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HEARING BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-THIRD CONGRESS
SECOND SESSION

ON

FRANK G. ZARB TO BE ADMINISTRATOR OF THE FEDERAL
ENERGY ADMINISTRATION

DECEMBER 4, 1974

DOCUMENTS

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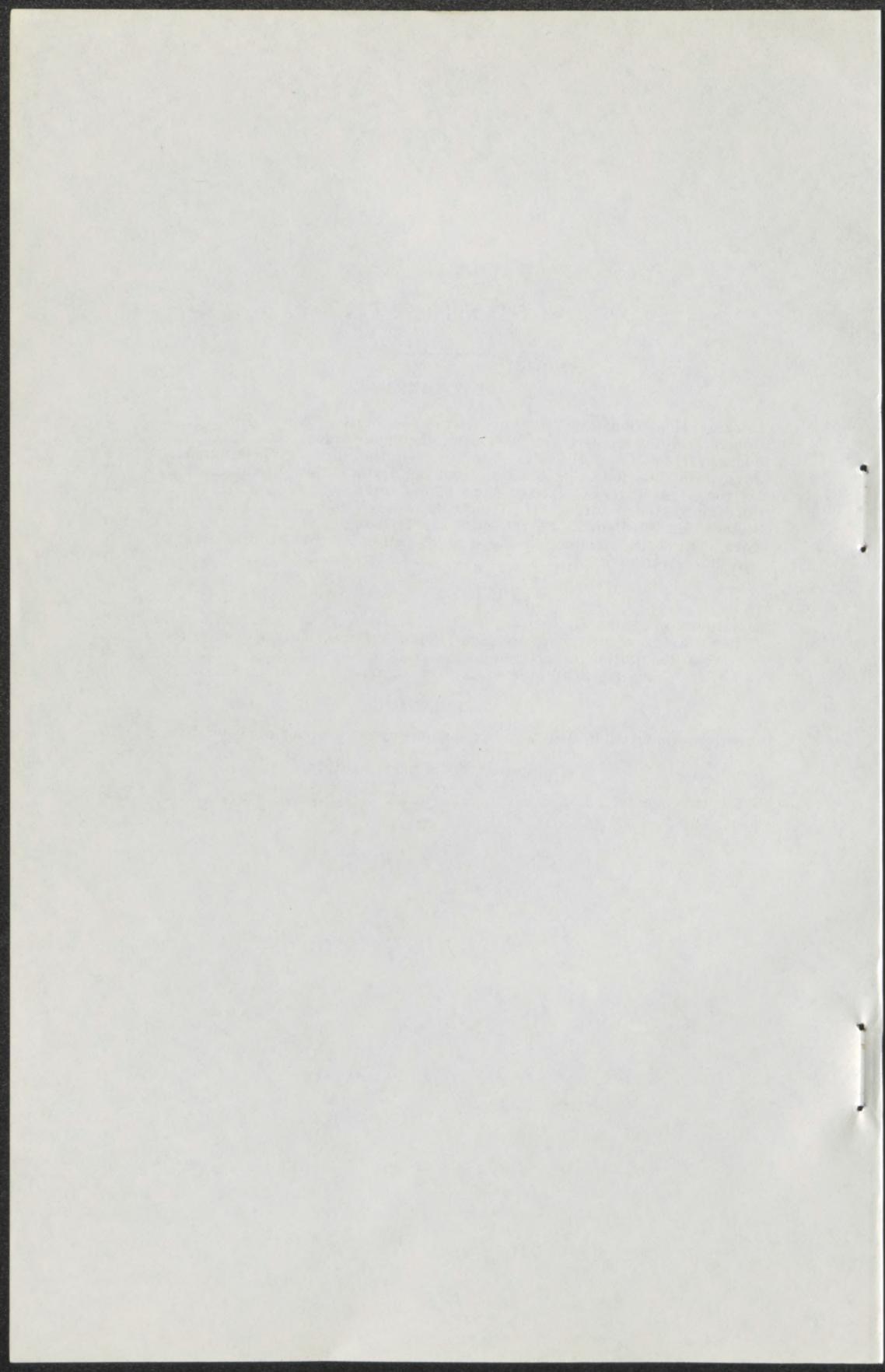
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NOMINATION OF FRANK G. ZARB TO BE ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION

WEDNESDAY, DECEMBER 4, 1974

U. S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 2 p.m., in room 3110, Dirksen Office Building, Hon. Henry M. Jackson, chairman, presiding.

Present: Senators Jackson, Johnston, Metzzenbaum, Fannin, Hansen, Hatfield, Buckley, McClure, and Bartlett.

Also present: Jerry T. Verkler, staff director; William J. Van Ness, chief counsel; Grenville Garside, special counsel, Richard D. Grundy, James Barnes, and Lucille Langlois, professional staff members for the majority; Harrison Loesch, minority counsel, David P. Stang, deputy director for the minority; and W. O. Craft, Jr., deputy minority counsel.

The CHAIRMAN. The committee will come to order.

OPENING STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

The Federal Energy Administration Act of 1974, passed by the Congress at the request of the Administration, was enacted May 7, 1974.

It provides that—and I quote—

... the Administrator shall be responsible for such actions as are taken to assure that adequate provision is made to meet the energy needs of the Nation. To that end, he shall make such plans and direct and conduct such programs related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy. . . .

In its request to the Congress for the creation of FEA the executive branch had envisioned that its Administrator would also function as "the President's adviser with respect to the establishment and integration of domestic and foreign policies relating to energy matters."

The President has nominated Mr. Frank Zarb to succeed Mr. John Sawhill as the Administrator of FEA. The committee will today hear testimony on Mr. Zarb's qualifications to discharge the duties of that office upon which it may base its recommendation to the Senate on the question of his confirmation.

We are pleased today to welcome, together with Mr. Zarb, Secretary of the Treasury, Mr. William E. Simon; Secretary of the Interior,

Mr. Rogers C. B. Morton; Deputy Attorney General, Laurence H. Silberman, and Executive Vice President of Common Cause, Mr. David Cohen.

We are extremely pleased to have with us the senior Senator from New York, Senator Javits. I will ask Senator Javits to speak first, and then call on Senator Buckley, a member of this committee.

**STATEMENT OF HON. JACOB JAVITS, A U.S. SENATOR FROM
THE STATE OF NEW YORK**

Senator JAVITS. Fortunately in this nomination New York has its own Senator on the committee, and Mr. Buckley will present Mr. Zarb's background in more detail.

My job is to commend Mr. Zarb to the committee, and I have gone to some pains to inquire after him in his capacities in the New York area, first as an undergraduate and then very singularly honored by one of our great universities, Hofstra University which is in Hempstead, close to New York City, and second in the banking industry where he served his early experience in respect of business and governmental affairs.

My own observation of him since he has been Assistant Secretary of Labor, and my committee of which I have the honor to be second-ranking member that confirmed him, he is able, honest and tough. That, plus the specificity of experience and knowledge which the committee will inquire into, will represent the prime qualifications for this, probably the toughest of all jobs right now in the Federal establishment.

I think the Chair and the committee commend Mr. Zarb for confirmation for Federal Energy Administrator to the committee.

The CHAIRMAN. Thank you, Senator Javits for your fine statement. I know you have, as we all do, other things, and you are excused. Senator Buckley?

**STATEMENT OF HON. JAMES BUCKLEY, A U.S. SENATOR
FROM THE STATE OF NEW YORK**

Senator BUCKLEY. Thank you, Mr. Chairman.

I would like to join my colleagues in welcoming Mr. Zarb to these hearings.

In his December news conference of 1974, President Ford said—and I quote:

We are currently facing three serious challenges, all at the same time: inflation, recession and energy . . . assuring adequate energy will require the best efforts of all Americans. . . .

The President's words served to remind us of two important facts: First, although we do not hear the phrase "energy crisis" as often as we did last year, our Nation is still confronted with grave and wide-ranging energy problems.

Second, these problems must be approached as integral parts of the other "serious challenges" our Nation faces. The President has made it clear that the decisions we will make in the near future will have a major impact in every area of national concern, at home and abroad.

It is obvious that what is needed to meet the challenges of the energy problems is an unusual degree of administrative ability and leadership.

President Ford's nomination of Frank Zarb to be Administrator of the Federal Energy Administration can perhaps be better appreciated when seen in the context of the facts I have just outlined. President Ford has called upon Mr. Zarb to undertake what is currently the most urgent and most difficult domestic administrative task in the executive branch.

I suppose Mr. Simon would question that; he has inflation on his hands, but nevertheless President Ford's confidence in Mr. Zarb is well placed.

I am pleased to have this opportunity to present him to the committee.

Since I assume you already have sufficient biological data concerning Mr. Zarb—

The CHAIRMAN. Did you say "biological?"

Senator BUCKLEY. Or biographical—I will not take the time to read to you his fact sheet, except to say that as a Senator from New York it is with considerable pride I can report Frank Zarb was born in that legendary section of Brooklyn known as Flatbush and has been educated and worked in New York.

The faculty of Hofstra University, where he received his undergraduate and graduate education, recently conferred upon him the University's Distinguished Honor Award, a tribute not only to the fact but also to the high quality of his success as a businessman and government official.

He comes to this assignment with considerable experience in dealing with energy-related matters. Last year he helped to organize the Federal Energy Administration fuel allocation program, and, according to Business Week magazine—and again I quote:

Played a leading role in hammering out a crude-oil equalization program that will make small oil companies more competitive with major ones.

When I learned of Mr. Zarb's nomination, I made some discreet inquiries to learn what his reputation is among those who know and work with him. As you know, Mr. Chairman, Washington is noted as a place where you can always count on candid—in fact, even brutal—assessments of a person by those with whom he has had close contact.

In the midst of my inquiries I came across someone who is in a good position to be able to judge Mr. Zarb's record as Associate Director of the Office of Management and Budget and as Executive Director of the Energy Resources Council.

I want to pause here for a moment to say that my informant, whose opinion I value highly, was judging Mr. Zarb's performance with the jaundiced, skeptical, some might even say cynical, eye that is the distinguishing characteristic of one who has spent some time in the bureaucratic trench warfare of Capitol Hill.

Instead of paraphrasing what he said, I would like to quote to you directly the words he used when I asked him his opinion of Frank Zarb:

Frank Zarb has a reputation as a man who not only thrives on controversy, but is able and willing to make difficult decisions in such an atmosphere. His reputa-

tion with those on Capitol Hill who have worked with him is one of honesty, integrity and fairness. He has always been a man of his word. Another quality to be highly admired in Frank Zarb is his complete grace and ability to make balanced judgments under stress.

Mr. Chairman, I suggest this is the kind of man we need for this most difficult and taxing assignment.

The CHAIRMAN. Thank you, Senator Buckley. Mr. Zarb, we have nothing but meetings and sessions around here today.

Before you make your statement, I want to ask a couple of questions, and I will defer so you can make your statement.

In your statement you say first—and I quote:

The time has come, however, when hard decisions must be made and positive action taken.

Later on you say:

The voluntary conservation program should be our first approach, but if it does not work then mandatory conservation measures will be recommended, and I will not hesitate to recommend them to the President and to the Congress if legislation is needed and implement them if given the legislative authority.

Let me ask you this question: This matter is going to be up next week. Would it not be desirable if the legislative authority were enacted now to be used later, if needed, rather than wait to demonstrate the need and then, with the situation more critical seek the authority? I am referring to standby authority. Maybe you want to clarify that.

Mr. ZARB. Mr. Chairman, I would first inquire as to the specific nature of the authority to ascertain whether or not the executive branch already did not have the authority to react to an emergency in the future.

I would go on to say the ability to achieve a voluntary program is so much better, inasmuch as it attains the cooperation and support of the American people in a way that we experienced during the days of the embargo. People who were not mandated to do things or not do things, specifically with respect to rationing and so on; nevertheless, they cooperated in a wholehearted way.

I certainly have no problem with standby authorities to be implemented in a state of emergency, should they be required.

On the other hand, if we already have them on the books and do not need further clarification, I would just as soon not have those authorities. They sometimes get us into trouble when we try to implement them.

The CHAIRMAN. The reason I'm bringing this up, is because we have tentatively entered into an international agreement for the necessary belt-tightening over here. I can see a delay—not a long delay—but a time when we may be in a cutoff crisis, and we are in a crisis right now—a financial crisis. Next week the Senate will be considering the Standby Energy Authorities Act, and I take it, if the Senate adopts this legislation, you would support that effort.

Mr. ZARB. Again, I would like to look at that legislation more precisely before answering your question, Mr. Chairman.

We do have allocation authority now, which gives us a long step forward in what some call the same thing as rationing.

The CHAIRMAN. I think your counsel has ruled—and correct me if I am wrong—that allocation authority does not give you rationing authority to the end user.

Mr. ZARB. There is a dispute, Mr. Chairman. There are lawyers who say we do and lawyers who say we do not. I think when we reach the point where we have exhausted the other means to get this job done, and jointly conclude such a severe step as rationing, with its built-in bureaucracy and its built-in inequities, is absolutely essential; and I would suggest, Mr. Chairman, it might be useful at that moment to address the precise form of such authority as might be required and the shape it might take, and not attempt at this time to prejudge it.

The CHAIRMAN. You would support basic authority which you do not have now on a standby basis, so if the situation arose you would have that tool available to you as an option? I am not suggesting that it be mandated at this time.

Mr. ZARB. I would insofar as it did not preclude flexibility in that we had to move forward with it very quickly and it could be, if needed, tailored in another way.

The CHAIRMAN. Earlier, of course, Secretary Simon had the responsibility. He went ahead and printed rationing tickets. But I think there should be some planning going on here so we are prepared to deal with it.

I must say I feel very strongly the American people, in turn, feel they want action. They don't like rationing. They don't like a lot of things, but we are now in a different kind of situation on the end use of energy, it seems to me, that the crisis cannot be cut off.

We are into a financial cutoff, and if I read the experts correctly, and they testified before our committee; they said, if prices stay at the current level—and those are the words of Dr. Wallach of the Federal Reserve Board and Alan Greenspan, Chairman of the Council of Economic Advisors, we face national bankruptcy in the Western industrial communities within 2 years. I think what we need to articulate here are the views of the administration, if there is a real sense of urgency. If there is, they simply ought to say so.

I think there is. I think we are going downhill so fast on the international side and the amount of energy we buy directly relates to that financial situation. I think the administration should be in a position to indicate what their views are on the authority, and whether they want to apply a peril point concept to limit the amount in dollar terms how much is going to be imported. We ought to know these things. I just wanted to make these comments so it would be clear.

Now, on the light side, your predecessor's demise has been attributed, among other things, to terminal candor, particularly as regards his forthrightness with Congress and the press.

I just wonder if you feel you are sufficiently equipped to retain the Administrator's post in the event you are confirmed, having to deal with some very difficult questions, and still be as candid as possible with the press, the Congress and the public. I say that part of it tongue-in-cheek.

Mr. ZARB. I am seated next to one of the most candid people I have ever had the pleasure of working with. I have never known him to pull a punch, publicly or privately, even under the pressures of the severe battle of the embargo. And I know, for the record, his survivability lies with that characteristic.

May I just further say, Mr. Chairman, I have every assurance, with any question of that nature, I certainly would not have accepted this

job unless I had every assurance I would be free to be my own person and to run my own agency.

The CHAIRMAN. It is a tough job. It is going to get tougher, in my judgment. I hate to say this, but we have not seen anything yet, as I look down the road, unless oil prices come down and there is some kind of stability in the Middle East. If we don't, I think we are headed for some terribly, terribly serious things. I know of no authority in the international finance area that doesn't say the same thing. We are moving fast down that road. I am sure you are going to live up to your responsibility.

While I'm on that one point, I want to ask the standard question, and that we ask of all nominees pursuant to a decision of the Democratic Caucus, and that is: If confirmed, you will of course be willing to appear before this committee upon any reasonable request being made at a reasonable time?

Mr. ZARB. Yes, sir.

The CHAIRMAN. I understand the Secretary of the Treasury has to leave due to a previous commitment. I will ask him to make a statement, and I think eventually we will get to the nominee.

Am I not correct, Mr. Secretary?

Secretary SIMON. Yes, Mr. Chairman.

I would appreciate it greatly. If you like, I will submit my statement for the record, and you can get on with the hearing if you would prefer that.

The CHAIRMAN. That would be fine. Do you want to make some general comments?

STATEMENT OF HON. WILLIAM E. SIMON, SECRETARY OF THE TREASURY

Secretary SIMON. No one was more pleased than I was when President Ford nominated Frank Zarb to head the Federal Energy Administration, which paralleled the job I held about a year ago, at which time I came to know Frank Zarb very, very well.

He was one of the critical elements in the early days of the embargo in the Federal Energy Office, in charge of the most highly sensitive—and, I might add, explosive—areas, the area of regulation and allocation.

In those very early days of the gasoline lines and a brand new allocation program, to say he did it in a brilliant fashion would be the understatement of the century, and his ability to get along with people as a superb administrator and is a knowledgeable man in the energy area.

I can just completely recommend that you gentlemen confirm Frank without deliberate haste, and I thank you for the opportunity and I would like to submit my statement for the record.

The CHAIRMAN. Thank you, Mr. Secretary. Your statement will be included in full in the record.

[The prepared statement of Secretary Simon follows:]

STATEMENT OF HON. WILLIAM E. SIMON, SECRETARY OF THE TREASURY

It is both a pleasure and a privilege to appear here this afternoon in support of President Ford's nomination of Frank Zarb to become head of the Fed-

eral Energy Administration. As one who has been charged with various responsibilities in this field over the past two years, including a post very similar to the one to which Mr. Zarb has been nominated, I hope that my insights will be particularly helpful to this committee.

All of you are aware that the United States is in the midst of a continuing crisis in energy. To conserve the use of current supplies and accelerate the development of greater supplies, we must clearly have the support of the American people, we must have action by the Congress, and of special concern here today, we must have strong leadership in the Executive Branch.

The Federal Energy Administration has a critical role to play in this process. Working in concert with Secretary Morton and the members of the Energy Resources Board, that agency bears prime responsibility for helping to devise and execute national energy policies. The Congress recognized its importance this spring when it passed legislation vesting major responsibilities for energy policies in FEA.

FEA is a large organization—about 3,000 employees—and it has large duties. In looking for a person to be its Administrator, President Ford placed primary emphasis upon finding someone who was a first-rate organizer, had a sound, working knowledge of the problems in energy, and had a reputation for getting things done. This is no time for on-the-job training or a figurehead administrator. We need someone who will land with his feet running and will keep moving until he leaves office.

In Frank Zarb, I know that the President has found precisely the right person for the job. A man who distinguished himself in the financial world. Mr. Zarb is young, energetic, very talented, and extremely well versed in the challenges facing FEA. After serving for a year and a half as Assistant Secretary of Labor, he was persuaded to leave a high-paying job in New York and come back to Washington in 1973 by George Shultz. Back in Washington, Frank became Associate Director of the Office of Management and Budget with oversight responsibilities in the field of science, energy and natural resources.

I quickly became acquainted with his talents when I became head of FEA's predecessor, the Federal Energy Office, in December of last year. During the height of the energy crisis last winter, I asked him to reorganize and manage the national allocation program at FEO—a job he handled with great dedication and distinction under the enormous pressure of the embargo.

Since that time, I have worked closely with Frank, and I have always found him to be very straight forward, long-headed in his thinking, and candid in expressing his views. He is also an extremely flexible person, quickly establishing good working relationships with his associates. I know that Members of Congress appreciate these qualities, and I am confident that you will appreciate and respect Mr. Zarb in the difficult months ahead.

In short, I believe that Frank Zarb is superbly qualified to become Administrator of the FEA and I respectfully urge your approval of his nomination.

Thank you.

Senator JOHNSTON [presiding]. I understand Deputy Attorney General Silberman is here to testify on behalf of Mr. Zarb so in order that Mr. Silberman may also leave, we will defer to him at this time.

STATEMENT OF HON. LAURENCE H. SILBERMAN, DEPUTY ATTORNEY GENERAL

Deputy Attorney General SILBERMAN. I came here while I was Under-Secretary of Labor. I was partially responsible for recruiting Frank Zarb into government.

He came down in 1971, as I recall, as Assistant Secretary of Labor for Administration, an area in which he had no background or knowledge prior to coming into the Labor Department, and a post which he took at great financial sacrifice solely because of his views about Government and public services.

I would like to assure the committee that Frank Zarb is one of the most talented, able men that I have seen come into government in any position, and his integrity, candor, and balanced judgment is such

that I cannot help but believe he will acquit himself in this terribly difficult job as well as any man in the country.

Thank you.

Senator JOHNSTON. Thank you very much indeed, Mr. Silberman. Now, Mr. Zarb, we would like to hear from you.

STATEMENT OF FRANK G. ZARB, NOMINEE TO BE ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION

Mr. ZARB. In the interest of time, if I may submit my statement for the record.

Senator JOHNSTON. The statement will be included in the record. [The biography and prepared statement of Mr. Zarb follow:]

BIOGRAPHY OF FRANK G. ZARB

President Ford has nominated Frank G. Zarb, 39, as Administrator of the Federal Energy Administration.

Mr. Zarb is currently Associate Director of the Office of Management and Budget, Executive Office of the President. In this position he provides executive direction to Federal programs concerned with agriculture, the environment, natural resources, energy and science. These activities include responsibilities for all energy related areas of Government, such as the Department of Interior, Environmental Protection Agency, Council on Environmental Quality, Atomic Energy Commission, Energy Research and Development Administration and other related agencies in the science and technology fields. When President Ford created the Energy Resources Council in 1974, he appointed Mr. Zarb as its first Executive Director, a post he held concurrently with his OMB assignment and will hold in addition to FEA Administrator.

Prior to assuming his OMB position, Mr. Zarb was in charge of OMB's Management and Operations activities. This included direction of a broad range of Federal programs and initiatives, including Government reorganization, evaluation of Federal programs, statistical policy, Federal activities in regional areas, and relations with Governors and Mayors.

Mr. Zarb first joined the Administration in April 1971 as Assistant Secretary of Labor. His most recent position in the private sector was Executive Vice President and Chairman of the Executive Committee of Hayden Stone, Inc., a New York investment and securities firm.

Earlier Mr. Zarb had been with the New York investment houses of Cogan, Berland, Weill and Levitt, and Goodbody and Company. His first job in industry was with Cities Service Oil Company where he served as management trainee and a member of the Industrial Relations Department.

Mr. Zarb graduated from Hofstra University with a BBA in 1957 and a Master's Degree in 1961. In 1974 the faculty of Hofstra conferred the University's Distinguished Scholar Award to Mr. Zarb. At Hofstra he was a Student Body President, Dean's List student and elected to Who's Who in Colleges and Universities in 1957.

In 1970 he edited THE STOCK MARKET HANDBOOK, published by Dow Jones-Irwin, Inc. He organized and served as the first Chairman of the Joint-Bank-Securities Industry Committee for Securities Protection and has held membership with the Board of Arbitrators of the National Association of Securities Dealers, and the Board of Advisors of the New York Institute of Finance. He has been a member of the Chicago Board of Trade and the Chicago Mercantile Exchange and an allied member of the New York Stock Exchange as well as the American and Pacific Coast Stock Exchanges. He has served on the Board of Trustees of the East Woods School, Oyster Bay, New York.

He is married to the former Patricia Koster and they have two children. They reside in McLean, Virginia.

STATEMENT OF FRANK G. ZARB, NOMINEE TO BE ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION

Mr. Chairman and members of the committee, it is both a pleasure and an honor to be here today as the President's nominee to be Administrator of the

Federal Energy Administration. I deeply appreciate the kind words which have been expressed on my behalf by the distinguished Senators from New York, Senator Javits and Senator Buckley.

As the Committee can well appreciate, development and implementation of a national energy policy is one of the greatest and most challenging tasks facing this Country. It was with a sense of urgency and a strong desire to develop workable solutions to these difficult problems that I accepted the President's nomination. I appear before this Committee with the full knowledge that the different solutions to our energy problems will require the close cooperation of the Administration and the Congress.

Although I am not familiar with some of the detailed problems facing the Federal Energy Administration, my present position as Associate Director of OMB for Natural Resources, Energy and Science has given me a broad background and general insight into energy problems. During last winter's oil embargo, and prior to assuming my position with OMB, I assisted Secretary Simon in organizing the Federal Energy Office. This experience gave me the opportunity to work closely with senior FEA personnel and to become familiar with the overall organizational structure of the agency. Since the middle of November, I have been serving as the Executive Director of the President's Energy Resources Council—a position which has made me sensitive to the need for better coordination and management among the various Federal agencies engaged in developing and implementing energy policies. I intend to continue in this important position should I be confirmed as FEA's Administrator.

Solutions to our energy problems will not come easily and a great deal of cooperation between the Administration, the Congress, and the public will be required. The time has come, however, when hard decisions must be made and positive actions taken. The seriousness of the international and domestic energy situation will not permit further lengthy studies of alternative energy strategies. Our goal is clear. We must obtain a degree of energy self sufficiency which is consistent with the nation's future economic and social well being.

We must come to grips with our present and future energy problems or conditions will continue to deteriorate. At the same time, it is imperative that we not panic or act irrationally; ill-conceived actions at this time could exacerbate our energy problems and cause further disruptions to the economy.

The Energy Resources Council is currently reviewing and examining the Project Independence Blueprint which was developed by FEA and presented to the President and to the Congress in November. Once the Blueprint has been reviewed and specific energy problems identified we will be in a position to begin developing solutions specifically tailored to meet major energy problems. This process of identifying specific energy problems will be completed in the next few weeks and we will be giving President Ford an in-depth briefing of our present situation and the available energy options.

I believe all options for resolving various energy problems confronting the nation should be fully and publicly explored. FEA, the Energy Resources Council and the Administration as a whole will work closely with the Congress in developing and implementing needed energy programs. We also have and will continue to solicit input from interested and knowledgeable members of the public.

To be successful, a national energy program must carefully balance competing national objectives. We cannot abandon our environmental goals, for example, to obtain greater energy supplies. By the same token, domestic controls must be structured in a manner that promotes the exploration and development of new energy sources without allowing any sector of the economy to profit at the expense of other sectors. Price adjustments and tax incentives designed to spur increased oil exploration and drilling activities must be coupled with appropriate measures to ensure that uncontrolled profits do not result.

Let me assure you that we need, and must rely on, the American free enterprise system. Our traditional free enterprise system, however, must at times be regulated to assure that no element of our society unduly profits at the expense and hardship of others. In this regard, oil producers who are, currently enjoying high profits should be required to use any excess earnings as investments which will assist domestic energy development. I support a windfall profits tax with provisions which give an incentive to plowback profits into the expansion of domestic energy production. I also support the elimination of the foreign depletion allowance and a limitation on foreign tax credits.

Energy conservation programs must also be designed to impact fairly and equitably on all sectors of society. A voluntary conservation program should be our first approach, but if it does not work then mandatory conservation measures will be required and I will not hesitate to recommend them to the President and the Congress, if legislation is needed, and implement them, if given the legislative authority.

It is also important that energy policy be developed in an open atmosphere which will inspire public confidence in the integrity of our national energy policy and ensure public participation and cooperation in our specific energy programs. For this reason, I believe the openness and objectivity with which FEA has conducted itself in the past must be continued and further improved.

For the benefit of the Committee, I would like to describe briefly the complementary roles FEA and the Energy Resources Council will play in developing specific energy programs as well as an overall national energy policy. The Energy Resources Council is designed to accomplish two purposes: First, it serves as the primary vehicle for coordinating the consideration of alternative energy policies by participating Federal agencies. In this role, the Energy Resources Council will help ensure that all Federal agencies are connected to the same drive shaft for implementing national energy policy. Second, the Council is responsible for assessing various energy policy options and presenting recommendations to the President.

FEA will remain the principal driving force for developing and implementing new Federal energy programs. The agency will be expected to continue its record of independent and innovative thinking, and will be charged with the responsibility for maintaining a central core of information and expertise. FEA, of course, will also continue to make independent decisions on regulatory matters under the Emergency Petroleum Allocation Act.

In addition, FEA will provide operational staff support for the Energy Resources Council and will be responsible for researching and presenting a range of energy policy options to the Council and the President. Consistent with its duties under the Federal Energy Administration Act of 1974, FEA will continue to serve as the Administration's chief point of contact with State and local governments as well as with public interest groups.

Let me conclude my statement by briefly summarizing my general thoughts on what the Administration, the Congress and the American people should seek to accomplish in the energy area.

Hardly anyone denies that our ultimate goal must be energy independence. While I recognize that there are and will continue to be disagreements over the appropriate strategies for achieving this goal, I believe that a reasonable degree of independence is attainable if we all work together.

The American people want to win this battle. They need and deserve a comprehensive plan that will show them how we intend to reach our goal, and what sacrifices they will be asked to make. If we develop—as we must—a sensible and integrated national energy policy which the American people can understand, I have no doubt that they will give us not only their cooperation, but their enthusiastic support.

In developing such a national energy plan there is no need to polarize environmentalist against pro-energy forces, industry against labor, business against the consumer. All Americans share common needs, and although the reconciliation of differing viewpoints and perspectives will take hard work I am confident that it can and will be accomplished. I actively solicit the support of the Congress and the American people in this endeavor.

This concludes my statement. I would be happy to respond to any questions you may have.

MR. ZARB. We need to get on with the job, Mr. Chairman. We need to decide on a long-term program which would say that this Nation is going to be independent.

I think it is not important to talk about 1 million barrels or 2 million barrels. I think what is important is the commitment and decision that we will become independent by some date certain.

The second area was alluded to by Senator Jackson a few minutes ago. We need to answer the question are we going to drive down con-

sumption in some balanced way over the near term. These are true measure questions which will be at the heart of the national energy policy.

We are in the process now of working with the Project Independence blueprint, which is a major staff document. We are listening to public comment. We are isolating issues, and we will shortly be visiting with the President to outline options to get decisions to get the comprehensive energy policy completed and then to get on with the job.

I say one other thing in my statement, Mr. Chairman, that it is time to consider our objectives and our joint objectives. The executive branch and the Congress can run the Government and lead people. We need not be polarized, environmentalists, and energy people. We need not have paralyzing differences between those interested in the economy and those interested in energy.

Reasoned men, working with the resources we have in this Nation, can implement the decisions to make us independent to drive down the consumption so our balance of payments does not so seriously affect our economy.

The American people are winners. They want a program they can win with. They want to understand where it is all going to and where we come out. We owe them that kind of plan.

Once it is submitted, I am assured they will support it.

I will end, Mr. Chairman, by thanking the two good Senators from New York for their kind words, Secretary Simon, Deputy Attorney General Silberman for their kind words, and I will answer any questions.

Senator JOHNSTON. Thank you, Mr. Zarb.

I agree with you that we ought to have cooperation between the Congress and the Federal Energy Administration. I might mention, the Senate on a number of occasions, has expressed itself on the need for independent refineries; and, the circumstances under which those refineries will be built, will be in large measure determined by your Office. Equal treatment for new refineries and independent refineries is essential in order to have any new ones built, and particularly in the event of a shortage. It must be determined that crude oil supplies will be shared equally and equitably, or a shortage shared equally and equitably between the old and new refineries, between the existing and new refineries. Can we look for that kind of assurance from your office?

Mr. ZARB. Yes, sir.

The regulations that prevail that affect that area for the future will continue.

Senator. JOHNSTON. They can put in new refineries with that kind of assurance?

Mr. ZARB. Yes, sir.

Senator JOHNSTON. Mr. Zarb, I don't know if you are familiar with the pricing of diesel fuel, particularly that kind—I believe they call it No. 1 diesel—that is used in fishing boats. The fishing industry nationwide—and, by the way, I'm asking this question on behalf of myself. Senator Metcalf has been very interested in ocean policy, as well as Congressman Kyros, as well as a number of other Congress-

men and Senators who are interested in the fishing industry, because of the increase in the price of diesel fuel used in fishing boats, which has gone from 13 cents preembargo to 29 cents, a doubling or tripling of diesel fuel costs. Gasoline prices have only gone up a fraction of that. People are in a fear of a deep depression, and many of them are going out of business.

My question to you: as the new Administrator, will you make an all-out effort to investigate this pricing, and utilizing the embargo pricing as benchmarks, bring into reasonable balance the present and future pricing of petroleum products, to the end that no one segment, such as the fishing industry, is virtually driven out of business?

Mr. ZARB. Mr. Chairman, to your questions 1 and 2, I can answer that without hesitation. The mandate of the Congress establishing the FEA in the first instance, was to have concern for equity in our society, including especially those small, independent business people in our society who might be affected by a change in the balance of the energy supplies or costs.

The third point you make is to bring into reasonable balance these prices. I think that is an objective of all of us. I am not familiar with the reason for the disparity, but before I make the commitment I would like to take on No. 1 and No. 2 of your mission, and find out why the disparity exists.

Senator JOHNSTON. I cannot put into too dramatic terms the difficulty fishermen are having and the extreme pressure they are under financially. They are going out of business in droves in my State, and I am told this is true in other areas, because of the increased price in diesel. The shrimp industry, for example, they figure about a pound of shrimp for a gallon of diesel. It is almost that kind of trade-off when you double or triple the price of diesel. You can imagine what it does to their plight.

Just a few more questions, and I will stand on the 10-minute rule for myself and other members of the committee.

You mentioned Project Independence. If there still is a Project Independence, would you define in a sentence or two what Project Independence is?

Mr. ZARB. I would give you my personal view, but as I indicated earlier, we are in the process now of doing necessary staff work, so the President can make the appropriate decisions.

It seems to me, Mr. Chairman, independence is not a definition you can give with marbles in your mouth. You are either in favor of independence or you are not. Which means by some point in the future, by virtue of its feasibility—and I pick 1985 as a general timetable—we can be independent from serious disruption in our economy and our society, based upon the unilateral actions of suppliers of petroleum.

Whether that means we can be importing 20 percent, 15 percent or 10 percent, that decision still needs to be made.

The point is we need to decide that it is indeed our objective, and if we share that objective we must learn what prices must be paid to get from here to there.

There simply do not appear to be any free lunches in this program.

Senator JOHNSTON. You are talking about eliminating all imports which are unreliable as sources of supply by 1985. Is that a fair statement?

Mr. ZARB. Or sufficient quantities of that, so a cutoff of any unreliable product that may be flowing to our shores could be quickly accommodated within the existing structure.

Senator HATFIELD. Would you yield a minute?

Would you define what is an unreliable resource?

Mr. ZARB. The Senator used the term initially.

I would define it as a source from which we have good reason to expect the providing nation may in its best interest at some moment, for political reasons or domestic economic reasons, turn off our supply.

Senator HATFIELD. Could this include Canada?

Mr. ZARB. I don't know, Senator. That is a question we have to ask as we go through this process.

Senator HATFIELD. You don't exclude any country from that definition of unreliable sources?

Mr. ZARB. At this time I don't exclude any source from that kind of examination.

Senator HATFIELD. Thank you, Mr. Chairman.

Senator JOHNSTON. There has been some conversation in the Administration about deregulating the price of old crude oil, letting the price of old crude go from \$5.25 up to \$10, \$11, or \$12 a barrel. I don't know how serious this kind of conversation is, but I want to know what your view is, what your advice would be to the Administration on letting the price of old crude rise to the price of market level, or cartel level, whichever term you prefer. And, if you consider it, if you would know what it would cost to the American taxpayer and consumer.

Mr. ZARB. Mr. Chairman, I have not gone so far in this work to be precise with respect to numbers.

Philosophically, I suppose, you can say my views are if we can achieve someday a free market in the energy business, the free market will once again work correctly.

Over the near-term there need to be some questions with respect to immediate turning up of that price. A lot of work is being done on that issue. How soon, whether it needs to be done as a step program, one step at a time, how it will impact our ability to increase production—need to be determined.

It seems fairly clear when the market is able to freely operate—and sometimes that is impossible for political or other reasons—I am talking about international politics—it seems to work pretty well.

I would hope at some point in our Nation's history we are going to be able to return to that state in the energy business.

Senator JOHNSTON. I certainly agree with you. You are saying, in effect, that point is not now, and you would so advise the people in the Administration?

Mr. ZARB. I would say in my judgment, sitting at this table at this moment, my answer would be yes.

But I just want to add I have not completed the work with the economic people who are working on Project Independence, which is still 2½ weeks away.

So, with that caveat, please excuse the answer.

Senator JOHNSTON. Thank you, Mr. Zarb. I hope I have stayed within my 10 minutes.

Senator Fannin?

Senator FANNIN. Mr. Zarb, we feel we are very fortunate to have you accepting this position.

We have had the privilege of observing your abilities in some positions you have held in Washington as Assistant Secretary of Labor and Deputy Assistant at the OMB.

I have personally observed with pleasure the expertise you have exhibited on these particular jobs. I do feel, as challenging as those jobs have been, you are perhaps facing a greater challenge in this prospective position.

I am wondering what your feeling is, as far as working with the States. We have a widespread difference of opinion as to what should be done as far as working with the States around the Nation.

Mr. ZARB. I think, with your permission, Senator, I will use the example of an event which would best describe my philosophy in working with the States.

As you know, we have had a work stoppage in the coal extraction area for the last several weeks. The Government has done everything in its power to make the free system work and not get in the way of collective bargaining, and we did, reviewing with all parties, did get into a modest program of attempting to treat emergency problems around the Nation that might occur because of the disruption.

I met with the energy aides of the States affected, and we laid out a program which fundamentally put the responsibility at the State level, with Federal support.

That example, I think, may define my principle, that States should be involved in the thinking before policies are made that are going to affect them and where they can do a better job of implementation. They should be relied upon to implement them.

Senator FANNIN. Mr. Zarb, we have some groups that advocate conservation programs and in some respects are opposed to increased production of petroleum products, or increased use of energy supplies. What is your opinion as far as the conservation program as weighed against the increased production of energy?

Mr. ZARB. There is no question in my mind, if we are going to be independent, we need to do both.

Having said that, I think I should also point out some of the prices we pay for some of the alternatives which have been suggested.

It was recently suggested we might cap off all imports a level 1 million barrels below today's consumption. That, on the face, seems like a viable alternative when it was submitted. We asked the Council of Economic Advisors to analyze that step and tell us what import it would have on the economy.

An abrupt cap at 1 million barrels below today's consumption levels would drop our GNP by somewhere between \$15-\$20 billion and create 400,000 more in unemployment.

I use that one dramatic example to attempt to make the point that whatever we decide together should be our program, both short term and long term, and indeed we need conservation, we need to carefully measure the price we are going to pay and agree on that price.

Senator FANNIN. I think that is a very good analogy of what could happen when we just start talking about conservation without consideration, as the job involved.

It is your opinion in striking a balance you can accomplish a great

deal more, and you would favor doing what is practical in the way of conservation, but also on the other side increase production where it is practical.

I know you have discussed our Project Independence, I think from a very objective perspective, and you have stated, as I understand it, this is a goal we are not necessarily going to reach, independence, but in a case of an emergency we could have sufficient supplies to take care of our needs.

Mr. ZARB. Yes, sir. I do not want to leave the impression I am talking about practical conservation that is overly mild. I think conservation is a firm step that needs to be taken. I am convinced of this.

We are going to end up a society doing things a little bit differently and using energy with a little bit more respect.

As to its real value and worth—

Senator FANNIN. I think you are familiar with Business Week of November 30, when you were discussing what has happened as far as the requirements by EPA on coal-fired power plants.

I think you took a very objective view that everything should be done to protect the environment, that we should not go beyond the necessary measures, to be sure we do have ambient air quality standards that are satisfactory.

Do you feel that is being done at the present time?

Mr. ZARB. I think, Senator, there needs to be some readjustment to our approach in that area. The administration has on the Hill now, and will renew in the next Congress, certain amendments to the Clean Air Act.

That kind of an issue is a razor blade with all edges. No matter how you seem to pick it up, you always get cut. But nevertheless, it is an issue that we need to face squarely.

I think there is adequate room for compromise—that might be a poor word, but there is adequate opportunity to measure effects on all sides and come to agreement on the amendment required, both to achieve our energy results and at the same time by no means abandoning our environmental program.

Senator FANNIN. I know you have not had time to go into all of these measures as yet.

Are you willing to meet with the people who have had these problems? I heard New York maintain, for instance, they spent over \$100 million unnecessarily to meet some of the Clean Air Act quality standards, but still had the living level. It had no effect measurable, and felt when the statement was made at one of our meetings on inflation in Dallas, this was an unnecessary program. It was all passed on to the consumer.

An additional study should be made before those requirements are placed into effect. Do you agree more of these studies should be made before these decisions are made?

Mr. ZARB. I think we ought to have the benefit of every ounce of fact that we can wring out in this case, from the private sectors as well as Government, before we make our decisions in concrete terms.

But let me add this: It seems time to come to an agreement on what our national decisions are going to be. We cannot continue to have two points of view on this issue and on a number of others, resting apart and undecided so that anyone—

Investors who would be planning to make investments, are not doing so because of the uncertainty; or the utility management who would be making plans and making decisions come before the bankers who bank them; for the consumer people concerned with consumer rate regulations; or the environmental people who are locally concerned with that—I think we have to have every bit of fact.

I think we need to get on with it, sir.

Senator FANNIN. I agree, we need a balance, but I don't see we have a need in many areas of the country—I know in my State of Arizona we have the Four Corners area; we have a problem there that is serious, and still when they start to clean up, they start cutting back on the development of power and the quantity of power being developed, and they ship it down to the heavily-populated area where they do have a problem from emissions, and we really defeat our own objective which is to protect the people.

Thank you, Mr. Chairman.

Senator JOHNSTON. Mr. Zarb, some members of the committee are unable to be present this afternoon and would like to submit questions in writing. I hope this will be suitable to you.

One observation I would like to make: The 1-million-barrel-a-day reduction as you referred to as a suggestion somebody made, was actually a specific program announced in the Congress of the United States in October of this year by the President of the United States. If that is no longer a policy—

Mr. ZARB. Let me correct the record, if I led that astray.

The proposal that I referred to, was an immediate and legal ceiling on the amount of products we would import in this Nation, starting January 1, 1975, which would say that we would as a Government stop anything above that level from coming into our system.

That is considerably different than the President's program. Did he use next year to reduce our total consumption—and for that matter primarily within the import area of our petroleum?

Senator JOHNSTON. To quote Dr. Kissinger in his speech, President Ford has stated the United States will reduce oil imports by one-million barrels a day by the end of 1975, a 15 percent reduction.

Senator Metzenbaum?

Senator METZENBAUM. Mr. Zarb, in your opening statement, which is a good one, you indicate the need to take some immediate definitive action and get on with the job.

Do you have a position as to whether in order to accomplish conservation of our energy resources that our Government ought to adopt a program of rationing?

Mr. ZARB. Senator, the program for reaching these decisions within the executive branch is this: We have the benefit of a lot of staff work that is demonstrated in the FEA blueprint for independence document.

We have been spending the last 3 weeks taking comment from the public—and from those in Government concerning the recommendations and options in that book.

We will have meetings next week with at least six groups representing various elements of our society to get their precise statements on the options presented within that book.

There are really three ways we can conserve abruptly and boldly over the next few years: We can cap imports, effective January 1, which was the model I used a short while ago to indicate the abrupt economic jolt we would have; it would be a self-imposed embargo, if you will.

We could move toward a voluntary system and put substantial amounts of emphasis on resources, to make the Nation aware of the severity of the problem, the steps they might take in their best interest, and hopefully succeed in that manner. That is at the end-use level.

At the end-use level we have a voluntary program and a whole series of mandatory programs, some long-term, some short-term. One of those in rationing. The one in the middle is allocation, where we would not crimp imports, but we would say the Federal Government will allocate to users 90 percent of what they used in 1972, for example.

There are three levels at which we can attack the conservation question. Each has a price to pay.

During the embargo, I looked at rationing very carefully with Secretary Simon. We spent days looking at various schemes provided by those who worked during World War II and others who had contemporary views of rationing.

I believed then, and I believe now, it is a very drastic step, and perhaps we are going to be moved to it. I am not absolutely resolutely and forever against it.

But I would hope we are going to consider some of the other alternatives first.

Senator METZENBAUM. You came down to two choices: it was a choice between a 10 to 20-cent-a-gallon gasoline tax or rationing. Do you personally have a position that you favor?

Mr. ZARB. If I only have those two choices, Senator, I would be very unhappy. I would say in my book of things to do, they are both at the same level: Not very good steps to take unless we absolutely had to.

I would not be able to pick between the two, knowing what I know about the inequities of a rationing system. No matter how much we put into it—

Senator JOHNSTON. You sell the car.

Mr. ZARB. Both of them. [Laughter.]

Senator METZENBAUM. I am inactive in this field. You do have some opinion as to what steps this Nation ought to take, those hard steps that you talk about. Would you tell the committee which ones you lean to at this particular time, even though they are not finalized in your decision?

Mr. ZARB. I am fairly sensitized of the need to have the cooperation of the public. I have said before, and others have said, when we were involved in the embargo days, when it looked from day to day like the roof was caving in.

That, on balance of what we had to work with and the crisis we were in, not a bad job was done. But that was not because the Federal Government was good, or because Secretary Simon and I worked so hard; it was because we had the cooperation of the American people.

I would favor as a first and firm cut, giving it a good trial, the proposition of making our people aware of the nature of the problem,

what is at stake, and attempting to achieve voluntary steps before going to the next level of muscle.

Senator METZENBAUM. Do you think the voluntary program the President called for some months ago has worked at all? Do you see any indication of that in lesser amounts of consumption?

Mr. ZARB. The fact we are consuming less under different conditions has been attributed by many people to price. They are saying we are consuming less than we would have without that price being high.

I think we are just making a beginning, Senator, in making people aware of the problem, the nature of the problem, and what needs to be done.

Senator METZENBAUM. In view of the emergency situation, do you think the country can afford a long-term voluntary program without taking more drastic steps?

Mr. ZARB. No, sir.

Senator METZENBAUM. How long do you think we could go without taking positive steps that would have some definite end?

Mr. ZARB. I think by the early part of next year we are going to be in the position to measure the effects of voluntarism and we are having some good results in some areas that you ought to know about.

You will recall the President asked the automobile industry to demonstrate how they could come forward and reduce our gasoline consumption per mile by 40 percent over a 4-year-plus period.

We have had a meeting with the automobile manufacturers, which Secretary Morton chaired—Secretary Brinegar participated. Secretary Brinegar was given the lead to meet individually with the companies. He and Russell Train are now closing on some final issues, and we will know within a matter of weeks whether or not we have a program that we can lay out before the American people and say this is the program that has been agreed to, and this is how it is going to be monitored, and it has all been done with the cooperation of industry and Government.

If we don't, the President has said he will ask for legislation to make it a mandatory program.

Senator METZENBAUM. Mr. Zarb, do you advocate deregulation of prices of natural gas?

Mr. ZARB. Yes, Senator, I do. I do, based upon the staffwork that has been shown to me the last week or so.

I do, because I have seen evidence that demonstrates our natural gas curtailments would be significantly more this winter than last winter.

I do because I visited a Member of the Congress yesterday who had a letter on his desk that said: "We are a small company. We are doing good, and we just had our natural gas curtailed. Unless we get more supplies we are going to be in financial trouble."

Senator METZENBAUM. Mr. Zarb, do you think it is in the interest of our national energy policy that coal resources, uranium, and solar energy development would be in the hands of the petroleum companies?

Mr. ZARB. Senator, are you asking me an antitrust question?

Senator METZENBAUM. No, I'm not asking you an antitrust question. I'm asking you an energy question. I'm asking you whether we can anticipate greater use of our coal, uranium, and other resources if the petroleum industry owned those resources.

Mr. ZARB. That is a profound question. I'm not going to give you a straight-out answer, because I don't have one. I have heard both sides of that argument, and not a lot deeper than that. The one side says an energy company in the energy business would quite naturally pursue energy on an ongoing basis and when there is no more oil, they might be in the coal and solar business.

I also hear the argument that these companies have investment capabilities so they can invest in such important areas as solar.

The other side of that argument is the petroleum companies might be doing something to dissuade the advancement of liquefaction, gasification, or solar performance.

I would like to look at those arguments more carefully before I come to my own decision. It would seem, offhand, however, an energy company would want to be in other businesses in the energy field.

Senator METZENBAUM. My time is up, Mr. Chairman.

There are a number of questions I would like to ask. His answers are lengthier than my questions, but I would like the opportunity to inquire further of Mr. Zarb.

Senator JOHNSTON. I would try to allow some latitude on that. I will point out the acting chairman has a bill in markup which will come up when we are finished with this session, so we will spare the questioning. First things first.

I see Secretary Morton in the audience. I don't know if he wants to testify for you or against you, but he has another appointment and we will welcome the Secretary's testimony at this point.

Secretary MORTON. Thank you, Mr. Chairman, members of the committee. I will do whatever helps him.

I have a short statement I would like included in the record. I would like the opportunity to paraphrase it.

Senator JOHNSTON. Mr. Secretary, your statement will be included in the record.

**STATEMENT OF HON. ROGERS C. B. MORTON,
SECRETARY OF THE INTERIOR**

Secretary MORRIS. I would like to say I have worked with Frank Zarb over a period of time, particularly in relationship to the work he had in the natural resource field as a member of the Office of Management and Budget.

He worked not only with the secretariat, but also with the people throughout the Department, very effectively. He was highly respected.

I think he did a great deal to develop a much better relationship between our department and the Office of Management and Budget. There is always difficulty, of course, between a budget bureau and an operational bureau. One, of course, is on one side of the coin and the other is on the other. But he has done a superior job. He has a great way with people and I have the highest regard for him. I asked him to serve earlier on, when I was asked to chair the Energy Resources Council which was established by the ERDA Act, as the Executive Director of that Council. Although he still was Associate Director of OMB, as well as Executive Director of the Council, he did an outstanding job.

I feel the President made a very wise choice.

He has a deep knowledge of how Government works and shares with me a basic philosophy in this energy matter.

If what we are going to do is bring the full impact of the Federal Government against this problem working closely with the Congress, the Congress cannot go one way and the executive branch another way and expect to solve the problem.

As you know, we have turf problems downtown which are paralleled by what is called jurisdictional problems up here on the Hill. I have lived in that atmosphere for 10 years.

Frank has demonstrated his ability to try to get a great deal done without trying necessarily to get all the credit for it, and I think this is to his great credit.

I support him wholeheartedly.

[The prepared statement of Secretary Morton follows:]

STATEMENT OF HON. ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR

Mr. Chairman, members of the Committee. I am pleased to appear before you to urge favorable action on the President's nomination of Frank G. Zarb as Administrator of the Federal Energy Administration.

When the President gave me the responsibility of chairing the Energy Resources Council, I looked for someone to fill the position as Executive Director. I sought someone with broad experience in and knowledge of government who has an understanding of the complexities of our energy problems and who has proven ability to draw on all elements of the Executive Branch, making it pull in one direction. Clearly, that man was Frank Zarb.

As Chairman of the ERC, responsible for the coordination of the federal government's energy policy, I found a real need for strong policy direction and coordination of our efforts. We cannot afford to have agencies competing with each other for responsibility in the energy field. Cooperation is essential throughout the federal establishment. The ERC was created to bring all of the energy problems of the federal government into focus, to eliminate any overlap, and to let each agency know what its energy assignment is. These agencies must then be monitored in the performance of their assignments. Unless we are able to get all of the talents of the federal government to come to bear on our energy problems, we will fail. There is no room for competing interests or "turf battles"; there is enough work for everyone. The task of sorting out these ERC responsibilities largely fell to Frank Zarb. This afternoon you are hearing the nomination of Mr. Zarb as Administrator of FEA. The selfsame qualities which led me to select him as Executive Director of ERC attend to this critical position as well.

In this hearing, others will talk about the many accomplishments and experiences of Mr. Zarb, both within and without government service. I will not repeat the elements of his background; however, I would like to stress the exemplary job he has done as Associate Director of the Office of Management and Budget for natural resources and energy matters. The Department of the Interior falls within the scope of his OMB responsibilities and, therefore, I have had ample opportunity to witness his abilities.

My close association with Mr. Zarb convinces me that we share fully a philosophy aimed at bringing all elements of the Executive Branch to bear on our energy problems.

I am confident that Frank Zarb will discharge these responsibilities efficiently and effectively.

Clearly, Frank Zarb's strengths and abilities will make him an ideal Administrator of the FEA.

Additionally, I think you will find him most willing to work with the Congress as together we more carefully define our energy policies.

Senator JOHNSTON. Thank you very much, Mr. Secretary. Mr. Secretary, the Chair will rule, unless the committee rules otherwise, today you are not fair game. If we subjected you to questioning, I am afraid you would be here until midnight.

Secretary MORTON. I have all the answers.

Senator JOHNSTON. We thank you very much for your testimony.

Secretary MORTON. Thank you very much, Mr. Chairman.

Senator JOHNSTON. Senator Hansen.

Senator HANSEN. Thank you.

Senator HANSEN. Mr. Zarb, in addition to your title as FEA Administrator, when confirmed by the Senate, you have also been named as Executive Director of the President's Energy Resources Council by Secretary of the Interior Rogers Morton, whom the President has also named as Chairman of the Council.

In that capacity you will be working under Secretary Morton. Last week Secretary Morton testified before this committee on an agreement in an international energy program recently entered into by the United States and 15 of the world's major oil-consuming countries.

Let me restate that: I would like to comment on some of Secretary Morton's observations at that hearing which were made in response to questions by Senator Bartlett.

But before doing that, I want to ask you if you have a clear understanding of the division of authority in the executive branch between the FEA and other agencies, such as the Department of the Interior?

Mr. ZARB. Yes, sir.

Senator HANSEN. That is a good one. I like that unequivocal answer.

Now, responding to Senator Bartlett's question about that crude entitlements, or the so-called equalization program the FEA has just announced, Secretary Morton said, "I would just like to say this on the deregulation" and I am quoting:

At the time we controlled prices, we got into some real problems. We now have this problem of keeping some independent refiners whole and well, because of the inequity in their ability to obtain old oil. I have just been working on the proposition of this entitlements program as it was published in the Federal Register, and I find one oil company I know of is going to get \$40-million a month if we do implement the program as it was published.

I continue to quote:

We have not run it all the way through and this is not even one of the majors. We are running it through today to see what effect this would have on the majors, particularly those that import large amounts of products, middle distillates for example, it will incur I think a tremendous transfer of funds from one area of the country to another, for example, and from one segment of the industry to another.

This would probably have more of a detrimental impact in the long haul than the problem that we are trying to solve has. This is what you get into.

That is the end of the quote by Secretary Morton.

Now, apparently, after having run it through as the Secretary has phrased it, the proposal, in the Secretary's words, would benefit one company by \$40-million a month and result in a tremendous transfer of funds from one area to another. And I am not talking entirely and exclusively about taking someone else's property for the benefit of another, but other parts of the country would be subsidizing New England terminal operators and utilities by picking up the tab of something like 72 cents of the cost of each barrel of residual oil, and home heating oil, that they import.

The old oil import program was something of a Rube Goldberg contraption, by the time it was abolished. In my opinion, it was simple compared with this present proposal.

I may mention the New England States sued the Secretary of the Interior a few years ago in an attempt to do away with the old oil import quotas so they could have that cheap foreign oil. Now they want all the cheap domestic oil they can get and a subsidy for the high-priced imported oil they could not get enough of at that earlier time.

I would predict the oil-producing States will bring a suit against the FEA to abolish the crude oil allocation program entirely.

My question is: What requirement or assurance is there that any recipient of the subsidies may pass it on to the consumer?

Mr. ZARB. I was not as close to the formulation of that program as I have been with some others, and was not a party to the final hours of deliberation on its structure.

Senator HANSEN. That is to your credit.

Mr. ZARB. I have been advised by counsel here, who worked for the Secretary, that the \$40-million number the Secretary was concerned with was indeed a concern, and when it was worked through it was found a large bulk of that amount would be passed on to the consumer.

I can only say, if confirmed by the Senate, you can be certain my intention will be to see that this program or any other like it which has value shift for equity reasons ends up at the consumer level, where that would be the intent of the program to begin with.

Senator HANSEN. As I remember under the oil import program the New England terminal operators had a quota for 1971-72 for around 50,000 barrels a day of No. 2 heating oil.

In testimony before this committee, a representative of the Oil Jobbers Council said, in answer to my question, that they had actually imported about 80 percent of that oil, and sold the import tickets for the other 20 percent to East Coast refiners for the value of the tickets which at that time was about \$1.25 per barrel.

I don't know how you could determine or require one of them now to pass that 72-cent bonus on to the purchaser of residual home heating oil.

Secretary Morton mentioned the plight of independent refiners without access to old or price-controlled oil. But the independent refiners who do have their own old oil, and also integrated companies, will suffer as much if not more from this so-called crude equalization program.

Let me give you a few examples: I contend the equalization program threatens bankruptcy to a small refiner, Pasco, Inc., that will have to purchase a large number of old oil entitlements under the requirements of a new regulation. This would be a very disappointing result of the new regulation, especially since Pasco was set up pursuant to an antitrust effort to enhance competition in the oil industry.

I am going to hand you—I won't read it—two examples of larger integrated operations, which would closely approximate actual companies. You will note when you examine them, the smaller company loses almost \$80,000 a day, while the larger company makes that much.

The Emergency Petroleum Allocation Act said—and this was reiterated in comments by the Justice Department on behalf of exemption of small refiners from the requirement to buy entitlements, that regulations promulgated under the act shall, among other things, provide for the preservation of an economically sound and competitive petroleum industry, including the priority needs to restore and foster com-

petition in the producing, refining, distribution, marketing and petrochemicals sectors of such industry and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers.

I think when you examine what has been happening in the State of Wyoming you will likely agree with me that this particular program is denying some small refiners in Wyoming access to oil they acquired in the marketplace, either by purchase or actually went out and discovered and found, and I think they are entitled to it.

I believe, parenthetically, there is a very serious question as to the constitutionality of the Congress of the United States by law to take property from one individual corporation and give it to another under this allocation program.

But, whether or not that is raised, the question of the constitutionality of the law, it certainly cannot be denied that this program in its implementation is placing a very severe strain and hardship on these Wyoming companies.

I hope, Mr. Zarb—and I'm not blaming you for this policy—that you will take a look at it and see if you think the question of constitutionality isn't a legitimate question to raise.

And, No. 2, if something cannot be done about making some exemptions in it so as not to accomplish the very opposite result that was hoped for when this program went into effect.

I may have taken as much time as I am entitled to, but I would like to submit some questions to Mr. Zarb in writing. There are 10. I will hand this information to you, and at your first opportunity I would hope we would have responses to them.

They raise questions that I think are legitimate and it would seem to me hopefully will suggest changes in the regulations or laws, so as to treat everyone more fairly than I believe this present program is treating people.

Mr. ZARB. I certainly will, Senator.

Senator JOHNSTON. Thank you, Senator Hansen.

I might add we have the same problem with some of our smaller independent refiners in Louisiana, and we were advised if regulations were to make an exemption, 30,000 barrels a day—and when the regulations came out a couple of days ago they did not contain that exemption.

I would endorse Senator Hansen's request we review that policy to the end that the smaller independents who cannot compete with the biggies would be able to stay in business.

Mr. ZARB. I should add for the record, Mr. Chairman, the intent of this program is to help save the independents. If it is having a reverse effect, something should be done about it.

I should point out there is an exception in the current rule that would attempt to take care of those situations. I will certainly look at it.

Senator JOHNSTON. The Senator from Oregon.

Senator HATFIELD. Thank you, Mr. Chairman.

I would like to go back to this organization structure that we now find ourselves in.

Needless to say, we have had quite a parade of directors in this particular office to which you have been nominated. I was interested in here hearing Secretary Simon give you today practically the same statement he gave Mr. Sawhill when Mr. Sawhill was before us for confirmation. I don't know if that is a good omen or a bad one.

But I would like to know further, from what you have already said, the chain of command to whom you will be directly responsible, where you will act in terms of your own views and your own input, what kind of responsibilities you have to the Council and independent of the Council, how we can expect to look for leadership and innovations from you personally as the Director. Or will they be camouflaged within the Council, or will it be bucked to the Council before you can speak? Are you under wraps to get approval from the Council on any statement relating to energy or policy, or can you speak independently of the Council?

There are all sorts of implications to this, but generally how independent are you?

Mr. ZARB. If I am confirmed, Senator, as Administrator of FEA, I will be reporting directly to the President. There will be no constraints on my ability to make recommendations directly to the President, to speak publicly without preclearance from the Council.

As I said earlier, I will be my own man with my own agency.

Senator HATFIELD. What are the requirements for preclearance?

Mr. ZARB. No; I said preclearance will not be required. Where the Council as an institution is very useful however as Executive Director, and since FEA is really the only energy agency in town right now, we will staff the Council.

Our staff will be Council staff, and it will enable us to work with other Federal agencies who have a stake in this energy business.

For once they will be part of the problem and part of the solution, and we will all be connected to the same drive shaft.

That does not at all dilute our ability or authority. We have some fixed responsibilities with respect to regulation that we will have complete responsibility apart from everything else in the Federal Government.

But we have some other responsibilities where the Department of Transportation can be useful in automobile transportation, for example.

I feel very comfortable with the arrangement as stipulated that I will not only be head of the agency and Executive Director, but have complete access to the President, and in no way will I be precluded from speaking my mind.

Senator HATFIELD. Are you constrained by anything you have inherited, personnel, blueprints or commitments of any kind?

Mr. ZARB. I don't think so, Senator. I won't know for sure until I get into the job. But there is nothing in the docket I am aware of now.

Senator HATFIELD. Are you presently familiar with the blueprint prepared by FEA?

Mr. ZARB. Yes, sir.

Senator HATFIELD. Do you plan on making revisions in that blueprint, any addendums or changes?

Mr. ZARB. The changes that will occur will be a supplement to the

information and accommodate some of the challenges that may come in.

The public interest groups, other agencies have sent information which might correct the statistics, some data we are adding, some economic analysis.

But, fundamentally, the data will not be changed.

Senator HATFIELD. Do you feel free to make policy changes, changes at the policy level in the FEA?

Mr. ZARB. Yes.

Senator HATFIELD. I would not presume to ask you specific cases; I am only asking in general what kind of power you actually have. Are you free to make any changes that you desire to make; is that correct?

Mr. ZARB. There is absolutely no limitation on my ability to make those changes.

Senator HATFIELD. Would they only be cleared at the White House?

Mr. ZARB. To the extent—I don't want this to be interpreted by my colleagues who are sitting behind me to do this—

Senator HATFIELD. I'm not making that presumption. I am talking about the general realm of the power or authority.

Mr. ZARB. To the extent of new Presidential appointments, they will be worked through the White House.

Senator HATFIELD. Would you have to clear such new appointments with the Council?

Mr. ZARB. No, sir.

Senator HATFIELD. Your chain of command, your authority not only is emanating authority but is reporting authority as well?

Mr. ZARB. That is correct.

Senator HATFIELD. In your program which you anticipate, you have talked today a great deal about conservation, and you have indicated certain levels of action that relate to conservation.

Do you see conservation including anything in the area of consumption, related consumption patterns? What I means by consumption patterns—I'm not talking necessarily about the level of consumption; I am talking about the so-called convenience and disposability in our patterns that have a great effect on our energy, the plastics, the throw-away society that seems to have developed.

In your concept of conservation, does it include anything at all as far as addressing yourself to the style of consumption patterns today and their relation to the energy requirement?

Mr. ZARB. It seems to me, Senator, anything we do in that area that will have a lasting effect will have the countereffect of changing the style, if you will.

If we relate it to the automobile and its consumption of gasoline, the work we will be doing there will ultimately result in a different kind of automobile, and certainly auto design of the fleets.

We have carried that forward in the construction design for buildings and the method for generating electricity and the way electricity is used.

These will all have lasting impact on the style for the use of energy.

As I said earlier, I truly believe this, that we as a society will be using energy with respect for its real value.

Senator HATFIELD. I can appreciate your exactness.

Let me ask you now, in the field of transportation as comparison for energy requirements between rail and truck, and where we have little or no evidence of a national transportation policy now, do you anticipate your job will at least be one to stimulate, to try to urge a policy that would relate possibly to transporting long hauls more by rail, as compared to truck; and truck for short range?

Whatever it is, would you develop a comprehensive transportation system as it relates to energy?

Mr. ZARB. I would expect, I know the work we will be doing on energy in transportation will be worked very closely between the FEA and the Department of Transportation.

We will be not only the leader in some of these endeavors, a creator and an initiator, but also support the final implementation.

Senator JOHNSTON. We will have a recess for 10 minutes.

[Whereupon, a recess was taken for 10 minutes.]

Senator JOHNSTON. I believe Senator Buckley is next with the questioning.

Senator BUCKLEY. First of all, Mr. Zarb, I was delighted that you have shifted our target date from 1980 to 1985 for Project Independence. I think it is far more of a realistic estimate.

I also gathered in your definition, you define independence as that degree of self-sufficiency that would allow us to tide over or ride through any sudden cutback of energy sources.

I also gathered you understand, whereas we need conservation, we also need to stimulate new production.

I would hope, given some of the understanding of the various options, I think it would be useful, if you have not already done so, to review the experience we had after World War II, when we lifted the price controls. We were no longer self-sufficient in the world.

We had a really substantial deficit. The price rose about twice—I think it doubled—exploration went up something like four to sixfold. Within 3 years the price had come down about halfway. We were exporting oil.

I also suggest to a fellow New Yorker that he look at the experiences in our area, and he will find the industry is price responsive.

Natural gas, and because it is so intrastate sensitive to movement in the free market, there was a doubling of price from 50 to 60 cents in 1973 and exploration in New York State went up fourfold and we have gone from 2-million cubic feet a day up to 6-million cubic feet a day. This year that is a threefold increase, which is a way of saying I was concerned about your present seeming uncertainty as to the degree to which you would be willing to recommend the movement into a free market.

You stated you would not favor deregulation of old oil today. What about tomorrow?

Mr. ZARB. The nature of my hedge, Senator, comes from the fact I have not looked at all of the data in that detail which would show me whether there needs to be achieved over a 12-month period or a 15-month period or a 2-month period, what the impact on the economy would be by that kind of technique.

I think I firmly said I was in favor of returning the Nation to the free-market approach to the energy business.

Not having had the opportunity to intellectually satisfy myself as to the timetable of the scheme, I thought I would duck that one.

Senator BUCKLEY. I was also interested in your repeated emphasis on the need for reaching some kind of final agreement within this country between the Congress and the Executive so we could state specific goals, and to work to achieve them.

This suggests, it seems, that you recognize the importance of predictability, importance for the people who are investing huge sums and risking them knowing what the ground rules are before they go forward.

I understand you have participated in just such an exercise in a strategy for meeting the air quality objectives, I believe. You and others in the executive branch, including EPA, have achieved a target date of 1985; is that correct?

Mr. ZARB. That is correct.

Senator BUCKLEY. So we could inject the high-priority areas first with available technology and so on.

On the surface, to me this seems very sound.

As a member of the Environmental Subcommittee and Public Works, I will be looking—but I assume, because of Russell Train's appearance and knowing the recommendations without a more flexible allocation approach—

Mr. ZARB. That is correct. It hopefully breaks, or will break, the log jam we have experienced ever since the amendments were sent to the Hill some months ago. Because of a strong feeling on both sides of that question, we have made no progress at all.

As a more flexible approach to getting the job done, it would seem to allow us to go on and get the job done.

I understand the long-term objectives will be implemented, and I will be interested in the details when they come.

SENATOR BUCKLEY. There is one area that I am extremely interested in, the deregulation of natural gas. Have you been able to make a thorough study now of that particular approach, and have you been able to measure what the impact will be of deregulation on supply?

I know in my State and in nearby New Jersey, and others, they have already started laying people off of their jobs because of interruptions.

Mr. ZARB. I do not seem to have the arithmetic here that would indicate the exact numbers that were changed.

I recall very vividly, however, a number that says this winter we would have over 100 percent additional curtailments than we experienced last winter, and I have a graph here that shows the trendline of natural gas supply, and it is almost headed due south.

The situation is very serious, and I have been hearing from a number of people around the country, particularly those in small business, who cannot accommodate to a different form of energy very easily, and they are threatened by curtailment of natural gas. Deregulation would certainly be one of our top priorities.

Senator BUCKLEY. Would you agree that one of the objectives of any energy policy, one that is directed not only to encourage the exploration and development of new energy sources, but also to see that various forms of energy are directed to their highest economic use depends on freedom in the marketplace to be the traffic cop?

Mr. ZARB. I had the experience here recently of sitting down with Alan Greenspan to discuss an issue that has nothing to do with

energy. It was in another area. We were wrestling with the question of how we could do things as a Government to prevent the wide swings of domestic experience based upon some steps, and we anguished, and finally Alan sat back and said, "I guess I cannot always explain why, but I know after having gone through so many years of this kind of thought that the machinery of the free market is the one that finally makes it work, and the more we foster it the more we stop it from working in the marketplace in its way, the more we pay a long-term price.

Philosophically, Senator, I think that is absolutely so.

I have to add we face an inordinate situation with international diplomatic and political problems that somehow interfere with our ability to run a free market.

Senator BUCKLEY. One of the concerns I've heard expressed is the mobility, the ability to mobilize the capital that would be required to do the work that has to be done in the next decades. I think the figure is about \$80 billion a year that has to be invested on an average.

Mr. ZARB. Yes, sir.

Senator BUCKLEY. You are familiar, and have knowledge about this aspect of our economy I am sure—

Mr. ZARB. I certainly do, from my being involved in the money market. These days money goes to those endeavors which produce a return.

One way for sure to ensure that investment will stop in any given area is to do something which would produce inadequate return.

Equally poor is a posture which would have investors unsure as to what steps the Government might be taking in the next 3 or 4 months, because then do they stop short of a commitment to putting financing into what in some cases is a high national priority.

I do have great concern over our ability to get investments into the energy business, with particular reference to the energy R. & D. work. The Federal Government, with its \$2 billion a year is really a small, small part, and we need to have the kind of policy that will encourage two, three and four times that amount going to gasification, liquefaction, to some extent the solar as things develop.

Senator BUCKLEY. Thank you very much.

My time is up.

Senator METZENBAUM [presiding]. Senator McClure.

Senator McCLURE. Mr. Zarb, I have already looked into your qualifications, and I am not going to ask as many questions as to what your qualifications may be, but I want to focus on a couple of particular things it seems to me that illustrate some problems.

First, your background with OMB would lead me to believe you have in the past been involved in the balancing of priority in which all sectors of the budget are equal competitors with a policy decision being reached.

Now you move into Federal Energy Administration, where you become in effect, I assume, a protagonist for the energy priorities and leave it to others to strike a balance.

Is that fairly stated?

Mr. ZARB. I would make one small modification, Senator, if I may. I don't think being a complete protagonist without sensitivity to

what is logical or to what is achievable, without having a posture of understanding the other point of view and being prepared to accommodate it, as long as I don't have to sacrifice my own principles or my own objectives.

I think unless we approach this job this way, we, in the Energy Office or the Environmental Protection Agency, are just not going to get the job done.

So I have no intention of giving up what I consider to be my most important mission in energy. I have found over the years reasonable people can usually work hard to achieve a solution that accommodates both sides.

Senator McCLURE. Sometimes compromises are made with which you do not agree. The job in OMB is to reach those compromises, because that is the function of OMB, that requires compromises between viewpoints.

Is that your view in FEA, that you are prepared to compromise at the outset?

Mr. ZARB. The short answer to your question is absolutely no.

I would just say at OMB, when we are not able to reconcile agencies' position to a Presidential decision, our role as staff to the President is to develop a paper giving both sides, giving our recommendation of who seems to be right, based on a Presidential objective, and he makes the final decision.

I would anticipate we would have those occasions here in the energy business as the weeks roll along.

Senator McCLURE. Obviously there are trade-offs. One such example is in the deferrals the President has just sent to the Congress. There are several items in the public works deferrals that bear directly on energy protection.

I will give you two or three specific ones in which they are deferrals for the Bonneville Dam second power unit on the Columbia River in Oregon; again on the Snake River in the State of Washington; Monumental Dam; Grand Coolee Dam.

They are being deferred for their powerplants. Every one of those will increase our dependence on foreign sources of energy.

I recognize the dilemma the President has in reaching some kind of balance to the budget. In a situation like that, what is your primary objective in the job: to seek the energy objective or the balanced budget objective?

Mr. ZARB. My objective is to fight for full funding for whatever we need to get the job done.

Senator McCLURE. I recognize you cannot win all of those fights. There is not enough money to go around for everyone.

An associated question with that, not only a budgetary question, but FEA's potential to deal with the power potential of the Snake River, as it flows through Hell's Canyon along the States of Oregon and Washington. There are those who wish to build dams for hydropower.

FEA testified this year they were going to forgo the power potential of those sites in favor of a recreational designation for the area to maintain the river in the free-flowing status.

There are those who want FEA to change its position and have suggested the FEA is about to change its position.

Have you any comment with regard to the possibility that FEA might change its position on the Snake?

Mr. ZARB. I have not.

Senator McCLURE. I wonder if you would supply an answer for the record. It is of very great concern.

One of the problems that confronts us, the Senator from New York, Mr. Buckley, has made some reference to it. I'm also a member of the Environmental Subcommittee of the Public Works Committee—as is he.

I will not ask you to comment, but I am very concerned about the Clean Air Act amendments that have not moved. There is going to have to be some effort to move them.

I don't know what the results will be of those efforts in terms of the final program adopted by the Congress, but in the context of that debate, I am absolutely convinced by all the evidence before me at this time that the stack-scrubbers in the present state of the art do not work. I wish they did.

I am somewhat concerned with governmental policy that demands a technology that does not work be installed simply as a kind of token of our commitment to clean air.

The consumers of this country are paying the bills for every one of those things that does not work, and it does not advance those as far as the proponents of that stack-scrubber technology would have us believe.

I am not opposed to cleaning up the air. I want to do it as rapidly as we can. Again, I will not ask you to comment on that. But I am concerned, and I hope you will take a close look at that.

Now, one question I would like to ask for your comment on, if you are prepared to comment. We have had in the past a helium conservation program. There was a decision some time ago to terminate contracts on that program, although Congress has not acted to terminate the program itself.

The current information I have is that the lawsuits against the Government as a result of that action are probably going to cost the Government anywhere from half a billion to three-quarters of a billion dollars in lawsuits, and we will not have the helium. It may have been rational from a budgetary standpoint and the immediate impact on the budget to terminate the conservation program, but I think it is extremely adverse to the items in which you will now be engaged, particularly as it relates to future energy developments that we have the helium, that we conserve it, that it is there, because all of the technology upon which we are going to be spending millions of dollars on research and development will not be usable unless we have low-temperature technology, unless somebody discovers something nobody knows yet.

Now, is there a possibility that FEA will take another look at the previous OMB decision to scrap the helium conservation program so we preserve our options for the future in regard to the technologies that may be applicable in the field of energy?

Mr. ZARB. Senator, I will guarantee you we will take another look at that decision. I am not familiar with it and cannot comment on the specifics at this time.

Senator McCURE. I am very much concerned about it. We are looking at fusion energy as a possible source of energy in the next century. Fusion energy in the present state of the art must depend on magnetic containment, and there is only one available technology that can be applied to magnetic containment, and that is superconductive magnetic fields and that requires helium.

There is absolutely no helium that anybody can point to, and yet we are venting helium into the air, wasting it, and the Government is participating in the same old cutout-getout philosophy that we have applied to resources in the past and yet the Government is doing this.

Thank you, Mr. Chairman.

Senator METZENBAUM. Senator Bartlett.

Senator BARTLETT. Thank you, Mr. Chairman.

Mr. Zarb, did you know when the Congress enacted the Emergency Petroleum Allocation Act it was made clear that all forms of public transportation would be given priority in the allocation of fuel?

In fact, most people travel on the airlines, which I understand carry about 70 percent of the intercity passenger miles by common carriers.

I cannot understand why airlines are not considered a passenger transportation service by the FEA regulations.

Mr. ZARB. I'm aware of the fact, Senator, there have been a number of disputes concerning the definitions of users within the regulations in the instant case. I can tell you that is under review and it would appear on the face of it when the review is completed, along with these other adjustments that that one will be made.

Senator BARTLETT. They will be considered on a comparable basis?

Mr. ZARB. Yes, sir.

Senator BARTLETT. Mr. Zarb, could you outline briefly your experience directly in the oil industry, when you were with Cities Service?

Mr. ZARB. I was recruited by Cities Service in 1957. I was a senior in school as a management trainee in a program called cadet engineering.

I spent about a year touring various petroleum facilities in 1958, learning something about refining, terminal operations of our transportation operations. I pumped some gas and wiped some windshields.

They had a fairly thorough training program that first year. I went on to become coordinator of the program from which I had just graduated, which at that time they called the cadet engineering program.

I worked in industrial relations and then training, and then spent the last part of my 5 years with that company as a service station dealer-trainer, working with service station owners, and in other ways.

Senator BARTLETT. Your experience was not in exploration, production, pipeline, refining, or distribution of products? You were at the other end of the line.

Mr. ZARB. Only during the training period where I spent 6 weeks at Lake Charles studying refining and quite an extensive remainder of the year learning the industry and being expected to learn it and understand it and pass muster on what I had learned.

It reached into all segments of the petroleum business, including the petrochemical business.

Senator BARTLETT. But you were not involved with products, crude oil shipments, and so on?

Mr. ZARB. No, sir.

Senator BARTLETT. Do you think it is an asset in this job that you propose to fill that you have around you people who are experienced if they do not have a conflict of interest?

Mr. ZARB. With that qualification, Senator, I would have to say it sure does help to have people who have a background in an area when they are counseling you and helping you make policy decisions in that regard.

But you have placed a very big question in that statement, and that is where we normally run into our difficulties in defining what is a conflict of interest.

Senator BARTLETT. It has concerned me that so many people involved in energy administration have no petroleum experience. That is one of the problems we have had.

I know there are experienced people in the academic field who have some knowledge of these areas. From my own observation I don't think they have been contacted. At least I do not know that they have been. There is no evidence of any efforts being made in that direction.

Will you make such an effort?

Mr. ZARB. Yes, sir.

Senator BARTLETT. Do you have full authority for operating all aspects of the FEA?

Mr. ZARB. Yes, I will.

Senator BARTLETT. I assume the title of the program comes under the authority of the FEA.

Mr. ZARB. Yes.

Senator BARTLETT. Therefore, you are in a position to change that decision by the Secretary if you reach that conclusion.

Mr. ZARB. Using the appropriate means of rules changes I will have that authority. Yes, sir.

Senator BARTLETT. What does that answer mean?

Mr. ZARB. The answer is yes, that there is a rule making procedure we are required to go through, including placing the proposals in the Federal Register, receiving comments, and a series of legal steps.

Senator BARTLETT. Do you feel the decision that was reached, which was described by the Senator from Wyoming and in which the Secretary said he was involved, where one section of the country subsidizes another do you agree with that? And if you agree that is the case, do you agree that is fulfilling the hopes and desires of the Congress in writing the bill, and do you think that in all justice is fair?

Mr. ZARB. Senator, in all honesty, I cannot answer that question clearly and precisely.

The Congress has said in our allocation and compliance work we needed to serve equity, as I recall—not those words, but similar to them.

In that regard, the first steps to entitlement were directed toward ensuring that small independent refiners were not driven out of business. All they had at their disposal was imported oil, and as a result of our conditions they could not make it go.

We expanded some to accommodate a price dispersion of residual oil between New England and the rest of the world. Those people

who looked at its, looked at its mission, came to the conclusion that was an appropriate step for FEA to take, given all the facts they had to examine.

I don't know if I examined the same facts if I would come out with precisely the same conclusions.

I don't mean to suggest I would not, but I just don't know.

Senator BARTLETT. The indication I got with talking to some people at FEA would be just the opposite of what you said.

Mr. ZARB. Which would be what?

Senator BARTLETT. Which said they were opposed to this action.

Mr. ZARB. I think FEA as an institution—

Senator BARTLETT. What I was asking was: Do you favor one section of the country or consumers from one section of the country subsidizing the consumers from another section?

As you stated it, the entitlement program was initially created in order to take care of inequities between refiners and had nothing to do with imported products. Then it was extended to products which were going into an entirely different area.

It is one thing as a product for a certain area, and it is another thing as a product going to all the areas. There is a policy established there which I am asking you do you favor?

Do you favor the policy? You might be trying to achieve a good goal, but achieving that goal by having one set of consumers in one section of the country subsidizing another, do you agree with that or don't you?

Mr. ZARB. As a basic philosophy, I am opposed to further inserting Government into the movement of products around the country where that insertion is not essential.

The reason I am not clear in giving you a yes or no answer, Senator, is that down deep in my heart I am not sure whether this was the right thing to do or not.

It was a major departure. But the other side of that argument I recall very clearly in a discussion with Governor Novell.

I explained the inordinately high expense of common electricity and the inability to do common things in the household in this part of the country had pushed people on fixed incomes and low incomes right to the wall.

If there were an inordinate problem in that section of the country, maybe there was a different way to solve that problem. But it was not a problem that could be ignored.

Senator BARTLETT. The question was on the means to the end, and not the end itself.

I was not trying to debate the goal; I was trying to debate the means to achieve that goal.

I agree there is a problem. But my problem is the matter in which it was dealt with, whether or not it is consistent with the law and justice.

Is that the way you think you should run the department?

Mr. ZARB. I do know I will have a problem to find the right strategy or vehicle to solve that problem. I don't think this would have been the first step I would have looked toward in making such a major policy change.

On the other hand, it would appear from where I sit those other options were examined by those in the process and found there was no other way to quickly address the problem.

I am not happy with the kind of philosophy behind that kind of strategy, Senator. But I am saying there might not be other ways to treat it.

Senator BARTLETT. In the conversation related by the Senator from Wyoming, I think it showed the Secretary had concern about the steps he planned to take.

In addition, they indicate on the record discussing it with him that afternoon and he said for me to call him, which I did. I was indicating my interest in discussing it.

Senator METZENBAUM. The Senator's time has expired.

Senator BARTLETT. Just one more minute if you don't mind, Mr. Chairman.

In this position will you have a relationship with members of Congress, if they do plan to see you prior to a decision, not to make a decision without honoring that commitment?

Mr. ZARB. I will go a step further, Senator, to commit to make it a point to consult with those involved in such policy decisions, to confer with them before it occurs.

Senator McCLURE. If you would yield for just a minute for a comment on this question of allocation, it is important to many of us.

I think it should be underscored probably the allocation of raw crude has resulted in the consumers in my area of the country paying about 2 cents a gallon more for their products. And that is done primarily to help the Northeast.

Is it a kind of transfer, that the people of the Northwest are called upon to subsidize the people of the Northeast?

I think that is what the Senator was referring to, in part.

Senator BARTLETT. Mr. Chairman, could I make one more point on this?

I think the concern that exists with this is: it has been the same people from the Northeast who want this subsidy, who have insisted and brought pressure on the Government to have price controls on crude oil which have brought about the shortages which exist in the first place.

If there are free market prices for natural gas and crude oil, we still might have a shortage. I'm not sure of that. But it would not be as great.

It seems to me this is grossly unfair and is a principle that is wrong. I hope your desires are to limit it. I am sure there are other ways of subsidizing the purchasers of distillate heating oil in the Northeast, rather than by the consumers in our part of the country.

Mr. ZARB. I certainly will examine that, Senator.

Senator METZENBAUM. Mr. Zarb, as I indicated previously, I have a few questions to ask you. I don't think they will take long to answer, and I won't take long in asking you.

Would you agree not to accept employment with companies regulated by the FEA after you leave the administration?

Mr. ZARB. I am not sure the extent that takes in, Senator. I understand my predecessor made a commitment not to join an oil company for a year after he left FEA.

Senator METZENBAUM. What would you be willing to do?

Mr. ZARB. I would be willing to set that kind of a standard for myself. I don't need to set it for other agency heads around town, who might feel this is precedential.

We are in the public eye. Credibility is at stake. I certainly would be willing to go that far.

Senator METZENBAUM. How about other aspects of the industries you regulate?

Mr. ZARB. The staff tells me we affect somewhere between 60-70 percent of the economy.

Senator METZENBAUM. You and I can establish that you can go back into the consumer end of the economy and you will have a great impact on it.

Nobody would find any fault with that. It is just the utility companies, oil companies, nuclear energy-producing companies I think we are really talking about.

The question I'm asking you: Would you be willing to reenter any of those fields within a year of the time you left Government?

Mr. ZARB. Well—

Senator METZENBAUM. Would you be willing to advise the committee the degree of specificity you would be willing to be bound by and if it is a period of limitation of 1 year?

We would be pleased to hear from you, as well.

Mr. ZARB. Very well.

Senator METZENBAUM. Do you think we should require you to make the same pledges as those in policy-making decisions?

Mr. ZARB. I think from the standpoint of potential removal from potential conflict, that would be a good step, but I am also reluctant to bring people into the Government and have them go into the Federal Government and then go out.

I'm willing to set such standards for myself, but I'm afraid if I went that far for my immediate colleagues it would have a negative effect.

I'm rather sensitive to this question of conduct.

Senator METZENBAUM. What if those assistants responsible to you have a conflict or appear to have a conflict of interest situation?

Mr. ZARB. I understand there are some rules that cover this. I think the first step has to be a system whereby I, as Administrator, can be free to recruit good, honest, solid talent from the country to get this well done in a way that would leave this committee and the American people free of skepticism that there is any potential conflict.

I'm not sure how that process can be worked out, but I'm sure it can be so we can demonstrate we have the appropriate procedure.

Senator METZENBAUM. That is your position and those who hold the positions as assistants to your faith. But what can you do beyond that?

Mr. ZARB. Now, I just want to suggest the first problem. I want to make sure we only recruit people who have been on the payroll, honest, decent, good human beings—and have that challenged because we have not had the foresight to have a pre-arranged system that this committee has confidence in to assure appropriate opinions were gotten and the rate standards were set.

Senator METZENBAUM. I am asking you what would be the standard for that system?

Mr. ZARB. The obvious I won't mention, those who have continuing relationships with companies which we would regulate, I think is an apparent and clear conflict.

There are those who get into the gray area. I would say there, Senator, we have to find a method. I would like to do it individual by individual.

Now, a second level of question which is troublesome is what do you do to assure the people you appoint might not be doing something while they are in office to benefit themselves in the future.

I have already said I am prepared, from my own position, to give you the assurances that are appropriate in that regard. I face the dilemma of going that way with my subordinates and not being able to recruit some people that I need to have.

We have to find another answer in terms of first assuring ourselves we have people of integrity; and, second, in doing the right kind of monitoring work within our agency, that there is precious little opportunity for someone to be tempted to do the wrong thing.

Senator METZENBAUM. You still haven't indicated what those procedures would be.

Mr. ZARB. I don't know what they are and what needs to be done.

Senator METZENBAUM. Isn't it more important to establish a standard and then find an exception to the rule?

Mr. ZARB. The simple standard we could reach out for and grab would be to put all the secondary management on the standard that I have set for myself.

I will explain why that has some negative impact. So, I would like to agree to the standard that we need to devise the mechanism and assure we have the right people and preclude and minimize the situation you and I conclude to be incorrect.

I have not thought it through enough to determine what that procedure might be.

Senator METZENBAUM. I don't want to press the point on that, Mr. Zarb, but would you be good enough before your confirmation by the Senate to provide this Committee with how you would establish such standards?

Mr. ZARB. Yes, sir.

Senator METZENBAUM. Would you also at the same time—because I think it ties in with that—imply how you would take steps to prevent the Bowen double-dip controversy, with which I am sure you are familiar.

Mr. ZARB. I have trouble with the controversy. I think back in the days when those regulations were being drafted the conditions within FEA, by nature of the environment around it, very severe and under enormous pressure.

I can recall quite clearly virtually everybody in the agency had been there only a few hours, and they were brought in from another agency.

The FEA now has a very competent General Council for the Department, and I would submit all of our regulations promulgated would be carefully reviewed by Council and they will report to me that they have reviewed them.

Senator METZENBAUM. Mr. Zarb, that question went beyond Council. As I recollect the man who was then Counsel for the FEA is presently Counsel of the White House; is he not, Mr. Walker?

Mr. ZARB. He is in the personnel business at the White House.

Senator METZENBAUM. What I'm talking about is avoiding the possibility of Mr. Bowen coming from Phillips Petroleum or some other company similar to that being in a policy position to be a party to developing such regulations. That is what I'm asking you to address yourself to.

Mr. ZARB. I don't want to comment on the Bowen case. I am not familiar with the details of it, just at arm's length. I mentioned we have to be doubly sure to not only in substance prevent the possibility of conflict, but to prevent its appearance, even where such conflict does not exist.

And I can only pledge we will do everything in our power to be sure the people we have working on policy, the Council what they are doing will be open and apparent to this Committee and to the public, so if anything occurred that might be irregular or appear irregular it will come to our attention quite quickly.

I don't preclude people from certain backgrounds ever being precluded from a position with the FEA. I would prefer to submit standards to the Committee that we would be able to live by, and consider each case on its merits.

Senator METZENBAUM. You feel there should be some limitation of the officials with backgrounds in the industry, to preclude them from positions in the FEA?

Mr. ZARB. Senator, I have an energy background.

Senator METZENBAUM. Well, let me say from the industries being regulated.

Mr. ZARB. I would say by the nature of our job the kinds of talents we have we have almost a natural balancing in that people not necessarily with petroleum backgrounds, people in dozens of jobs. I would be unhappy if we had 95 percent of our people come from any one industry or discipline.

Senator METZENBAUM. 85 percent, 75 percent?

Mr. ZARB. I mean that reasonable people would agree was inordinate.

Senator METZENBAUM. Do you agree that any restriction should be placed on FEA officials who are involved in receiving substantial severance pay when they leave their employers and they are coming to the FEA in policy-making positions and they are leaving an industry regulated by the FEA?

Mr. ZARB. I am somewhat familiar with case that raises that question, Senator. I think I would like to rest on my principle of examining each case in its own light and doing so in the open air so as we make the determinations it is clear we are making decisions and this Committee is aware of the standards we are using and the people we are employing and the backgrounds from whence they come.

Senator METZENBAUM. Again it comes down to personal evaluation, as well as public information after the facts.

Mr. ZARB. I think it gets down to making them public and in all cases making this committee aware of the people coming in and what their background is before they are hired.

The committee has agreed, even prior to confirmation hearings, they will not raise objections with respect to conflict.

I don't think we can go on having any real skepticism between members of this committee and the public and the credibility of FEA.

Senator METZENBAUM. Aren't you faced with the question where you have substantial discretionary severance payments made to a top executive of the oil company joins FEA in a policy-making position? Don't you have that same question you mentioned a moment ago? It is not only the actual conflict of interest, but it is that which provides for an apparent conflict of interest and causes the public to lose confidence in the governmental structure.

Mr. ZARB. Not necessarily, Senator. I think if the public was assured that we had FEA and you come to an agreement to carefully review case-by-case by the standards that we had structured were not so rigid as to arbitrarily prevent me as Administrator from bringing in top talent in any way that was consistent with the way the Congress wanted the agency to work. I think we can afford that appearance.

I think it gets back again to the question of the ability to work together and having the ability to bring people in, even if they come from industry and even if they had severance payments, because of the peculiar nature of the background and because of the way we are structuring the position that reasonable people would agree we could go ahead on that basis.

I think with that kind of awareness and openness that the public will realize those men and women serving these functions will have the spotlight on them.

So long as we do it in a spirit of openness. I would just ask that I not be required to set up such stringent requirements that I am not able to bring in these people, as Senator Bartlett suggested earlier, who are really essential in terms of their background at this point.

Senator METZENBAUM. We are going to take a recess of 10 or 15 minutes, unless Senator Bartlett cares to do the honors.

Senator BARTLETT. I have to go too.

Senator METZENBAUM. We will take a 10-minute recess.

[Whereupon, a recess was taken.]

Senator FANNIN [presiding]. We call Mr. Cohen, the vice president of Common Cause, at this time. Mr. Cohen, please come forward.

STATEMENT OF DAVID COHEN, EXECUTIVE VICE PRESIDENT, COMMON CAUSE

Mr. COHEN. My name is David Cohen. On my right is Miss McBride, of Common Cause. Among her specialities is the energy issue.

Senator FANNIN. We are pleased to have both of you with us this afternoon.

Mr. COHEN. What I would like to do in the interest of time is to summarize my statement and have the statements serve as part of the record.

Senator FANNIN. Your complete statement will be made part of the record.

Mr. COHEN. I could not come to the Interior Committee without first acknowledging the really great praise we have for the Interior Committee and the way it has conducted its business and its trail-

blazing efforts in the Senate, in terms of open meetings, and going beyond that in terms of open conferences.

I have sat through this hearing and I think, like everyone else, I have recognized and share the view that energy policy is a serious matter. The country has to face up to very hard problems, but it needs action, and we now are faced with the situation in which we know it really is two minutes to midnight.

Our purpose in coming here isn't to challenge Mr. Zarb's nomination, nor to urge his confirmation, but it is really to raise the principal point that we think the Interior Committee and all other legislative committees should use the confirmation process to raise the kinds of questions of appointees in advance of their appointments that too often get neglected.

What we would urge today is don't rush into a rapid confirmation without knowing more. Questions that concern us were in part addressed by Senator Metzenbaum, and I think one of the purposes a confirmation hearing serves is that it helps send the message signifying to the appointee, the prospective appointee, that there should be some matters on your agenda that may not necessarily be there.

The sense I get of the integrity and accountability issues is that they are not high enough on Mr. Zarb's agenda. They seem to be neglected and they seem to be forgotten, and they would have been forgotten until Senator Metzenbaum brought them out in his questions.

And I would hope this committee continues to oversee these issues in an aggressive way.

Now I would hope before there is any confirmation of Mr. Zarb—and I don't doubt that he will be confirmed and that he should be confirmed—but before there is any confirmation of Mr. Zarb, this committee should know what his proposals are in dealing with the sensitive conflict of interest issues.

This committee just went through a controversy this morning on the confirmation of Mr. Conant. The issue is a sensitive one. It is a real one, and it is one that troubles a lot of people, a lot of Americans.

I would hope Mr. Zarb would be able to set forth in writing what his suggested standards are. No one wants not to have able and experienced people implementing our energy policy, but I would suggest the divisions Mr. Zarb articulated are not the real ones, are not between rigid standards and nobody. I think it is important that this issue, in fact, be addressed.

Unless it is addressed we are not going to be able to fulfill the major goal that Mr. Zarb so ably stated earlier today, which is having the support of the American people. We want these decisions accepted that the Federal Energy Administration makes. We want them understood.

It goes beyond conflict of interest. It goes to the question of being able to deal with energy policies in an articulate and informed way.

Mr. Zarb's predecessor made a trail-blaze in a way by developing a regulation that requires officials to log contacts with outside parties concerning specific proceedings or questions of policy.

Now, such disclosure is essential to safeguard the integrity of the process by which policy is made. That kind of regulation is essential

in order to make sure the kinds of invisible pressures that exist on an agency don't stay invisible, but surface out and get brought up.

Now, as good as that regulation is, it is not perfect and there are improvements that can be made in it. But the very least we can know from Mr. Zarb before he is confirmed is where do you stand on this regulation, Mr. Zarb? Will you support it? Will you look to enforce it? Will you look to see how it can be strengthened?

Second, I think we should know from Mr. Zarb what steps will you take to open up the energy decision-making process to the public? What steps will you take to actively seek and employ representatives of consumer and environmental groups to the advisory committees, as they are required by the Federal Advisory Committee Act? What steps will you take to make the Freedom of Information Act, the new act that Congress recently enacted?

If we begin to know that, in addition to what we talked about with conflict of interest, I think we can begin to achieve the kind of cooperation that Mr. Zarb wants, that the Senate Interior Committee wants.

But we cannot obtain it by merely talking about it, and you cannot obtain it by wishing for it. You have to obtain it by working at it.

I think the ball is very much in Mr. Zarb's lap, and I would hope this committee, before it votes on Mr. Zarb's confirmation, will see to it that he informs you in a reasonably detailed way of what his proposals are, of what it is he intends to do, how he intends to accomplish it, and what the standards are—not solely operating on an individual basis, but what these standards are.

If we can do that, it will begin to make a very, very powerful agency, an agency that is going to be more powerful as time goes on, one that is effective and responsible and accountable and one that is then respected by the American people.

Thank you.

[The prepared statement of Mr. Cohen follows:]

TESTIMONY OF DAVID COHEN
EXECUTIVE VICE PRESIDENT OF COMMON CAUSE
ON THE NOMINATION OF FRANK G. ZARB
TO BE ADMINISTRATOR OF THE FEDERAL ENERGY ADMINISTRATION
before the U.S. SENATE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Wednesday, December 4, 1974

Citizen confidence in government is at an all-time low. The lack of leadership and creativity in the Executive Branch are factors in this dismal situation. Common Cause believes that Congress must reassert its Constitutional responsibility to oversee the Executive Branch. Congress must insist that its policy pronouncements be implemented. All too often, bold Congressional statements of policy evaporate under the invisible heat of special interest pressure in the bureaucracy.

The confirmation process is an essential Constitutional responsibility of Congress in regard to the Executive Branch. Common Cause believes that the confirmation process is not taken seriously enough and must be made an integral part of a comprehensive Executive Branch oversight program.

We have no particular quarrels with Mr. Zarb. However, Common Cause believes that there are certain commitments that must be made and attitudes that must be queried before anyone is confirmed to a position of responsibility in the energy field. At a time when the American public is especially sensitive to the energy issue and to conflicts of interest by public officials, it is important that our questions be asked and that they be answered in detail before this committee acts on the nomination of Mr. Zarb or any other energy decision-maker. Our questions are the first, necessary steps toward ensuring public confidence in the government's energy decision-making process.

First, Common Cause believes that Mr. Zarb should be asked for a public commitment to retain, in fact to improve, the FEA regulation requiring officials to log contacts with outside parties concerning specific proceedings or questions of policy. Such disclosure is essential to safeguard the integrity of the process by which energy policies are made.

There is ample precedent for FEA's logging regulation. The Federal Trade Commission, the Justice Department, and the Consumers Product Safety Commission all require their employees to keep logs of outside contacts. These logs are made available for public inspection, either as part of the public record on specific cases or as a special record of outside communications concerning policy.

While the new regulation is an important step toward openness, it does not go far enough. First, the section on specific Administration rule-making or other proceedings only covers communications from "non-involved" persons. This exempts from

disclosure certain contacts by those most interested in a case before the Administration. Second, the logs relating to specific proceedings are not made public in a timely fashion. They become available for public inspection only when and if a public record of the case is made, and even then a lengthy procedure under the Freedom of Information Act could be required to see the record. Finally, the section covering meetings on policy only applies to certain high-level FEA officials. Many meetings take place between outside lobbyists and lower-level employees in policy-making positions, and these contacts should also be covered by the logging requirements. Mr. Zarb should be on record in favor of closing these loopholes before he is confirmed. (I have a copy of the FEA regulation and of a model logging regulation prepared by Common Cause. I would like to make them a part of the record.)

Second, energy policy is a political as well as an economic and scientific matter. It is essential that it be established in the framework of an involved and informed citizenry. Mr. Zarb should be asked:

- What steps will you take to open the energy decision-making process to the public?
- Will you actively seek and appoint representatives of consumer and environmental groups to advisory committees as required by the Federal Advisory Committee Act of 1972?
- What steps will you take to make your decision-making documents available to the public and to ensure complete and timely compliance with the Freedom of Information Act as recently amended?

Third, the conflict of interest problem is at the heart of citizen disillusionment with government. Last year, pollster Louis Harris found that seventy-six percent of the American people agreed that "too many government leaders are just out for their own personal and financial gain." The revolving door between industry and government is responsible in large part for this attitude. A recent General Accounting Office report found "widespread noncompliance" with conflict regulations by Federal Power Commission officials. GAO noted a "total breakdown in financial reporting and review procedures." Mr. Zarb should be asked:

- Will you pledge not to accept employment with companies regulated by the FEA after leaving the Administration? Will you require your top assistants to make similar pledges?
- What steps will you take in regard to persons who come into government under the Presidential Interchange Program? How will you avoid a repetition of the Bowen "double-dip" controversy?
- Do you favor limitations on the number of FEA officials with backgrounds in the energy industry? Do you favor recruitment procedures oriented toward individuals with diverse academic and professional backgrounds? What use of outside consultants will you make and how will you ensure no conflicts of interest by them?
- What restrictions would you place on FEA officials with substantial severance contracts from companies affected by FEA policy?

- What divestiture and/or disqualification standards will you require in order to insulate FEA officials from conflicts of interest and comply with Executive Order 11222 of 1965?
- Do you favor full public disclosure of financial holdings (and severance arrangements from former employers) by FEA officials at the GS-15 level or above?
- What steps will you take to inform employees of financial disclosure and conflict regulations?
What steps will you take to ensure that personal financial statements are filed and reviewed?

Fourth, it is essential that prospective energy decision-makers not be wedded to past commitments and outdated policies that constrain them from making the hard choices that must be made to solve our energy problems. Mr. Zarb must be asked:

- What commitments to the present energy-financial investment establishment do you have that might prevent serious consideration of alternative energy sources?
- What is your attitude toward the anti-trust laws with regard to the petroleum industry?
- What role should private industry play in gathering facts about and recommending locations for energy development sites?
- What role should environmental groups and

agencies, such as the Council on Environmental Quality and Environmental Protection Agency, play in energy decision-making?

There is no more critical challenge before the Congress and the nation than the restoration of citizen support for and confidence in our institutions of government. Common Cause believes that if the questions that we have submitted are asked and are answered in an open and candid way, this Committee will have the information necessary to make a responsible judgment on this and future energy appointees.

Senator METZENBAUM [presiding]. Mr. Fannin.

Senator FANNIN. Thank you, Mr. Chairman, and thank you for your statement, Mr. Cohen.

I understand your concern. I feel from the testimony, and Mr. Zarb has answered most of the questions which you have in your statement, very favorably. I have been very impressed with him.

I have watched his performances over the years he has been here, and I consider him very outstanding, trustworthy, capable as an administrator, and I feel we are very fortunate in having a man of this caliber.

Do you feel in bringing in a public servant to do this work that he should sacrifice his remuneration to the extent or maybe three or four-to-one?

Mr. COHEN. I think when one comes to work in public service you accept the statutory salary limits, and I think Mr. Zarb has taken a welcome step in the 1-year moratorium.

I would hope that he changes his mind and is willing to ask the same request of his key subordinates. I am not at all sure that will prevent the Federal Energy Administration from getting the kind of talent it needs—

Senator FANNIN. You didn't answer my question.

Do you think public servants should be penalized—

Mr. COHEN. I don't think you penalize yourself on that basis.

Senator FANNIN. You are asking a public servant to come and take a tremendous cut in salary and eliminate his potential in the future.

Mr. COHEN. It is not eliminating it permanently in the future. That is not what you require at all. The 1-year moratorium, or an even longer moratorium, of not working in the same industries being regulated by the agency is neither a permanent condition nor a totally limiting condition.

Senator METZENBAUM. I want to ask you a question. I gather from your question on the implication that Mr. Zarb has been making three to four times his present salary—

Senator FANNIN. In private industry before he came to public service.

Senator METZENBAUM. How long ago was that?

Senator FANNIN. Just a few years ago.

Senator METZENBAUM. I thought he was coming from Government to Government.

Senator FANNIN. He is applying this not just to Mr. Zarb, but he is saying our stipulations to people coming into Government service.

I assume you're not just pointing out Mr. Zarb; is that right, Mr. Cohen?

Mr. COHEN. That's right.

Senator FANNIN. What I am getting to is we want to encourage good men and women to come into public service.

Do you think they should be penalized for doing so?

Mr. COHEN. I do not think they are penalized on a permanent basis, or even on a long term basis if they accept certain ground rules around conflict of interest regulations and to limit yourself to nonemployment for a period of time in the major industries or major concerns that you regulate.

Government service does not foreclose you from other fields nor does it foreclose you from a regulated field forever.

Senator FANNIN. What I'm getting at, Mr. Cohen, if we trust a man we have confidence in his honesty and integrity, and we want to give him the responsibilities which are involved in the position, such as we are talking about today.

Then I think we should have enough confidence in him and have some reward—I wish we had some rewards, rather than the penalty—but I think the reward he gets is that he has rendered a public service for his country.

Mr. COHEN. If I may, for your record, I would like to insert for the record the FEA regulation on lobbying I referred to in my testimony.

I would also like to insert in the record the FEA model regulation on disclosure.

The lobbying regulation would set some ground rules and procedures on the responsibility of those who lobby the FEA, so we have some ground rules to further build some confidence in the agency.

[The documents referred to above follow:]

**common cause**

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John W. Gardner, Chairman

(202) 833-1200

FEA REGULATION ON LOBBYING

Section 1. DECLARATION OF PURPOSE. The Federal Energy Administration hereby declares that the responsible exercise of its duties requires that members of the public be given the fullest opportunity to express their views on matters pending before the Administration, and that, in order for its officials to distinguish between expressions of ordinary citizens and those of organized interests and to preserve the integrity of its decision-making processes, it is necessary that the identity, expenditures, and activities of such persons be publicly and regularly disclosed.

Section 2. DEFINITIONS. For purposes of this Regulation, the term --

(1) "Administration" means the Federal Energy Administration.

(2) "Administrator" means the Administrator of the Administration.

(3) "Office" means the Office of Private Grievances and Redress within the Administration.

(4) "Director" means the Director of the Office.

(5) "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(6) "income" means --

(A) any payment, gift, reimbursement, funds, loan, advance, services, or other thing of value received; and

(B) any contract, promise, or agreement, whether or not legally enforceable, to receive any item referred to in subparagraph (A).

(7) "expenditure" means --

(A) any purchase, payment, distribution, loan, funds advance, services, or other thing of value made, disbursed or furnished; and

(B) any contract, promise, or agreement, whether or not legally enforceable, to carry out any transaction of any kind referred to in subparagraph (A).

(8) "filing period" means, as applicable --

(A) the period beginning on January 1 and ending at the close of March 31 in any calendar year;

(B) the period beginning on April 1 and ending at the close of June 30 in any calendar year.

(C) the period beginning on July 1 and ending at the close of September 30 in any calendar year.

(D) the period beginning on October 1 and ending at the close of December 31 in any calendar year.

(9) "identification" means, if the person to be identified is an individual, his name, address, occupation, principle place of business, and position held in such business; and, if the person to be identified is an organization, corporation, or other association, its name, address, objectives, and members of its Board of Directors.

(10) "lobbying" means all forms of communication with an official or employee of the Administration to influence any official decision or action on any matter proposed or pending before the Administration, with the exception of --

(A) any communication by means of an appearance before a public hearing conducted by the Administration pursuant to Section 121(b)(2) of the Federal Energy Emergency Administrative Act or by means of a written statement submitted for the public record of such hearing;

(B) any communication by any governmental official or governmental employee, acting in his official capacity;

(C) any communication through the publication, distribution, or dissemination, in the ordinary course of business, of news items, featured news stories, articles, columns, editorials, comments, books reviews, letters to the editor, advertising, and other matter, by --

(i) a newspaper, magazine, or other regularly published periodical which is distributed to the general public,

(ii) a licensed radio or television broadcasting station,

(iii) a book publisher engaged in the sale or distribution of books and publications, or

(iv) an owner, officer, editor, or employee of any of the foregoing.

(11) "lobbyist" means any person who engages in lobbying and who:

(A) receives income of \$100 or more in a calendar quarter for lobbying, whether that income is solely for lobbying or the lobbying is merely incidental to that person's regular employment; or

(B) expends \$100 or more in a calendar quarter for lobbying.

Section 3. STATEMENT OF POLICY ON COMMUNICATION FROM LOBBYISTS. No official or employee of the Administration who occupies a position on the General Schedule at grade 15 or higher, or who exercises responsibilities related to the formation of Administration policy, regulations, or administrative programs, shall receive any form of communication from any lobbyist who has not filed a notice of representation and all required amendments thereto and reports pursuant to Sections, 4, 6, and 7 of this Regulation.

Section 4. FILING OF NOTICES OF REPRESENTATION. Each lobbyist shall, at least three days prior to his initial communication to influence Administration policy or activity, file a notice of representation with the Office. Each notice shall be in the form and detail as the Director shall prescribe and shall include, but not be limited to, the following information:

- (1) an identification of the lobbyist filing such notice;
- (2) an identification of each person, whether or not income is received from such person, on whose behalf such lobbyist is to perform services as a lobbyist; excluding, if such person is an organization of voluntary due-paying members, the members of such organization;

(3) an identification of each person by whom such lobbyist is retained;

(4) the financial terms and conditions (including any contingent fee arrangement) on which such lobbyist is retained; and

(5) each specific area of Administration policy or activity which such lobbyist seeks to influence, including relevant docket numbers if known.

Section 5. FILING OF NOTICES OF REPRESENTATION BY OTHER PERSONS. Each person identified under Section 4(2) of this Regulation shall, in order for the lobbyist identifying such person to be in full compliance with that Section, file a notice of representation with the Office. The notice shall be filed at least three days prior to the initial communication by such lobbyist to influence Administration policy or activity, and shall be in the form and detail as the Director shall prescribe and shall include, but not be limited to, the following information:

(1) an identification of the person filing such notice:

(2) an identification of each lobbyist who is to perform services as a lobbyist, whether or not income is provided for such lobbyist, in behalf of such person;

(3) the financial terms and conditions (including any contingent fee arrangement) on which each such lobbyist is

retained;

(4) each specific area of Administration policy or activity which each such lobbyist seeks to influence; and

(5) a statement, if such person is an organization of voluntary due-paying members, of the aims of the organization as they pertain to the Administration, the number of members, and the methods by which such organization develops and makes decisions about positions on policy.

Section 6. AMENDMENTS TO NOTICES OF REPRESENTATION. If, at any time, the information contained in a notice of representation filed pursuant to Section 4 or 5 of this Regulation is not completely current, accurate, and up to date in all respects because of any change in circumstances or conditions with respect to the persons filing such notice (including termination of status as a lobbyist), such person shall file with the Office within five days after such change has occurred, such amendment or amendments to such notice as may be necessary to make the information contained in such notice completely current, accurate, and up to date in all respects.

Section 7. FILING OF REPORTS. Each lobbyist shall file with the Office a report covering each filing period during which such lobbyist engaged in lobbying. Each such

report shall be filed not later than the close of the fifth day following the filing period covered by the report. Each report shall be in the form and detail as the Director prescribes and include, but not be limited to, the following information:

(1) an identification of the lobbyist filing such report;

(2) an identification of each person, whether or not income was received from such person, on whose behalf such lobbyist performed services as a lobbyist during the filing period; excluding, if such person is an organization of voluntary due-paying members, the members of such organization;

(3) an identification of each person from whom such lobbyist received income during the filing period and the amount received from each, including --

(A) if such person is an organization of voluntary due-paying members, those members of such organization who contributed \$100 or more to such organization during the filing period;

(B) the total amount of such income; and

(C) the amount of such income received to engage in lobbying, whether or not such income was received solely for lobbying or the lobbying was merely incidental to such lobbyist's regular employment;

(4) the total expenditures made related to lobbying activities by such lobbyist during the filing period, including an itemization by amount, purpose, and person on whose behalf made of any expenditure in excess of \$50 in value;

(5) each honorarium, gift, loan, service, or anything of value transferred, directly or indirectly, to any official or employee of the Administration by such lobbyist during the filing period, and an identification of the name and position of such official or employee;

(6) an identification by name and position of each official or employee of the Administration to whom a communication was made by such lobbyist during the filing period to influence Administration policy or activity; and

(7) each specific Administration policy or activity which such lobbyist sought to influence during the filing period, including relevant docket members if known.

Section 8. FILING OF REPORTS BY OTHER PERSONS. Each person identified under Section 7(2) of this Regulation shall, in order for the lobbyist identifying such person to be in full compliance with that Section, file with the Office a report covering each filing period during which such

lobbyist engaged in lobbying. Each such report shall be filed not later than the close of the fifth day following the filing period covered by the report. Each report shall be in the form and detail as the Director prescribes and include, but not be limited to, the following information:

(1) an identification of the person filing such report;

(2) an identification of each lobbyist who performed services as a lobbyist on behalf of such person during the filing period, whether or not income was provided to such lobbyist;

(3) the total expenditures made during the filing period related to all activities to influence Administration policy or activity, including an itemization of expenditures made:

(A) to employ lobbyists, including the amount paid to each;

(B) to solicit other persons, including members of voluntary membership organizations, to engage in any activities to influence Administration policy or activity;

(C) for research, media, staff, offices, travel and other items necessary for affecting the activities of such lobbyists;

(4) each specific Administration policy or activity which such person sought to influence during the filing

period through each lobbyist identified in (2) above and through any solicitation made to other persons; and

(5) a copy of any publication or newsletter used during the filing period to solicit other persons to influence Administration policy or activity and an indication of numbers of persons who received such publication or newsletter.

Section 9. LOGGING OF COMMUNICATIONS FROM LOBBYISTS. Those officials or employees of the Administration specified in Section 3 of this Regulation shall place in a public record kept by the Office all written material, in its original form, received from lobbyists and memorandums stating the substance of all oral communications from lobbyists. Entries in the record shall be in the form and detail as the Director shall prescribe and shall include, in addition to the written material received from lobbyist or the substance of oral communications, the following information:

(1) the name and position of the official or employee submitting the entry;

(2) the date upon which such material or communication was received;

(3) an identification of the lobbyist from whom such material or communication was received and of the person

on whose behalf such lobbyist was acting; and

(4) the subject matter of such material or communication and the specific Administration policy or activity it seeks to influence, including relevant docket numbers if known.

For purposes of this Section, "lobbyist" shall include governmental officials or employees acting in their official capacity.

Section 10. FUNCTIONS OF THE DIRECTOR. The Director shall be required --

(1) to develop forms for the filing of notices of representation, amendments thereto, and reports pursuant to Sections 4,5,6,7 and 8 of this Regulation and to furnish such forms to lobbyists and other persons upon request;

(2) to develop forms for entries in the public record of the Office pursuant to Section 9 of this Regulation and to make such forms available to all officials and employees of the Administration specified in Section 3 of this Regulation;

(3) to make such notices, reports and entries filed with the Office available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit copying of any such notice, report, or entry by hand or by duplicating machine, as requested by

any person, at the expense of such persons, provided that the charge does not exceed actual marginal costs;

(4) to preserve such notices, reports and entries for a period of five years from date of receipt;

(5) to compile and summarize the information contained in such notices and reports in a manner reflective of the disclosure intent of the Regulation and in specific relation to the lobbying activities and expenditures related to specific matters before the Administration, including the identity of the lobbyists involved and of the persons in whose behalf they are acting;

(6) to have such information, as so compiled and summarized, published in the Federal Register within fifteen days after the close of each filing period;

(7) to have each notice of representation and amendment thereto published in the Federal Register within three days after such notice was received;

(8) to compile a comprehensive index by name of lobbyist, name of person in whose behalf a lobbyist acted, and subject matter of all entries in the record made during each filing period;

(9) to have such index, as so compiled, published in the Federal Register within fifteen days after the close of each filing period;

(10) to receive complaints from any person that a lobbyist or other person has failed to comply competely and accurately with the filing requirements of this Regulation and to thereupon determine, at his discretion pursuant to Section 11 of this Regulation, whether such failure has occurred; and

(11) to develop the administrative procedures necessary to effectuate the provisions of this Regulation.

Section 11. DETERMINATION OF NON-COMPLIANCE. The Director shall make a preliminary determination of whether notices of representation, amendments thereto, and reports filed with his Office are complete and accurate in all respects. In making such determination, he may request any lobbyist or other person to submit voluntarily any reports, documents, or answers to questions as he deems necessary. Upon refusal to comply satisfactorily with such requests, he may submit a preliminary determination to the Administrator that such lobbyist or other person is not in compliance with Sections 4,5,6,7 or 8 of this Regulation. The Administrator shall then determine, after adjudicatory hearings, whether such non-compliance exists. Upon such determination, the prohibition against receipt of communications from the lobbyist in question pursuant to Section 3 of this Regulation shall apply.

Section 12. SANCTIONS. Any official or employee of the Administration who knowingly and willfully violates Section 3 or 7 of this Regulation shall, upon determination by the Director with the consent of the Administrator, be suspended from the Administration for not less than 30 days. Multiple violations shall result, as the Director deems appropriate, in extended suspension, demotion, or removal from the Administration. Any lobbyist or other person who is not in complete and accurate compliance with Section 4,5,6,7 or 8 of this Regulation shall be prohibited from participating in any Administration deliberations or proceedings.

FEA LOGGING REGULATIONS

Part 204 is added to Chapter II to read as follows:

PART 204—RECORDS OF ORAL COMMUNICATIONS WITH PERSONS FROM
OUTSIDE FEA

- Sec.
204.1 Purpose and Scope.
204.2 Definitions.
204.3 Preparation of Record of Outside Contact Forms.
204.4 Preparation of Meeting Logs.
204.5 Public Record of Meetings.

Authority: Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 F.R. 23185.

§ 204.1 PURPOSE AND SCOPE

This part establishes regulations for the preparation and maintenance, by specific FEA employees, of written reports and meeting logs regarding certain types of oral communications received from and meetings held with persons from outside the agency. Procedures are also established for the preparation and distribution to the public of a list of all meetings that have occurred between the Administrator, the Deputy Administrator, Assistant Administrators, or the General Counsel and persons from outside the agency during the preceding two-week period. These regulations and procedures are designed to maintain the integrity of FEA's decision making process, to insure that FEA programs and policies are developed and implemented in an open atmosphere, and to promote public confidence in FEA.

Section 204.1 sets forth the general organization and objectives of Part 204. Section 204.2 contains the definitions applicable to this part.

Under the provisions of § 204.3, FEA employees in grade GS-15 and above, will be required to prepare and maintain written records of oral communications received from "non-involved" persons expressing an opinion or viewpoint on a specific application, interpretation request, appeal, petition for special redress, investigation, or enforcement proceeding pending before FEA. The purpose of the requirement that written records be maintained on communications from the "non-involved" persons, rather than from actual parties to applications or proceedings, is to insure that sources of influence that would not otherwise be apparent to the public are identified. Section 204.3 also prescribes the form to be utilized in reporting conversations. Such forms will provide information on: the name of the communicant, the application or proceeding involved, the organization or entities represented by the communicant, and the subject matter or matters discussed.

Under the provisions of § 204.4, the Administrator, the Deputy Administrator, the General Counsel, and all Assistant Administrators and Directors of FEA Offices will be required to maintain records of their meetings with persons from outside the agency concerning FEA policy questions. These records will identify the organizations and entities represented by each participant and will provide a brief summary of the subject matter or matters discussed.

Section 204.4 requires the Office of Public Affairs to distribute to interested parties a list of all meetings that have occurred between the Administrator, the Deputy Administrator, Assistant Administrators, or the General Counsel and persons from outside the agency during the preceding two-week period. These lists will also be made available to the public in the Office of Public Affairs' Public Reference Room.

Because Part 204 pertains to rules of internal agency procedure and practice, formal notice and public hearings are not required.

In consideration of the foregoing, a new Part 204 of Chapter II, Title 10 of the Code of Federal Regulations is hereby established.

(Federal Administration Act of 1974, Pub. L. 93-275; E. O. 11790, 39 F.R. 23185).

Issued in Washington, D.C. on September —, 1974.

ROBERT E. MONTGOMERY, JR.,
General Counsel,
Federal Energy Administration.

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§ 204.2 DEFINITIONS

As used in this part—

(a) "Appeal" means a request for further view of an order or interpretation, or of any action taken in response to an application.

(b) "Application" means a request for an exception, exemption, assignment or adjustment, modification or rescission, or stay.

(c) "Enforcement proceeding" means a proceeding relating to the preparation and issuance by FEA of notices of probable violation or remedial orders.

(d) "FEA" means the Federal Energy Administration.

(e) "Non-involved person" means a person with whom contact would normally not be made in the routine processing by FEA personnel of an application, interpretation request, petition for special redress, appeal, investigation or enforcement proceeding and includes, but is not limited to, a member of Congress or his staff, an employee or official of another government agency or of the Executive Branch, and any other person in public or private life not directly involved in the matter. It does not include an official or employee of FEA, or a person from outside the agency with whom an employee would be expected routinely to communicate in the normal course of processing the matter, including but not limited, to the applicant, the person requesting an interpretation, an appellant, a petitioner for special redress, a person under investigation, an informant in an investigation, a person charged with a violation, a party or witness to a proceeding or the attorney representing such persons.

(f) "Person from outside the agency" means a person not employed by FEA or detailed to FEA by another Federal agency.

(g) "Petition for special redress" means a "Petition for Special Redress and Other Relief" filed with the FEA Office of Private Grievances and Redress pursuant to Section 21 of the Federal Energy Administration Act and Part 205 of this Chapter.

§ 204.3 PREPARATION OF RECORD OF OUTSIDE CONTACT FORMS

(a) All FEA employees in grades GS-15 and above shall prepare a "Record of Outside Contact Form" ("Record Form") on each oral communication received (in person, by telephone or otherwise) from a non-involved person expressing an opinion or viewpoint on a specific application, interpretation request, appeal, petition for redress, investigation, or enforcement proceeding pending before FEA: *Provided*, that no Record Form shall be prepared for routine requests for information concerning the status of a matter, including, but not limited to, inquiries regarding when FEA actions were or may be taken, the identity of parties or staff

personnel responsible for a matter, or the availability and location of public information concerning a matter.

(b) The form set forth below, entitled "Record of Outside Contact Form", shall be used in complying with the provisions of paragraph (a).

Record of Outside Contact

(Identity of Application, Petition for Redress, Appeal, Interpretation Request, Investigation or Enforcement Proceeding Involved)

Name of Communicant

Organizations or Entities Represented

Date and Time of Communication

Place or Method of Communication

Brief Summary of Subject Matter(s) Discussed:

Completed by:

Name -----

Office -----

(c) Completed Record Forms shall be placed in the appropriate subject matter or case file and shall thereafter become part of the public record (if and when a public record of that particular matter is established). If the communication concerns an appeal before the Office of Exceptions and Appeals, the completed Record Form shall be immediately transmitted to that Office where it shall be placed in the appropriate application or enforcement proceeding file; *Provided*, however, that such Record Forms shall be maintained separately from the materials upon which the Review Committee may rely in reaching a final decision.

§ 204.4 PREPARATION OF MEETING LOGS

(a) The Administrator, the Deputy Administrator, the General Counsel, and all Assistant Administrators and Directors of FEA Offices shall maintain logs of their meetings with persons from outside the agency concerning FEA policy questions.

(b) The meeting logs prepared pursuant to paragraph (a) above shall reflect, at a minimum, the date and place of each meeting, the name of each participant in the meeting, the organizations or entities represented by each participant, and a brief summary of the subject matter or matters discussed.

§ 204.5 PUBLIC RECORD OF MEETINGS

(a) Within one week after the 15th and the end of each month, the Administrator, the Deputy Administrator, each Assistant Administrator, and the General Counsel shall submit to the Office of Public Affairs a list of all meetings that they have held with persons from outside FEA during the preceding half-month period. The list shall contain the date of each meeting, the names of all participants, the entities represented, and the general subject discussed.

(b) The Office of Public Affairs shall make the lists prepared pursuant to paragraph (a) above available to the public, upon request, in its Public Reference Room. In addition, the Office of Public Affairs shall distribute copies of the lists to interested parties on a regular basis.

Senator METZENBAUM. Senator Hansen.

Senator HANSEN. Mr. Cohen, I'm sorry I didn't get to hear your full statement. I scanned it very hurriedly.

On page 4, as I have the printed text before me, I note this:

Mr. Zarb should be asked: Will you pledge not to accept employment with companies regulated by the FEA after leaving the Administration? Will you require your top assistants to make similar pledges?

Does this reflect your feeling?

Mr. COHEN. It reflects our feeling that this is an issue that has to be faced. I think out of this I would hope we would achieve the kind of understandings between the Interior Committee and the Agency that would set up appropriate standards and ground rules.

Senator HANSEN. Would you feel that this or a similar pledge ought to be extracted from, or required of, each appointee to any Federal job?

Mr. COHEN. Any appointee above a certain level. Certainly each appointee has to be confirmed by the Senate and, perhaps at a certain high level.

I think one of the things we are obviously suggesting here is this is a generalized problem and will take generalized legislation.

But, in the absence of generalized conflict of interest legislation, I think the kind of oversight the Interior Committee should apply to the FEA and other committees should apply to other Federal agencies, has to come into play.

Senator HANSEN. Do you think such a requirement, such a prerequisite to the holding of a job above a certain level, would be a deterrent to the Government's finding the most competent help it might be able to enlist?

Mr. COHEN. I do not think it would be a deterrent. I think we kind of have a self-fulfilled prophecy here. Unless we keep things as they are and as we are using a very satisfactory method. That is one of the reasons we have this very, very genuine lack of confidence and turbulence that exists in the country.

It is a very worrisome thing to those of us like me who want to have our institutions respected.

I think there is a challenge to public servants. I think I'm sure Mr. Zarb thinks so, and I'm sure other able people like himself feel that way.

I think it will be possible to have such able people move in and out of Government. We don't expect people to stay in Government forever. We expect people to move in and out. It is possible to do that and at the same time avoid the appearance of background, appearance of conflict of interest.

Senator HANSEN. What is your background? What did you do before you joined Common Cause?

Mr. COHEN. I have been a lobbyist. I have taught. Those are the two main things I have done.

Senator HANSEN. Are you a lawyer?

Mr. COHEN. I am not a lawyer.

Senator HANSEN. Would you be willing to accept an appointment for Government service?

Mr. COHEN. Would I? It depends on the job and it depends on what the conditions of the assignment were to be. I would hope that sometime in my life I would have the challenge of working in Government.

Senator HANSEN. Would you be willing to make the same pledge you think should be required of Mr. Zarb?

Mr. COHEN. I would be willing to make that pledge. I would say right off, though, in all candor, by background I do not come from similar industries and therefore I am not sure I would have a chance of getting similar offers, but I would certainly be willing to make the same pledge.

Senator HANSEN. You would forgo, then, as I understand, impliedly you would forgo the future opportunity to either teach or lobby; is that what you are saying?

Mr. COHEN. For a period of time, yes.

Senator HANSEN. Maybe there is more than I read into this. I read it to you, and you said it reflected your feeling. I do not find any period of time in here.

Mr. COHEN. I said this was our way of saying this issue had to be raised so it could be dealt with. But the result should not be a permanent one.

Senator HANSEN. You have raised it, and I ask you if you subscribed to what appears in the written statement. If you have qualified it in another fashion, I am not aware of it. Maybe you have.

Mr. COHEN. I will say it again. I think there is a limit to the forgoing of future employment.

Senator HANSEN. When you said—

Mr. COHEN. I think Mr. Zarb set a good example with the 1 year. Perhaps it ought to be higher.

But what I do know is the committee has to deal with this problem and come up with some practical, workable recommendations.

Senator HANSEN. I have no more questions, Mr. Metzbaum.

Senator METZENBAUM. Senator from Oklahoma.

Senator BARTLETT. Mr. Cohen, your goal then is not necessarily to try to establish standards or have this committee establish standards as they are interviewing a prospective appointee, but your goal is rather to have this committee or the whole Senate review the requirements and the tests they would make regarding conflict of interest and the tests they would make regarding conflict of interest for appointees to regulatory bodies, and any appointees. Is that correct?

Mr. COHEN. That is correct, but let me say this: Federal Energy Administration has many appointees in the structure of the organization. I think this is very important in this system to have the recommendations by the committee for Mr. Zarb in this area.

Senator BARTLETT. Mr. Cohen, I notice you said—and I sort of agree with you—that Congress has a constitutional responsibility to oversee the executive branch.

You also believe it should oversee itself, its own membership.

Mr. COHEN. That is right.

Senator BARTLETT. Should we make the test for others or should we make the test for ourselves? Should we make it for others if we have no test for ourselves?

Mr. COHEN. I believe you have to begin somewhere.

Senator BARTLETT. Isn't there a certain amount of hypocrisy in that?

Mr. COHEN. I don't think so, Senator.

Senator BARTLETT. You think it is fine, then. Do you think it is fine for us to not have a responsibility to set a standard for ourselves, as well as for others? That is both.

Now, I'm not trying to say or imply, because—but there is a certain amount of hypocrisy there on our part. Don't you want to answer the question?

Mr. COHEN. I do want to answer the question.

I don't think that hypocrisy alone—I think you have got to deal with the existing situations as they come up and, as a matter of fact, the Senate had made some progress.

As I recall, I think you attached an amendment to the Campaign Reform bill that included a comprehensive statement on financial

disclosure. That was a welcome kind of thing, a welcome kind of amendment.

But the House of Representatives insisted it come out. I hope the Senate next year enacts the legislation on conflict of interest and financial disclosure for the Congress.

But even though you have not completed the job now does not mean you can afford not facing the issues as they come up in major confirmation kinds of situations.

Senator BARTLETT. That was not my point.

The point was, recognizing we have not fulfilled the job that we should, and we are wrong in not doing that, and are being somewhat hypocritical is my point.

Mr. COHEN. While you are hypocritical—when I say “you” I mean you as the institution—I hope that will not paralyze the institution and prevent it from dealing with other problems.

Senator BARTLETT. Do you see some unfairness existing when we do not have a set standard for others in the executive branch, and then for a person in the energy field—I notice on page 2 you bring out the energy field is more suspect—or more sensitive, perhaps is a better word to use—than others. And it seems to me it is unfair to not say in advance what the standards are, and then to create a set of standards when a person is obviously wanting confirmation and has already made sacrifices, and to set another standard?

Well, to require that we do not go back to business after he leaves this job, I think there is a certain unfairness there.

Mr. COHEN. That is exactly why I suggested the recommendations should come from Mr. Zarb, the Administrator.

We are all practical people here, and we all know his recommendations on the first round are going to be accepted if he is the kind of person I think he is, which is the supercompetent person.

But I think it results in the committee taking a responsible position and asking the Administrator to deal with the problem in a serious way, and that is what would be accomplished.

That is not hypocritical or unfair.

Senator BARTLETT. Shouldn't we go into this on a rather broad basis, and ask the same test of a businessman who has had experience in the oil industry or of a person from one of the institutions of higher learning? They are involved with government and the money quite often. Shouldn't this be done on the basis that is fair to all people?

I hope you are not of the opinion that people in the oil industry are more honest or dishonest than anyone else.

Mr. COHEN. I am certainly not of an opinion. I think there is as much controversy in the energy field as any.

Senator BARTLETT. Mr. Cohen, have you made recommendations to other committees of the Senate acting substantially in the same way?

Mr. COHEN. Yes, we have. We have done this with the Senate Commerce Committee on various occasions, and with several other committees; I believe the Senate Public Works.

Senator BARTLETT. This happens to be a matter I have been interested in. I have deposed myself of holdings I held in the industry and I put other holdings in an irrevocable trust.

And now after this, I cannot go into the oil industry after finishing my term for 2 years. I think we need to go very carefully into this business of not going back into a business that one is knowledgeable in.

It is the only business I have ever been in. I think many people, particularly if they are called to Government who have been for a long time in a certain business or profession, to cut that off from them in the future is a great handicap.

Mr. Zarb's answer was excellent. He was not going to require this of other people because it was very unfair. If one's only expertise is in this one area, and he is using that expertise in Government, and then he has to cut himself off to serve his Government—although it is a privilege, and I am sure Mr. Zarb so considers it, it should not come in connection with a person's particular confirmation, but it should come—in other words, just looking at the broad spectrum, not just the energy industry and not just the FEA, but all regulatory agencies, all businesses, all professions—and be quite fair.

I think this always tends to zero in on the oil industry, which bothers me a little bit and I think it is unfair. I have to believe people in the oil industry are just as fair and just as honest as anybody else, no better, no worse.

I congratulate you for pursuing this, but I think it should be pursued not at the time when Mr. Zarb comes before this committee.

Mr. COHEN. This in no way is meant or intended to have an effect on Mr. Zarb, as such. I think we make that clear in our statement, but it is the failure to have dealt with this problem and at the same time dealing with an agency which, in Mr. Zarb's words, has an influence or impact on 60-70 percent of the economy.

I think it makes it imperative the issue be raised and dealt with.

Senator BARTLETT. One final quick question: Would you send me what you consider, for all people in Government who would be subject to confirmation, and Congressmen—Senators, are, a series of tests which would be equitable all along the line?

Mr. COHEN. I'd be happy to do that, Senator, both on financial disclosure and conflict of interest.

Senator BARTLETT. Whatever you think that is important.

Senator METZENBAUM. The Senator has questioned the fact that many Members of Congress have not set up rules and regulations for themselves, but isn't it a fact that Members of Congress have made financial disclosure and taken other steps where there would be a possible conflict?

Mr. COHEN. You are right, Senator. A number have, but not a majority. That is why we need the legislation.

Senator METZENBAUM. Would you say that because some have not that that is any reason why we should not go forward and set standards for the executive branch?

Mr. COHEN. I think you should go ahead and set standards.

Senator METZENBAUM. Do you think that might be an inducement for Congress to try it?

Mr. COHEN. It would be pretty tough once this issue is going to be dealt with. It would be very tough to have any serious institutional exemptions.

Senator METZENBAUM. Doesn't your question relate to the credibility in the Government?

Mr. COHEN. It is one of our concerns.

Senator FANNIN. Mr. Chairman, he does not feel that one person should be sought out to apply standards that are not going to be applied in other areas, in a similar-type position. Is that right?

In other words, you are not saying you recommend Mr. Zarb have standards applied to him that we, as a committee, would not apply to others? You are recommending the committee adopt standards they would apply; is that correct?

Mr. COHEN. That is right. But I am also recommending very strongly the committee ask Mr. Zarb to come up with some recommendations at the next Federal Energy Administration.

Senator FANNIN. To come up with recommendations?

Mr. COHEN. That's right.

Senator FANNIN. We are not just picking on Mr. Zarb.

There are many agencies that are very much involved.

Mr. COHEN. Fine, that's right. But I think the recommendation should come before you vote on the confirmation.

Senator FANNIN. I think you are being very unfair and ridiculous in making a statement like that.

You might give some consideration of your statement. If you are reasonable, when you make a statement like that you are being absurd.

Senator METZENBAUM. If the Senator from Arizona will yield, I think Mr. Zarb has already agreed to furnish the committee with that information.

Senator FANNIN. Recommendations. This man is talking about doing it before he is confirmed.

Senator METZENBAUM. I think that Mr. Zarb will indicate that these are the things that he expects to put into practice. That would not be satisfactory?

Mr. COHEN. Yes. The point is to have assurances that the matter will be dealt with, and that is what we are seeking.

Senator FANNIN. In other words, you don't trust the man?

Mr. COHEN. I do trust the man.

Senator METZENBAUM. If he says he will do it you are perfectly satisfied?

Mr. COHEN. That is right, but I think they ought to become part of the record. They ought to be discussed and open and it ought to be locked in.

Senator FANNIN. Mr. Chairman, I don't want to prolong this, but I'm not sure I understand what you are recommending.

Would you please recommend what you are recommending.

Mr. COHEN. I think as a legitimate concern of the Senate Interior Committee it can ask of Mr. Zarb that he indicate to the committee, and ask him to, as to what the standards he believes in following on the implementing of conflict-of-interest matters.

Senator FANNIN. In other words, the statements we have asked a dozen other administrators—

Mr. COHEN. If you have asked other administrators, I think that is excellent.

Senator FANNIN. We are not picking on Mr. Zarb.

Mr. COHEN. No, we are not picking on Mr. Zarb; quite the opposite. We are pleased with the effect of this on this committee. We raised this with other committees and agencies that it has oversight over.

We are saying to the Government: Here is a policy of standards. How do you enforce it, and how do you implement it?

Senator FANNIN. We must, as members of the committee, weigh the advantages, the disadvantages, the benefits, the detriments; and if we are going to set unreasonable standards that are not practical, we could be more detrimental than beneficial to the Government of the United States.

Mr. COHEN. I agree with that. That is why I think the recommendor in this instance should be the Federal Energy Administrator.

We are talking about a policy with standards and enforcements.

Senator METZENBAUM. I'm going to conclude this hearing, but it occurred to me Mr. Zarb was on the witness stand when we recessed for a roll call vote.

I have no further questions of you, Mr. Zarb, but it occurred to me after Mr. Cohen had testified, you might want to address yourself to two matters.

You have previously addressed yourself to the question of standards, and I asked you whether you would advise the committee with respect to such standards, and you agreed. Am I correct on that?

Mr. ZARB. That is correct, Senator.

Senator METZENBAUM. I thought you might address yourself to the question raised by Mr. Cohen as to whether you expect to continue, in effect, the keeping of logs as is presently done at the FEA.

Mr. ZARB. I will direct the committee to pages 3 and 4 of my statement. The answer is yes. I had earlier indicated the openness of the FEA and the standards which they had promulgated would not only be continued, but would be built upon.

Senator METZENBAUM. Thank you, Mr. Zarb.

One of the questions raised by Mr. Cohen is: Do you expect to take steps to open up the decisionmaking processes to consumer groups, environmental groups, and others who represent divergent points of view?

Mr. ZARB. I'm a little confused by that, Senator. It was my conception that FEA in recent months had done a great deal to open its decisionmaking process, with its Advisory Committee and open seminars around the country.

I would certainly agree that should continue.

Senator METZENBAUM. I don't think that really zeros in on the question.

The open seminars and the advisory groups are just—they are advisory discussion groups. The thrust of the question was whether you would open up the decisionmaking process to these various other groups, and I think that that is the real question. It is not a question of who is giving advice, but who is making the final decision.

Mr. ZARB. Senator, I don't mean to dispute this, but I really don't understand what that means. What is it that FEA should be doing differently than it has been doing in arriving at its conclusions?

Senator METZENBAUM. Let me state it in a different manner: At the present time there is no question there is a large number of personnel in the FEA in policymaking decisions that have come directly out of the petroleum industry.

Query: Do you expect to put people in policymaking decisions who do not come from the petroleum industry, but may be representative of consumer groups, environmentalists, or such other groups as might have some other similar type of identification, not being a part of the group being regulated? I think that is the way to put it.

Mr. ZARB. I would want to say, first of all, we seem to be getting to the point where we talk about people who come from the oil industry to these positions. But there is nothing wrong with that.

Senator METZENBAUM. I have not suggested that. I just think there are too many of them.

Mr. ZARB. I recently had a session with Virginia Knauer and asked that she assign the Energy Resources Council a staff person who would work along with the Council and the Council staff on a day-to-day basis, so the consumer point of view would be presented during the course of the development of policy, and not after policy had been developed.

I felt very strongly about that, Senator.

I think when good people who have various expertise in various enterprises understand the problem and participate along with others who have different types of expertise, when the final decision is made the appropriate and balanced impact has been obtained.

Where we normally have our problems is where these points of view obtained after the decision is made, or so far along in the process there is no way to influence change.

But I note the important elements of our society will have the opportunity to participate fully, not only as a critic after the decision has been completed.

Senator METZENBAUM. Thank you very much, Mr. Zarb.

The committee stands adjourned subject to the call of the Chair.

[Whereupon, at 5:25 p.m., the hearing was adjourned.]

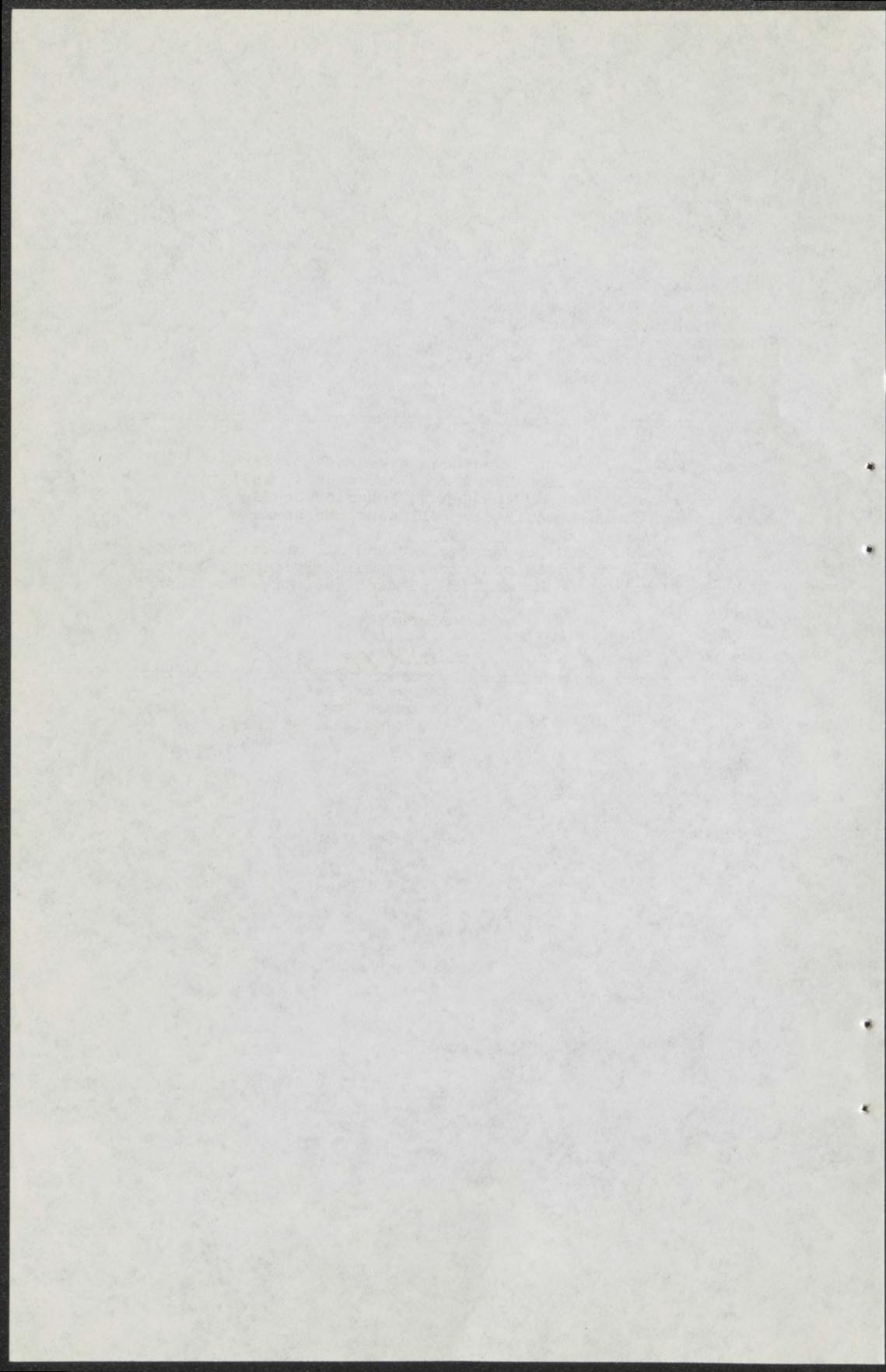
The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data. The text also mentions that regular audits are necessary to identify any discrepancies or errors in the accounting process.

The second section focuses on the role of the accounting department in providing valuable insights into the company's financial health. By analyzing trends and patterns in the data, accountants can help management make informed decisions about budgeting and resource allocation. It is noted that clear communication between the accounting team and other departments is essential for achieving these goals.

The final part of the document outlines the steps for implementing a new accounting system. It stresses the need for thorough planning and testing before going live. A detailed migration plan should be developed, including data backup and recovery procedures. Additionally, staff should receive comprehensive training to ensure they are comfortable with the new software. The document concludes by stating that a successful implementation will lead to improved efficiency and accuracy in the company's financial reporting.

APPENDIX

ANSWERS SUBMITTED BY MR. ZARB TO QUESTIONS BY MEMBERS OF THE
COMMITTEE



FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

December 9, 1974

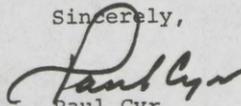
Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are answers to questions asked of Mr. Zarb during his confirmation hearing on December 4, 1974, or submitted in writing by the Senate Interior and Insular Affairs Committee immediately following the hearing.

Mr. Zarb stands ready to answer any and all questions prior to confirmation, and if confirmed, should additional questions need to be answered, he will be pleased to oblige the Committee.

Sincerely,



Paul Cyr
Director for
Congressional Affairs

Enclosure

ANSWERS
TO WRITTEN
QUESTIONS SUBMITTED
BY THE
SENATE INTERIOR
AND INSULAR AFFAIRS COMMITTEE
DURING THE
CONFIRMATION HEARINGS OF
FRANK G. ZARB
TO BE
ADMINISTRATOR
FEDERAL ENERGY ADMINISTRATION

DECEMBER 9, 1974

QUESTION #1

Inasmuch as I was not an essential party to the crude equalization rule making procedure I have asked FEA to respond to your specific questions regarding the program.

Experience, however, has taught us that systems of regulations sometimes produce effects other than that originally intended. Therefore, if confirmed, I will undertake a thorough review of the program. The purpose of the review will be to ascertain if it is achieving a beneficial result on our economy and consuming public without unduly burdening various segments. If I find the program is not accomplishing the desired goal I will not hesitate to recommend changes.

FEA's response to the specific questions are:

QUESTION:

a. Did FEA study the impact of the proposed "Entitlements" program on all refiners prior to the publication of the proposal?

ANSWER:

a. Yes, the FEA simulated the impact of the Entitlements Program on all refiners a number of times while the proposal was being designed.

QUESTION:

b. Was the study made public?

QUESTION #1 (Cont.)ANSWER:

b. While certain results were made public at various times, considerations such as confidentiality of data (18 U.S.C. 1905) or potential anti-trust issues prohibited the release of certain specific items developed in this analysis.

QUESTION:

c. Did FEA prepare an Inflation Impact Statement as required by Executive Order 11821?

ANSWER:

c. The proposal for an entitlement program was published by FEA in the Federal Register on August 30, 1974. At that time, there was no requirement that such proposed rulemakings be accompanied by an inflation impact statement. However, on November 27, 1974, President Ford promulgated Executive Order 11821 which now requires that all major proposals for the promulgation of regulations by any executive branch agency be accompanied by a statement which certifies that the inflationary impact of the proposal has been evaluated. Although the FEA proposed entitlement program was issued prior to the formal requirement for an inflation impact statement, the potential inflationary impact had been analyzed prior to the issuance of the proposed rulemaking and judged to be negligible.

QUESTION #1 (Cont.)QUESTION:

d. What is the impact on the consumer, on business and the effect on competition.

ANSWER:

d. (1) Consumer: It is anticipated that in the aggregate, the impact on the consumer will be negligible. In specific cases, and to a limited extent in specific geographical regions, there may be increases or decreases in consumer prices according to the exact distribution of marketers.

QUESTION #1 (Cont.)

(2) Business: As with the consumer, specific industrial users of petroleum products and their subsequent customers may experience cost increases or decreases as the costs of their respective refiner/suppliers are adjusted by the equalization program. It is anticipated that the nationwide effect will be negligible.

(3) Competition: Since, in theory, all refiners will have roughly equal feedstock costs, refiners who are currently experiencing high costs will be able to reduce their selling prices and, hence, should become more competitive. Similarly, refiners who are now able to undersell the competition because of disproportionately greater access to old oil will be obliged to purchase entitlements and consequently raise their prices for refined products. Thus, with a significantly reduced range of market prices, competition should be considerably enhanced, both in the petroleum industry as well as petroleum dependent sectors of the economy.

QUESTION:

e. What is the impact of the entitlements program in terms of dollars which will be transferred among all refiners?

ANSWER:

e. The extent of the dollar transfer depends upon the exact behavior of the individual participants with regard to

QUESTION #1 (Cont.)

the national average old oil supply ratio. Based upon previous periods, it appears that approximately \$4-7 million per day will be transferred among affected firms.

QUESTION:

f. Who will be the purchasers and who will be the sellers of entitlements, by company name?

ANSWER:

f. Whether a firm is a seller or purchaser of entitlements depends on its crude runs to stills, the amount of old oil obtained, and the amount of residual fuel oil and distillate imported in a given month. In general, those firms who have large amounts of "old" oil, which is price controlled at \$5.25 per bbl., will have to buy entitlements from those firms which have to rely on a large volume of new uncontrolled oil and/or high priced imported crude or finished products. At this point in time, the names of specific companies are not available.

QUESTION:

g. Why are entitlements awarded to East Coast importers who are not refiners and whose product in the main is used by electric utilities?

QUESTION #1 (Cont.)ANSWER:

g. FEA considers it inequitable that the petroleum costs of one region dependent on imported finished products would not be reduced while the petroleum costs of other regions of the country served by refiners that refine imported crude oil would be covered. Over 75% of the imported refined products used in the U.S. is imported by the East Coast. A substantial volume of this imported product is brought in by independent marketers who are not refiners. To eliminate these marketers from the cost equalization program, would inhibit FEA from fulfilling its responsibility under the allocation act of providing for equitable allocation of crude oil and refined products at equitable prices among all regions of the U.S. and among all users.

QUESTION:

h. What is the impact on consumer prices when some refiners will have to increase product costs as a result of the overall increased price of crude oil by purchasing entitlements?

ANSWER:

h. It is unlikely that there will be increased product prices in the aggregate due to implementation of the cost equalization program. At the present time a considerable amount of competition has returned to the market place. It is mainly the small and independent refiners that are being hurt by this

QUESTION #1 (Cont.)

situation because they are continuing to incur high operating costs resulting from their dependence on high priced new domestic oil and imported crude and product. However, they are unable to raise product prices and remain competitive. The equalization program should lower their operating costs to the extent of the cost differential between "old" oil and higher priced new domestic and imported crude oil.

QUESTION:

i. What effect will the following actions have on gasoline price increases:

- (1) abolishing the fixed price of \$5.25 per barrel "old oil"?

ANSWER: approximately 3-5¢ per gallon on the average.

- (2) requiring refiners to purchase an "entitlement" ticket at a cost of \$6 per barrel?

ANSWER: negligible (in the aggregate)

QUESTION:

j. What is the impact of the program on a refiner with a high percentage of "old" oil on a high composite cost of all oil run?

ANSWER:

j. A refiner having a high percentage of "old" oil should not have a high composite cost of all oil run.

QUESTION #1 (Cont.)QUESTION:

k. What is the chance of having small refiners exempt from the crude equalization program? (Small refiners producing 175,000 B/D or less).

ANSWER:

k. The equalization program is designed to benefit small and independent refiners overly dependent upon high cost foreign or uncontrolled domestic feedstocks. The small refiners further benefit from additional entitlements issued under the "bias." Further steps to deal with the special problems of small refiners are under active consideration for future implementation.

QUESTION #2QUESTION:

a. Recent studies by the Ford Foundation say that the poor and the elderly are particularly hard hit by the rising cost of energy. What policy programs will you request to assure that these groups do not carry a disproportionate share of the burden? The Senate Committee on Aging has already received disturbing reports that many elderly are already forced to decide whether they can eat or heat. We have even heard of desperate older persons seeking help from the local police department in a vain effort to find the wherewithal for heating fuel.

ANSWER:

a. I am aware of the undue hardships placed on the elderly, as well as the handicapped and the low-income consumer due to the increased cost of energy. Presently FEA does not have funds or the Congressional mandate to establish specific programs to alleviate these problems; however, the Office of Consumer Affairs/Special Impact in FEA has identified the target population which is adversely affected, and has established an Interagency Task Force (with twelve human-resource related agencies participating) to coordinate efforts on behalf of the financially disadvantaged, to

QUESTION #2 (Cont.)

analyze ongoing assistance programs which have the potential to alleviate the energy related problems of the poor, coordinate interagency efforts, and avoid duplication. FEA's function is to provide information regarding the price and availability of all energy forms, as well as information regarding the impact of energy policies on the poor, the aged, and the handicapped and to assist human resource agencies with program experience and funds in analyzing such information.

QUESTION:

b. The Committee on Aging has also been concerned about the function and adequacy of the FEA's Consumer Affairs/Special Impact Office. What role would you see for this office if you became FEA director? How many staff persons are now in that office? What number would you consider adequate?

ANSWER:

b. The responsibilities of the Office of Consumer Affairs and Special Impact (CA/SI) cover a wide variety of energy issues, with major emphasis on policy analysis. Some of the major facets of this function are: the review and analysis of the impact of agency policies on consumers of

QUESTION #2 (Cont.)

all income levels, dissemination of information concerning FEA policies and regulations to Federal, State and local governmental agencies and to private organizations that represent consumer and special impact concerns, and the review of policies of other Federal agencies and State and local agencies, both governmental and private, to determine if those policies have the potential for either alleviating or compounding energy-related problems of consumers, the poor, the handicapped and the elderly. I endorse the present role of the Office of Consumer Affairs and Special Impact within FEA.

There are 24 staff members in the Office of Consumer Affairs and Special Impact. If confirmed I will reassess the adequacy of the staffing pattern of the CA/SI office; if it is necessary to increase the staff to more adequately evaluate the impact of Federal energy policies on the aged, the handicapped, and the low-income consumer, and the consumers in general, I will take steps to do so.

QUESTION:

c. How do you react to suggestions that an "energy stamp" or "fuel voucher" program be established to offset the impact of rising energy costs among low-income Americans?

ANSWER:

c. I believe that any program which would lessen the impact on those Americans who can least sustain the burden of increased costs of energy is worthy of serious consideration. The Office of Consumer Affairs/Special Impact in FEA is now participating in an energy stamp feasibility study which is being circulated to appropriate Federal agencies for comment. When this study is complete, it will be forwarded to the Senate Interior and Insular Affairs Committee, as well as the Senate Special Committee on Aging and Senator Mathias who has requested that FEA and HEW conduct such a study.

QUESTION #3

COMMENT: FEA is pressed by many organizations and law firms to release advance copies of draft and final regulations. We believe they should do so freely so that public participation is maximized. However, they have on too many occasions been selective, giving one group a copy which they officially refuse to give to others until the others explain that they know who already has copies.

Because FEA uses the shortest possible public comment periods for new regulations, advance release on a discriminatory basis places many, including the general public, at a distinct disadvantage. Worse, the Public Affairs Office too often does not even know about proposals or regulations which are public for two or three days.

The remedy, we believe, would be a strictly enforced policy of making all internal documents immediately available to anyone who asked for them. If FEA must keep secrets then it should at least forbid employees to release any documents without advising the Public Affairs Office and making copies available there within an hour.

QUESTION: With this background in mind, Mr. Zarb might be asked, (1) whether he foresees any reason why all of FEA's substantive activities should not be completely open to the

QUESTION #3 (Cont.)

public; (2) what material should be restricted and why;
(3) whether he will...a policy mandating equal availability of all documents, including these papers improperly released;
(4) whether he will mandate FEA employees to fully inform the Public Affairs Office can begin providing information when it is useful; and (5) whether Mr. Zarb will countenance any discrimination by the selective advanced release of information to major oil companies or to large Washington law firms.

ANSWER: If confirmed, it will be my policy to make FEA documents available to the public on a non-discriminatory basis consistent with all existing laws and regulations.

QUESTION #4

COMMENT: In your statement you say first that

"The time has come, however, when hard decisions must be made and positive actions taken."

but later that

"A voluntary conservation program should be our first approach, but if it does not work, then mandatory conservation measures will be required and I will not hesitate to recommend them to the President and the Congress, if legislation is needed, and implement them, if given the legislative authority."

QUESTION: Would it not be desirable if the legislative authority were enacted now to be used later if needed rather than wait to demonstrate the need and then, with the situation more critical, seek the authority?

ANSWER: See detailed response I provided before your Committee during public hearings on my confirmation, December 4, 1974.

If confirmed, one of my initial priorities will be to examine the statutory authorities available to FEA for reacting to abrupt energy shortages in the future. I am fully committed to the proposition that FEA must be in a state of readiness to promptly respond to any such development.

QUESTION #5

COMMENT: In your introductory statement you say that the Energy Resources Council is currently reviewing and examining the Project Independence Blueprint which was developed by FEA and presented to the President and to the Congress in November. Once the Blueprint has been reviewed and specific energy problems identified we will be in a position to begin developing solutions.

However, on November 14, 1974, two days after submission of the FEA report, the Secretary of State in an address in Chicago outlined an energy strategy that has been described by the White House as official policy. On November 18, 1974, the United States signed the International Energy Program Agreement whose draft plan had been concluded with U.S. participation. By its signature the U.S. formally committed itself to certain specific energy policies. These broad strategic decisions, having been made, announced, and formalized in advance of any study by the Administration of FEA's report on Project Independence, two questions arise:

QUESTION:

a. First, to what extent will be truly a factor in the development of future energy policy?

ANSWER:

a. The Project Independence Blueprint is intended to be the basis of the development of future energy policy. The

QUESTION #5 (Cont.)

data in this report, the analyses used, and the implications for policy of these analyses are playing a major role in the development of energy policy. The FEA is working with the Energy Resources Council to prepare a series of policy recommendations for the President dealing with energy that will be reviewed by the President and included in an energy message early next year.

QUESTION:

b. Second, which options set forth in the report are implicitly projected by virtue of the adoption of the elements of the strategy announced by Dr. Kissinger and by virtue of U.S. obligations incurred through participation in the International Energy Program Agreement?

ANSWER:

b. FEA participated fully in the development of the strategy announced by Dr. Kissinger. The policy was based upon an early review of the Project Independence Blueprint and is fully consistent therewith. Thus, all options presented by the Blueprint remain viable.

QUESTION #6

COMMENT: Government participation in the exploration and development of the Nation's energy frontiers such as the Outer Continental Shelf has been proposed as a means of offsetting delays in development of those areas resulting from high financial risk and public concern with environmental dangers.

QUESTION:

- a. Would you comment on this proposal?

ANSWER:

a. I do not believe that direct government participation in the exploration of OCS areas would materially accelerate the development of the OCS. Further, regardless of whether the government or private enterprise is involved, the environment must be considered and protected.

QUESTION:

- b. What is the optimum role of government on the energy frontier?

ANSWER:

b. I believe that the government's role in the OCS area should concentrate on making leases available for commercial development in a manner that is consistent with industry's capability to explore and develop in a safe and lawful way. In general, I would extend this principle to the leasing of government owned "frontier" lands too.

QUESTION #7

COMMENT: The GAO has been designated the agent of the Congress in the monitoring of FEA activities to permit an orderly but, where necessary, detailed check on FEA operations by an independent source. In addition to this ongoing GAO activity it would greatly assist us as a legislative committee if FEA could, on a regular basis, see that the Committee is provided with a summary of current issues and problem areas in connection with FEA regulations and/or proposed regulations. The GAO could prepare such a summary based on its contact with the FEA operation on a monthly basis and submit it to the Committee along with FEA comments. In view of the complexity of the issues which arise, for example in petroleum pricing, I think that such an "early warning system" for problem areas would greatly assist the Congress in evaluating FEA's performance.

QUESTION: Could you comment on this idea?

ANSWER: I am definitely in favor of a regular program which assures that Committees of Congress with oversight responsibility for FEA will be kept informed of current issues and "problem areas" in connection with FEA regulations. It is my understanding that, during recent informal consultations between FEA officials and Interior Committee staff personnel, a proposal very much along the lines you suggest was agreed to in principle.

QUESTION #8

COMMENT: It is my understanding that there is no desire on the part of GAO or, for that matter, on the part of Congress to cause any disruption of the operations of FEA in monitoring those operations or to compromise or second-guess strategies in cases which are under litigation at the time of the monitoring.

Section 12 of the Federal Energy Administration Act requires the Comptroller General to "monitor and evaluate the operations of the Administration" and states that the "Comptroller General shall have access to such data within the possession or control of the Administration from any public or private source whatever, notwithstanding the provisions of any other law, as are necessary to carry out his responsibilities under this Act."

I understand that in the past GAO has had some difficulty in obtaining access to information pertaining to the compliance and enforcement operations of FEA. It appears that access to information was denied where proprietary information was alleged to be involved, where investigations were in progress or, in the case of audits, prior to the completion of an audit cycle. The intent of Congress in the FEA Act was to provide for a "real-time" monitoring of FEA operations by GAO.

QUESTIONS:

a. However, I wonder if you agree with me that the FEA Act requires that the GAO shall have complete access to FEA

QUESTION #8 (Cont.)

files even if these files do in fact involve (1) confidential or proprietary information? (2) issues which may eventually lead to litigation? (3) audits which are in process? or (4) investigations which are in progress prior to issuance to a notice of probable violation (NOPV)?

b. Will you guarantee that the FEA will comply with the provisions of Section 12 of that Act granting the GAO access to all the information it requires to fulfill its monitoring function?

ANSWER: I understand that, in a letter of December 4, 1974, FEA recognized the breadth of Section 12 of the Federal Energy Administration Act of 1974 in affording GAO plenary access to audit data in its custody. I further understand that FEA and GAO agreed to take appropriate steps to assure that GAO is advised of the sensitivity of certain data requests from a compliance standpoint, so that FEA's statutory responsibilities are not impaired by GAO data requests. I fully support the cooperative nature in which FEA and GAO are meeting this problem and agree that Section 12 of the Federal Energy Act provides GAO access to all audit data, including that which contains proprietary information and which involves pending compliance actions.

QUESTION #9

COMMENT: Section 22 of the Federal Energy Administration Act, Public Law 93-275, requires that:

. . . the Administrator shall, within six months from the date of the enactment of this Act, develop and report to the Congress and the President a comprehensive plan designed to alleviate the energy shortage, for the time period covered by this Act. Such plan shall be accompanied by full analytical-justification for the actions proposed therein.

Although due on November 7, 1974, that Comprehensive Report has not yet been received, apparently because of the conflicting requirements of preparation of the Project Independence Report.

However, Dr. Sawhill advised on October 23 that the plan would be submitted not later than next Monday, December 9, 1974.

You are potentially responsible for the implementation of that Comprehensive Plan.

QUESTION: Have you had the opportunity to review or comment on it and would you care to discuss its provisions with the committee in advance of its submission next week?

ANSWER: While I have not had the opportunity to review the contents of the comprehensive energy plan required by Section

QUESTION #9 (Cont.)

22 of the FEA Act, I understand that the report is now being circulated within the Executive Branch for comment and coordination.

If confirmed I will review the report in detail and, of course, will be pleased to discuss it with the committee at any time. In addition, I will insure that the completed report is delivered to the committee at the earliest possible date.

QUESTION #10

QUESTION: When will the Administration announce its legislative, administrative, economic, and budgetary objectives for the attainment of those energy goals?

ANSWER: The Administration will announce its program for attaining the necessary energy goals shortly after January 1, 1975. The specific date and format will be decided upon by the President.

QUESTION #11

QUESTION: What urgent energy programs must be implemented now?

ANSWER: We must implement programs to foster both energy conservation and the development of domestic energy supplies. The Project Independence Report indicates that if we get started now, we could well be on our way to self-sufficiency by the early 1980's. Due to the lead times involved and the past trends in oil, gas, and coal production, unless we establish a clear national energy policy and initiate programs to stimulate the production of domestic oil, gas and coal, our dependence on foreign energy could increase over the next few years.

I believe that programs which should be implemented now were stated by the President in his October 8, 1974 Economic Message.

These programs include:

- Deregulation of new natural gas
- Passage of acceptable surface mining legislation
- Passage of deepwater ports legislation
- Increased leasing of Federal lands for coal and oil production
- Implementation of utility coal conversion programs
- Responsible use of Naval Petroleum Reserves
- Increased auto fuel economy
- Conservation of 1 million bbls/day

QUESTION #11 (Cont.)

The Energy Resources Council is now coordinating an interagency effort to develop more detailed short-range and long-term energy policy recommendations. These policy proposals will be submitted to the Congress early next year.

QUESTION #12

QUESTION: Is a mandatory energy conservation program that would, among other things, end the use of oil and natural gas for boiler fuel, and improve auto efficiency, needed?

ANSWER: The Project Independence Report indicates that the potential for greatest energy savings lies in those programs that attain specific conservation goals. The application of conservation measures depends upon the unique demand characteristics in each sector of the economy. Circumstances may dictate that an integrated national energy policy will be a mix of both voluntary and mandatory programs.

A great deal of time has been expended to determine how to achieve adequate conservation of energy in both the utility and automotive sectors of our economy.

If confirmed, I will focus on assuring an orderly manner in which these programs can contribute to conservation. President Ford will be examining various alternative methods to achieve necessary and desired conservation goals within the next several weeks. And, the President will make decisions on these options and include them as part of his National Energy Policy.

QUESTION #13

QUESTION: Do you consider it necessary to mandate an upper limit on petroleum imports by either volume or dollar outlay?

ANSWER: Both dollar and volume limitations on petroleum imports should be considered as viable alternatives to reduce U.S. dependence on foreign supplies. These, along with others, will be submitted to the President. In each instance, the impact on affected sectors of the economy will be outlined.

QUESTION #14

QUESTION: In your view is the early enactment of legislation to provide a statutory basis for the implementation of energy shortage contingency plans necessary?

ANSWER: See detailed response to this question I provided before your Committee during public hearings on my confirmation, December 4, 1974.

If confirmed, one of my initial priorities will be to examine the statutory authorities available to FEA for reacting to abrupt energy shortages in the future. I am fully committed to the proposition that FEA must be in a state of readiness to promptly respond to any such development.

QUESTION #15

QUESTION: Is a national strategic reserve necessary?

ANSWER: There are still a number of questions to be answered regarding the viability of the strategic reserve option. The Energy Resources Council is currently accumulating information for submission to the President for his decision.

QUESTION #16

QUESTION: Should the U.S. Government be a party to negotiations between foreign governments and the U.S. international oil companies in the case of contracts for the purchase of oil for import into the U.S.?

ANSWER: I understand that FEA is currently studying the problem and that the report will soon be completed. If confirmed I will be happy to provide the Committee with my views on the completed report.

QUESTION #17

QUESTION: Do you believe it necessary to maintain price controls on domestically produced petroleum for so long as the world price is determined by a cartel?

ANSWER: I responded to this question in some detail during the confirmation hearing. It appears to me that there is general agreement that we must allow the petroleum segment of our economy to return to an open and free market system. If confirmed, I will work with Congress to develop the best and most practicable time table, to assure the attainment of this goal.

QUESTION #18

QUESTION: Recently, the FEA took the position that a hydroelectric plant should not be constructed in the Middle Snake River/Hell's Canyon area, and that this area should be preserved as a recreational facility. Should the FEA change its position?

ANSWER: On July 10, 1974, Mr. Duke Ligon, Assistant Administrator for Energy Resource Development, testified before the Parks and Recreation Subcommittee of the Senate Committee on Interior and Insular Affairs with respect to FEA's position on hydroelectric development in the Hell's Canyon reach of the Middle Snake River. In his testimony, support was given to legislation which would designate that portion of the Snake River which includes Hell's Canyon as a wild and scenic river. Support of this designation represented FEA's decision not to support proposed hydroelectric development in the area.

In response to this question of particular concern to Senator McClure, I promise the Senator that if confirmed I will reexamine the FEA determination and notify him of my decision.

QUESTION #19

QUESTION: Please provide a response to reconsideration of the helium conservation program.

ANSWER: I fully support a thorough study concerning the potential energy applications of helium. However, not being familiar with the current efforts involving reconsideration of helium conservation programs, I have referred this question to the Federal Energy Administration for answer. The FEA response is as follows:

The Helium Act Amendments of 1960 called for dependable and sustained supplies of helium for the Federal government's activities by providing contracts to the west Texas natural gas industry. Helium is a component of natural gas and it can be separated while natural gas undergoes treatment for other purposes. An important feature of these contracts was the stipulation that a significant decline in demand for helium would be sufficient cause for termination of the contracts.

During the 1960's, the National Aeronautical and Space Administration's projects consumed about 90% of all the Federal government's helium requirements. More recently, however, this large NASA helium demand has dropped considerably because of the completion of many NASA projects and the implementation of helium recovery (recycle) techniques. The substantial quantities of helium produced in excess of demand were delivered to the Department of the Interior for underground storage.

Subsequent to the Department of Interior's thorough investigation of the Nation's helium needs through the year 2000, the Secretary of Interior determined that because sufficient helium had been stored to meet the Nation's projected needs until the year 2000, and because of the recent sharp reduction in the Federal government's helium requirements, the four delivery contracts existing at that time should be terminated.

QUESTION #19 (Cont.)

Section 104(e) (3) of the Energy Reorganization Act of 1974, which established the Energy Research and Development Administration, provides: "The Administrator (of ERDA) shall conduct a study of the potential energy applications of helium and, within six months from the date of the enactment of this Act, report to the President and Congress his recommendations concerning the management of the Federal helium programs, as they relate to energy."

The Federal government currently has in storage about 53 billion standard cubic feet of helium, and additional quantities of helium are held in storage by private interests. Presuming that 300 gas cooled nuclear reactors, which use helium, are constructed through the year 2000, they would require only 1 billion standard cubic feet of helium. There are several other very interesting possible uses for helium in the energy field. Helium's unique properties at low temperatures suggest possible use in cryogenic electrical transmission lines and for purposes of low temperature, magnetic storage.

These possibilities are under consideration by the National Laboratories under AEC's jurisdiction, and the energy aspects relating to the need for helium will be carefully evaluated as required by the Energy Reorganization Act.

QUESTION #20

QUESTION: What standards would you set to cover the following professional and ethical considerations?

(a) Will you agree not to accept employment with any company over which FEA has regulatory authority within one year after your official resignation as the Administrator of FEA?

(b) Would you require the same standards of your policy making employees?

(c) How do you intend to insure that the people appointed to policy making positions do not try to "better themselves" while serving at the Federal Energy Administration? Is it better to set a standard now and find the exceptions later. Please submit your set of standards for the Federal Energy Administration, and address yourself to the basic problem of conflicts of interest.

ANSWER: I agree that it is absolutely critical that we maintain public confidence in the integrity and objectivity of FEA's activities. Toward that end I fully support continuation --and, where possible, the improvement-- of the "lobbying" regulations which FEA has adopted, as well as its conflict-of-interest regulations, which are designed to assure that the character of a person's public service is not influenced by the possibility of private gain.

QUESTION #20 (Cont.)

During the confirmation hearing, I answered in some detail the restrictive standard that, if confirmed, I will adhere to following the completion of my service as Administrator of the Federal Energy Administration. I will fulfill this commitment.

With regard to my policy-making assistants, as indicated during the public hearings on my confirmation, I will necessarily have to study the problem in depth. While I am concerned about the Government's ability to recruit highly qualified personnel for important and sensitive policy-making positions; I also have a deep appreciation of the important points you raise.

Within 90 days of my confirmation I will submit to the Committee my recommendations on professional and ethical considerations as they apply to top-level policy makers in FEA. During the course of my study I will welcome the views of the Congress.

QUESTION #21

QUESTION: What has been and what is now the nature of the regulation used by FEA to govern transfer prices? Have there been significant violations of these rules? If so, in each instance, what was the nature of the violation, how much money was involved and what is the current disposition of the case? What rules governing transfer prices have been proposed by FEA? (Include those rules not adopted and those pending) Provide a discussion which compares these rules as to their rationale, potential for limiting unwarranted profits and minimizing costs to U.S. consumers, and ease of enforcement.

FEA has indicated that major integrated companies have landed crude oil at prices above those of the smaller independents. The major companies claim that this effect results from the FEA program requiring mandatory crude oil sales. Has FEA attempted to determine the validity of this explanation?

ANSWER: If confirmed, my intention is to review current regulations and to ensure that implementation occurs within the spirit and letter of the law. However, not being familiar with the present treatment of transfer pricing regulations, I have referred this question to the Federal Energy Administration for answer. The FEA response is as follows:

QUESTION #21 (Cont.)

The regulation used by FEA in the past to govern transfer prices was §212.83(b) of its regulations. This required that the "landed cost" of imported crude petroleum acquired in transactions with affiliated entities be computed by use of the customary accounting procedures generally accepted and consistently and historically applied by the firm concerned. FEA's (then FEO) only enforcement of this regulation was a Notice of Proposed Violation of May 8, 1974, to Gulf Oil Corporation which alleged that, in determining landed cost of crude petroleum received from its Nigerian and Canadian affiliates, Gulf had failed to comply with §212.83(b). Because the case is still pending, it is inappropriate to discuss the money involved.

FEA has further authority to govern transfer prices under §212.83(c) which provides that

"Whenever a firm uses a landed cost which is computed by use of its customary accounting procedures, the FEO may allocate such costs between the affiliated entities if it determines that such allocation is necessary to reflect the actual costs of these entities or the FEO may disallow costs which it determines to be in excess of the proper measurement of costs."

Recently FEA has issued new regulations which are interpretative in nature, setting out with more precision the methods for measurement of actual landed costs which is required in any application of §212.83(e).

After two proposed rulemakings on the subject, FEA on October 31, 1974, promulgated the final regulations applying §212.83(e) and proposed additional regulations to supplement them. The final regulation prevents companies from establishing transfer prices in excess of competitive market levels. The proposed supplemental regulation would impose a company-by-company ceiling price which is intended to limit firms to normal competitive margins on

QUESTION #21 (Cont.)

their crude oil sales and is thought to be consistent with existing open market prices.

The final regulations are designed to establish more precise standards for disallowing costs in excess of those permitted under the price regulations. Refiners found in violation of the regulations would be required to reduce their prices and refund the excess costs. International companies are permitted to set their prices to U.S. affiliates at arms-length levels. FEA will collect price data on all foreign crude oil transactions monthly from each company.

From this data, FEA will establish for each type of crude oil a representative price and a maximum price. The representative price which FEA will use to measure transfer prices is the median price of all reported transactions between non-affiliated companies. The maximum price is the greater of (a) the representative price plus 10 cents per barrel or (b) the lowest price at or below which 65 percent or more of reported third-party sales have taken place. If FEA finds that company-set prices are above the maximum price, such prices would be disallowed, and companies would be required to recompute their allowable costs using the lower representative price.

Under the proposed supplemental regulations, the ceiling price is tentatively set to allow firms profit margins equal to their May 1973 margins plus 25 cents per barrel. The additional allowance is necessary to cover certain increases in capital costs, and to reflect open market prices. The price ceiling is not designed to supplant the other regulations, but to provide an added degree of certainty concerning allowable transfer prices during the period required for FEA to collect the data necessary to compute representative and maximum prices.

Both sets of rules are designed to protect American consumers against artificially high prices for products refined from crude oil purchased by the U.S. firms from their overseas subsidiaries. While FEA does not yet have sufficient information to draw firm conclusions, the data which is available strongly suggests

QUESTION #21 (Cont.)

that certain international companies may in some cases have been charging their U.S. affiliates more for crude oil than they could obtain in arms-length sales to third parties. Until actual data is collected and analyzed pursuant to the new regulations, however, it is not possible to estimate the potential for limiting unwarranted profits and minimizing costs to the consumer. The new regulations should be easy to enforce because of the fixed standards which they establish.

Data available to FEA indicates that several of the major integrated companies in the last few months have landed crude oil at prices above those of the independent refiners. While this effect may in part result from the FEA program requiring mandatory crude oil sales, the program does not account for the general discrepancy in prices. This phenomenon cannot be fully analyzed until FEA has available the more detailed information which it will collect as part of the new regulations and its continuing audit program.

QUESTION #22

QUESTION: What limits the price to consumers of propane derived from natural gas plants? What limits the price of propane derived from refinery operations? Discuss the rules FEA has used to regulate the propane market including significant types of violations, amounts of money involved, enforcement problems, and the rationale for rules which have been or are being proposed.

ANSWER: If confirmed, my intention is to review current regulations and to ensure that implementation occurs within the spirit and letter of the law. However, not being familiar with the present treatment of propane pricing, I have referred this question to the Federal Energy Administration for answer. The FEA response is as follows:

Propane produced by natural gas plants has been frozen at May 15, 1973 levels, which in some cases represented the price at which propane was sold in August, 1971. The current limit on the price of propane derived from refinery operations is the May 15, 1973 price plus that percentage of the increased cost of crude oil since May, 1973 which equals the ratio that propane production bears to all products produced from that crude oil. The FEA expects to publish very shortly a revision of the regulations to more adequately treat propane produced from natural gas as well as taking into consideration those natural gas processors and refiners whose propane prices were caught below market levels. To minimize the impact on residential users, the regulation will permit refiners and natural gas processors to allocate permitted costs away from propane to other products. The necessity for the change is evidenced by the decreased supply of propane coming from both refineries and gas plants.

QUESTION #22 (Cont.)

Propane violations have been given special attention by FEA.

After the transfer of the compliance program from IRS in July a compliance program called Project Speculator was expanded. Project Speculator was initiated by IRS when it became apparent that propane prices were being driven up by illegal broker activity, particularly by large markups that were being made without any product even changing hands.

During February through June 1974, the IRS committed a team of 15 men to Project Speculator. When FEA assumed Compliance activities in July of 1974 added emphasis was placed on this project. The FEA Regional Offices assigned investigators to Project Speculator without restriction as to numbers resulting in an expansion of the project to its current size.

To date, 77 selected firms have been investigated. As of November 1974, FEA has taken a formal position that 28 firms are in violation as a result of completed audits of the firms' records. These violations total \$43.1 million. Another approximately \$25 million in violations exist among the 49 other firms. FEA's audits indicate that 98-99% of the selected 77 firms are or have been in violation of FEA pricing regulations.

It is difficult at this time to give an accurate figure on just how much actually has been refunded since the 28 completed investigations are in varying stages of compliance, discussion, clarification or litigation.

The establishment of a compliance strategy and priority workload system has necessitated the redistribution of the number and skills of the Regional Compliance and Enforcement staff.

Additional study is being made to ensure that a combination of the allocation regulations and FEA investigations prevent a reoccurrence of speculative activity this winter. If necessary additional regulation changes will be made although this may be disruptive to distribution systems.

QUESTION #23

QUESTION: Explain the role of so-called "banked costs" in determining future prices of crude oil and petroleum products and in adjustments for overcharges by individual companies which FEA has ordered. How much has been "banked" during each month since the embargo by U.S. companies? How much of the bank has been cancelled in lieu of consumer refunds? How does this compare to the total amount of refunds to consumers through price rollbacks? What is the role of banked costs for tax purposes?

ANSWER: If confirmed, my intention is to review current regulations and to ensure that implementation occurs within the spirit and letter of the law. Not being familiar with the present treatment of "banked costs," however, I have referred to the Federal Energy Administration for answer. The FEA response is as follows:

So-called banked costs have no relationship to future prices of crude oil. Banked costs can be allocated to future petroleum product prices on a controlled basis. As of November 1, 1974, companies can use in their price calculations for a particular month, up to 10% of their "banked" costs of October 31, 1974, or any month thereafter or whatever amount is necessary to maintain prices at price levels for the previous month. (Reference F.R. November 6, 1974) Previous to this time, companies were able to use the full "bank" if the marketplace would support it. A reduction in a firm's banked costs equal to an amount of overcharge on a particular product has been one method of enforcing compliance with the regulations to assure that only a dollar-for-dollar cost pass-through is allowed. The total of banked costs since implementation of the price rules is \$1.5 billion.

QUESTION #23 (Cont.)

The monthly totals are:

<u>Date</u> <u>M/Yr.</u>	<u>Bank</u> <u>Difference</u> <u>(X1000)</u>
9/74	1459940.8
8/74	1730188.1
7/74	1618647.2
6/74	1544449.7
5/74	1056590.3
4/74	790853.6
3/74	416186.0
2/74	427761.5
1/74	335971.2
12/73	-27334.3
11/73	268622.7
10/73	112942.9

Additionally, approximately 75% of our compliance actions at the refiner level involved reduction in a firm's bank vs. actual refund to the marketplace. The reduction in the bank prevents a firm from passing through to the consumer increased costs in an amount equal to the overcharge. The Bank has no purpose for tax benefit.

QUESTION #24

QUESTION: What method has FEA used to determine the amounts of domestic crude oil produced in each of these categories? Has company-supplied data describing production in these categories been provided with certification? Has any of this data been verified on a spot-check basis? What are the penalties for submitting inaccurate production data as part of this program?

What is the regional breakdown of production in these price categories by month since September 1973? What is the structure of the production in each category in terms of characteristics of the petroleum industry: major companies, independents, large, mid-range and small producers?

What data has FEA gathered concerning the costs associated with maintaining production and bringing on increased incremental production in each of these categories?

ANSWER: If confirmed, my intention is to review current regulations and to ensure that implementation occurs within the spirit and letter of the law. Not being familiar with the present method of information collection, however, I have referred to the Federal Energy Administration for answer. The FEA response is as follows:

The FEA has continued to use the Cost of Living Council CLC-90 reporting system to collect

QUESTION #24 (Cont.)

information on the sales of stripper, new, old and released crude oils. This program will be replaced shortly with the FEA-P302-M-0 form and reporting requirements which requests information in a format consistent with the updated regulations. Both the old and new forms are submitted to FEA with a required certification which aids in the Compliance and Enforcement effort. Attached to this sheet is a capsule description of the enforcement effort on this system entitled Project Manipulator. The violation penalties are specified in 10 C.F.R. Part 205 as \$2500 for each civil violation. However, since fraudulent reporting may be encountered, the criminal sanctions of Title 18 will apply.

The FEA Office of Policy and Analysis has the responsibility of analyzing the CLC-90's to determine nationwide trends. The attached chart exhibits this analysis on a percentage basis.

At this time, the crude category data is not delineated either by PAD or type of producer. However, the FEA data bank could be used to obtain this information if the Policy and Analysis Office is requested to reprogram its current retrieval system.

The FEA Office of Policy and Analysis is now completing an analysis of various regulatory options to promulgate regulations which would stimulate the production of crude oil. The analysis considers crude oil in the categories of primary, secondary and tertiary rather than as new, old and released. In the course of this study, incremental cost data have been developed.

PROJECT MANIPULATOR

Project Goal: To conduct field investigations and take corrective action against producers who are selling more new oil than they produce.

National Plan:

1. Select targets nationwide that indicate maximum potential violations.
2. Analyze results of target cases to determine trends and violation methods in order to develop effective strategies which conform to legislative mandates and FEA regulations.
3. Conduct training of regional representative at the National Office to maintain coordinated investigative procedures on a nationwide basis.

Progress to Date:

- Sept. 3, 1974 Began trial investigations and interviews of oil producers.
- Oct. 7, 1974 Implemented procedures which use FEA reporting system to target oil producers. Initial 125 targets selected.
- Nov. 4, 1974 Basic training manual completed.
- Nov. 20, 1974 Training manual updated with regional C&E support.

ATTACHMENT #1 (Cont.)

- Nov. 22, 1974 Completed training program in National Office.
- Dec. 2, 1974 Regional Offices begin training programs.
- Dec. 9, 1974 Field investigations of oil producers begin in most regions.

NOTE: C&E estimates that 50% of the initial target cases will be completed by February 28, 1975.

ATTACHMENT #2

<u>Controlled Oil</u>	<u>Old Oil</u>	<u>New</u>	<u>Released</u>	<u>Uncontrolled Oil</u>
<u>Date</u>				<u>Stripper</u>
October	76	7	4	13
November	71	10	6	13
December	71	17	6	13
January	60	15	10	13
February	62	16	10	13
March	60	16	11	13
April	60	16	11	13
May	62	15	10	13
June	63	15	9	12
July	64	15	9	12
August	66	14	8	12
September				

QUESTION #25

Inasmuch as I was not an essential party to the crude equalization rule making procedure, I have asked FEA to respond to your specific questions regarding the program.

Experience, however, has taught us that systems of regulations sometimes produce effects other than that originally intended. Therefore, if confirmed, I will undertake a thorough review of the program. The purpose of the review will be to ascertain if it is achieving a beneficial result on our economy and consuming public without unduly burdening various segments. If I find the program is not accomplishing the desired goal, I will not hesitate to recommend changes.

FEA's response to the specific questions are:

QUESTION: Provide a discussion of the issues associated with the crude oil costs equalization program. Include, in particular the effect of this program on the programs for mandatory crude oil sales, mandatory crude oil allocation and its effect on the incentives acting on refiners to reduce their imports of expensive and potentially insecure imports of foreign crude oil.

QUESTION #25 (Cont.)

ANSWER: Approximately 2/3 of U.S. domestic crude oil is under price controls at approximately \$5.25 per barrel. The remaining 1/3 of domestic production is free of price controls and prices for it currently approach the cost of imported crude oil. With percentages of price-controlled domestic crude oil differing among refiners the historic raw material cost structure of the industry has been badly distorted. The crude cost equalization program has been designed to minimize this distortion. Other factors being equal - crude quality, location, foreign crude costs, transportation costs, etc. - all refiners would have exactly the same crude costs. Other factors, of course, are not equal. The cost equalization program, therefore, has the potential for returning the refining industry to its historic competitive environment. This should insure the competitive viability of the small and independent refiners.

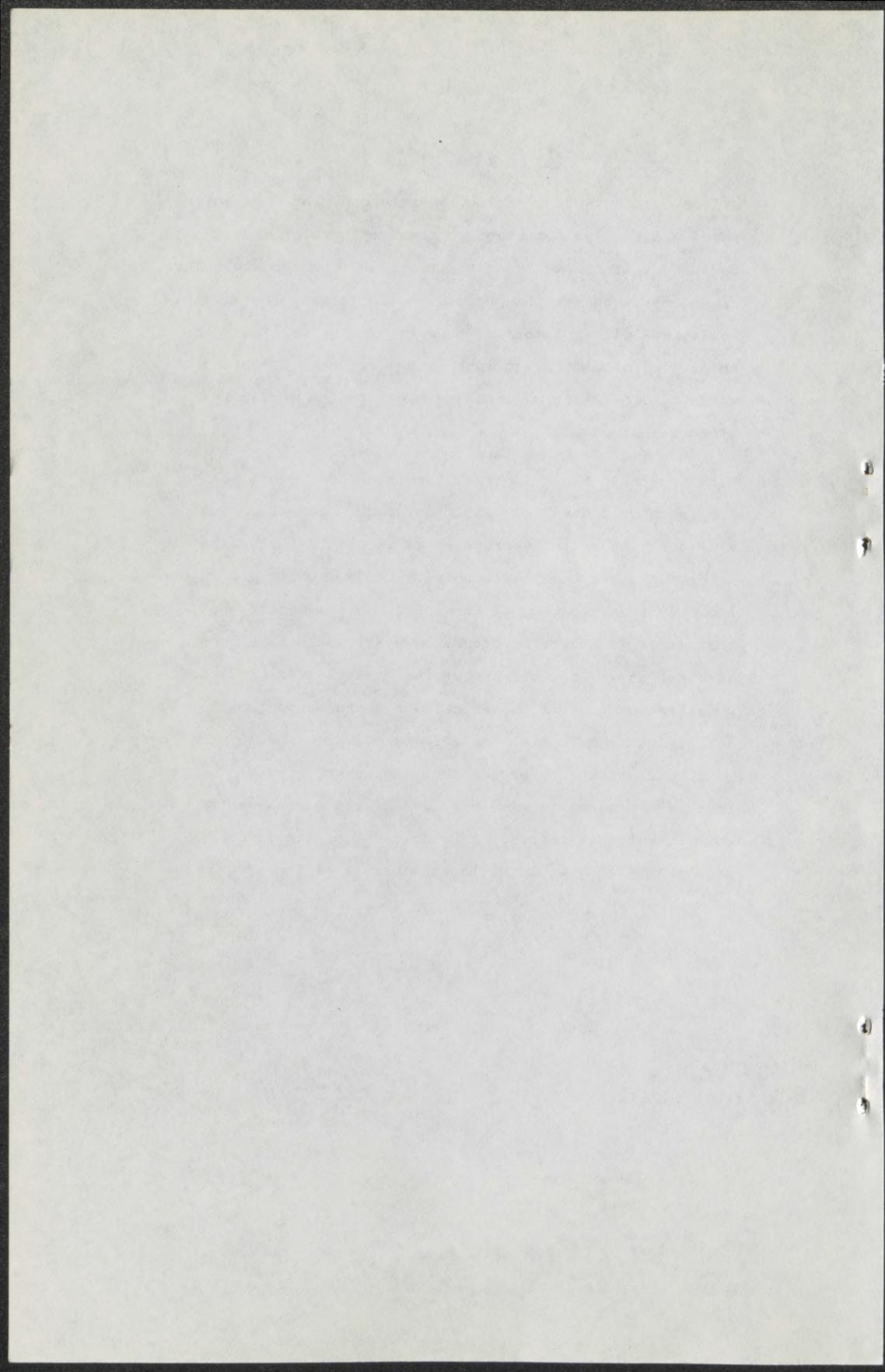
As a consequence of the crude cost equalization program, FEA anticipates product costs and prices to be more nearly competitive. It is FEA's desire that this development will permit eventual product deallocation and the removal of product price controls.

The crude cost equalization program should also reduce the importance of the mandatory crude oil sales program as well

QUESTION #25 (Cont.)

as the volumes sold under it. Heretofore, the mandatory sales program was important to some refiners primarily because of its impact upon their average crude costs. The crude cost equalization program should largely replace this need. FEA will, of course, have to examine carefully the ability of the small and independent refiners to obtain crude before making major adjustments to the mandatory crude sales program.

With regard to crude imports, the crude cost equalization program should have only limited impact. Domestic crude will still be as fully produced as if the cost equalization program had not been implemented. Crude imports are superficially rewarded because they earn "entitlements" when that crude is run. The crude, however, would have been imported anyway out of absolute necessity. The crude cost equalization program is basically a method of approximately equalizing crude costs, the effects of which should stretch no further than U.S. boundaries. Moreover, product imports under the program receive only 30% of the entitlements earned by crude imports, and should not be significantly higher than they would be in the absence of the program.



EXECUTIVE SESSION

TUESDAY, DECEMBER 10, 1974

The Committee on Interior and Insular Affairs met in open session on December 10, 1974, at 2:30 p.m. in room S. 128 in the U.S. Capitol to consider the nomination of Mr. Frank G. Zarb, of New York, to be Administrator of the Federal Energy Administration.

Those present were: Senator Jackson, chairman; Senator Bible, Senator Metcalf, Senator Johnston, Senator Haskell, Senator Metzenbaum, Senator Fannin, Senator Hansen, Senator Hatfield, Senator Buckley, Senator McClure, and Senator Bartlett.

Without objection, the nomination of Frank G. Zarb to be Administrator of the Federal Energy Administration was unanimously ordered favorably reported to the Senate.

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