EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 12, 2007
(Senate)

STATEMENT OF ADMINISTRATION POLICY

H.R. 6 – Creating Long-term Energy Alternatives for the Nation (CLEAN) Act

(Rep. Rahall (D) WV and 198 cosponsors)

The Administration is committed to improving the Nation's energy security and environmental stewardship through advanced technologies and diversification of resources, including reducing our dependence on oil, and commends the efforts of the Senate to address further our energy and environmental challenges. However, the proposed Senate version of H.R. 6 does nothing to increase domestic supplies of oil and natural gas for American homes and businesses, such as providing more access to Outer Continental Shelf resources, opening a small portion of the Artic National Wildlife Refuge, and streamlining the siting and expansion of refineries. In addition, the proposed Senate version of H.R. 6 includes several objectionable provisions that make this bill unacceptable in its current form.

The Administration looks forward to working with Congress to enact legislation consistent with the President's "Twenty in Ten" plan. The Administration's objections to the Senate proposed substitute bill are described below.

Price Gouging: The Administration strongly opposes Title VI of H.R. 6. The Federal government has all the legal tools necessary to address price gouging. The Administration takes its enforcement responsibility seriously and will take action against those who break the law. The Administration is greatly concerned about the difficulty high gas prices are creating for both families and businesses; however, Title VI will not alleviate the problem. These provisions could result in gasoline price controls and in some cases bring back long gas lines reminiscent of the 1970s. Gasoline price controls are an old – and failed – policy choice that will exacerbate shortages and increase fuel hoarding after natural disasters, denying fuel to people when they need it most. If a bill including Title VI or any similar price control language is presented to the President, his senior advisors will recommend that he veto the bill.

Corporate Average Fuel Economy (CAFE) Standards: As part of the "Twenty in Ten" plan, the President called for reforming and increasing fuel economy standards for passenger automobiles, and for making further increases in standards for light trucks that will reduce projected annual gasoline use by up to 8.5 billion gallons within 10 years. The Administration has several goals: increased fuel economy, safety, sound economics, and protection of consumer choice. The Administration appreciates the work of the Commerce Committee on CAFE in pursuit of these goals. In particular, the Administration appreciates the flexibility provided by the committee, especially the ability to establish an attribute-based standard, as we have already successfully done in the context of light trucks and sport utility vehicles.

The Administration believes, however, that numeric fuel economy standards should not be set arbitrarily by statute, as is done in H.R. 6. Such arbitrary fuel economy targets are inconsistent with making determinations based on expert analysis, the most current data, safety, and sound science. The language in H.R. 6 is also overly prescriptive in requiring DOT to consider an array of difficult-to-quantify benefits in its analysis of cost effectiveness. Such a requirement adds regulatory uncertainty and would likely subject DOT rulemakings to increased litigation.

The Administration also strongly opposes mandatory standards for medium-duty and heavy-duty trucks and earmarking of civil penalties for unrelated spending purposes.

Renewable Fuels Standard: The Administration strongly supports the increased use of renewable fuels and recognizes the many similarities between the bill's Renewable Fuels Standard (RFS) and the President's proposed Alternative Fuel Standard (AFS) in his "Twenty in Ten" plan. The Administration, however, strongly believes that the bill's RFS should be improved in several ways to achieve greater energy security and environmental benefits. Recommended improvements include: (1) accelerating the time frame for achieving targets for production of alternative fuels; (2) broadening the scope of the portfolio of eligible fuels to include all alternative fuels as defined in the Energy Policy Act of 1992 (EPAct); (3) making the mandate technology-neutral and allowing market forces to determine the mix of such fuels; and (4) modifying the waiver provision to include an automatic, economic safety valve to protect consumers from price spikes and to provide regulatory certainty and market stability (e.g., allowing the Federal Government to sell fuel credits at $1.00 per gallon of ethanol equivalent). These changes will more rapidly commercialize the use of alternative and renewable fuels and will minimize the potential disruption the standard could have on the economy.

EPAct Title XVII Loan Guarantee Program: The Administration strongly opposes the bill's modifications to the EPAct Title XVII loan guarantee program, many of which are inconsistent with the Federal Credit Reform Act of 1990 (FCRA) and long-standing Federal credit policy. For example, certain provisions would remove appropriate controls over the size of the program and significantly increase potential taxpayer liability, namely those provisions that would waive the FCRA requirement that authority be provided in advance in an appropriations act in situations where the borrower pays the subsidy cost. Furthermore, provisions that provide special treatment to advanced biofuels renewable fuel facilities, by requiring 100 percent guarantees, eliminate any incentive for due diligence by private lenders. DOE is working to implement the Title XVII program as Congress authorized it less than two years ago. The Administration believes that it is unwise to amend that authority while the program is still in the early stages of implementation.

Energy Efficiency Promotion: Promoting energy efficiency is a critical part of addressing our energy and environmental challenges, and the Administration generally supports the bill's energy efficiency goals. There are numerous provisions with which the Administration has concerns and will work with Congress to improve.

Public Buildings Cost Reduction: The Administration supports efforts to improve energy efficiency in Federal, State, and municipal buildings and, while generally supporting the bill's provisions related to these efforts, believes that coordination across the Federal government should be handled, as it is currently, by DOE through its Federal Energy Management Program and, as appropriate, GSA. Furthermore, to the extent possible, lighting retrofits should be done within the context of an Energy Savings Performance Contract, or Utility Energy Services Contracting, as allowed by current law.

Energy Diplomacy: The Administration strongly supports the goal of maintaining a high profile for international energy policy but opposes the bill's energy diplomacy provisions because they would raise constitutional concerns noted below and require the State Department to establish programs that duplicate and/or conflict with existing DOE programs and State Department initiatives, hindering ongoing U.S. energy diplomacy efforts.

Constitutional Concerns: Several titles of the bill, including sections 111(h)(1)(B), 263(e)(2)(A), 302, 403(e)(1), 705(e)(2), 704(b), 704(d), 704(g), 705(e)(2), and 706(d), contain provisions that would intrude upon the President's constitutional authority to supervise the unitary executive branch, conflict with the separation-of-powers principles, infringe upon the President's authority to conduct foreign relations or determine whether to initiate litigation to enforce Federal law, violate the Recommendations Clause, raise separation of powers policy concerns, or raise concerns under the equal protection component of the Due Process Clause of the Fifth Amendment and Commerce Clause.

Amendments

The Administration opposes the following amendments:

No Oil Producing and Exporting Cartels (NOPEC): The Administration would strongly oppose any amendment that (1) intends to subject to the jurisdiction of U.S. courts the actions of foreign countries related to energy production, distribution, or pricing and (2) purports to eliminate sovereign immunity and the "act of state" doctrine as defenses in such cases. The consequent targeting of foreign direct investment in the United States as a source of damage awards would likely spur retaliatory action against American interests in those countries and lead to a reduction in oil available to U.S. refiners. Not only would such a result substantially harm U.S. interests abroad, it would discourage foreign investment in the U.S. economy. If a bill including such a provision is presented to the President, his senior advisors will recommend that he veto the bill. The Administration has proposed initiatives, like the Advanced Energy Initiative and "Twenty in Ten" plan, to diversify our energy resources and promote advanced technologies in order to strengthen our energy security and address environmental challenges.

Renewable Portfolio Standards: The Administration would oppose an amendment to add a narrow national renewable portfolio standard (RPS) for power generation. A limited Federal RPS would result in higher electricity costs for consumers in areas where renewable resources are less available and could place new strains on electricity reliability needs. A one-size-fits-all Federal RPS mandate ignores the specific energy and economic needs of the individual States. There are significant regional differences in availability, amount, and types of renewable energy resources, resulting in different regions of the country relying on different fuel mixes. As a result, standards are best left to State discretion.

Windfall Profits Tax: The Administration would strongly oppose any amendment to include a windfall profits tax (WPT). The WPT imposed during the Carter Administration was an abject failure, decreasing domestic energy production while increasing imports. Another WPT could potentially raise consumer prices, reduce domestic oil production, and increase America's oil imports.

* * * * *