-year quarterly average volume.

(e) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it need not comply with the intermediate gross-margin limitations in (d). However, during the second program year, any gross-margin increases allowable under (c) should be implemented in equal quarterly increments.

(f) A compliance unit may exceed the intermediate gross-margin limitations in (d) if it can demonstrate that increases in excess of these limitations

(i) are justified on the grounds of seasonal variations in business operations, historical business practices, or unusual business conditions, and

(ii) will not prevent compliance with the annual gross-margin limitation in (c).

(g) Physical Volume Increases. Physical volume increases to be used in justifying increases in gross margins may be computed by deflating revenues using a measure of price increases as the deflator, or by computing changes in units or tonnage sold when such units are revenue weighted by major product categories.

(h) Inability to Compute. If a compliance unit is unable to compute its gross-margin limitation because of a lack of historical data, the Council may assign a gross-margin limitation.

705C-5 Gross-Margin Standard for Petroleum-Refinery Operations.

(a) Eligibility. Petroleum refiners are eligible for a gross-margin standard as an alternative to the price standard in 705A for their refinery operations.

(b) Definitions.

(1) Petroleum refiners are "refiners" as defined in Section 212.31 of Department of Energy regulations, 10 CFR 212.31 (in brief, a firm that refines, blends, or substantially changes crude oil and certain petroleum products, and sells its output to resellers, retailers, or ultimate consumers).

(2) Notwithstanding the definition of "compliance unit" in 705D, a petroleum refiner may disaggregate its operations into the following three groups and treat each as a separate compliance unit:

(i) petroleum-refinery operations (including distribution and marketing of petroleum products);

(ii) crude-oil and natural-gas production to the point of first sale or transfer; and

(iii) all other operations.

(3) For petroleum-refinery operations, the gross margin is net sales (gross sales adjusted for discounts, rebates, and other allowances) less the cost of petroleum inputs associated with those sales, including crude oil, feedstock, blendstock, finished petroleum products purchased for resale, natural gas, natural gas liquids, and natural-gas-liquid products. The gross margin must be adjusted to remove the effects of changes in the mix of inputs and outputs (for example, a shift to greater utilization of crude and away from blends or a shift away from gasoline to middle distillates).

(c) Annual Gross-Margin Limitation. A petroleum-refinery operation complies with the annual gross-margin limitation if its gross margin per barrel in the second program year does not exceed its gross margin per barrel in the base year by more than 13.5 percent.

(d) Intermediate Gross-Margin Limitations. A petroleum-refinery operation complies with the intermediate gross-margin limitations if

(1) its gross margin per barrel in each of the first and second quarters of the second program year does not exceed its gross margin per barrel in the base year by more than 12 percent, and

(2) its gross margin per barrel in each of the third and fourth quarters of the second program year does not exceed its gross margin per barrel in the base year by more than 15 percent.

(e) If a compliance unit was granted or properly self-administered a profit-margin exception during the first program year, it need not comply with the intermediate gross-margin limitations in (d). However, during the second program year, any gross-margin increases allowable under (c) should be implemented in equal quarterly increments.

(f) A compliance unit may exceed the intermediate gross-margin limitations in (d) if it can demonstrate that increases in excess of these limitations

(i) are justified on the grounds of seasonal variations in business operations, historical business practices, or unusual business conditions, and

(ii) will not prevent compliance with the annual gross-margin limitation in (c).

(g) Application of the Profit Limitation. If any of the compliance units of a petroleum refiner properly evaluates its compliance under the two-part profit limitation in 705A-6(a), it should follow generally accepted accounting principles and procedures in allocating costs and expenses to the respective compliance units if they have historically made these allocations. Costs that have not historically been

allocated (for example, unallocated corporate overhead expenses) may be allocated to the compliance unit, other than the crude-oil and natural-gas production units that has the largest dollar sales volume, or in any other reasonable manner, as long as it is done consistently in the base quarter and the second program year.

705C-6 Gross-Margin Standard for Electric, Gas, and Water Utilities.

(a) Eligibility. Utilities that sell electric power at retail or wholesale, that sell natural gas at retail or wholesale but not at the wellhead, and that provide drinking water at retail or wholesale are eligible for a gross-margin standard as an alternative to the price standard in 705A.

(b) Definitions.

(1) For electric and gas utilities, the gross margin is sales less the cost of purchased fuels, gas, and power.

(2) For water utilities, the gross margin is sales less the cost of purchased water and power.

(c) Gross-Margin Standard. A compliance unit complies with the gross-margin standard if its gross margin in the second program year does not exceed its gross margin in the base year by more than 13.5 percent plus any positive percentage growth in physical volume over the same period.

705C-7 Professional-Fee Standard.

(a) Coverage.

(1) This standard applies to fees and charges for the services of physicians, dentists, lawyers, accountants, engineers, architects, outside directors, and other professionals; these include all activities included in 1972 Standard Industrial Classification Major Groups 80 (except 805, 806, 808, and 809), 81, 891, and 893.

(2) All compliance units that provide professional services on a fee-for-service basis, regardless of the proportion of the compliance unit's total revenue that is derived from professional services, are expected to comply with the professional-fee standard for that portion of the compliance unit's revenue. For other lines of business, the compliance unit should comply with the applicable price standard in 705A or 705C.

(b) Professional-Fee Standard. A compliance unit complies with the professional-fee standard if

(1) the sales-weighted average percentage change in fees from the base year to the second program year does not exceed 13.5 percent, and

(2) the percentage increase in the fee for any single service from the base year to the second program year does not exceed 19 percent.

The period used to determine sales-volume weights should be a period of time that is representative of normal business operations.

705C-8 Federal, State, and Local Government Enterprises, Private Nonprofit Enterprises, and Government-Subsidized Private Companies.

(a) Subject to paragraph (c), government enterprises as defined in paragraph (b) and private nonprofit enterprises should comply with the price standard in 705A or the appropriate alternative standard in 705C.

(b) A government enterprise is any unit of a Federal, State, or local government for which data are available to determine compliance and that satisfies either of the following conditions:

(i) it is the U.S. Postal Service, a college or university, a toll facility, an alcoholic-beverage store, a commissary (retail outlet), a parking system, a port authority, an airport, an electric, gas, sewer, water, or other utility, a transportation service, a housing authority, or a health facility other than a hospital; or

(ii) its base-year operating revenue (i.e., revenue from sales of goods and services) equals at least 50 percent of base-year operating expenses.

(c) Government enterprises and private compliance units that receive government operating subsidies should use a subsidy-adjusted price change for both the base period and the two-year

program period. In either period, the subsidy-adjusted price change is the weighted sum of the percentage price change and the percentage change in the operating subsidy per unit of output during that period. The price change is weighted by revenues from sales of goods and services divided by the sum of these revenues and total operating subsidies. The change in the subsidy per unit of output is weighted by total operating subsidies divided by the sum of revenues from sales of goods and services and total operating subsidies. During the base period, weights are determined by using the revenues and operating subsidies in the last calendar or complete fiscal quarter of 1975. During the program year, weights are determined using the revenues and operating subsidies in the last calendar or fiscal quarter completed before October 2, 1978.

(d) If a government enterprise or a private nonprofit enterprise cannot comply with the price standard in 705A or the appropriate alternative standard because it cannot calculate its price change or because of uncontrollable increases in the prices of goods and services that it buys, it should comply with the profit limitation in 705A-6(a) substituting the terms "operating margin" for "profit margin" and "operating surplus" for "profits." If the compliance unit utilizes fund accounting, operating surplus is the budget line item "net increases in current fund balance" and operating margin is operating

surplus divided by operating funds or revenues. Compliance units reporting deficits in their current fund balance may be excepted from this standard if they qualify for an exception based on undue hardship or gross inequity.

705C-9 Price Standard for Medical and Dental Insurance Providers.

[Reserved]

705C-10 Price Standard for Providers of Insurance Other than Medical and Dental Insurance.

[Reserved]

705C-11 Standard for Financial Institutions.

[Reserved]

705D DEFINITIONS

Base-Period Price Change

The base-period price change is the sales-weighted average of the percentage changes in product prices from the last calendar or complete fiscal quarter of 1975 to the corresponding quarter of 1977. It may be computed using the following formula:

$$BPPC = \left[\left(\sum_i S_i \times \frac{P_i(77)}{P_i(75)} \right) - 1.0 \right] \times 100$$

where

- BPPC = the base-period price change;
- $P_i(77)$ = price of the i th product in the last complete fiscal or calendar quarter of 1977;
- $P_i(75)$ = price of the i th product in the last complete fiscal or calendar quarter of 1975;
- S_i = i th-product sales share (i.e., the i th-product sales divided by total sales) in the last complete fiscal or calendar quarter in 1975; and
- \sum_i = the summation sign, where the subscript i runs over all products not excluded in 705A-4.

The choice of fiscal or calendar quarters must be consistent throughout the compliance unit's calculations.

Base Quarter.

The base quarter is either (1) the compliance unit's last complete fiscal quarter before October 2, 1978, or (2) the calendar quarter July 1, 1978, through September 30, 1978, except as otherwise specified in a modified price standard.

Base Year.

The base year is the four calendar or fiscal quarters ending before October 2, 1978, except as otherwise specified in a modified price standard.

Company.

A company is any independent contractor, sole proprietorship, partnership, corporation, association, estate, trust, or any other entity, however organized, that is engaged in domestic business operations and that is neither controlled nor owned by another entity. The term "company" includes Federal, State, and local government entities.

Compliance Unit.

A compliance unit is a company or part of a company separately identified for purposes of compliance with the pay or price standards. An unconsolidated, controlled entity must be treated as a separate compliance unit. Entities that are consolidated should be consolidated in accordance with 17 CFR 210.4-01 to -09 prescribed by the Securities and Exchange Commission.

One or more parts of a consolidated company may be treated as a separate unit for purposes of complying with the price standard if

- (1) each part maintains accounting records that permit the Council to ascertain whether the prices and profits of each part accurately reflect the economic realities of its operations,

(2) allocation of overhead among the parts is made in a consistent and reasonable manner, as if the parts were not commonly owned,

(3) transfers between parts are valued as if they were arms length transactions, and

(4) internal accounting procedures adhere to generally accepted accounting principles and procedures, consistently and historically applied.

Custom Product

A custom product is one that is produced specifically to the unique specifications of a particular buyer. Such products must have characteristics that are substantially different from those of any other product sold by the company. A product is not substantially different merely because of differences in specifications, style, packaging, or quality. If such differences are significant, appropriate adjustments should be made when measuring prices.

Employee

An employee is any individual residing in the United States who is either an employee within the meaning of Section 3121(d) of the Internal Revenue Code, 26 U.S.C., or the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq.

First Program Year

Organized Exchange Market

A compliance unit's first program year is the one-year period immediately following its base quarter.

Future-Value Incentive Plans

Future-value incentive plans include any long-term plans under which units (shares, stock options, awards, shares subject to option, or investment amounts) are granted or issued, the compensation value of which will not be known until some future time. Examples of these include qualified and nonqualified stock options, performance share plans, performance unit plans, stock appreciation rights, restricted stock or property plans, phantom-stock plans, and book-value plans.

Health Maintenance Organization

A health maintenance organization is one that provides health services to its members on a prepaid basis either directly or under contract.

New Products

A new product is one that is introduced during either the base period or the first two program years. A product does not become new merely because of changes in specifications, style, packaging, or quality. If such changes are significant, appropriate adjustments should be made in measuring prices (for example, quality decreases should be reflected as price increases and quality increases as price decreases).
(1) sales commissions and production-incentive pay;
(2) bonuses and other annual incentive compensation charged when earned (that is, when the services are

Organized Exchange Market

A market qualifies as an organized exchange market only if the following three conditions are satisfied:

1. The market is established for a specific purpose and is governed by a defined set of rules regarding (a) eligibility for participation in the market, (b) the roles of participants (including buyers, sellers, and middlemen or specialists), (c) offers, acceptances, and rejections of bids, and (d) the procedure for an exchange.
2. The exchange prices are determined exclusively within the act of exchange and are unaffected by the requirements or resources of individual buyers or sellers.
3. The price determined on the exchange is equal to the price paid by the individual taking physical delivery of the commodity.

Pay

Pay includes the following:

- (a) The straight-time wage and salary paid during the compliance unit's customary pay period, including, where applicable, payments for shift differentials, skill differentials, and cost-of-living adjustments;
- (b) Incentive pay and other forms of income such as:
 - (1) sales commissions and production-incentive pay;
 - (2) bonuses and other annual incentive compensation charged when earned (that is, when the services are

performed that generate the compensation);

(3) compensation from long-term incentive plans (other than those covered under 705B-5), new future-value incentive plans, and other similar compensation arrangements charged when accrued; and

(4) job perquisites and other forms of compensation not covered elsewhere in this definition but reported as income under the Internal Revenue Code and its interpretive regulations and rulings.

(c) Employer contributions or costs for the following fringe benefit items:

(1) pay for time not worked (e.g., paid vacations and holidays, sick leave and other paid leave);

(2) saving and thrift plans such as qualified stock bonus plans, qualified profit-sharing plans, employee stock-ownership plans, and other qualified defined-contribution plans;

(3) qualified defined-benefit retirement plans;

(4) health benefit plans; and

(5) life insurance, accident insurance, legal assistance, educational assistance, and other plans resulting in benefits to employees but not reported as income.

Pay does not include overtime wages as long as the conditions of that pay are unchanged. Also, pay does not include employer contributions for legally-mandated benefit programs.

Pay Rate

An employee unit's pay rate in any quarter should be determined in a manner consistent with the employer's accounting practices. Pay rates should be constructed as pay per straight-time hour worked. Pay rates should be the average rates for the employee unit over the quarter or as of the last customary pay period within the quarter. When employer costs for certain pay elements are incurred irregularly (for example, bonus payments and vacation pay) these items should be included according to the pay programs in effect at the end of the quarter and should be included in pay-rate computations as though they were incurred evenly over time. For employees not compensated on an hourly basis, an estimate of straight-time hours worked should be made and applied consistently. The method used to compute pay rates must be applied consistently in all measurement periods.

Two-Year Price Change

The two-year price change is the sales-weighted average of the percentage changes in product prices from the base quarter to the corresponding quarter of 1980. It may be computed using the following formula:

$$\text{TYPC} = \left[\left(\sum_i S_i \times \frac{P_i(80)}{P_i(78)} \right) - 1.0 \right] \times 100$$

where

- TYPC = the price change over the first two program years;
- $P_i(80)$ = the price of the i th product in the 1980 quarter corresponding to the base quarter;
- $P_i(78)$ = the price of the i th product in the base quarter;
- S_i = i th-product sales share (i.e., the i th-product sales divided by total sales) in the base quarter; and
- \sum_i = the summation sign, where the subscript i runs over all products not excluded in 705A-4.

The choice of fiscal or calendar quarters must be consistent throughout the compliance unit's calculations.

Product

A product is a category of goods and/or services that is established by the compliance unit for purposes of complying with the price standard. These groupings should be established in such a manner that the measured price changes for each product reasonably reflect the changes in the prices of the individual

goods and services contained within the category. The method of establishing product groups must be applied consistently in all measurement periods.

Product Price

The price of a product during a quarter is computed by dividing the revenues from sale or lease of the product by the number of units sold or leased. Prices may be measured at the end of a calendar or fiscal quarter only if prices have remained substantially unchanged during the quarter. A product price may be determined from a sample of the individual goods and services in the product category, in which case the sampling methods must follow sound statistical procedures. List prices may be used only if percentage changes in these prices are representative of percentage changes in actual transaction prices.

Profit Margin

A compliance unit's profit margin is the ratio of profit to net sales and/or revenues.

(a) Profit is defined as the sum of item 14 and items 11 through 13 minus items 7 through 10 in 17 CFR 210.5-03. Briefly, profit is "income or loss before income tax expense" minus dividend income, interest or profit on securities, and miscellaneous other income, plus interest and amortization of debt discount and expense, losses on securities, and miscellaneous income deductions.

(b) Net sales and/or revenues consist of net sales of tangible products (gross sales less discounts, returns, and allowances), operating revenues of public utilities, and other revenues such as royalties, rents, and the sale of services and intangible products (e.g., engineering, research and development, and other professional services). This definition is consistent with 17 CFR Section 210.5-03, items 1A, 1B, and 1C.

Second Program Year

The second program year is the one-year period immediately following the compliance unit's first program year.

DATED: September 28, 1979



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PART 706 PROCEDURAL RULES

Subpart A -- General Provisions

706.1 Purpose and Scope.

This Part establishes procedures to be used in proceedings before the Council relating to the pay and price standards set forth in Part 705 of this Chapter.

- (a) Subpart A concerns definitions and general procedural rules.
- (b) Subpart B concerns the submission of reports and notifications.
- (c) Subpart C concerns requests for approval of exceptions to the standards.
- (d) Subpart D concerns special investigations regarding the standards.
- (e) Subpart E concerns determinations of noncompliance with the standards.
- (f) Subpart F concerns the placement on and removal from the list of noncompliers.
- (g) Subpart G concerns requests for reconsideration of Council actions under Subparts C and E.

706.2 Definitions.

- (a) "Company," "compliance unit," "net sales or revenues," "first program year," and "second program year" have the same meanings as in Subpart 705D of this Chapter.

(b) "Collective-bargaining unit" means an employee unit that is a party to a collective-bargaining agreement.

(c) "Council" means the Council on Wage and Price Stability.

(d) "Employee unit" has the same meaning as in Section 705B-2 of this Chapter.

(e) "Hearing Officer" means a person designated by the Council to conduct a hearing.

(f) "Notice of Probable Noncompliance" means a written statement by the Council that a compliance unit or employee unit may be out of compliance with the standards.

(g) "Person" means any compliance unit, employee unit, collective-bargaining unit, company, individual, group, or organization.

(h) "Standards" means the voluntary pay and price standards set forth in Part 705 of this Chapter.

(i) "Undue hardship" and "gross inequity" have the same meanings as in Section 705A-6 of this Chapter.

706.3 Appearances Before the Council.

A person may take any action permitted by this Part on his or her own behalf, or may be represented by any person whom he or she designates.

706.4 Actions by the Council.

The Chairman of the Council, or his designee, is authorized to take actions for the Council under this Part.

706.5 Submission of Documents.

(a) Submissions should be sent to the Council on Wage and Price Stability, The Winder Building, 600 17th Street, N.W., Washington, D.C., 20506.

(b) Submissions should be signed by the chief executive officer or authorized designee of a company, compliance unit, employee unit, collective-bargaining unit, or other organization.

(c) Each submission should be plainly marked at the top of the document indicating whether it is a "Report," "Request for Extension of Time," "Request for Exception - (Pay) or (Price)," "Response to Notice of Probable Noncompliance," "Request for Reconsideration," or "Request for Removal from List of Noncompliers."

706.6 Confidential Material.

Material for which confidentiality is sought should be submitted in accordance with Part 702 of this Chapter and will be treated as there provided. When submissions (other than forms confidential in their entirety, such as PM-1 and Pay-1) contain confidential information, two copies should be submitted. One copy, containing the confidential information, is for the Council's use and should be clearly marked "Contains Confidential Information." The other copy, from which any confidential

information should be deleted, is to meet public disclosure requirements.

706.7 Service of Documents.

All documents served under this Part are to be served personally or by U.S. mail on the person specified in these regulations or his or her designated representative.

706.8 Computation of Time.

Except as otherwise provided, any period of time specified in this Part is counted in business days (all days other than Saturdays, Sundays, and Federal holidays), beginning with the first business day after the Council takes any action. If the document setting forth the Council's action is sent by mail, three additional days may be added.

706.9 Extension of Time.

If an action is required under this Part to be taken within a prescribed period of time, an extension of time will be granted only upon a showing of good cause.

Requests for extensions should be made in writing to the Office of General Counsel.

706.10 Consolidations.

The Council may consolidate separate matters if consolidation will expedite the proceedings or otherwise assist the Council in carrying out its functions.

Subpart B -- Reports and Notifications

706.20 Purpose and Scope.

(a) This Subpart concerns the submission of reports and notifications requested by the Council.

(b) A person that has furnished the Council with data requested and retained by the Council need not resubmit such data, but should identify for the Council the document (including page references) containing such data and the date on which it was submitted.

706.21 Submissions on Company Organization for Purposes of Compliance.

(a) Reorganization for Second Year. A company may reorganize its compliance units and employee units for purposes of compliance with the price and pay standards, respectively, at the beginning of its second program year but not during the year.

(b) Company Organization for Price Compliance. A compliance unit that had, or that is part of a company that had, net sales or revenues of \$250 million or more in its last complete fiscal year before October 2, 1979, and any other company designated by the Council, should furnish the Council by December 1, 1979, with the information to be specified in Part 707.

(c) Company Organization for Pay Compliance. A company that had 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979, and any other company

designated by the Council, should furnish the Council by December 1, 1979, with the information to be specified in Part 707.

706.22 Periodic Data Submissions.

(a) Form PM-1. A compliance unit that had, or is part of a company that had, net sales or revenues of \$250 million or more in its last complete fiscal year before October 2, 1979, and any other compliance unit designated by the Council, should furnish the Council with the data specified on Form PM-1. These submissions should be made not more than 45 calendar days after the end of each of the first three quarters and 60 calendar days after the end of the second program year.

(b) Form PAY-1. A compliance unit that had 5,000 or more employees during any calendar quarter of its last complete fiscal year before October 2, 1979, and any other compliance unit designated by the Council, should furnish the Council the data specified on Form PAY-1. Data on prospective compliance with the second-year pay standard should be filed no later than March 31, 1980. Data on actual pay-rate increases for the second program year should be filed within 60 calendar days after the end of the second program year.

706.23 Submissions by State and Local Governments.

State and local governments with 5,000 or more employees should submit:

(a) by December 1, 1979, a statement of assurance by the head of the government entity that the entity intends to comply with the pay standard; and

(b) the data to be specified in Part 707 for formal pay plans in operation as of October 1, 1979, within 60 calendar days after the end of the pay plan year.

Subpart C -- Requests for Approval of Exceptions

706.30 Purpose and Scope.

This Subpart concerns requests by a compliance unit or employee unit for the Council's determination that an exception to the pay or price standard is warranted under Part 705.

706.31 Who Should Request Approval.

(a) Any compliance unit or employee unit that intends to apply one or more of the exceptions specified in Section 706.32 should request a determination from the Council that the exception is warranted, if:

(1) the request relates to the price standard and the compliance unit had, or is part of a company that had, net sales or revenues of \$250 million or more in its last complete fiscal year prior to October 2, 1979; or

(2) the request relates to the pay standard, and

(i) the affected employee unit consists of 100 or more employees in a compliance unit with (or that is part of a company with) 1,000 or more employees, or

(ii) the affected collective-bargaining agreement covers 1,000 or more employees, regardless of the number of employees in an individual company's employee units.

(b) Any compliance unit or employee unit not covered by (a) may request a determination that an exception to the pay or price standard is warranted if such unit shows that there is good cause for the Council to entertain such a request.

(c) A compliance unit or employee unit not covered by (a) or (b) is expected to self-administer the exceptions in a manner consistent with the standards. A compliance unit or employee unit should retain all data and documents that constitute the basis for the exception in a form suitable for review by the Council.

(d) If a compliance unit or employee unit was granted an exception to the pay or price standards for the first program year and wants to continue that exception for the second program year, it should submit a new request for approval of the exception. The new request need not include data previously supplied, but it should demonstrate that the previously granted exception continues to be appropriate.

706.32 Grounds for Exceptions.

The grounds for an exception to the price standard are contained in Sections 705A-6 and 705C-2. The grounds for an exception to the pay standard are contained in Sections 705B-9 through 705B-12.

706.33 Contents of the Request.

(a) A Request for approval of an exception should be in writing and include data sufficient to demonstrate that the grounds for an exception are met.

(b) The request for approval of an exception should not exceed 15 typewritten pages, exclusive of supporting documents.

(c) If a decision by the Council is required by a certain date, that date should be clearly and conspicuously noted in the request. If the specified date for a decision is within 30 calendar days of the submission of a completed request for an exception, the request should explain the basis for requesting an expedited decision.

706.34 Notice to Interested Persons.

(a) The Council may notify any person who could be significantly affected by approval of an exception that his written comments should be submitted within ten days. Submission of comments to the Council does not make the person a party to the proceeding.

(b) Any person submitting written comments to the Council about a request submitted under this Subpart should serve a copy of the comments (or a copy from which confidential information has been deleted, provided that it is adequately summarized) upon the compliance unit or employee unit making the request, and should certify to the Council that this

requirement has been met. The Council may notify other interested persons of such comments and provide an opportunity to respond.

706.35 Additional Information.

(a) The Council may at any time request such additional information as it deems necessary to reach a determination, and may set a reasonable deadline for the submission of such information.

(b) A request for approval of an exception may be denied if the information called for under Sections 706.33 or 706.35(a) is not provided.

706.36 Conferences.

Any person requesting approval of an exception may request a conference. If the Council determines that a conference is appropriate, it will contact the applicant to arrange a suitable time and location. At its discretion, the Council may invite other interested persons to attend portions of conferences at which confidential material will be not be discussed.

706.37 Decision.

(a) The Council will issue a written determination granting or denying a request for approval of an exception as promptly as possible, giving consideration to any showing of urgency under Section 706.33(c).

(b) When the Council grants a request for approval of an exception, it may condition its approval in any

manner that promotes the objectives of the standards.

(c) The Council's decision will be based on the facts and arguments before it on the date of the decision. If a person relies on certain facts and arguments to support a request for approval of an exception, he may not later rely on substantially the same set of facts and arguments in a new exception request.

Subpart D -- Special Investigations

706.40 Purpose and Scope.

This Subpart concerns special investigations by the Council relating to particular companies, compliance units, or employee units. Additional investigatory procedures are set forth in Part 704.

706.41 Investigational Policy.

The Council may at its discretion conduct special investigations to examine significant pay and price increases and compliance with the standards. A special investigation may be initiated when the Council's examination of publicly available pay or price indices or the receipt of other information indicates the possibility of pay or price increases in excess of the respective standard for a compliance unit or in a sector of the economy.

706.42 Requests for Information.

The Council may request information relating to a compliance unit's specific price actions, its average price increases, its pay programs, or any other information relating to the standards. Any such request will be accompanied by a statement of the purpose of the request and the Council's need for the information.

Subpart E -- Determination of Noncompliance

706.50 Purpose and Scope.

This Subpart concerns the determination of whether compliance units or employee units are in compliance with the standards.

706.51 Notice and Reply.

(a) Notice of Probable Noncompliance. When the Council has reason to believe that a compliance unit or employee unit may not be in compliance with the standards, it will send a Notice of Probable Noncompliance to the compliance unit and, if the alleged noncompliance relates to a collective-bargaining situation, to any affected collective-bargaining unit.

(b) Reply.

(1) Within ten days after a Notice of Probable Noncompliance has been issued, the compliance unit and any collective-bargaining unit to which the notice is issued may file a written reply disputing information in that notice, presenting additional information relevant to the allegations in the notice, and raising any available defense.

(2) Available defenses are that any of the exceptions in Sections 705A-6, 705B-9 through B-12, and 705C-2 are applicable or have been properly self-administered, or that the standards do not properly apply.

(3) The reply may request a conference and, if so, indicate whether any confidential data may be discussed.

(c) If a compliance unit and any collective-bargaining unit to which the notice is issued does not timely reply, the Council may issue a determination of noncompliance.

(d) The Council may request comments from any person concerning the notice, but submitting such comments does not make that person a party to the proceeding.

(e) If a conference is requested, the Council will arrange a suitable time and location.

706.52 Decision.

(a) After considering the record, which shall consist of relevant data developed by the Council and material submitted to the Council, the Council will inform the compliance unit and collective-bargaining unit, if applicable, of the Council's conclusions and the reasons therefor.

(b) Whenever the Council has concluded there is noncompliance, it may consider any corrective action offered by the compliance unit or employee unit. If the Council is satisfied that appropriate corrective action will be initiated promptly, the Council will not find the compliance unit or employee unit out of compliance.

(c) After the Council has considered all relevant information, it will set forth in writing the reasons for its decision.

Subpart F -- The List of Noncompliers

706.60 Purpose and Scope.

This Subpart concerns placement on and removal from the list of noncompliers.

706.61 Listing of Noncompliers.

- (a) If the Council issues a decision finding a compliance unit out of compliance in accordance with Section 706.53(c), it will place the compliance unit's name on a list of noncompliers no sooner than eight days after its decision.
- (b) If the listing of a compliance unit has been stayed pending reconsideration in accordance with Section 706.76, and the compliance unit is found on reconsideration to be out of compliance, it will be listed no sooner than three days after the

reconsideration decision.

706.62 Removal from List of Noncompliers.

- (a) Any compliance unit that has been placed on the list of noncompliers may request, in writing, that the Council remove it from the list on grounds that the compliance unit has come into compliance with the standard. Any such request should be submitted to the Director. It should state the corrective action that the compliance unit has taken, explain how that action brings the compliance unit into compliance, and indicate whether a conference or hearing is requested.
- (b) The Council will provide a conference and, if a disputed substantial and material question of fact is presented, a hearing in accordance with Section 706.75(b) through (d).
- (c) The Council will advise the compliance unit as promptly as possible after receipt of any request under paragraph (a) (or after the completion of any conference or hearing) as to whether the request has been granted or denied. If granted, removal from the list will be effective immediately, and a notice to that effect will be published promptly in the same manner as the publication of the list of noncompliers. If

denied, the compliance unit will have exhausted its administrative remedies, and no further reconsideration of the facts or compliance plan presented will be available under Subpart G.

Subpart G -- Reconsideration

706.70 Purpose and Scope.

This Subpart concerns reconsideration of Council actions taken under Subparts C or E.

706.71 General.

- (a) Any person who has or could have participated in a matter under Subparts C or E of this Part may request reconsideration of the Council's decision within seven days of the Council's action.
- (b) Additional facts that were not before the Council at the time of the initial decision may be presented at the time of reconsideration. If a person relies on certain facts and arguments to support a request for reconsideration, he may not later rely on substantially the same set of facts and arguments in a new request for reconsideration.
- (c) A person who has participated or could have participated in a matter under Subparts C or E of

this Part will not have exhausted his administrative remedies until he has submitted a request for reconsideration under this Subpart and final action on that request has been taken by the Council.

706.72 Contents of the Request.

A request for reconsideration should:

- (a) contain a concise statement of the requested relief and any factual, legal, or policy basis for such relief; and
- (b) specify whether a conference and/or hearing as provided by Sections 706.74 and 706.75 is requested, and, if so, whether confidential data will be discussed; and
- (c) if a hearing is requested, identify the substantial and material questions of fact presented.

706.73 Conference on Reconsideration.

- (a) The Council will, if requested, provide a conference on reconsideration of an action under Subparts C and E.
- (b) The Council will notify the requesting party and, in the Council's discretion, other interested persons of the time and place for the conference.

- (c) Any subject relevant to the exception or noncompliance decision may be discussed at the conference.

706:74 Hearing on Reconsideration.

- (a) If a disputed substantial and material question of fact is presented, the Council will, if requested, provide a hearing on reconsideration of an action under Subpart E.
- (b) If the Council determines that a hearing is appropriate, it will notify the person requesting the hearing and, in the Council's discretion, other interested persons. Thereafter, the hearing will be promptly scheduled before a Hearing Officer at such time and place as the Council may direct.
- (c) A hearing conducted in accordance with this Section may include the submission of such additional evidence and arguments as the Hearing Officer permits.
- (d) Within 20 days after the close of the hearing, the Hearing Officer will submit to the Council findings of fact on each substantial and material question of fact. The Council will promptly send a copy of the report to the person who requested the hearing.

706.75 Decision.

- (a) Within 20 days of receipt of a request for reconsideration, or within 20 days after the conclusion of any conference under Section 706.74, or within 20 days after receipt of a Hearing Officer's findings under Section 706.75, the Council will issue a decision affirming, modifying, or reversing its earlier action.
- (b) The Council's decision will be in writing and will set forth the reasons on which it is based. Copies of the decision will be served on the person requesting reconsideration.

706.76 Stays Pending Reconsideration.

A request for reconsideration submitted within seven days of the Council's decision of noncompliance under Section 706.53 will stay the placing of a compliance unit's name on a list of noncompliers pending the disposition of the request.

Dated: September 28, 1979



R. Robert Russell
Director, Council on Wage
and Price Stability

Talking Points for Briefers

— For the last two months the Administration has been developing a new approach to meet the increasingly serious threat posed by double digit inflation fueled by high energy prices.

— Inflation is such a complex problem and so deeply embedded in our system that it can only be overcome by a genuine cooperative effort between the government, labor and business. And that effort will require sacrifices by all.

— The Administration is announcing such a cooperative effort today. The major points of the program are:

- (i) the formation of a Pay Advisory Committee on which leading members of the business and labor communities will be invited to serve with public members under the chairmanship of John Dunlop;
- (ii) a statement of common objectives with leaders of the AFL-CIO, a "National Accord", that it has reached to serve as the basis for anti-inflation action and cooperation on various economic issues; and
- (iii) the general guidelines for pay and price policies in the year commencing October 1. The guideline standards are:

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

September 27, 1979

9:30 p.m.

MEMORANDUM TO THE EPG STEERING COMMITTEE
ALONZO MCDONALD

FROM: Susan Irving *mi*

SUBJ: Questions & Answers
Fact Sheet on Accord

Attached are:

- (1) a revised set of Questions and Answers
these Qs and As were developed by Undersecretary Carswell,
Van Ooms (OMB), Josh Gotbaum (CWPS) and me; the revisions
are largely Charlie's

the Qs and As have been divided by subject:

"Macro Policy" for questions on what this means for
economic policy

"Accord" for questions that presuppose reading the Accord
or that make specific reference to the Accord

"Committee/Political" for questions that go to the
way the Committee was developed etc.

"Committee/Standards" for questions on the standards
this last category also includes some broad
questions about are we abandoning the standards

in light of the decision on the price committee, I have
deleted the questions about "why no price committee?"

- (2) a fact sheet on the Accord itself

Question: What do you have in mind for "actions to provide capital for housing" (page 5 of the Accord)?

Answer: We would expect to continue to urge the Congress to take action to relax Regulation Q so that adequate funds would be available. We also would provide liquidity through the Federal Home Loan Bank Board and to ensure that Federal housing programs work in a countercyclical manner, consistent with our objectives of reducing inflation and moderating the impact of the recession on employment.

Question: The Accord (page 3 and also page 5) says revenues should not be "dissipated by general tax cuts." The President said yesterday that he might consider a tax cut in the future. Does this Accord now rule out such a cut?

Answer: The Accord rules out a general tax cut "in conflict with the principles of shared austerity." This, it seems to me, is a basic requirement of fairness. Moreover, the Accord states that any tax proposal must be "consistent with the long-term goals of full employment, price stability and balanced growth." We do not believe that current circumstances warrant a tax cut. Should a deepening recession call for an economic policy response, we have agreed, in the Accord, to employ certain principles in deciding upon what, if any, tax policies to propose.

Question: The Accord (page 2) says you won't accept "higher than otherwise levels of unemployment." What does that mean? How is that consistent with recent actions by the Federal Reserve to raise interest rates with the announced objective of slowing down the economy and a near certainty that will lead to higher unemployment?

Answer: American labor and the Administration recognize that reducing inflation and reducing unemployment are both important objectives; but that in the short run they cannot always be achieved simultaneously. For example, a large part of the current economic slowdown stems from the effects of the OPEC-imposed oil price increase, which has significantly reduced the purchasing power of American consumers, and led to a reduction in sales and output. Under today's inflationary circumstances, however, we recognize that we can not simply pump up the economy to counteract all of these effects of the oil-imposed economic slowdown. But we also must make sure that our policies do not overly prejudice the employment situation. These shared concerns -- which are part of the Full Employment and Balanced Growth Act of 1978 -- are reiterated in the Accord.

Question: Does the Accord (page 5) mean you are committed to a public works program if there is a downturn?

Answer: No. The Accord refers to programs which provide jobs while fighting inflation. Jobs are indeed provided by public works. But not all public works also fight inflation. As a good example of a program that meets both the "jobs" and the "anti-inflation" criteria, the Accord cites the public transit projects that would be funded by the proposed oil windfall profits tax.

Question: Does the Accord (page 7) mean more subsidies for American shipping and maritime unions?

Answer: No. We have no plans to increase subsidies at this time. We support a strong American merchant marine, and will consider measures to achieve that objective over time.

Question: Does this (page 5) mean you are committed to a public works program if there is a downturn?

Answer: No. The Accord states that if the recession deepens beyond our expectations, well balanced responses, scaled to the size of the problem, should be undertaken. It refers to programs which provide jobs while fighting inflation. Jobs are indeed provided by public works. But not all public works also fight inflation. As a good example of a program that meets both the "jobs" and the "anti-inflation" criteria, the Accord cites the public transit projects that would be funded by the proposed oil windfall profits tax.

Question: Does this mean that the Administration has agreed with Labor that economic policy must be shifted to a stimulus policy?

Answer: The statement does not call for a shift in policy. The language of the Accord itself states that "the war against inflation must be the top priority". In fact, the statement of jointly held views stresses that a period of austerity is needed, and -- very importantly -- that "such austerity must be fairly shared." Both Labor and the Administration are committed to that principle of fairness. With respect to this need for stimulus, the President has said recently, current economic circumstances do not call for a change in fiscal policy. The Accord states that if the recession deepens beyond our expectations, well balanced responses, scaled to the size of the problem, should be undertaken. It then lists -- but not exhaustively -- the kinds of actions that ought to be considered.

Question: This type of program didn't work when it was tried in the Nixon and Ford Administrations. Why do you think it will work this time?

Question: Why does the Administration believe a wage committee will work?

Answer: The history of collective bargaining in the U. S. amply demonstrates that the parties to that process are most often best equipped to meet their own particular needs and aspirations. In addition, over the past 40 years that process has often called upon third party neutrals (i.e., boards, commissions, arbitrators, mediators) to assist them in the resolution of difficult controversies. The Administration is convinced that the introduction of a balanced committee, with business labor and public participation into the wage side of the anti-inflation program will permit an objective analysis of disputed issues in the overall wage program and in specific cases. I remind you that the existing wage standards are being extended, and that any hasty decision to change them must convince a majority of members on the committee that the changes are warranted.

Question: Labor walked out of two previous wage boards. Why do you think they won't do the same thing again this time when the going gets tough?

Question: In the past organized labor has had a tradition of endorsing such tripartite approaches but later abandoned the effort when a decision was made that appeared contrary to what labor felt was its best interests. What will happen in its current situation if the labor members of the wage committee decide to resign:

Answer: This Pay Advisory Committee is being started in the context of an overall agreement by the Administration and Labor as to general objectives. It was not unilaterally dreamed up by the Administration. The Labor movement in this country recognizes that inflation is a great threat to the social and political fabric of our nation and is directly inimical to the well-being of their own members. Controlling inflation, and dealing with the necessary wage restraint in a fair and equitable manner is in Labor's own self-interest, and that is a powerful motive for their continuing participation. We expect that a balanced committee will address the problem facing the nation with the nation's interest in mind. We have worked closely with Labor and Business over the last few months. The atmosphere is good. We are confident that both business and labor are committed to making this work.

Follow-up Question: But just suppose there is a Labor walkout. Doesn't that stop the program?

Answer: No. The Council on Wage and Price Stability will still be in place and carrying out its obligations under existing law and executive orders. Appeals for review of CWPS or committee decisions or collective bargaining settlements, requests for exceptions and exclusions under the standards, or even a modification of such standards will still be within the purview of the Council.

But let me stress again that we do not expect either Business or Labor to walk out. That is in no one's best interest. We expect this to be a cooperative effort against the major threat to our economic well-being.

Question: Why was this program put together with such secrecy?

Answer: It wasn't done with such secrecy. President Carter announced in his Camp David speech that we sought broader public participation and the development of a consensus on major issues whenever possible. There have been extensive consultations with labor, business, members of Congress, and consumer representatives.

Question: You are announcing these in the context of an agreement with Labor. What about Business? Were they involved? If not, why not?

Answer: We have been in touch with Business leaders throughout the development of the second-year program in all its aspects. The vast majority of American businessmen and women have supported and complied with the program. We expect them to continue to do so.

Question: Isn't the Tripartite Committee a public relations gimmick?

Answer: By no means. Creation of the ~~Tripartite~~ Tripartite Committee is a genuine attempt by the Administration to involve major constituencies of the American public in its fight against inflation. The Committee will have a broad mandate to advise the Administration on how best to achieve anti-inflationary pay behavior.

Question: What real power does the proposed Committee possess? Put another way, are the Committee's rulings final and binding on the Administration?

Answer: The Committee will have relatively broad advisory powers, including advancing recommendations in individual cases and developing rules and regulations (including wage standards) of more general application.

Of course, the Chairman of the Council on Wage and Price Stability makes the final decisions. But we would not have worked so long and so hard to establish this Committee unless we intended to listen to it. (Also see answer to C - 2.)

C - 2

Question: The CWPS "preamble" says that the pay committee is charged with recommending by October 31 modifications to the pay standard itself, including, "specifically the basic standard." Suppose the committee recommends a very high standard? Or suppose they recommend no numerical standard at all? As you prepared to accept this?

Question: Is there any commitment that there will in fact be a wage standard?

Answer: This Pay Advisory Committee is a ^{Hybrid} tri-partite committee: representing Business and the Public as well as Labor. Such a balanced committee has a common interest in bringing inflation under control. Moreover, any one group or party which desires to make a change in the existing standards will have to convince a majority of the Committee. Under these circumstances the recommendations of this tri-partite committee will have GREAT weight. If such a committee recommended no numerical standard we would assume they had good reason to do so and we would consider those reasons. Fred Kahn as the Chairman of the Council may, of course, reject any recommendation if it is clearly contrary to the objectives of the anti-inflation effort.

which represents a broad range of interest

Question: Does the establishment of a tripartite wage committee mean that the Administration is abandoning the wage standards?

Answer: No. The wage standards developed for the first year of the program are being extended and will continue in force unless and until the Council changes them. However, the public comments received on our Issues Paper over the past months, as well as informal discussions, have identified certain problems with the pay standards that need to be addressed. The Advisory Committee has been expressly charged with examining the pay standard and making recommendations as to suggested changes and improvements. These recommendations will, of course, be accorded great weight.

In fact, the tripartite committee mechanism is designed to reinforce the wage standard rather than to dilute it or minimize its applicability. The existence of a committee provides the means for a continuing informed and public review of the performance of the standards and a balanced approach to recommending appropriate adjustments if needed to accommodate changes in economic performance throughout the course of the second program year.

Question: How can you have a price standard without knowing what the numerical pay standard is going to be?
How can you administer a price standard this way?

Answer: For the month of October we will be operating on the assumption of a continuation of the first year pay standard plus adjustments for non-COLA workers which are estimated to equal about 1 percent. We will administer the revised price standard on this basis. As the preamble to the standards explains, some later changes in the price standard may be needed if, on balance, the pay standard is modified significantly beyond this.

Question: You held off announcing a new pay standard so that this committee could make recommendations on a pay standard but you went ahead and announced a price standard even though there is a price advisory committee. Why?

Answer: It was simply impossible to delay a price standard beyond October 1 because companies all across the country told us that they needed a standard to announce their prices for October, November, and December. Prices, unlike wages, cannot be adjusted retroactively. Furthermore, there have been far fewer disagreements over the form of the price standard. The difficulties in the first year were largely technical; the second year standards have been modified to correct these problems. There is, of course, a relationship between the pay standard and the price standard. Any future changes of a significant nature in the pay standard would have to be examined to see whether any conforming changes in the price standard were needed.

Question: Does the fact that you announced a price standard even though you are creating a price committee, but you held off on a pay standard, mean the pay advisory committee has a great deal more power than the price committee?

Answer: No. (Then continue as above.)

Question: In the aggregate, won't this new program amount to a relaxation of last year's program?

Answer: No.

1. The existing pay standards are being extended.
2. Public comment has overwhelmingly indicated that some modifications are needed -- not to abandon restraint, but to make its continuation possible. For example, some adjustments must be made to deal with the disparate treatment of COLA and non-COLA workers; some adjustments are needed in the case of low-wage workers; and other adjustments are needed.
3. To propose that the standards remain unaltered in the face of a year's experience and changing economic circumstances would be to ignore realities and encourage inequity.
4. We believe that the establishment of a Tripartite Pay Committee represents a realistic and desirable way of going about securing specific recommendations for the needed modifications, and at the same time provides a continuing means for helping us carry out the program.

Question: Has the Administration abandoned the imposition of sanctions for obvious wage violations?

Answer: The sanctions provision of the standards carry forward from the first program year to the second.

It is important to understand, however, that the purpose of this program is to achieve lower prices and not simply to punish noncompliance. In all cases, most recently in our dealings with B. F. Goodrich Company, we have been able to secure lower prices without ever invoking our procurement authority. We expect this will continue to be true. Indeed, we believe that the arrangements for business and labor to participate in the formulations and implementation of the pay standard strongly reinforces this expectations.

FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended Pub.L. 94-409,
§ 5(c), Sept. 18, 1976, 90 Stat. 1247.

Sec.		Sec.	
1.	Short title.	9.	Establishment and purpose of advisory committees; publication in Federal Register; charter; filing, contents, copy.
2.	Findings and purpose.	10.	Advisory committee procedures; meetings; notice; publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance.
3.	Definitions.	11.	Availability of transcripts; "agency proceeding".
4.	Applicability; restrictions.	12.	Fiscal and administrative provisions; recordkeeping; audit; agency support services.
5.	Responsibilities of Congressional committees; review; guidelines.	13.	Responsibilities of Library of Congress; reports and background papers; depository.
6.	Responsibilities of the President; report to Congress; annual report to Congress; exclusion.	14.	Termination of advisory committees; renewal; continuation.
7.	Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat; establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations.	15.	Effective date.
8.	Responsibilities of agency heads; Advisory Committee Management Officer; designation.		

§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

EXECUTIVE ORDER NO. 11626

Ex.Ord.No.11626, Oct. 7, 1972, 37 F.R. 21621, set out as a note under this section, which related to committee management, was superseded by Ex.Ord.No.11766, Feb. 21, 1974, 39 F.R. 7123, set out as a note under this section.

EXECUTIVE ORDER NO. 11926

Ex.Ord.No.11766, Feb. 21, 1974, 39 F.R. 7123, formerly set out as a note under this section, which related to committee management, was revoked by Ex.Ord.No.12024, Dec. 1, 1977, 42 F.R. 6145, set out as a note under this section.

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EXECUTIVE ORDER NO. 12064

Dec. 1, 1977, 42 F.R. 6145

TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [this Appendix], Section 301 of Title 5 of the United States Code [section 301 of Title 5, The President], Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 551c) [section 551c of Title 31, Money and Finance], and Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix II of this title], and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977 [set out in Appendix II of this title], it is hereby ordered as follows:

Section 1. The transfer provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix II of this title], of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [this Appendix], from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

Sec. 2. There is hereby delegated to the Administrator of General Services all the functions vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6 (c) of that Act [section 6(c) of this Appendix] shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Sec. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

Sec. 4. Executive Order No. 11780 of February 21, 1974 is hereby revoked.

Sec. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

Sec. 6. This Order shall be effective November 20, 1977.

JIMMY CARTER

§ 2. Definitions.

For the purpose of this Act—

- (1) The term "Director" means the Director of the Office of Management and Budget.
- (2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—
 - (A) established by statute or reorganization plan, or
 - (B) established or utilized by the President, or
 - (C) established or utilized by one or more agencies,
 in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Performance, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.
- (3) The term "agency" has the same meaning as in section 551 (1) of Title 5.
- (4) The term "Presidential advisory committee" means an advisory committee which advises the President.

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1. Purpose
 This Appendix was intended to apply to committees created by agencies and to those not originally created by agencies but subsequently used by them as advisory committees. Center for Auto Safety v. Tloman, D.C.D.C.1974, 414 F.Supp. 214.

Remanded on other grounds 350 F.2d 85, 135 U.S.App.D.C. 424.
 Purpose of this Appendix is to effectuate the Federal Advisory Committee Act, to strengthen independence of remaining advisory committees, and prevent advisory groups from becoming self-serving. Citizens Union of U. S., Inc. v. Department of Health, Ed. and Welfare, D.C.I.1974, 409 F.Supp. 473, affirmed 513 F.2d 484, 179 U.S.App.D.C. 390.
 This Appendix was not intended to apply to all amorphous, ad hoc groups and only groups having some established structure and defined purpose constitute "advisory committees" within

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meaning of this Appendix. *Nader v. Baroody*, D.C.D.C.1975, 596 F.Supp. 1231.

In enacting this Appendix, Congress was concerned with formally organized advisory committees which President or an executive department or official directed to make recommendations on identified governmental policy for which specific advice was sought. *Id.*

2. Advisory committee

Determination that the American Association of State Highway and Transportation Officials is an advisory committee within the meaning of Federal Advisory Committee Act, this Appendix, when it provides input to the Federal Highway Administration with respect to proposals to require that state highway construction plans provide for minimum safety standards did not impermissibly impair the organization's freedoms of speech and association under U.S.C.A. Const. Amend. 1. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 639, 165 U.S.App.D.C. 426.

Organization consisting of representatives of state highway and transportation departments and officials of United States Department of Transportation was "utilized" by Federal Highway Administration when adopting regulations relating to certification acceptance of state safety standards pursuant to the Federal Highway Act, section 101 et seq. of Title 23, so that discussions between the Federal Highway Administration and the organization were covered by this Appendix. *Center for Auto Safety v. Tiemann*, D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 639, 165 U.S.App.D.C. 426.

Fact that Food and Drug Administration may have lacked statutory authority to require cosmetics industry to test ingredients in products would not preclude Administration from appointing appropriate advisory committee on such subject, which committee would be subject to this Appendix. *Consumers Union of U. S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

Where organization representing cosmetics industry presented industry-sponsored proposal to Food and Drug Administration, seeking its advice and comments regarding voluntary cosmetics testing program, and Administration was unable either to develop or require cosmetics testing program, such presentation by organization did not give rise to "advisory" relationship within meaning of this Appendix. *Id.*

"Established," within provision of this section defining advisory committee as one established by statute, does not include committees which merely can be said to owe their existence to legislation. *Lombardo v. Handler*, D.C.D.C.1975, 597 F.Supp. 792, affirmed 546 F.2d 1043, 175 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2638, 431 U.S. 932, 63 L.Ed.2d 246.

Bi-weekly White House meetings with selected groups, including major business organizations and private sector groups, do not create "advisory committees" within meaning of this Appendix, such meetings are unstructured, informal and not conducted for purpose of obtaining advice on specific subjects indicated in advance. *Nader v. Baroody*, D.C.D.C.1975, 596 F.Supp. 1231.

3. Standing to sue

Neither private citizen nor United States Senator, either as consumers or by

virtue of Senator's position as such, had standing to complain that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by petroleum industry special interests, contrary to requirements of this appendix and Federal Energy Administration Act, section 761 et seq. of Title 15. *Metcalf v. National Petroleum Council*, 1977, 553 F.2d 176, 180 U.S.App.D.C. 31.

Consumer representative, who asked to attend certain bi-weekly meetings with selected groups held at White House and who was denied admission, had standing to seek declaration that such meetings created "advisory committees" within meaning of this Appendix. *Nader v. Baroody*, D.C.D.C.1975, 596 F.Supp. 1231.

4. Agency

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. *Lombardo v. Handler*, D.C.D.C.1975, 597 F.Supp. 792, affirmed 546 F.2d 1043, 175 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2638, 431 U.S. 932, 63 L.Ed.2d 246.

5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix, as a state or local committee, a group must show that it is a state or local committee and that it was established to advise or make recommendations to state or local agencies. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 639, 165 U.S.App.D.C. 426.

By creating exception to the Federal Advisory Committee Act, this Appendix, for state and local committees, Congress intended to include state and local committees under this Appendix only when they function at the federal level. *Id.*

American Association of State Highway and Transportation Officials, an organization which is national in scope, whose purpose is to foster the development of a nationwide, integrated transportation system, whose bylaws charge its policy committee with preparing official presentation on legislative proposals, and whose representatives regularly testify before Congress, is not exempt from requirements of the Federal Advisory Committee Act, this Appendix on the theory that it is a state or local committee. *Id.*

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 639, 165 U.S.App.D.C. 426.

Exclusion from requirements of this Appendix provided for the Advisory Commission on Intergovernmental Relations was not available to shade organization consisting of representatives of state highway and transportation departments and officials of the United States Department of Transportation from requirements of this Appendix. *Id.*

§ 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§ 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

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1. Standing to me
In action for declaratory and injunctive relief alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committee to

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cause they were not fairly balanced in membership and were improperly influenced by certain petroleum industry special interests contrary to requirements of this section and Federal Energy Administration Act provision, section 776 of Title 35, plaintiffs' allegations of injury to themselves as consumers: anticipated higher costs for petroleum products; potential environmental damage and threats to health and safety; and anticipated denial of benefits from development of alternative sources of energy, did not confer standing to sue upon plaintiffs, particularly in light of fact that there was no nexus between plaintiffs' alleged injuries and defendants' challenged action. *Metz v. National Petroleum Council*, D.C. D.C.1976, 407 F.Supp. 257, affirmed 533 F.2d 176.

In action by United States Senator alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by certain petroleum industry special interests, Senator did not have standing to sue on theory that defendants' actions had affected effectiveness of his votes for this Appendix and Federal Energy Ad-

ministration Act, section 701 of sec. of Title 35, and had hindered him in carrying out his legislative duties through his inability to get unbiased advice and accurate information from Department of Interior and Federal Energy Administration because of Council's input into that process, particularly in view of fact that Senator showed no nexus between his alleged injuries and defendants' challenged action. *Id.*

2. Orders

Where dispute as to whether particular organization was covered by the Federal Advisory Committee Act, this Appendix arose out of the consultation by a federal agency with the organization over certain proposed regulations, and where there was no allegation or proof that all contacts between the agency and the organization constituted a utilization of the organization as advisory committee, order that any future meeting between the representatives of the federal government and the organization be subject to the Federal Advisory Committee Act was overbroad; the order should apply only to consultation for advice or recommendations on proposed regulations. *Center for Auto Safety v. Cox*, 2978, 580 F.2d 629, 126 U.S.App.D.C. 629.

§ 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

§ 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

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(b) The Director shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d) (1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of Title 5; and

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, for persons employed intermittently in the Government service.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States; or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

§ 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

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(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

- (1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;
(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and
(3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, with respect to such reports, records, and other papers.

§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter; filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

- (1) specifically authorized by statute or by the President; or
(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

- (A) the committee's official designation;
(B) the committee's objectives and the scope of its activity;
(C) the period of time necessary for the committee to carry out its purposes;
(D) the agency or official to whom the committee reports;
(E) the agency responsible for providing the necessary support for the committee;
(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
(G) the estimated annual operating costs in dollars and man-years for such committee;
(H) the estimated number and frequency of committee meetings;
(I) the committee's termination date, if less than two years from the date of the committee's establishment; and
(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

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Compliance, necessity of § Purpose 1

1. Purpose Purpose of this Appendix is to control the advisory committee process and to open to public scrutiny the manner in

which government agencies obtain advice from private individuals. Food Chemical News, Inc. v. Davis, D.C.D.C.1974, 578 F. Supp. 1045.

2. Compliance, necessity of Where a federal agency utilizes an advisory committee for the purpose of obtaining advice, the agency must charter and establish the committee in compliance with all the terms of this Appendix;

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and failure to comply with such requirements cannot be employed as a subterfuge for avoiding the public access requirements of this Appendix. Food Chemical News, Inc. v. Davis, D.C.D.C. 1974, 578 F.Supp. 1048.

§ 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance.

(a) (1) Each advisory committee meeting shall be open to the public. (2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of Title 5, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a) (1) and (a) (3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552 (b) of Title 5.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

As amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 2247.

1976 Amendment. Pub.L. 94-409 added "portion of an" following "to any" and substituted provisions relating to determinations for closing to the public such portion of the meeting in accordance with section 552b(c) of Title 5 for provisions relating to determinations of matters listed in section 552(b) of Title 5.

Effective Date of 1976 Amendment by Pub.L. 94-409 effective 30 days after Sept. 13, 1976, see section 6 of Pub.L. 94-409, set out as a note under section 552b of this title. Legislative History. For legislative history and purpose of Pub.L. 94-409, see 1976 U.S. Code Cong. and Adm. News, p. 5282.

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1. Construction with other laws

Freedom of Information Act provisions, section 552 of this title, dealing with intra-agency and interagency memoranda are applicable under this section to advisory committee meetings. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 373.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in Freedom of Information Act, section 552 of this title, did not apply so as to permit exclusion of public from all meetings of advisory committees serving cost of living council. *Nader v. Dunlop*, D.C. D.C.1973, 370 F.Supp. 177.

2. Purpose

Two separate "informal" meetings with consumer and distilled spirits industry representatives relative to drafting proposed regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department on ingredient labeling of distilled spirits were meetings of "advisory committees" utilized by the Bureau Director to obtain advice within the meaning of this Appendix, and said meetings were therefore open to the public. *Food Chemical News, Inc. v. Davis*, D.C.D.C.1974, 378 F.Supp. 1048.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in section 552 of this title, was not intended to include all deliberative conversations of committee meetings. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

3. Meetings within section

Where meeting between Food and Drug Administration and organization representing cosmetics industry was for purpose of presenting organization's voluntary ingredient testing program, and no matters of Administration policy or regulation were at issue, parties were not bound by provisions of this Appendix, and thus neither public access to such meetings, nor chartering of such organization, would be required. *Consumers Union of U. S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C.1976, 408 F.Supp. 673, affirmed 551 F.2d 646, 179 U.S.App.D.C. 380.

At a minimum a relatively detailed analysis of bases for closing various portions of meetings of advisory committees serving cost of living council must be provided. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

Where Defense Advisory Committee on Women in the Services was group of outsiders called on because of their expertise to offer views and comments unavailable within agency, meeting of such committee did not involve "inter-agency" nor "intra-agency" affairs and meeting was required to be open. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

4. Public participation

While plaintiffs were entitled to have meeting of Defense Advisory Committee on Women in the Services conducted so as to be open to public, there was no right of public participation in advisory committee. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

5. Exchange of information

For purposes of this Appendix, exchange of information does not make advisory committee "part of" its government agency. *Gates v. Schlesinger*, D.C. D.C.1973, 366 F.Supp. 797.

6. Burden of proof

This section does not contain same express provision as Freedom of Information Act, section 552 of this title, which places burden of proof on agency to sustain its action, but underlying policy considerations are identical and burden of proof should be comparable. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

7. Injunction

Where pleadings were limited to actions of Travel Advisory Board in holding closed meeting and did not refer to any other advisory committees in the Department of Commerce, and where all evidence was directed towards the TAB, injunction which purported to require timely advance public notice of each meeting of the TAB or any other advisory committee in the Department was overbroad. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 373.

Exemption relating to interagency or intra-agency memorandum or letters did not apply so as to permit meeting of Defense Advisory Committee on Women in the Services to be closed, and court would issue preliminary injunction requiring such meeting to be open to the public. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

8. Public access

The press has a statutory right under this Appendix as well as a privilege under U.S.C.A. Const. Amend. 1 to report on the manner in which government affairs are conducted. *Food Chemical News, Inc. v. Davis*, D.C.D.C.1974, 378 F.Supp. 1048.

9. Interagency or intra-agency memoranda

Evidence that there had been more than 20 meetings of the Travel Advisory Board and that on only three occasions had portions of the meeting been closed to the public demonstrated that the Board was not abusing exemption provided to it under subsec. (d) of this section from requirement of holding open meetings when interagency and intra-agency memoranda were being discussed. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 373.

Provisions of this section dealing with open meetings do not apply to any advisory committee meeting which the head of an agency determines is concerned with interagency or intra-agency memoranda.

Even after interagency or intra-agency memorandum has been disclosed to member of an advisory committee, the memorandum may still be considered an interagency or intra-agency memorandum so that fact that such disclosure is made to a member of an advisory committee does not preclude advisory committee from holding a closed meeting in accordance with the exemption provided for in

subsec. (d) of this section and section 552 of this title. *Id.*

20. Regulations

Where regulations which were challenged had been revised through procedure in which the revised regulations were published in draft form and public comment was invited and where the new regulations were temporary, court would not overturn original regulations despite failure of Federal Highway Administration to comply with requirements of this Appendix in adopting the initial regulations. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 550 F.2d 639, 185 U.S.App.D.C. 436.

21. Standing to sue

Persons active in opposing enactment of Equal Rights Amendment to United States Constitution were without standing to bring suit against National Commission on the Observance of International Women's Year, 1975, to enjoin it from supporting enactment of ERA, engaging in lobbying activities, and other pursuits. *Mulqueeny v. National Commission on the Observance of Intern. Women's Year*, 1975, C.A.11.1977, 349 F.2d 313.

Nonprofit corporation whose activities centered broadly upon transportation safety issues and whose functions included monitoring activities of Federal Highway Administration had standing to challenge alleged failure of the Federal Highway Administration to comply with rule-making provisions of sections 551 et seq. and 701 et seq. of this title when providing for alternative procedure for approving state highway safety plans and failure of the Federal Highway Administration to open meetings with a particular organization to the public pursuant to this Appendix. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 550 F.2d 639, 185 U.S.App.D.C. 436.

Nonprofit corporation whose activities centered broadly upon transportation safety issues was, with respect to its challenges to failure of Federal Highway Administration to utilize proper rule-making procedures in connection with approval of safety standards of state pursuant to Federal-Aid Highway Act, section 101 et seq. of Title 23, and within the zone of interest protected by the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of this title, and this Appendix. *Id.*

§ 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of Title 5.

References in Part. Effective date of this Act, referred to in subsec. (a), as meaning effective upon expiration of ninety days following enactment of Pub. L. 92-463 on Oct. 3, 1972, see section 15 of Pub.L. 92-463.

has standing to sue for the information. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 550 F.2d 639, 185 U.S.App.D.C. 436.

2. Standing to sue

Any person whose request for information under this appendix had been denied

§ 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§ 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of Title 5, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall es-

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establish a depository for such reports and papers where they shall be available to public inspection and use.

§ 14. Termination of advisory committees; renewal; continuation

(a) (1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b) (1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

Reference is made to the effective date of ninety days following enactment of Pub. L. 92-463 on Oct. 6, 1972, see section 15 of this Act, referred to in subsec. (a) (1), as meaning effective upon expiration of Pub. L. 92-463.

EXECUTIVE ORDER NO. 11827

Ex. Ord. No. 11827, Jan. 4, 1975, 40 F.R. 1217, as amended, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex. Ord. No. 11948, Dec. 30, 1976, 41 F.R. 25705, set out as a note under this section.

EXECUTIVE ORDER NO. 11948

Ex. Ord. No. 11948, Dec. 30, 1976, 41 F.R. 25705, as amended by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42836; Ex. Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex. Ord. No. 12110, Dec. 26, 1978, 44 F.R. 1068, set out as a note under this section.

EXECUTIVE ORDER NO. 12110

Aug. 22, 1977, 42 F.R. 42836

TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1), it is hereby ordered as follows:

Section 1. (a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11136 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 (set out as a note under Section 2000e of Title 42, The Public Health and Welfare), is further amended as follows:

(1) Subsection (6) of Section 202 is revoked.

(2) Section 203, in order to delete a reference to the Council, is amended to read as follows:

"Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 801, in order to delete references to the Council, is amended to read as follows:

"To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish the staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

Sec. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of section 4 of Executive Order No. 11514 of March 6, 1970 [set out as a note under section 4321 of Title 42, The Public Health and Welfare], is revoked.

Sec. 3. (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 11625 of October 12, 1971 [set out as a note under section 631 of Title 15, Commerce and Trade], is revoked.

Sec. 4. (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11553 of February 24, 1971 [set out as a note under section 657d of Title 20, Education], is amended as follows:

(1) The second sentence of subsection (b)(1) of section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

Sec. 5. (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11662 of January 19, 1977 [set out as a note under section 2107 of Title 22, Foreign Relations and Intercourse], is revoked.

Sec. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11648 of December 20, 1976 [set out as a note under this section], which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER

EXECUTIVE ORDER NO. 11669

Dec. 14, 1977, 42 F.R. 6361

TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

Section 1. (a) The Quotico-Superior Committee is terminated.

(b) Executive Order No. 11662, as amended, is revoked.

Sec. 2. Subsection (e) of Section 1 of Executive Order No. 11648 of December 20, 1976, which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER

EXECUTIVE ORDER NO. 11689

Dec. 23, 1978, 43 F.R. 1263

CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

1-101. Each advisory committee listed below is continued until December 31, 1980.

(a) Committee for the Preservation of the White House—Executive Order No. 11145, as amended (Department of the Interior) [set out as a note under section 110 of Title 2, The President].

(b) President's Commission on White House Fellowships—Executive Order No. 11183, as amended (United States Civil Service Commission).

(c) President's Committee on the National Medal of Science—Executive Order No. 11287, as amended (National Science Foundation) [set out as a note under section 1851 of Title 42, The Public Health and Welfare].

(d) President's Council on Physical Fitness and Sports—Executive Order No. 11562, as amended (Department of Health, Education, and Welfare).

(e) President's Export Council—Executive Order No. 11753 of December 20, 1975 (Department of Commerce) [set out as a note under section 2401 of Title 50, Appendix, War and National Defense].

(f) President's Committee on Mental Retardation—Executive Order No. 11776 of March 29, 1974 (Department of Health,

Education, and Welfare) [set out as a note under section 8001 of Title 42, The Public Health and Welfare].

(g) Federal Advisory Council on Occupational Safety and Health—Executive Order No. 11807 of September 28, 1974 (Department of Labor) [set out as a note under section 7902 of this title].

(h) Presidential Advisory Board on Ambassadorial Appointments—Executive Order No. 11970 of February 8, 1977 (Department of State) [set out as a note under section 801 of Title 22, Foreign Relations and Intercourse].

(i) Committee on Selection of Federal Judicial Officers—Executive Order No. 11992 of May 24, 1977 (Department of Justice) [set out as a note preceding Chap. 1 of Title 28, Judiciary and Judicial Procedure].

(j) United States Circuit Judge Nominating Commission—Executive Order No. 12058, as amended (Department of Justice) [set out as a note under section 44 of Title 28, Judiciary and Judicial Procedure].

(k) United States Court of Military Appeals Nominating Commission—Executive Order No. 12063 of June 8, 1978 (Department of Defense) [set out as a note under section 867 of Title 10, Armed Forces].

(l) United States Tax Court Nominating Commission—Executive Order No. 12064 of June 8, 1978 (Department of the Treasury) [set out as a note under

the Treasury] [set out as a note under

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section 7443 of Title 28, Internal Revenue Code).

(m) Judicial Nominating Commission for the District of Puerto Rico—Executive Order No. 12064, as amended (Department of Justice) (set out as a note under section 183 of Title 28, Judiciary and Judicial Procedure).

1-102. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act which are applicable to the committees listed in Section 1-101 of this Order, except that of reporting annually to Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

1-103. The following Executive orders, that established committees which have terminated or whose work is completed, are revoked:

(a) Executive Order No. 11682 of September 22, 1969, establishing a Construction Industry Collective Bargaining Commission.

(b) Executive Order No. 11949 of April 1, 1975, establishing the Collective Bargaining Committee in Construction.

(c) Executive Order No. 11534 of June 4, 1970, establishing the National Council on Organized Crime.

(d) Executive Order No. 11971, as amended, establishing the Committee on Selection of the Director of the Federal Bureau of Investigation.

(e) Executive Order No. 11978 of February 17, 1977, establishing the President's Commission on Mental Health.

(f) Executive Order No. 11968 of June 27, 1977, establishing the President's Commission on Military Compensation.

1-104. Executive Order No. 11948 is superseded.

1-105. This order shall be effective December 31, 1978.

JIMMY CARTER

Notes of Decisions

Powers and duties §
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1. Prospective effect

Federal Advisory Committee Act was intended to have both immediate effect through this section providing for termination of advisory committees and prospective effect through sections 6, 6 and 7 providing procedures which contemplate studied decision on whether particular advisory committee is necessary. *Carpenter v. Morton*, D.C.Nev.1976, 624 F.Supp. 603.

2. Remedies available

Congress in enacting Federal Advisory Committee Act was concerned about pro-

liferation of advisory committees which had outlived their usefulness; to remedy situation, Congress chose to terminate all advisory committees. *Carpenter v. Morton*, D.C.Nev.1976, 624 F.Supp. 603.

3. Powers and duties

Congress contemplated that Federal Advisory Committee Act would affect existing substantive law and that if it was later decided advisory committees were necessary, Congress would enact legislation to recharter them; Secretary of Interior had no obligation or authority to recharter advisory boards of which plaintiffs were members. *Carpenter v. Morton*, D.C.Nev.1976, 624 F.Supp. 603.

§ 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 8, 1972.

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Pauly, David, Rich Thomas, and Eleanor Clift. "A Carter-Labor 'Accord'." *Newsweek*, October 1979.

"As the Economy Darkens, a Call for John Dunlop." *The New York Times*, September 30, 1979.

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§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determi-

nation, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

Added Pub.L. 87-849, § 1(a), Oct. 23, 1962, 76 Stat. 1124.

Historical Note

Prior Provisions. Provisions similar to those comprising this section were contained in former section 434 of this title prior to the repeal of such section and the general amendment of this chapter by Pub.L. 87-849.

Codification. A prior section 208, Act June 25, 1948, c. 645, 62 Stat. 693, which related to the acceptance of solicitation of a bribe by a judicial officer, was eliminated in the general amendment of this chapter by Pub.L. 87-849 and is substantially covered by revised section 201.

Effective Date. Section effective 90 days after Oct. 23, 1962, see section 4

of Pub.L. 87-849, set out as a note under section 201 of this title.

Delegation of Authority. Authority of the President under subsec. (b) of this section delegated to department or agency heads, see Part V of Ex.Ord.No.1122, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of this title.

Canal Zone. Applicability of section to Canal Zone, see section 24 of this title.

Legislative History. For legislative history and purpose of Pub.L. 87-849, see 1962 U.S.Code Cong. and Adm.News, p. 3832.

Cross References

Definitions, see section 202 of this title.

Department of Health, Education and Welfare, applicability of this section to State personnel assigned to, see section 245 of Title 42, The Public Health and Welfare.

Mail contracts, conflict of interest, see section 440 of this title.

Memorandum of Attorney General regarding conflict of interest provisions, see note under section 201 of this title.

Office of Education, applicability of this section to State personnel assigned to, see section 857 of Title 20, Education.