Statement on Signing the Energy Policy Act of 1992

October 24, 1992
Today I am signing into law H.R. 776, the "Energy Policy Act of 1992." My action today will place America upon a clear path toward a more prosperous, energy efficient, environmentally sensitive, and economically secure future.

Soon after I took office I directed the Secretary of Energy, Admiral James Watkins, to prepare a comprehensive and balanced National Energy Strategy (NES) in recognition of the vital importance of energy to our economy and to our daily lives and the need for changes to Government policies and programs to take full advantage of the tremendous resources our Nation possesses.

Under Admiral Watkins' leadership, the NES was issued in February 1991 to provide a blueprint for our energy future while ensuring that our environmental and economic goals would also be met. Proposed legislation to implement some of its core features was sent to the Congress on March 4, 1991, and with the support of leading members of the congressional energy committees, sound energy legislation was finally enacted by overwhelming margins in both Houses.

There is much that is good for America in this new law. It contains a landmark provision furthering competition in the way electricity is generated and sold, thus lowering prices while ensuring adequate supplies. It also contains licensing reforms that will help to preserve the option of using more nuclear power -- which now supplies one-fifth of our electric power -- in the future. Our near total dependence upon petroleum to fuel cars and trucks will begin to decline because of provisions to encourage the development and use of clean burning alternative fuels. Research and development on a host of exciting new energy technologies -- including advanced clean coal, natural gas, renewables, and conservation -- will be greatly increased. America's independent oil and natural gas producers will be allowed to keep more of their hard-earned money for reinvesting in the production of domestic fossil fuels, so we will produce more here and import less from abroad. Finally, this bill will upgrade postsecondary math and science education for low-income college students so that they will have a better opportunity to contribute to their country and thereby enrich their lives as well as ours.

These are some of the highlights of this legislation. The chief highlight, however, is this: In all of these great and worthy endeavors, Government will serve as the partner of private enterprise, not as its master. This approach will allow our Nation to reap the benefits of the greatest single energy resource we possess -- the entrepreneurial spirit of free men and women.

This new energy policy now takes its rightful place alongside our initiatives in clean air, trade, and other areas that together form a solid basis for my Agenda for American Renewal. This agenda will enable us to approximately double the size of our economy over the next decade and achieve the world's first $10 trillion economy.

I must note, however, that there are several provisions that the Congress has added to the NES that raise constitutional issues.

Various provisions of the Act must be interpreted consistent with the Appointments Clause of the Constitution, which requires that authority under Federal law be exercised only by officers of the United States, and not by private organizations and State officials.

For example, numerous provisions added by title I of the Act, including various provisions in sections 101, 121, and 123, purport to require the Secretaries of Housing and Urban Development, Agriculture, and Energy to amend Federal standards or testing procedures to "conform to" or "be consistent with" standards or procedures to be established in the future by private organizations. Consistent with the Appointments Clause, the Secretaries should, when exercising their responsibilities under these provisions, reserve for themselves the final decision whether or to what extent to adopt these standards or procedures. In particular, the title I provisions must be interpreted as authorizing, but not requiring, the Secretaries to change Federal standards or procedures in response to changes promulgated by the private organizations specified in title I.

Similarly, provisions of the Public Utility Holding Company Act of 1935 (as added by sections 711 and 715 of this Act) purport to condition exemptions for wholesale generators and foreign utility companies on the consent of every State commission having jurisdiction over the relevant utility company, and section 2407(c)(1) of the Act purports to condition the Federal Energy Regulatory Commission's granting of certain licensing exemptions on the licensee's compliance with terms and conditions set down by Alaska's fish and wildlife agency. In administering these provisions, the Federal Energy Regulatory Commission should reserve for itself the final decision regarding the exemptions, while requiring that notice be given to the relevant State authorities and taking their views into account. In particular, the Commission need not regard non-concurrence by any such State authority as sufficient to require denial of an exemption.

Certain portions of section 901, relating to the Uranium Enrichment Corporation, must also be interpreted to avoid constitutional problems. In particular, the provisions adding section 1312 (b) and (c) to the Atomic Energy Act of 1954 (AEA), and which subject the Corporation to Federal environmental laws and to the Occupational Safety and Health Act, must be construed not to authorize litigation in court between the Corporation and other Federal agencies as long as the Corporation is wholly owned by the government. Similarly, new section 1315 of the AEA, which authorizes a Transition Manager to exercise the powers of the Corporation until a quorum of the Board of Directors has been "appointed and confirmed," must be interpreted so as not to interfere with my authority under Article II, section 2 of the Constitution to make recess appointments to the Board. And new section 1306(c) of the AEA, which requires that certain materials be made available to the Comptroller General at his request, must be construed as limited by other applicable law, including Executive privilege. (The same applies to section 2605(1)(3), which authorizes the Indian Energy Resource Commission to obtain certain information from Federal agencies.)

Other provisions of this legislation must likewise be construed to avoid constitutional difficulties.

Sections 1211(a) and 1332(a) of the Act purport to direct the Secretary of Energy to enter into agreements with the Administrator of the Agency for International Development and other agency heads. If these officers are unable to reach such agreements, they must send their competing versions of proposed agreements to the President, who shall within 90 days determine which version shall be in effect. I will interpret these provisions consistent with my inherent constitutional authority as head of the executive branch to supervise my subordinates in the exercise of their duties, including my authority to settle disputes that occur between those officials through means other than those specified in the statute.

Sections 1332(g)(3) and 1608(g)(3) of this Act direct the Secretary of Energy to "consult with government officials" and other persons in certain foreign countries regarding technology transfer programs. Sections 3020(c) and (d) of the Act purport to direct the course of objectives of negotiations concerning the establishment of a Consultative Commission of Western Hemisphere Energy and Environment and to require that the Commission include representatives of legislative bodies, presumably including the Congress. Under the Constitution, it is the President, not the Congress, who articulates the foreign policy goals of the Nation, who decides whether and when to negotiate agreements with foreign nations or otherwise consult with them, and who represents the

United States in international bodies. I will, therefore, construe these provisions merely to express the sense of the Congress with respect to the matters to which they refer.

Section 3021(a) of the Act directs agencies to expend 10 percent of the amounts obligated for certain contracts under the Act with organizations that may be defined on the basis of race, ethnicity, or gender. A grant of Federal money or benefits based solely on the recipient's race, ethnicity, or gender is presumptively unconstitutional under the equal protection standards of the Constitution. Consistent with these standards, I will construe these provisions so as not to allow the expenditure of monies solely on the basis of race, ethnicity, or gender.

Finally, several provisions of the Act purport to require officers of the executive branch to submit reports to the Congress containing recommendations for legislative action, and to submit certain other reports "to the President and the Congress." I will construe these provisions in light of my constitutional duty and authority to recommend to the Congress such legislative measures as I judge necessary and expedient, and to supervise and guide my subordinates, including the review of their proposed communications to the Congress.

George Bush

The White House,

October 24, 1992.