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

June 10, 2008
(Senate)

STATEMENT OF ADMINISTRATION POLICY

S. 3044 – Consumer-First Energy Act
(Sen. Reid (D) NV and 22 cosponsors)

The President is concerned about the continuing increase in the prices of gasoline and diesel fuel and its impact on American consumers and families. Prices rise when demand increases faster than supply. The Administration has taken action to moderate oil demand and increase supply of alternative fuels by signing into law the Energy Independence and Security Act of 2007 (EISA), which increases vehicle fuel efficiency standards and mandates increased production of alternative fuels. In addition to these successful efforts, improving our energy security also means that the Nation needs to continue to increase American energy production.

The Administration encourages Congress to build upon the bipartisan progress demonstrated in EISA and focus on increasing the supply of domestically-produced oil and natural gas. Despite the rapid increase in the production of alternative fuels, such as ethanol and biodiesel, our transportation sector will be overwhelmingly dependent for the foreseeable future on oil-derived fuels. Oil-derived fuels comprise 97 percent of the Nation's transportation fuel mix today, and even with the dramatic increases in alternative fuels and improvements in fuel efficiency mandated by EISA, oil is projected by EIA to comprise 88 percent of our total transportation fuel consumption in 2030.

The Nation cannot ignore this fact and must ensure that in addition to increasing efficiency and alternative fuel production, domestic production of oil and natural gas is robust. For the last seven years, this Administration has urged Congress to enact legislation to boost U.S. energy production while at the same time being environmentally responsible. Further increasing access to Outer Continental Shelf resources, opening a small portion of the Arctic National Wildlife Refuge in an environmentally responsible way, and streamlining the siting and expansion of refineries will increase supplies of oil and gasoline over time, putting downward pressure on prices.

Unfortunately, rather than addressing the principal cause of fuel price increases -- rising world petroleum demand without a similar increase in supply -- S. 3044 will undercut U.S. energy security and decrease U.S. energy production, thus exacerbating market tightness and increasing energy prices. For these reasons, the Administration strongly opposes S. 3044. <u>If S. 3044 were presented to the President, his senior advisers would recommend that he veto the bill</u>.

The Administration's principal objections to the bill are described below.

<u>Title I - Tax Provisions Related to Oil and Gas</u>: An increase in taxes on energy will likely reduce supply and increase energy costs which is exactly the opposite of what the Congress

should be doing at a time when consumers are already burdened with record high energy prices. Since 2001, the Administration has invested more than $15 billion in alternative energy resources and supported billions more in tax incentives for increased clean energy production.

The Administration strongly opposes the use of the Federal tax code to single out specific industries for punitive treatment. Singling out and denying a specific industry the tax advantages broadly provided to others is bad tax policy and would result in still higher prices for their products. Repealing the manufacturing deduction specifically for certain oil and gas companies is a targeted tax increase that would put U.S. firms at a disadvantage relative to their foreign competitors. Changes to the foreign tax credit rules related to foreign oil and gas extraction income and foreign oil-related income would also disadvantage U.S.-based companies by reducing their ability to compete for investments in foreign energy-related projects.

The Administration also strongly opposes imposing the 25 percent windfall profits tax (WPT) on specified oil companies. 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. While this WPT is structurally different from the Carter WPT, it would still fail because the qualified investment offset to the windfall profit tax would encourage inefficient investments and thereby reduce the industry's ability to match its investments to genuine market conditions. This is no time to drive the price of fuel still higher by imposing a tax increase on its production.

<u>If the final bill includes any of these tax provisions, the President's senior advisors would recommend the President veto the bill</u>.

<u>Title II – "Excessive" Pricing Provisions</u>: The Administration strongly opposes Title II, which would do nothing to alleviate the supply/demand balance that drives fuel prices in competitive markets. Instead, this title 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. Moreover, it already is illegal for companies to collude to raise gas prices or for a single firm with market power to engage in anti-competitive behavior to exploit consumers. The Department of Justice and the Federal Trade Commission (FTC) remain vigilant in monitoring the markets and stand ready to prosecute any such behavior. <u>If the final bill includes "excessive" pricing provisions contained in this title, the President's senior advisors would recommend the President veto the bill.</u>

<u>Title III - Strategic Petroleum Reserve (SPR):</u> The Administration opposes Title III, as it is redundant and unnecessary with the passage of HR 6022, which the President signed into law on May 19, 2008. The current law has already resulted in the suspension of deliveries of royalty oil from the Department of Interior to the Department of Energy, and the deferral of over 2.1 million barrels of oil to the SPR until Mar-May 2009. Title III contains additional requirements that are inconsistent with PL 110-232 and could result in disrupting and extending the deferrals that have previously been negotiated and contracted for, to the detriment of both the taxpayers and the nation's energy security.

<u>Title IV - No Oil Producing and Exporting Cartels (NOPEC)</u>: The Administration strongly

opposes Title IV, which: (1) would 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. The net effect would be to harm U.S. interests abroad and discourage investment in the U.S. economy. Moreover, this title would make the United States a less desirable place for investment, meaning less foreign capital would be put to work in our country. Both of these outcomes could lead to the loss of a significant number of American jobs. <u>If the final bill includes the NOPEC provisions contained in this title, the President's senior advisers would recommend that the President veto the bill</u>.

<u>Title V - Speculation in the Oil Futures Market</u>: In addition, the Commodity Futures Trading Commission (CFTC) is conducting an investigation of current energy market conditions; any further action by the Congress to regulate the energy markets should be premised on the need for such regulation, as advised by the experts at the CFTC, the FTC, and the Department of Justice. This requirement will not in any way address speculative trading, however it likely will increase transaction costs and reduce liquidity in energy markets, thereby further increasing energy costs for consumers and driving hedgers to more opaque markets.

* * * * *