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DEPARTMENT OF ENERGY
Washington, DC 20585

OFFICE OF THE SECRETARY

March 22, 1993

TO: John Podesta

FROM: Rich Rosenzweig

Subject: Executive Order on Conservation/Alternative Fuels

As we discussed, the Department of Energy does not concur with the latest draft of the Executive Order because it is not fully consistent with the aggressive initiatives outlined during the campaign and the policy directions of the President's economic package, and is, in some instances, at odds with Energy Policy Act requirements. The Executive Order which was drafted is substantially weaker than a prior one on this subject.

The draft Order essentially directs Federal agencies to comply with existing law. All agencies comply with existing law without the need of an Executive Order. The goal of the Order should be to (a) reverse years of poor Federal performance in achieving significant energy efficiency, and (b) eliminate institutional resistance to converting the federal fleet to alternative fuel vehicles (AFVs). The Federal government must take the lead in initiating the AFV market. The conversion of the federal fleet will reduce pollution and reduce oil use in the transportation sector.

At your request, we have redrafted the Executive Order (attached), with the aim of providing Federal leadership in the areas of energy efficiency and alternative fuels. A leadership position can be claimed only by directing Federal agencies to substantially exceed the minimum requirements established by the EPACT.

We urge rapid consideration of the new draft. Completion and expeditious issuance of the Order would allow the initiative to be communicated during Earth Day activities. We stand ready to work with the Office of Management and Budget, the White House, and other affected agencies to finalize an Executive Order that conveys the position of leadership clearly articulated during the campaign by the President and Vice President.

The specific rationale for changes we propose in each section of the Order is as follows:

Section 2 (Budgeting to Meet Facility Energy Efficiency Goals)

This provision in the current draft has no practical effect, except to direct OMB to comply with longstanding statutory requirements. DOE's original proposal in this area would have directed OMB to ensure that energy management funding was set at specified percentages of total Federal facility energy costs. Although the minimums originally proposed by DOE would be exceeded if the out-year proposals included in the President's plan become reality, the draft does not reflect this substantial commitment. Even without reintroducing minimum funding levels, modifications to this provision could make it more meaningful.

Section 3 (Energy Efficiency Training and Site Audits)

Although this provision does not go significantly beyond the minimum requirements of existing law, a minimal addition is recommended in order to emphasize that individual Federal agencies continue to hold the primary responsibility for conducting the required facility surveys.

Section 4 (Streamlining Procurement)

As drafted, this provision not only does little more than existing law, but it also may confuse responsibility for the implementation of existing requirements for the issuance of guidelines and regulations for energy performance contracting, which the Energy Act imposes on DOE, with the concurrence of the Federal Acquisition Regulation Council. This confusion should be eliminated and we would recommend establishing minimum requirements on every agency to use performance contracting to improve the energy efficiency and management of at least some of their facilities.

Need for Other Provisions Related to Facility Energy Management

As drafted, the Executive Order does not address two important opportunities for accelerating efficient improvements in the Federal sector: participation in utility demand-side management programs; and purchase of more energy efficient products. Consideration should be given to adding provisions in these areas, as indicated in the attachment.

Section 5 (Alternative Fuel Vehicle Planning and Reporting)

As written, this section simply requires that we rely on competitive procurements and that we provide a report to the President. This section should provide explicit requirements for the planning process, such as those stated in the attachment, and clear goals to DOE, GSA and all Federal agencies to substantially exceed Energy Policy Act requirements to convert existing vehicles to alternative fuels or purchase new vehicles. Furthermore, the revision identifies the long-term goals of the Federal program and emphasizes the use of domestically produced fuels (see attachment, Section 7). The suggested revisions are compatible with the budget proposed by the President in the stimulus and investment packages--anything less would be seen as lacking leadership.

Section 6 (Alternative Fuel Vehicle Purchases and Conversions)

The draft executive order requires DOE to reimburse agencies for differences in appointments, size or model upgrades. The House FY'93 Supplemental Appropriations bill, at OMB's request, restricts the use of DOE funds "for only the cost differential between the alternative fuel vehicle and the same model of vehicle in its conventional fuel design." The range of reimbursements, proposed in the draft executive order, would not now be permitted. Furthermore, the executive order should not preclude the expenditure of non-DOE funds on alternative fuel related costs. The option that GSA can allocate the costs of alternative fuel vehicles or refueling facilities to the agency cost of all vehicles is explicitly provided for in the Energy Policy Act and should not be preempted by the executive order. The suggested revision, attached (see Section 8), gives sufficient flexibility to direct appropriated funds in the most cost-effective manner.

Section 7 (In Case of Lost Value on Vehicle Disposal)

This section should be dropped. It signals to the public that purchasers of alternative fuel vehicles can expect greater depreciation than purchasers of conventional fueled vehicles. Procedures are in place to analyze potential alternative fuel vehicle disposal problems and address them should they occur. There is no need in this executive order to deal with a relatively arcane issue. In addition, use of DOE funds for this purpose is inconsistent with the Appropriations bill as discussed above.

Section 8 (Cooperation with Industry and State and Local Authorities on Alternative Fuel Refueling Capabilities)

We have included slightly revised language that directs all agencies, not just DOE, to cooperate with State, local and private authorities. See attached (Section 10).

Section 9 (Evaluation)

An alternative section is attached (Section 11) that only requires that DOE report to the President the progress on implementing the executive order, not evaluating the costs of alternative fuel vehicles. The Department is already undertaking multiple evaluations of Federal and other alternative fuel vehicles that include all of the factors identified in the draft executive order. In addition, our evaluations include the benefits of alternative fuel vehicles. Reports, based on these evaluations, must be provided to Congress (Energy Policy Act).

Since the analytic assessment of alternative fuel vehicles are so explicitly defined in the Energy Policy Act, it is counterproductive to add yet a new set of requirements via the executive order.

Need to Include Original Section on Agency Incentives

The original draft executive order (February 3) included a requirement that GSA provide incentives to agencies to encourage the purchase of alternative fuel vehicles. This was one of the few items that the executive order contained that was not already required by the Energy Policy Act and could be pointed to as an example of Presidential leadership. We ask that this section be re-included (as attached, see Section 9).

Attachment

DOE DRAFT

DRAFT

Executive Order {   } of {insert date of issuance}

Federal Energy Efficiency and Use of Alternative Fuels

By the authority vested in me as President by the Constitution and consistent with the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 et seq.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.), section 205(a) of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(a)), the Energy Policy Act of 1992 (Pub. L. 102-486), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. Federal Leadership and Goals. The use of alternative motor vehicles can substantially reduce or eliminate pollutants at affordable cost, create significant domestic economic activity and stimulate jobs creation, utilize entirely domestic fuel sources as defined by the Energy Policy Act of 1992 (P.L. 102-486), and provide substantial savings, in some applications, in vehicle maintenance costs and the extension of vehicle life.

Moreover, Federal action can provide a significant market impetus for the large scale development and manufacture of alternative fuel vehicles, and for the expansion of the fueling infrastructure necessary to support large numbers of privately owned alternative fuel vehicles.

Federal agencies expend more than $ 11 billion annually on energy used in Federal buildings and general operations. Existing technologies and improved management techniques could reduce energy use in Federal facilities by substantially more than 20% by 2000, compared to 1985, while maintaining or improving the services provided by these facilities. The capital investment and personnel training costs of achieving these savings are likely to be more than offset by energy cost savings within five years. Reducing energy use in Federal facilities will also have significant environmental and economic benefits.

The Federal Government has a special responsibility to exercise leadership in the energy-efficient operation of its facilities and in the use of alternative fuel vehicles. To that end, each agency shall adopt aggressive plans to **substantially exceed** the energy conservation and alternative fuel vehicle purchase requirements established by the Energy Policy Act of 1992.

Section 2. Budget Support to Meet Energy Efficiency Goals. The Director of the Office of Management and Budget (OMB) shall ensure that the President's budget establish funding for energy efficiency audits and investments in Federal facilities, and for training of energy managers. The Director of OMB shall permit any agency that has identified efficiency investments that total more than its budget targets for such investments in any given fiscal year to exceed these targets, if all of the identified

OMB ensures budget funds energy efficiency audits; permit agencies to exceed targets

[Can't do it if it means to bind Pres budgets]

check w/ DOE

projects have discounted paybacks of less than 10 years, and the agency is prudently managing available resources for improving energy efficiency.

Section 3. Energy Efficiency Training and Site Audits. The Department of Energy shall provide training and technical assistance to all agencies in support of improvements in facility energy efficiency and, subject to appropriations, will contract with energy audit teams to identify opportunities for energy savings at Federal facilities. Agency leaders should place high priority on the prompt completion of building and facilities surveys required by the Energy Policy Act and other laws. Priority will be given to the identification of sites where there will be the greatest return on investment in energy efficiency. Heads of agencies shall ensure that sufficient numbers of employees are trained in energy efficiency methods and in energy-savings performance contracts to achieve the Administrations's efficiency improvement goals. Heads of agencies shall also provide the Secretary of Energy with information identifying the officials responsible for ensuring that new Federal buildings in that agency meet the energy-efficiency standards defined in 10 C.F.R. 435 and section 101 of the Energy Policy Act of 1992.

energy audits

Section 4. Utility Demand-Side Management. The Administrator of General Services, Secretary of Defense and the heads of other agencies that negotiate with local utilities regarding the rates to be charged Federal facilities shall introduce into those negotiations any demand-side management incentives and services that may be made available to Federal facilities by the utility.

demand-side incentives

a significant

Section 5. Product Procurement. Heads of agencies that procure energy-using equipment shall ensure that life cycle costs are the primary cost consideration of all procurement actions initiated after January 1, 1995. [check current law]

life cycle costs

Section 6. Streamlining Procurement. Heads of agencies shall review their procurement procedures with the goal of streamlining, accelerating and expanding the use of energy-savings performance contracts and other energy-related procurements. The Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Act (41 U.S. C. 421) shall, within 120 days of the issuance of this order, promulgate appropriate changes to the Federal Acquisition Regulations (FAR) that will enable agencies to accomplish this goal. Within two years of the issuance of these changes to the Federal Acquisition Regulations and the guidelines issued by the Department of Energy under Sec. 155 of the Energy Policy Act, every Federal agency that owns at least 100 Federal buildings or at least 1 million square feet of building space shall have initiated and entered into at least one energy performance contract; the Department of Veterans Affairs, the Department of Energy and the General Services Administration shall have initiated and entered into at least five such contracts; and the Department of Defense shall have initiated and entered into at least ten energy performance contracts.

energy perf. Ks

Would we do best efforts + reporting

DOE to do alternative formula

how can we mandate this — but if not use it, what teeth? might actually be more expensive & less up front

Int, Ag, DOJ, GSA, VA, HHS, DOT, Archives, HHS

+ consistent w/ life cycle costs

fuels

Section 7. Alternative Fuel Vehicle Requirements. The Federal government shall acquire, subject to the availability of appropriations, alternative fuel vehicles in numbers that exceed by at least 50% the requirements for 1993 through 1995 set forth in the Energy Policy Act of 1992. The Federal fleet vehicle acquisition program shall be structured with the objectives of: (1) continued reduction in the incremental cost associated with specific vehicle and fuel combinations; (2) long-term movement toward increasing availability of alternative fuel vehicles produced as standard manufacturers' models; and (3) gaining experience in using the diverse alternative fuels defined in the Energy Policy Act of 1992. Each agency shall coordinate with the Secretary of Energy in order to achieve this requirement. In order to facilitate such coordination, each agency shall submit alternative fuel vehicle acquisition plans to the Secretary of Energy no later than 90 days from the date of issuance of this Order. Plans are expected to stress rapid and efficient procurement of alternative fuel vehicles, through established competitive procurement practices.

Exceed EPACT on AFV fleet by 50%

objectives

DOE approves

consult

In order to meet the acquisition requirements

Section 8. Alternative Fuel Vehicle Acquisition Assistance. Within available appropriations, and as required by the Energy Policy Act of 1992, the Secretary of Energy shall provide assistance to other agencies which acquire alternative fuel vehicles. This assistance includes payment of incremental cost of alternative fuel vehicles. All vehicles, whether conversions or purchases as original equipment manufacturer (OEM) models, shall comply with all applicable Federal and State emissions and safety standards.

DOE assists

incremental cost

of acquisition & disposal

+ DOE

Section 9. Alternative Fuel Vehicle Use Incentives. The Administrator of the General Services Administration (GSA), to the extent allowed by law, shall provide incentives to purchase alternative fuel vehicles, including priority processing of procurement requests, the establishment of a hot line staffed to address agencies' concerns, and any other technical or administrative assistance aimed at accelerating the purchase and use of Federal alternative fuel vehicles.

w/ DOE provide

Section 10. Cooperation with Industry and State and Local Authorities on Alternative Fuel Refueling Capabilities. The Secretary of Energy, in cooperation with GSA and other appropriate agencies, shall coordinate Federal planning and siting efforts with private industry fuel suppliers, and with State and local governments, to ensure that adequate refueling capabilities exist wherever Federal fleet alternative fuel vehicles are sited. Each agency's fleet managers are expected to work with appropriate organizations at their respective locations on initiatives to promote alternative fuel vehicle use.

siting for refueling capabilities

sector

or will exist

Section 11. Reporting. The head of each agency shall report annually to the Secretary of Energy on actions and progress under this order, consistent with guidance provided by the Secretary. The Secretary shall prepare a consolidated annual report to the President and Congress on the implementation of this order.

[illegible]

Including the portion of vehicles acquired pursuant to this order [illegible]

Section 12. Definitions. For the purpose of this order, the terms "agency," "energy savings performance contract" and "alternative fuel vehicle" have the same meanings given such terms in sections 151, 155(b) and 301 of the Energy Policy Act of 1992, respectively.

Section 13. Judicial Review. This order is not intended to create any right or benefit, substantive or procedural, enforceable by a nonfederal party against the United States, its officers or employees, or any other person.

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EXECUTIVE ORDER

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FEDERAL USE OF
ALTERNATIVE FUELED VEHICLES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (42 U.S.C. 6201 _et seq_.), the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 _et seq_.), the Energy Policy Act of 1992 (Public Law 102-486), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Federal Leadership and Goals. The use of alternative fueled motor vehicles can, [in some applications,] substantially reduce pollutants in the atmosphere, create significant domestic economic activity and stimulate ~~jobs~~ job creation, utilize domestic fuel sources as defined by the Energy Policy Act of 1992, and reduce vehicle maintenance costs. [vehicle life]

Moreover, federal action can provide a significant market impetus for the development and manufacture of alternative fueled vehicles, and for the expansion of the fueling infrastructure necessary to support large numbers of privately owned alternative fueled vehicles.

The Federal Government can exercise leadership in the use of alternative fueled vehicles. To that end, each agency shall adopt aggressive plans to substantially exceed the alternative fueled vehicle purchase requirements established by the Energy Policy Act of 1992.

Sec. 2. Alternative Fueled Vehicle Requirements. The Federal Government shall acquire, subject to the availability of funds and considering life cycle costs, alternative fueled vehicles in numbers that exceed by [at least] 50% the requirements for 1993 through 1995 set forth in the Energy Policy Act of 1992. The federal fleet vehicle acquisition program shall be structured with the objectives of: (a) continued reduction in the incremental cost associated with specific vehicle and fuel combinations; (b) long-term movement toward increasing availability of alternative fueled vehicles produced as standard manufacturers' models; and (c) minimizing life cycle costs in the acquisition of alternative fueled vehicles. In addition, there is established, for a period not to exceed one year, the Federal Fleet Conversion Task Force, a federal interagency implementation committee to be constituted by the Secretary of Energy, in consultation with a Task Force Chairman, to be named by the President. The Task Force will advise on the implementation of this Executive order. The Task Force will issue a public report within ninety days setting forth a recommended plan and schedule of implementation and, no later than one year from the date of this order, in cooperation with the Secretary of Energy, file a report on the status of the conversion effort.

Sec. 3. Alternative Fueled Vehicle Acquisition Assistance. Within available appropriations, and as required by the Energy Policy Act of 1992, the Secretary of Energy shall provide assistance to other agencies which acquire alternative fueled vehicles. This assistance includes payment of incremental costs of alternative fueled vehicles, including any incremental costs associated with acquisition and disposal. All vehicles, whether conversions or purchases as original equipment manufacturer models, shall comply with all applicable federal and state emissions and safety standards, consistent with those requirements placed on original equipment manufacturers, including years and mileage.

Sec. 4. Alternative Fueled Vehicle Purchase and Use Incentives. The Administrator of the General Services Administration, to the extent allowed by law, may provide incentives to purchase alternative fueled vehicles, including priority processing of procurement requests, and, with the Secretary of Energy, provide any other technical or administrative assistance aimed at accelerating the purchase and use of federal alternative fueled vehicles.

Sec. 5. Cooperation with Industry and State and Local Authorities on Alternative Fueled Vehicle Refueling Capabilities.

The Secretary of Energy shall coordinate federal planning and siting efforts with private industry fuel suppliers, and with state and local governments, to ensure that adequate private sector refueling capabilities exist or will exist wherever federal fleet alternative fueled vehicles are sited. Each agency's fleet managers are expected to work with appropriate organizations at their respective locations on initiatives to promote alternative fueled vehicle use.

Sec. 6. Reporting. The head of each agency shall report annually to the Secretary of Energy on actions and progress under this order, consistent with guidance provided by the Secretary. The Secretary shall prepare a consolidated annual report to the President and to the Congress on the implementation of this order. As part of the report, the Secretary and the Director of the Office of Management and Budget shall complete a thorough, objective evaluation of alternative fueled vehicles. The evaluation shall consider operating and acquisition costs, fuel economy, maintenance, and other factors as appropriate.

Sec. 7. Definitions. For the purpose of this order, the terms "agency" and "alternative fueled vehicle" have the same meanings given such terms in sections 151 and 301 of the Energy Policy Act of 1992, respectively.

Sec. 8. Exceptions. The Secretary of Defense, the Secretary of the Treasury, and the Attorney General, consistent with the national security, and protective and law enforcement activities of their respective agencies shall determine the extent to which the requirements of this order apply to the national security, and protective and law enforcement activities of their respective agencies.

Sec. 9. Judicial Review. This order is not intended to create any right or benefit, substantive or procedural, enforceable by a nonfederal party against the United States, its officers or employees, or any other person.

THE WHITE HOUSE,