

VOLUME I

APPENDIX B - MODEL DRAFT NOTICE

This Appendix is a model draft notice suggested for insertion in the Federal Register. It describes pertinent features of the recommended program and solicits public comment. Although the draft refers to specific incentives and implementation plans, all such references are, of course, contingent upon future decisions about the nature and scope of the recommended program. It should be recognized that additions and modifications are expected and welcomed as consideration of the recommended program continues.

NOTICE OF INTENT TO ESTABLISH A PROGRAM FOR  
THE COMMERCIAL DEMONSTRATION OF CERTAIN SYNTHETIC FUELS

AUTHORITY

This notice is issued pursuant to the Energy Reorganization Act of 1974 (P.L. 93-438), the Federal Nonnuclear Energy Research and Development Act of 1974 (P.L. 93-577) and other applicable law.

PURPOSE AND SCOPE

A. The purpose of this notice is (i) to provide data to the public concerning the Energy Research and Development Administration's (ERDA) intent to carry out a synthetic fuels commercial demonstration program, (ii) to seek comments from interested parties relative to the proposed program, prior to formulating final agency rules and regulations, (iii) to obtain industry's appraisal of the program, and (iv) to gain insight into probable response to solicitations for proposals to conduct individual demonstrations.

B. The objective of the program is to execute an initial effort aimed at developing approximately 350,000 barrels per day equivalent capacity of synthetic fuels (synfuels) from oil shale, coal, biomass (solid waste materials) which could then be increased to 1,000,000 barrels per day by 1985. The initial level of 350,000 barrels would provide the essential information and data to clarify uncertainties surrounding the scale-up of the several processes likely to be used by the synfuels industry. A sound information base will then be established for determining the best ways to proceed toward the second phase of 1,000,000 barrel per day goal by 1985.

C. This notice is not intended as a solicitation for proposals offering to undertake commercial demonstrations of these synthetic fuels. ERDA intends, after receipt and review of the comments requested herein to issue an announcement(s) requesting competitive proposals for commercial demonstrations of these synthetic fuels.

1. Synthetic petroleum produced from oil shale and/or coal, although it is not presently intended to include production of synthetic petroleum from coal in the initial phase;
2. Synthetic natural gas produced from coal; and
3. Synthetic utility and industrial fuels (substitute fuels) which may be produced from coal, oil shale and/or biomass (solid waste materials). This category may include low and medium Btu gasses, liquid or solid clean boiler fuels including methanol.

#### BACKGROUND

A. The President, in his January 1975 State of the Union Message proposed a comprehensive energy program.

Under this proposed program, the Nation's abundant indigenous coal and oil shale resources will provide significant contributions to future energy supplies. Specifically, the President

" . . . established a goal of 1-million barrels of synthetic fuels and shale oil production per day by 1985 together with an incentive program to achieve it. . .".

In response to this national goal, the Office of Management and Budget in February 1975 organized a task force to:

1. develop detailed incentive program plans designed to ensure several alternative levels (including 1-million barrels per day) of synthetic fuels capacity by 1985;
2. evaluate the overall costs and benefits of each alternative program from a national viewpoint including such factors as direct financial cost to government, opportunity cost, environmental and social impact, macro-economic and distributional effects, national and international security and international relations benefits; and
3. recommend a preferred program level option and develop the details necessary for expeditious implementation.

B. This Notice of Intent is an outgrowth of the activities of the Task Force, the Federal Agencies favorable review and assessment of those activities, and the President's decision to proceed with the 350,000 barrels per day first phase of the recommended 2-phase 1,000,000 barrel of oil per day-equivalent program.

POLICY PROPOSAL

ERDA proposes to establish and implement, using competitive procurement techniques, a synthetic fuel commercial production demonstration program for the following synthetic fuels:

1. synthetic petroleum produced from oil shale and/or coal, although it is not presently intended to include production of synthetic petroleum from coal in the initial phase;
2. synthetic natural gas produced from coal; and
3. synthetic utility and industrial fuels (substitute fuels) which may be produced from coal, oil shale and/or biomass (waste materials). This category may include low and medium Btu gasses, liquid or solid clean boiler fuels and/or methanol.

INCENTIVES

A. In support of the above policy, ERDA proposes to provide the following financial incentives to successful offerors selected on a competitive basis. The incentives for substitute fuels are directed toward both regulated and unregulated companies. The incentives for synthetic natural gas are directed toward regulated companies only. All other incentives are directed toward unregulated companies. The government's analysis of this problem has indicated that these incentives are most appropriately applied to the subject cases as indicated below; however, ERDA is prepared to consider any variation or combination of these incentives that the offeror believes would more efficiently support his particular project and will bring about the desired development at the lowest cost or provide the greatest benefit to the government.

<u>FUEL</u>	<u>INCENTIVE</u>
1. Synthetic Petroleum Shale Oil Syncrude	Competitively bid combination of non-recourse loan guaranty of up to 50% total project cost, plus a price guaranty.
2. Synthetic Natural Gas High Btu - Regulated Companies	Competitively awarded non-recourse loan guaranty for up to 75% of total project cost.

3. Synthetic Utility and  
Alternative Fuels  
(Alternative Fuels)

Utility/Industrial  
fuels produced from  
- coal

Unregulated  
Companies

Competitively awarded non-  
recourse loan guaranty for  
up to 50% of total project  
cost, and price guaranty.

Regulated  
Companies

Competitively awarded  
construction grant for  
up to 50% of total  
project cost.

- Biomass

Unregulated  
Companies

Competitively awarded non-  
recourse loan guaranty for  
up to 75% of total project  
cost.

B. The following discussion reflects the intended position regard-  
ing these incentives.

1. Synthetic Petroleum derived from oil shale or coal and non-  
regulated substitute fuels, except those produced from  
Biomass: Competitively bid combination of a non-recourse  
loan guaranty of up to 50 percent of total project cost  
plus a price guaranty.

Under the loan guaranty part of this incentive, the government would  
guaranty, on a "non-recourse" basis, the payment of principal and accrued  
interest on a loan for up to 50 percent of the estimated total project  
cost of the development of a synthetic fuel production project. In  
addition, the government would consider guaranteeing a loan for up to  
50 percent of overrun in excess of estimated total project cost; how-  
ever, as a matter of policy, such supplemental guaranty, if provided,  
would be on a "recourse" basis. "Non-recourse" means that in the event

of default on the guaranteed loan the government would assume the loan obligation and assert its claim against the borrower but its recovery right would be limited to the assets of the synthetic fuel production project, without recourse to other assets. "Recourse" means that in the event of default on the guaranteed loan, the government's recovery right would extend to all assets of the project equity participants (and of the participants therein) as well as to those of the project.

Under the price guaranty part of this incentive, the government would pay the producers of the fuels an amount equal to the difference between the agreed to guaranteed price and the market or selling price of the fuels, if less than the guaranteed price. The guaranty price would be paid only for fuel actually produced up to the agreed to rated output capacity of the plant. No payments would be made if the market or selling price of the fuels equals or exceeds the guaranteed price. The government would have the option during the period in which the price guaranteed incentive was in effect, to acquire up to the agreed to rated output capacity of the plant at the guaranteed price. Production in excess of this capacity would not be subject to this option.

The price guaranty would apply only to a specified quality and quantity of fuel delivered to a designated pumping station(s) or other point(s) of delivery. Price guaranty(s) would be related to a market price(s) which would be measured or calculated at this same point of delivery.

The loan guaranty would extend over the life of the loan which may not exceed the lesser of 25 years or 90 percent of the useful economic life of the project. The price guaranty would extend no longer than the period of the loan guaranty or, if not granted in combination with a loan guaranty, no longer than 25 years.

The timing and terms and conditions of the loan guaranty would be subject to Department of the Treasury approval.

2. Synthetic Natural Gas derived from coal for regulated sale and Substitute Fuels derived from Biomass for unregulated sale: Competitively offered non-recourse loan guaranty of up to 75 percent of total project cost

Under this incentive, the government would guaranty, on a "non-recourse" basis, the payment of principal and accrued interest on a loan for up to 75 percent of the estimated total project cost of the development of a synthetic fuel production project. In addition, the government would consider guaranteeing a loan for up to 75 percent of overrun in excess of estimated total project cost; however, as a matter of policy, such supplemental guaranty, if provided, would be on a "recourse" basis. "Non-recourse" means that in the event of default on the guaranteed loan the government would assume the loan obligation and assert its claim against the borrower but its recovery right would be limited to the assets of the synthetic fuel production project, without recourse to other assets. "Recourse" means that in the event of default on the loan, the government's recovery right would extend to all assets of the project equity participant (and of the participants therein) as well as to those of the project.

The loan guaranty would extend over the life of the loan which may not exceed the lesser of 25 years or 90 percent of the useful economic life of the project.

The timing and terms and conditions of the loan guaranty would be subject to Department of the Treasury approval.

3. Substitute Fuels derived from coal for regulated sale: Competitively awarded construction grant up to 50 percent of total project cost

Under this incentive, the government will provide a fixed dollar amount grant for development of a synthetic fuel production project. The grant will be for a portion of the estimated total project cost of developing the synthetic fuel production project, but will be supplemental to contractor provided financing.

### C. Definitions

As used in subparagraph B above, the term "total project cost" means the sum of the properly allowable direct and indirect costs allocable to the development of a synthetic fuel production project as well as the interest and other financial costs incurred during construction and initial start-up costs that are related to the loan guaranteed by the government. Appropriate allowable cost provisions and the portion guaranteed of the projects to which they will be applicable will be specified in the solicitations for proposals and attendant regulations to be promulgated by ERDA.

As used in subparagraph B above, the term "overrun" means those costs properly allowable and allocable to the development of the synthetic fuels production project, incurred or to be incurred, less any allocable credits, which result in the actual "total project cost" of the synthetic fuel facility project being more than the estimated total project cost agreed to by the government and the successful offeror.

### D. Nature of Government Loan Guaranty

Loans subject to government guaranty would: (1) be secured by a first mortgage or other most senior claim on the assets of the venture; (2) would have protection against any additional encumbrance of the equity; and (3) would be subject to call. The government's remedies under a default would include the right to make contributions towards debt service requirements. Such contributions, if made, would not prejudice any other rights the government may have under default. Other protections available to the government as guarantor will both be specified administratively and be the subject of detailed negotiation as may be required by state or local law, or by the circumstances of specific guaranties. A sinking fund or amortization provision will be required for guaranteed debt. Interest rates and other terms and conditions of any loan guaranty will be subject to approval by ERDA and the Department of the Treasury.

The government will charge an annual fixed percentage loan guaranty fee of up to one percent of the outstanding balance for the life of the loan guaranty. The fee will vary based on the administrative costs and on the financial structure of the venture. Pertinent factors used to determine the fee will include:

1. the rate of long-term indebtedness to net worth;
2. the nature of equity investment to the government's total guaranty;
3. the life of the guaranteed loan;
4. administrative expenses of the government.

E. Price Guaranty Incentive

Protection(s) to be available to the government with regard to the price guaranty incentive will be the subject of future regulations.

IMPLEMENTATION

A. Proposed Procedure

1. ERDA will provide information concerning the proposed synthetic fuel program to the public with the intent of encouraging the submission of competitive proposals to develop and demonstrate the commercial production of such synthetic fuel(s). ERDA's present intent is to support the construction and operation of a limited number of facilities for each such synthetic fuel.
2. Prior to the submission of competitive proposals, ERDA will hold discussions with interested participants covering particular and significant aspects of the proposed projects which may include, but not be limited to (i) the extent and nature of government financial and other support that will likely be made available; (ii) any government limitations on the amount of price guaranties (including economic adjustment factors as well as what indices should be used in establishing these factors); (iii) the government's intent to include in the incentive arrangements provisions concerning termination, default, patent and data rights, technical and financial reporting requirements and

other standard and required contractual terms and conditions; (iv) the Environmental Protection Strategy and (v) any other pertinent areas of interest or concern to prospective participants, the government, and concerned public interest groups.

3. After the discussion called for in subparagraph B 2 above, formal written competitive proposals would be requested to be submitted to ERDA.
4. It is intended that the evaluation process would include consideration of certain specific factors, which may include, but not be limited to, the following;
  - (a) Overall technical feasibility of the proposed effort including
    - ( i) Technological process to be used
    - ( ii) Construction cost by major technical components
    - (iii) Operating cost by major operating expense items
    - ( iv) Product price to expected users
    - ( v) Technical probability of successful operations
    - ( vi) Methodology to be utilized in meeting applicable environmental requirements.
  - (b) Overall expected cost and potential cost to the government.
  - (c) Environmental and societal factors, including the impacts which may result from a successful project.
  - (d) The potential contribution, if supported at this time, which the proposed effort is expected to have on ERDA's efforts to carry out the synthetic fuel commercialization program.
  - (e) The capabilities, related experience, facilities, instrumentation or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal.
  - (f) The qualifications, capabilities and experience of the proposed key personnel.

- (g) The availability to the proposer of key physical resources including plant site, coal and water.
- (h) More general considerations such as the following:
  - ( i) The anticipated objectives to be achieved by the activities or facilities proposed.
  - (ii) The relationship of the proposal to the following kinds of priorities.
    - (a) The urgency of public need for the potential results of the proposed commercial demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance.
    - (b) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results.
    - (c) The extent of the problems treated and the objectives sought by the undertaking are national or widespread in their significance.
- (i) With regard to the production of substitute fuels, the proposed use and marketing arrangements for the fuels to be produced.

B. State and Local Government Involvement in Protection of the Environment

- 1. The Synthetic Fuels Commercialization Program (SFCP) will include a comprehensive strategy for environmental protection, including socioeconomic concerns. The Environmental Protection Strategy (EPS) has as its main objectives:
  - (a) To ensure that synfuels projects selected are environmentally sound in design, construction and operation.
  - (b) To mitigate or prevent any significant adverse impacts that may otherwise result from a project included in the program; and
  - (c) To develop a complete environmental knowledge base for subsequent synfuels commercialization.

2. The principal features of the EPS include, formation of an Environmental Advisory Board, preparation of individual development plans for each synfuels facility, coordination of the development plans with state and local governments, preparation of site-specific environmental impact statements for each synfuels facility, and other means for inter-governmental cooperation to ensure orderly energy developments consistent with preservation of the physical, biological, and human environments.
3. Procedures are being developed for defining the roles of state and local governments with respect to the Environmental Protection Strategy. Information on environmental and socio-economic aspects will be provided to the states and local governments. The Environmental Advisory Board will include state representation. Procedures will be established for state and local reviews of pertinent draft materials and for consideration of state and local comments prior to reaching environmentally significant decisions.

Some examples of the types of procedures being considered are found in the Guidelines of the Council on Environmental Quality dated August 1, 1973 (38 FR 20550), and the proposed regulations on the Drilling and Development Programs of the Department of the Interior, dated September 10, 1975 (proposed modification to 30 CFR 250.34). State and local governments will be given the opportunities to comment on the procedures before they are finalized.

#### C. Other Related Considerations.

Certain other related considerations may materially affect the implementation of the proposed program. These include but may not be limited to:

##### 1. Eligibility

- a. To be eligible to participate in the program, the proposing entity must offer to construct all plants and related facilities within the United States. Federal leaseholders, as well as private landowners and leaseholders, will be eligible to participate in the program. However, it should be noted that the Government does not presently intend to enter into any new leases for oil shale land except for those associated with the Department of Interior prototype oil shale leasing program.

- b. With regard to synthetic natural gas (SNG), proposing entities will be required to have made application to the Federal Power Commission for a certificate authorization to tap the produced SNG into a pipeline transporting natural gas interstate where such tap is intended. Further, no loan guaranty will be effective until an opinion granting such certification is issued.
- c. It is intended that entities which have initiated projects but have not yet obtained financing commitments for them will be eligible to submit proposals for consideration in connection with the programs proposed herein. An entity with financing commitments which are conditioned on award of any incentive under this program, and in connection with which no funds have been made available, will be eligible to submit a proposal.

## 2. Economic Adjustment

Individual synthetic fuel projects will involve extensive long-term construction, and in certain cases, price guaranties over an extended period. It is anticipated, therefore, that agreements entered into will include "Economic Adjustment" provisions to adjust price guaranties to compensate for such uncertainties as fluctuations in construction material costs and availabilities, wage rates, other inflation factors, and like matters.

ERDA has under consideration for such use, various economic factor adjustment mechanisms such as fixed, adjusted, and actual cost profiles, redetermination, and composite cost indexes. Comments on the desirability of these or other mechanisms, with emphasis on any specifically affected technologies or fuels, are particularly solicited from interested parties.

## 3. Small Business Participation

It is the government's intent that small business concerns be given a reasonable opportunity to participate, insofar as possible, fairly and equitably in contracts and sub-contracts awarded under this synthetic fuel program.

## 4. Environmental and Social Aspects

In order to assure the health and well-being of the public, the proposed program for the development and commercial

demonstration of synthetic fuels shall be carried out by environmentally and socially acceptable means. To this end, all activities taken pursuant to, and work performed under this program shall be conducted in conformance with applicable environmental and socially related laws and regulations and in compliance with the Environmental Protection Strategy.

5. Patent and Data Policy.

ERDA considers Section 9 of the Federal Nonnuclear Energy Research and Development Act to be applicable to the grant incentive of the proposed program but to be inapplicable to the loan and price guaranty incentives. ERDA intends to include specific provisions concerning patent and data rights in each agreement under this program. These provisions will include the treatment of such rights if there is a default and, where appropriate, the extent and terms upon which the party constructing a facility will be required to license others to use the patents and technology involved. As the matter of patent data policy is likely to be a significant issue in the incentive program, ERDA intends to elaborate on this matter at the pre-response conference.

It is specifically requested that interested parties provide comments concerning what patent and data policy should be adopted by ERDA.

6. Due Diligence

It is intended that awards implementing any incentives in connection with this program will contain bonding and due diligence provisions to insure compliance with established program schedules.

POTENTIAL CONSTRAINTS

A. The government has determined by survey of a limited sample of industrial and other concerns, constraints which those interviewed perceived as working to inhibit synthetic fuel production. The results of these studies indicate that these constraints include, without being limited to, those in the list which follows. It appears that these could constrain or inhibit participation in the programs proposed herein. These include:

- Technical - Technical viability of processes  
Manpower availability
- Economic and Market - Uncertainty of oil price and supply  
Inflation and economy  
Cost uncertainties
- Capital Formation - Question of profitability  
Capital formation and cost
  - o Availability of funds from private sector  
Cost of capital
- Environmental - Environmental and regulatory problems
- Resource Acquisition - Availability of land  
Availability of water  
Community development
- Political - Absence of firm government policy  
Price control exemption  
Uncertainty of energy demand mix  
Government limits on oil company profits  
Overlapping governmental jurisdictions  
Antitrust  
Availability of reliable nuclear facilities
- Patents and Data - Disclosure of proprietary information
- Other - Transportation of coal and gas  
Availability of support industries

B. It is specifically requested that interested parties provide comments concerning what actions should be taken by the government to eliminate or alleviate these and other constraints.

PRE-RESPONSE CONFERENCE

ERDA intends to sponsor a meeting at \_\_\_\_\_ (time) \_\_\_\_\_,  
\_\_\_\_\_ (date) \_\_\_\_\_, 1975, at \_\_\_\_\_ (address) \_\_\_\_\_ at which parties  
interested in this program will have the opportunity to obtain clarification  
of any issues generated by this notice, and elaboration on the  
matters contained herein. Interested parties should indicate their  
intent to attend such a meeting by \_\_\_\_\_ (date) \_\_\_\_\_. Replies should be  
directed to \_\_\_\_\_ (name) \_\_\_\_\_, \_\_\_\_\_ (address) \_\_\_\_\_,  
\_\_\_\_\_ (telephone) \_\_\_\_\_, indicating the number of attendees. To insure an adequate  
response to questions they have identified, parties should submit them in  
writing to \_\_\_\_\_ (name) \_\_\_\_\_ by \_\_\_\_\_ (date) \_\_\_\_\_, 1975.

RESPONSE

Comments regarding this notice, if they are to be given consideration in the definitive formulation of the proposed program described herein, must be received in writing by no later than (date), 1975.

Interested parties should submit such comments in writing to

(name)

, (address)

\_\_\_\_\_  
(signature)

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