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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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July 28, 1975



The Honorable Harley O. Staggers, Chairman  
Committee on Interstate and Foreign Commerce  
House of Representatives

Dear Mr. Chairman:

In accordance with your request we are forwarding our comments on H.R. 2385, 94th Congress, which, if enacted, would be cited as the "Energy Information Act." The bill would establish a National Energy Information System in the Department of Commerce and would authorize the Department of the Interior to undertake an inventory of United States energy resources on public lands and elsewhere.

We believe generally that, even though H.R. 2385 proposes constructive solutions to energy information problems, inserting its mandated activities amidst the existing Federal energy data structure might aggravate the serious and growing problems of fragmented and uncoordinated Federal energy programs. In this regard, the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) established the Federal Energy Administration (FEA) as the focal point for Federal energy matters, including energy data. FEA has established a National Energy Information Center which acts as a central clearing house and locator for federally collected energy data. Also, a noticeable increase in Federal energy data collection activity in the past year has occurred, particularly in the area of fossil fuel reserves. FEA has a mandate to make a complete and independent analysis of oil and gas reserves and resources in the United States, including the Outer Continental Shelf. The Federal Trade Commission, Federal Power Commission and the Department of the Interior's Geological Survey are also engaged in extensive reserve data collection.

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While H.R. 2385 addresses important shortcomings of current Federal energy data activities, we are concerned about the impact it will have on the existing Federal data structure. It appears that it would detract from FEA's ability to act as a data focal point, yet it makes no provision to shift energy data responsibilities from FEA to the Department of Commerce. In the same vein, it creates new energy data related activity within the Federal sector without provision for specific interface, modification, or replacement of voluminous and growing agency energy data programs.

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In addition to the foregoing, we offer a number of comments on particular provisions of the bill.

As noted, H.R. 2385 would establish a National Energy Information System within the Commerce Department, to be headed by a Director of Energy Information. There appears to be some ambiguity in the bill with respect to which entities are required to formally report information regularly to the Director. Subsections 3(e) and (f) define "major energy company" and "substantial energy resources company," respectively; and these companies are specifically required to report annually under titles IV and V. Section 107(a)(4) indicates that, in addition, "other companies, agencies, institutions, and associations" may be required to report; but the manner in which these entities are chosen to report and the nature and regularity of their reporting is not clear. We do note that section 2(b)(2) states that one of the purposes of the proposed Act is to provide for regular, uniform reporting by all "significant corporations operating in the energy industries," but the term "significant corporations" is not defined, and it is not precisely clear that development and use of "natural energy resources," other than in the generation of electrical power, are included in the definition of "energy industries" in subsection 3(a).

The term "major energy company" is defined in terms of "annual business receipts." The term "net annual business receipts" is used in subsections 501(d)(3) and (4). Since those terms are somewhat vague we suggest the use of more definitive terms such as "gross sales" or "gross revenues" and "net sales" or "net revenues."

Some ambiguity also exists in the bill concerning the manner in which energy data will be collected and how maximum use will be made of that data. Our recent study of "Actions Needed to Improve Federal Efforts in Collecting, Analyzing, and Reporting Energy Data" (B-178205, February 6, 1974) showed that many Federal agencies are collecting a large volume of energy-related data as an outgrowth of broad legislative mandates or to fulfill particular program needs. Section 107(b)(1) does provide for the establishment of consultation, liaison, and exchange agreements with all departments and agencies of the Federal Government. However, section 703(a) would amend the Federal Reports Act of 1942 to require the Director, Office of Management and Budget, to designate the Bureau of Energy Information as the collecting agency whenever a Federal agency has need for energy information. Section 703(b) provides that no agency shall be prevented or unreasonably delayed by the Director, Office of Management and Budget, from collecting information which it has been directed to collect by legislative mandate. These provisions could be subject to various interpretations concerning how the energy data collection process will work. Moreover, the bill is not completely clear how

Maximum use will be made of the data which may continue to be collected by agencies other than the Bureau of Energy Information. We believe the bill should make clear that supervision and responsibility regarding information is intended to be centralized rather than the complete collection function and provide that the Bureau make the fullest possible use of existing data being collected by Federal agencies.

Section 107(e) discusses reporting responsibilities of the Director. In subsection 107(e)(2) consideration should be given to including prices in the quarterly trend report, since it would provide useful information and is already required to be included in the monthly reports under subsection 107(e)(1). In addition, to ensure that the Congress will be able to assess how well the activities of the Bureau are being performed, we suggest that subsection 107(e)(3) be revised as follows:

"(3) an annual report which includes, but is not limited to, a description of the activities of the Bureau and the System during the preceding year with the objective of providing a comprehensive overview, a summary of all special reports published and the statistical information collected during the year, putting such information into the context of historical and projected energy production and consumption for the next \_\_\_ years, statements of the Director's conclusions as to the effectiveness of the System in meeting the purposes of the Act, and recommendations to the Congress with respect to any change or additional legislative action deemed necessary or desirable to assist in carrying out the purposes of the Act."

It would be helpful to state the period over which energy production and consumption are to be projected.

It might also be helpful to include in the bill some objectives for improving the National Energy Information System established by Title II of the Act. For example, one way in which improvements can be made is to work toward standardization of energy terms. As an illustration, in subsection 3(b) of the bill the terms "proved or probable" quantity are used when referring to mineral fuel reserves and in section 304 the word "speculative" is used in addition to "proved or probable." The terms "proved," "probable," and "speculative" reserves could be subject to varying interpretations and may differ from reserve terminology used by industry and other Government agencies. Efforts should be made to arrive at uniform standard definitions.

Section 206(c) regarding access to information in the secret library seems unduly restrictive. It permits access only by employees of the Bureau or Department of Commerce expressly designated by the Secretary of Commerce. Such restriction could result in denying energy policy-making agencies, such as Federal Energy Office, information which may be necessary to formulate and promulgate energy policy.

In dealing with the difficult question of confidentiality, the bill provides for three separate and distinct energy information libraries-- public, confidential, and secret. Section 203 of the bill contains standards for entry of information into the libraries. The two reasons for considering data confidential or secret are national security implications and reasonable competitive equities. In subsection 208(c), the presumption is that all individual company data should be placed in the confidential library, but provision is made for its transfer to the public library upon a showing to and determination by the Director that reasonable competitive equities would not be adversely affected. Such data could be placed in the secret library if companies demonstrated to the Director that placement in any other library would adversely affect reasonable competitive equities. As a general rule, no information would be transferred from the confidential or secret library until it is 25 years old.

We believe that confidential data should be restricted to a minimum. We suggest that the bill provide that individual company data be placed in the confidential or secret library only upon a showing to, and determination by, the Director that reasonable competitive equities would be adversely affected. The bill could also provide for public hearings on such questions and a formal ruling by the Director so that the rationale for confidentiality of individual company data would be clearly set forth and understood.

Section 209 of the bill provides for penalties for unauthorized disclosure and theft of information. Section 210 provides for penalties for refusing to provide information and providing false information. The penalties provided under section 209 are a \$2,000 fine or imprisonment of up to two years or both. However, section 210 provides for a fine of \$1,000 or imprisonment up to one year or both for neglect or refusal to provide requested information. It would seem that the penalty for refusing to provide information should be at least equal to the penalty for unauthorized disclosure or theft, since the success of the System is dependent to a large extent on submission of information.

Title VI of the bill provides for General Accounting Office oversight of the Bureau's activities. The Comptroller General is required to review and evaluate the activities of the Bureau of Energy Information and to report annually on the operations and effectiveness of the Bureau's activities. No specific mention is made, however, of the extent of our access to the records and documentation in the various libraries of the Bureau.

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If we are to discharge effectively the mandate that we annually report on the operations and effectiveness of the Bureau's activities, we believe that access to the records of the Bureau is required. The General Accounting Office also should be assured access to the books, documents, records, etc. of organizations reporting energy data, in a manner similar to that provided the Bureau under subsection 211(a) of the bill and similar to that provided our Office in S. 70 (passed the Senate May 10, 1973), S. 2176 (passed the Senate December 10, 1973), and S. 2776 (passed the Senate December 19, 1973). We support the provision of such authority since it would provide the Congress assurance that independent reviews of energy data gathering could be made. Accordingly, we have enclosed suggested language for a revised Title VI.

In addition, subsection 601(b) states that the Comptroller General shall report at least annually to the Congress on the operation and effectiveness of the Bureau's activities, but provides for discretion as to the form of the report. We believe that the Comptroller General should have reasonable flexibility in the utilization of the manpower resources of the General Accounting Office and this provision does not offer such flexibility. Accordingly, suggested language is included in an enclosed revision of Title VI that offers greater flexibility and efficiency in the utilization of staff resources and is consistent with the frequency of GAO's auditing and reporting of most Federal programs and activities.

We believe that the bill should provide for periodic assessment of the System's ability to respond to the needs of users of energy information. The questions of what data should be available, to whom, and how soon after collection are chronic in dealing with energy problems. A periodic assessment of data collection is imperative if the process is to be responsive to user needs. The assessment could be carried out by providing for periodic meetings between the Director or his representatives and users of the information--industry, Federal agencies, etc--at which time a determination could be made whether (1) needed data is being collected and (2) data which is not needed is being collected. Specific legislative requirements for these activities could provide a significant step toward mitigating the fragmented and uncoordinated aspects of Federal energy data collection, analysis and reporting.

In conclusion, we call to your attention certain provisions of, or omissions from, the bill, recognizing that they may or may not represent conscious policy decisions. The provisions of section 701 apply only to major energy companies and not substantial energy resources companies. The term "movement" is used on page 13, lines 23-24, while the term "distribution" is used on page 14, line 6. The term "transformation" does not appear in the series on page 12, line 19, although that function is included in the stated concerns of the bill on page 3, line 16. The term "anonymous" is used on page 15, line 9, rather than "aggregate."

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Some suggested technical and editorial changes to the bill are enclosed.

Sincerely yours,



Deputy Comptroller General  
of the United States

enclosures

Suggested Technical and Editorial Changes  
for H.R. 2385, 94th Congress

1. On page 5, line 16, "transmission" should be deleted since mineral fuels are not transmitted as that term is normally used.
2. On page 21, line 2, "the" should be added after "of."
3. On page 32, line 11, "the submerged lands of" should be added after "including."

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TITLE VI - GENERAL ACCOUNTING OFFICEOVERSIGHT OFENERGY DATA COLLECTION AND ANALYSIS

Sec. 601(a) The Comptroller General of the United States shall continuously monitor and evaluate the operations and activities of the Bureau including its reporting requirements. Upon his own initiative or upon the request of a committee of the Congress or, to the extent personnel are available, upon the request of a Member of the Congress, the Comptroller General shall (1) review the Bureau's energy information gathering procedures to insure that the Bureau is obtaining all necessary information from the appropriate sources to carry out the purposes of this Act, (2) review the issues that arise or might arise in the collection of any of the types of energy information listed in titles IV and V, including but not limited to issues attributable to claims of business establishments, individuals, or governments that certain information is proprietary or violative of national security and therefore entitled to be kept confidential or secret, (3) conduct studies of existing statutes and regulations governing collection of energy information, (4) review the policies and practices of Federal agencies in gathering, analyzing, and interpreting energy information, and (5) evaluate particular projects or programs. The Comptroller General shall have access to information from any public or private source whatever, notwithstanding the provisions of any other law, as is necessary to carry out his responsibilities under

this Act and shall report to the Congress at such times as he deems appropriate with respect to the Bureau's operations and effectiveness of its activities, including his recommendations for modifications in existing laws, regulations, procedures, and practices.

(b) The Comptroller General or any of his authorized representatives in carrying out his responsibilities under this section shall have access to any books, documents, papers, statistics, data, information, and records of any private organization relating to the management and conservation of energy, including but not limited to energy costs, demand, supply, reserves, industry structure, and environmental impacts. The Comptroller General may require any private organization to submit in writing such energy data as he may prescribe. Such submission shall be made within such reasonable period and under oath or otherwise as he may direct.

(c) To assist in carrying out his responsibilities, the Comptroller General may sign and issue subpoenas requiring the production of the books, documents, papers, statistics, data, information, and records referred to in subsection (b) of this section.

(d) In case of disobedience to a subpoena issued under subsection (c) of this section the Comptroller General may invoke the aid of any district court of the United States in requiring the production of the books, documents, papers, statistics, data, information, and records referred to in subsection (b) of this section. Any district court of the United States within the jurisdiction in which the private organization is found or transacts business may, in case of contumacy or refusal to obey a

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subpoena issued by the Comptroller General, issue an order requiring the private organization to produce the books, documents, papers, statistics, data, information or records. Failure to obey such an order of the court is punishable by such court as a contempt thereof.

(e) Reports submitted by the Comptroller General to the Congress shall be available to the public at reasonable cost and upon identifiable request, except that the Comptroller General may not disclose to the public any information which could not be disclosed to the public by the Bureau under this Act.