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HEARING

BEFORE THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

MICHAEL F. BUTLER, TO BE GENERAL COUNSEL OF THE
FEDERAL ENERGY ADMINISTRATION

NOVEMBER 10, 1975



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NOMINATION OF MICHAEL F. BUTLER TO BE GENERAL COUNSEL OF THE FEDERAL ENERGY ADMINISTRATION

MONDAY, NOVEMBER 10, 1975

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

The committee met at 10 a.m., in room 3110, Dirksen Office Building, Hon. Floyd K. Haskell, presiding.

Present: Senators Haskell and Fannin.

Also present: Owen J. Malone, senior counsel.

OPENING STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HASKELL. The hearing of the Interior Committee on the nomination of Mr. Michael F. Butler of Pennsylvania to be General Counsel of the Federal Energy Administration will commence.

I will put a very short statement in the record. Obviously, Mr. Butler, the job for which you have been nominated is one of terrific importance in this particular time in our history, and I look forward to hearing what you and your distinguished friend on your right may have to say.

[The prepared statement of Senator Haskell along with a biographical sketch of Mr. Butler follows:]

STATEMENT OF HON. FLOYD K. HASKELL, A U.S. SENATOR FROM THE STATE OF COLORADO

The purpose of this morning's hearing is to consider the President's nomination of Mr. Michael F. Butler of Pennsylvania to be General Counsel of the Federal Energy Administration.

Mr. Butler's most recent Federal service has been as Vice President and General Counsel of the Overseas Private Investment Corporation. From 1969 to 1973, he served as an Assistant General Counsel and as Deputy General Counsel in the Department of Commerce. He was in the private practice of law in Pittsburgh, Pennsylvania from 1960 to 1969.

Mr. Butler, the Committee welcomes you. In selecting you to be General Counsel at FEA the President has evidenced his confidence in your capacity to deal professionally and fairly with the complex legal questions that attend the work of the Federal Energy Administration. In the administration of the laws committed to its care FEA has a direct and critically important impact on the nation's energy consumers and industry. This Committee is vitally interested in seeing to it that the agency's interpretation of those laws properly reflect the Congress' intent in passing them—the spirit of the legislation as well as its words.

You have been selected for a demanding post requiring high standards of professionalism. The Committee is looking forward to hearing your statement and reviewing your qualifications for this office.

Without objection, a biographical sketch of the nominee will be printed in full in the record at this point.

BIOGRAPHICAL SKETCH OF MICHAEL F. BUTLER

Michael F. Butler, 40, has been Vice President and General Counsel of the Overseas Private Investment Corporation from November, 1973 to date. From November, 1969, through November, 1973, Mr. Butler was Assistant General Counsel and subsequently Deputy General Counsel of the Department of Commerce. From 1960 to 1969 Mr. Butler was with the Pittsburgh law firm of Kirkpatrick, Lockhart, Johnson & Hutchison.

Mr. Butler graduated magna cum laude in 1957 from Harvard College, majoring in economics, and in 1960 from the Yale Law School. He is a native of the Pittsburgh area and received his early education in the public schools there.

Mr. Butler is a bachelor and lives in Washington, D.C.

Senator HASKELL. Our first witness will be the distinguished Senator from Pennsylvania, Mr. Schweiker.

Senator SCHWEIKER. I would like to say that Senator Scott hoped to be here, but he does have another commitment, and he asked that a statement be inserted on behalf of Mr. Butler in the record.

Senator HASKELL. It will be so inserted.

STATEMENT OF HON. RICHARD S. SCHWEIKER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Mr. SCHWEIKER. Mr. Chairman and members of the committee, it is my pleasure today to introduce to you Michael Butler who has been nominated by President Ford to be General Counsel of the Federal Energy Administration.

Mr. Butler has been nominated to succeed Robert Montgomery who has been FEA General Counsel since July of 1974. Mr. Butler is presently serving as vice president and general counsel of the Overseas Private Investment Corp., a post he has held for the last 2 years.

Before that he served as assistant and then deputy general counsel for domestic and international business at the Department of Commerce. He has also been a U.S. delegate to the Committee of Experts on Restrictive Business Practices, the Organization for Economic Co-operation and Development in Paris, and he served as an adviser to HEW on the Poison Prevention Packaging Act.

Mike, who is a Pennsylvanian, worked for the law firm of Kirkpatrick, Lockhart, Johnson & Hutchison in Pittsburgh after graduation from Yale Law School. Before law school, Mike was a magna cum laude graduate of Harvard University.

As you can see, Mike's qualifications are impressive, and it is a real pleasure for me to introduce him to you today.

Mike will bring a tremendous amount of skill, talent, and experience with him to FEA. His legal and administrative abilities are well proven, and I know he will work hard with us in tackling the complicated problems we face in energy matters.

I know he is eager to get started on his new duties, and I am looking forward to working with him.

Thank you very much.

[The prepared statement of Senator Hugh Scott follows:]

STATEMENT OF HON. HUGH SCOTT, A U.S. SENATOR FROM THE STATE OF
PENNSYLVANIA

Mr. Chairman, I am delighted today to recommend to you for the position of General Counsel of the Federal Energy Administration a most able individual, Mr. Michael F. Butler.

Since November, 1973, he served as Vice President and General Counsel of the Overseas Private Investment Corporation. Through his work in this important and sensitive post he has earned an excellent reputation in matters involving international trade and investment with many countries throughout the world. He has performed capably, earning a well-deserved reputation among his peers as a skillful negotiator in efforts leading to international trade agreements.

Before joining OPIC, he was Assistant General Counsel, and subsequently Deputy General Counsel, for the U.S. Department of Commerce. During his tenure at the Commerce Department, he was responsible for all legal work involving U.S. government limitations on export of goods and services under the Export Control Act for national security and foreign policy reasons.

Before coming to Washington in 1969, Michael Butler served for nine years as a specialist in labor negotiations and general corporate tax work for the law firm of Kirkpatrick, Lockhart, Johnson & Hutchison in Pittsburgh, Pennsylvania. As a fellow Pennsylvanian, I am especially delighted to present to you his excellent credentials for a position which requires a diversity of professional expertise and a distinguished record of service to our Federal government.

Mr. Chairman, I know Michael Butler will perform his duties superably as General Counsel of the Federal Energy Administration. I recommend him to you without reservation as an individual whose career has been marked with much achievement, good judgment and a broad variety of experience. I know him to be a person of integrity, a man who will bring to this challenging position for which he has been nominated the dedication to his work he has always practiced.

I hope this Committee will act swiftly and favorably upon this nomination.

Senator HASKELL. Thank you very much, Senator. Your recommendation, of course, carries a great deal of weight. I am only sorry to see that following college Mr. Butler sought to go to a second-rate institution.

Mr. Butler, we look forward to hearing from you. Under the rules of the committee we swear in all nominees. So, would you raise your right hand.

Do you promise to tell the truth, the whole truth, and nothing but the truth so help you God?

Mr. BUTLER. I do.

STATEMENT OF MICHAEL F. BUTLER, NOMINEE TO BE GENERAL
COUNSEL OF THE FEDERAL ENERGY ADMINISTRATION

Thank you, Mr. Chairman. I appreciate very much the kind words of Senator Schweiker and Senator Scott.

It is an honor and a challenge to be nominated as general counsel of the Federal Energy Administration. An honor to be considered qualified for the responsibilities of the job; and a challenge because of the exceptional difficulties and importance of the problems this country faces.

This committee is well aware of these problems, and well aware that solving them will not be easy. I look forward to working within the administration, and with Congress and the public to find appropriate solutions to them.

I appreciate the opportunity to appear before this committee. I will be pleased to respond to any questions the committee may have.

Senator HASKELL. Thank you, Mr. Butler. What was basically your law practice?

Mr. BUTLER. The law firm that I was with basically had a large mixed business practice, I think it would be fair to describe it. I did basically labor law work, general corporate work, and tax work.

Senator HASKELL. Have you ever been active politically?

Mr. BUTLER. Yes and no. I have never run for any political office. I have supported and worked for various candidates, including Senator Schweiker and Senator Scott in Pittsburgh, basically as a hobby and when I could find time from the law practice.

Senator HASKELL. As you may know, some concern has been expressed in Congress over the lack of responsiveness of certain executive branch officials agreeing to appear and testify at hearings.

Now, can you assure this committee of your intention to maintain open, free, and responsive communications with the committee; and to see that your subordinates at the Federal Energy Administration do likewise?

Mr. BUTLER. Absolutely.

Senator HASKELL. Will you be available after reasonable notice to appear before the committee and other congressional committees to present agency and administrative positions on pending legislation, and to respond to questions on matters such committees may be investigating?

Mr. BUTLER. Yes.

Senator HASKELL. Now, you have provided, I understand, a sworn confidential statement of your financial condition?

Mr. BUTLER. I have.

Senator HASKELL. And for the record, are you aware of any personal holdings, direct or indirect, investments or interest which could constitute a conflict of interest or which could create the appearance of a conflict of interest should you be confirmed?

Mr. BUTLER. I am not aware of anything of that sort, Senator.

Senator HASKELL. Now, your financial statement has been given to the committee in confidence, and there have been times in the past when nominees have been asked to make public their financial statement.

Speaking as one Senator only, I am interested in making financial statements of nominees public only if the members of the committee could do likewise.

So, assuming however that the committee as a whole desired to have your financial statement made public would you have any objection?

Mr. BUTLER. No.

Senator HASKELL. I don't have any questions, Mr. Butler. I frankly think the endorsement of your Senators from Pennsylvania and your obvious record qualify you; and I don't know whether Senator Fannin has any questions or not.

Senator FANNIN. No, Mr. Chairman. I do welcome Mr. Butler, and I did have the privilege of visiting with him and have been impressed with his background. And I, of course, carefully read the recommendations that have been made by Senator Scott and Senator Schweiker, and they do speak very highly of Mr. Butler. And I feel that he is qualified to do the job.

It is a challenging job, and I just wish him luck.

Mr. BUTLER. Thank you very much, Senator.

Senator HASKELL. Thank you, Mr. Butler. You might just stay. Mr. Zarb is here, and I understand he will have something to say. Perhaps we will have some questions following his statement.

We appreciate your appearance very much.

Mr. BUTLER. I appreciate being here.

Mr. ZARB. Good morning, Mr. Chairman.

Senator HASKELL. Mr. Zarb, we look forward to hearing what you have to say. I am also interested in what you have to say about the proposal on S. 622.

Take one thing at a time.

STATEMENT OF HON. FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION

Mr. ZARB. Mr. Chairman, I will ask the committee to agree to accept my statement regarding Mr. Butler for the record, and simply say that I enthusiastically endorse his nomination as general counsel. He has an outstanding background, and I certainly look forward to working with him in the areas which we have responsibility.

The only question I ever had in discussing this appointment with Mr. Butler is his good sense in trying to get involved in this business.

Senator HASKELL. Good sense?

Mr. ZARB. In attempting to get involved in the energy business at this point in our history. Aside from that, and since I suffer the same liability, I heartily endorse his nomination.

Senator HASKELL. Well, thank you very much for appearing, Mr. Zarb. How did you locate Mr. Butler?

Mr. ZARB. I am not sure exactly which list he appeared on. We had a number of people. It may have been through the White House recruiting organization, or not. I am not sure. Mike?

Mr. BUTLER. I don't know.

Mr. ZARB. We had a number of candidates, and saw a good number and narrowed it down to two or three. And Mr. Butler quickly rose to the top.

Senator HASKELL. How did he get on your list of candidates?

Mr. ZARB. Normally, when a senior level position is going to become open, word gets around pretty quickly. And in this case we would have, since in some cases legal organizations would submit nominations and in some cases members will submit more nominations than sometimes we would like to receive.

Senator HASKELL. I have heard of that happening.

Mr. ZARB. The White House sends over a list of their own. We then take it and sort it all down, and do our own screening, our own interviewing, and our own selecting.

Senator HASKELL. I think in this particular case, if a brief look at a man is any indication, I think you have got a good one. So I have no questions, Mr. Zarb, unless you want to tell me about 622.

Mr. ZARB. I have no questions, Mr. Chairman.

Senator FANNIN. Thank you, Mr. Chairman. I feel very fortunate to have a man like Mr. Zarb, and certainly it is good fortune to have a man like Mr. Butler, who is willing to serve in Government, especially in these challenging times when there isn't very much thanks that come forward but a lot of abuse.

And I know that Mr. Butler will do a good service. I am not trying to scare him off before he gets started. But as he well knows from what he has observed already, this is a very challenging department. They have almost an unheralded chore to do.

And I just hope that everything does work out well with you. And you know that you are certainly working under an outstanding administration.

Mr. BUTLER. Thank you. Thank you very much, Senator Fannin. I appreciate the courtesies you and the committee have extended to me.

Senator HASKELL. For the record, at the request of committee staff, Mr. Zarb has provided a prepared statement describing the organization and functions of the FEA General Counsel's Office you are to take over. That is, if other folks on the committee see it as Senator Fannin and I do.

This statement and a letter to the committee dated November 4, accompanying the material, will be made part of the hearing record.

Thank you very much, gentlemen.

Mr. BUTLER. Thank you very much.

[The prepared statement and letter submitted by Mr. Zarb follow:]

STATEMENT OF HON. FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY
ADMINISTRATION

Mr. Chairman and members of the Committee, I have the privilege this morning to introduce to you Mr. Michael Butler, who has been nominated by the President to be General Counsel of the Federal Energy Administration. It is certainly a pleasure to be here to speak in support of this confirmation.

The Members of this Committee are well aware of the crucial position occupied by the Federal Energy Administration as the country seeks to formulate a national energy policy that would strengthen our capacity for self-sufficiency. The President has proposed many significant changes of the federal laws that affect the nation's production and consumption of energy. A new relationship is developing between the energy industries and the government since it has become so evident that energy production and consumption can have major public policy ramifications. We are, in many ways, exploring previously uncharted ground.

The challenges inherent in such activity require the most effective performance by the people who make up FEA, particularly in the areas of legislation and the formulation of regulations. This responsibility demands a sophisticated appreciation of the impact of the actions of government on the ability of the nation to meet its energy goals. Consequently, one of the key positions provided by law for the Federal Energy Administration is that of General Counsel. The position requires not only a skilled lawyer, but an individual with broad experience and sound judgment. I believe that Mike Butler's accomplishments amply demonstrate those qualifications.

Mike Butler has proven himself an outstanding attorney and administrator while Assistant General Counsel and then Deputy General Counsel of the Department of Commerce. Since November 1973, Mike has served as Vice President and General Counsel at the Overseas Private Investment Corporation. He has also served as a U.S. delegate to the Organization for Economic Cooperation and Development in Paris.

His broad knowledge of the relationship of government and business, from both an international and domestic perspective, as well as his legislative experience in domestic matters in environmental and consumer affairs, render him an extremely valuable asset in the position of General Counsel in an agency with such profound impact in these areas.

Before entering government service, Mike Butler demonstrated his competence by a successful 9-year career in private practice. Complementing his distinguished legal positions is an outstanding academic record, having graduated *magna cum laude* from Harvard College and having received his LL.B. from Yale Law School.

Mr. Chairman, I enthusiastically endorse Mike Butler's nomination to be General Counsel with the certainty that he will vigorously perform his duties with the highest degree of professionalism. I have the greatest personal confidence and respect for Mike and feel that FEA would indeed be fortunate to receive a man of such exceptional legal talent, experience and dedication.

It is my hope that the Committee will act favorably upon his nomination and that the Senate provide its confirmation at the earliest possible date.

FEDERAL ENERGY ADMINISTRATION,
November 4, 1975.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for general information on the role of the Office of General Counsel in the Federal Energy Administration ("FEA"). I have enclosed for your information the following: (1) an organizational chart which describes the structure of the Office of General Counsel and identifies some of the attorneys in the office; (2) a statement of mission and responsibilities for the various divisions of the Office of General Counsel; and (3) a list showing the number of attorneys in each division of the office.

I hope that this information is useful; and, if I may be of further assistance in this matter please let me know.

Sincerely,

FRANK G. ZARB,
Administrator.

Office of General Counsel, number of attorneys (by Division)

Division:	Number
1. General Law, legislation and coal conversion programs-----	9
2. International, conservation and resource development programs--	9
3. Litigation -----	9
4. Compliance -----	6
5. Allocation regulations-----	7
6. Price regulations-----	6
Total -----	46

STATEMENT OF MISSION AND RESPONSIBILITIES

I. The General Counsel

The General Counsel, whose position is established by Sec. 4(e) of the Federal Energy Administration Act of 1974 (P.L. 93-275), serves as the chief law officer and general legal advisor to the Administrator and his staff in all matters of law and policy. In this capacity he is responsible for the preparation of opinions, reports, recommendations, and other documents as required by the Administrator with regard to matters of substantive and administrative law, policy and procedure, relative to the Acts and statutes administered by the agency, its various activities and operations, and its proposed course of action. Similarly, he is responsible for the development, issuance, interpretation, and revision of all regulations, rulings and orders, both procedural and substantive, promulgated by the Federal Energy Administration.

The General Counsel maintains a continuing legal overview of the agency's compliance and enforcement activities, and exercises final judgment as to the legal sufficiency and manner of presentation of all cases recommended for prosecution in the Federal courts. Acting through the Attorney General, he represents and is the voice of the agency before the courts, where he carries the burden and responsibility of justifying, supporting, and defending the decisions and policies of the Administrator. In addition, the General Counsel oversees the work of the Regional Counsels, with a view toward maintaining uniformity of legal procedure and interpretation and insuring the availability of high quality legal services to each Regional Administrator.

The General Counsel is responsible for the review of the agency's statutorily required reports to the President and to the Congress, as well as drafts of legislative proposals initiated by the agency. In addition, it is the responsibility of the General Counsel to review legislative reports prepared in response to inquiries from Congressional Committees and other Federal agencies.

II. The Principal Deputy General Counsel

The Principal Deputy General Counsel is the senior of the three (3) deputies reporting to the General Counsel. He is responsible to the General Counsel for the direct supervision and coordination of the legal activities of two (2) of the major operating divisions of the Office of General Counsel and as the Principal Deputy he has a broader responsibility for managing, coordinating and administering the entire Office to insure unity of effort and to provide for its general efficiency and effectiveness as a major staff agency of FEA. As the Principal Deputy his functions extend to the establishment, implementation and coordination of all legal activities and functions of FEA. His specific area of responsibility encompasses direct supervision over the functions assigned to the Assistant General Counsel for Allocation and the Assistant General Counsel for Pricing, and in his general manager role he supervises those functions which relate to staff management and administration. He acts for the General Counsel in serving as an advisor to the Administrator and other senior officials of FEA on broad policy matters as well as legal questions. In the absence of the General Counsel he is designated as the Acting General Counsel.

III. The Deputy General Counsels

There are in addition to the Principal Deputy General Counsel two (2) Deputy General Counsels reporting to the General Counsel. Although their general responsibilities relate to the establishment, implementation and coordination of all legal activities and functions of FEA, each is directly responsible for the supervision, management and coordination of two (2) of the six (6) operating divisions of the Office of the General Counsel. One (1) Deputy General Counsel's area of responsibility encompasses direct supervision over the functions assigned to the Assistant General Counsel for General Law, Legislation and Coal Conversion and those functions assigned to the Assistant General Counsel for International, Conservation and Resource Development Programs. The other Deputy General Counsel's area of responsibility encompasses direct supervision over the functions assigned to the Assistant General Counsel for Compliance and those functions assigned to the Assistant General Counsel for Litigation. In addition, the Deputy General Counsels handle various special projects which may or may not fall within their normal respective areas of responsibility. They also act for the General Counsel in serving as advisors to the Administrator and other senior officials of FEA on broad policy matters as well as legal questions.

IV. The Assistant General Counsels

The Office of General Counsel has six (6) operating divisions, each of which is supervised by an Assistant General Counsel. There follows a summary of the functions and responsibilities of the six (6) divisions headed respectively by the Assistant General Counsel for General Law, Legislation and Coal Conversion, the Assistant General Counsel for Allocation, the Assistant General Counsel for Pricing, the Assistant General Counsel for International, Conservation and Resource Development Programs, the Assistant General Counsel for Compliance and the Assistant General Counsel for Litigation.

A. ASSISTANT GENERAL COUNSEL FOR GENERAL LAW, LEGISLATION AND COAL CONVERSION

In carrying out his responsibilities with regard to legislation, he drafts, reviews and prepares reports on proposed legislation, with appropriate input from other FEA offices, and assists in the preparation and review of Congressional testimony. He also represents FEA at all interagency meetings concerning legislation and serves as FEA's primary point of contact with OMB.

In his capacity as legal advisor for FEA's Coal Conversion Program activities he provides continuing legal services and guidance on a variety of matters pertaining to FEA implementation by regulation of FEA's Coal Conversion Program.

His responsibilities with respect to General Law encompass a wide variety of legal matters including those relating to personnel, budget, procurement, conflict of interest counseling, advisory committees, Freedom of Information Act requests, legal implications of information acquired by FEA, and other general legal matters which must be addressed by the agency.

(1) Office of General Law

a. Provides general legal services for FEA. Functions include legal aspects of personnel operations, appropriations, administration of Freedom of Information Act, Federal Advisory Committee Act and related matters. Serves as liaison with the Department of Justice on legal questions associated with these areas. Performs legal tasks not otherwise assigned to the other operating divisions of the Office of General Counsel or listed in (2) and (3) below.

b. Provides continuing legal services in connection with all FEA procurement activities, including support for the Office's participation in the FEA Procurement Review Board. Serves as liaison with the General Accounting Office on legal matters involving procurement activities.

(2) Office of Legislation

a. Coordinates development of FEA policy on pending legislation and legislative proposals developed within FEA or by other federal agencies. Provides legal assistance in evaluating proposed legislation and provides drafting assistance. Prepares or supervises preparation of legislative reports, advice to the President on enrolled bills, and testimony before committees of Congress.

b. Represents FEA in discussions with OMB and other Federal agencies concerning OMB clearance of FEA legislative reports and development of Administration positions on legislation. Represents FEA in negotiations with Congressional Committees on pending legislation.

(3) Office of Coal Conversion

a. Provides continuing legal services and legal guidance to the FEA programs for ordering conversion of power plants and major fuel burning installations to coal, as well as FEA programs for ordering new sources to be constructed so as to be able to burn coal and for ordering allocation of coal and fuel exchanges. Provides advice concerning interpretation of applicable statutory authorities and possible alternative courses of action.

b. Prepares regulations applicable to implementing and carrying out the coal conversion and related programs.

c. Coordinates with the legal staff of the Environmental Protection Agency concerning the responsibilities of that agency under the Energy Supply and Environmental Coordination Act of 1974.

d. Evaluates the need for additional legislative authority and assists in preparing the drafting of any such legislation.

B. ASSISTANT GENERAL COUNSEL FOR ALLOCATION

The Assistant General Counsel for Allocation normally reports through the Principal Deputy General Counsel and is responsible for the legal aspects of the FEA's regulatory programs for the allocation of crude oil, residual fuel oil and other refined petroleum products. He provides legal analysis of proposed regulations, prepares proposed rulemakings, notices of hearings, rulings and final regulations for publication in the *Federal Register*. He provides advice and assistance in the formulation and implementation of policy related to FEA allocation programs and monitors the operation of the allocation regulations for adequacy and consistency with FEA policy. He also advises regional and national FEA with respect to compliance and enforcement activities. He reviews and analyzes requests for interpretations and takes appropriate action, including drafting the written interpretation. He also represents the General Counsel with respect to matters before the Office of Exceptions and Appeals. Finally, he provides informal advice to Members of Congress, state and local officials, and other persons interested in the FEA's allocation program.

(1) *Office of Regulations and Operations Support*

- a. *Regulations.*—1. Provides legal analysis of proposed allocation regulations.
2. Prepares notices of proposed rulemaking and notices of hearings and other matters relating to allocation regulations for publication in the *Federal Register*.
3. Drafts new allocation regulations and amendments to existing regulations.
4. Advises and assists in the formulation and implementation of policy related to the FEA allocation program.
5. Monitors the operation of the allocation regulations for adequacy and consistency with FEA policy.
6. Coordinates with other sections of the Office of General Counsel.
7. Advises other FEA offices, including Regional Offices, on matters relating to allocation regulations.
8. Provides information with respect to the allocation regulations to members of the public, industry, the Congress, other federal agencies and state and local governments.
9. Advises and assists FEA operations staff in the preparation and revision of forms used in conjunction with the allocation regulations.
10. Reviews correspondence prepared by FEA policy and operations personnel for consistency with allocation regulations.
- b. *Operations Support.*—1. Provides legal advice with respect to allocation regulations to the operating divisions of the FEA, including Regional Offices.
2. Evaluates enforcement matters for possible issuance of notices of probable violation and remedial orders.
3. Coordinates with the Assistant General Counsel for Compliance with respect to issuance and enforcement of notices of probable violation and enforcement of notices of probable violation and remedial orders.
4. Participates in conferences with recipient or potential recipient of notices of probable violations and remedial orders.

(2) *Office of Rulings and Interpretations*

- a. *Rulings.*—1. Evaluates on the basis of information from FEA operations personnel, members of the public and industry, and other sources, the need for issuance of a ruling to assist the public in applying the allocation regulations to a specific fact situation.
2. Drafts rulings for publication.
3. Provides information and answers correspondence with respect to such rulings.
- b. *Interpretations.*—1. Reviews and analyzes requests for interpretation.
2. Researches regulations, rulings, previous interpretations, and other relevant precedent to determine applicability to requests for interpretation.
3. Coordinates with other offices within FEA to obtain explanation of practical aspects of fact situations.
4. Coordinates, when appropriate, with Compliance to determine if person making request is involved in related compliance proceedings.
5. If appropriate, convenes conferences regarding requests for interpretations.
6. Drafts the written interpretations in response to requests.

C. ASSISTANT GENERAL COUNSEL FOR PRICING

The Assistant General Counsel for Pricing normally reports through the Principal Deputy General Counsel and is responsible for the legal aspects of the FEA's regulatory programs for the pricing of crude oil, residual fuel oil and other refined petroleum products. He provides legal analysis of proposed regulations, prepares proposed rulemakings, notices of hearings, rulings and final regulations for publication in the *Federal Register*. He provides advice and assistance in the formulation and implementation of policy related to FEA pricing programs and monitors the operation of the pricing regulations for adequacy and consistency with FEA policy. He also advises regional and national FEA with respect to compliance and enforcement activities. He reviews and analyzes requests for interpretations and takes appropriate action, including drafting the written interpretation. He also represents the General Counsel on matters before the Office of Exceptions and Appeals. Finally, he provides informal advice to Members of Congress, state and local officials and other persons interested in the FEA's pricing program.

(1) *Office of Regulation and Operations Support*

- a. *Regulations.*—1. Provides legal analysis of proposed price regulations.
2. Prepares notices of proposed rulemakings and notices of hearings and other matters relating to price regulations for publication in the *Federal Register*.
3. Drafts amendments to existing price regulations.
4. Advises and assists in the formulation and implementation of policy related to the FEA pricing program.
5. Monitors the operation of the price regulations for adequacy and consistency with FEA policy.
6. Coordinates with other sections of the Office of General Counsel.
7. Advises other FEA offices, including Regional Offices, on matters relating to price regulations.
8. Provides information concerning the price regulations to members of the public, industry, the Congress, other federal agencies and state and local governments.
9. Reviews and assists FEA operations staff in the preparation and revision of forms used in conjunction with the price regulations.
10. Reviews correspondence prepared by FEA policy and operations personnel for consistency with price regulations.
- b. *Operations Support.*—1. Provides legal advice with respect to price regulations to the operating divisions of the FEA, including Regional Offices.
2. Evaluates enforcement matters for possible issuance of notices of probable violation and remedial orders.
3. Coordinates with the Assistant General Counsel for Compliance with respect to issuance and enforcement of notices of probable violation and remedial orders.
4. Participates in conferences with recipients or potential recipients of notices of probable violations and remedial orders.

(2) *Office of Rulings and Interpretations*

- a. *Rulings.*—1. Evaluates on the basis of information from FEA operations personnel, members of the public and industry, and other resources, the need for issuance of a ruling to assist the public in applying the price regulations to a specific fact situation.
2. Drafts rulings for publication and coordinates their issuance with FEA operations and policy personnel.
3. Provides information and answers correspondence with respect to such rulings.
- b. *Interpretations.*—1. Reviews and analyzes requests for interpretation.
2. Researches regulations, rulings, previous interpretations, and other relevant precedent to determine applicability to requests for interpretation.
3. Coordinates with other offices within FEA to obtain explanation of practical aspects of fact situations.
4. Coordinates with FEA compliance personnel to determine if person making request is involved in related compliance proceedings.
5. If appropriate, convenes conferences regarding requests for interpretations.
6. Drafts the written interpretations in response to requests.

D. ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL, CONSERVATION AND RESOURCE DEVELOPMENT PROGRAMS

The Assistant General Counsel for International, Conservation and Resource Development Programs is responsible for providing legal advice and counsel in the program areas relating to international matters, export and import controls, energy conservation, environmental protection, and resource development. In the international area his specific duties involve the regulation of "transfer prices" between international companies and their domestic affiliates, the legal and legislative aspects of the mandatory oil import program, international negotiations and agreements on energy questions, especially with respect to the International Energy Program, legal matters pertaining to export controls, law of the sea, and other international energy issues. In the areas of energy conservation and resource development he is involved in legal and legislative matters relating to energy conservation and environmental protection, energy taxation, energy resource development, utility and natural gas regulation, and contingency planning in regard to gasoline rationing. He also provides antitrust advice to FEA and acts as liaison with the Department of Justice and FTC on these matters.

(1) Office of International and Resource Development

a. Drafts and reviews all regulations, proposed Proclamation changes and, in cooperation with the Office of Legislation (A (2) above), legislation related to the Mandatory Oil Import Program, reviews licensing procedures, exceptions and other aspects of the oil import program.

b. Discharges legal aspects of international negotiations on energy questions including negotiation, review, drafting and implementation of treaties and international agreements; in cooperation with the Office of International Energy Affairs, represents FEA in international meetings where legal questions or other areas falling into the Division's expertise are paramount.

c. Acts on all aspects of the legal work (including the drafting of legislation in cooperation with the Office of Legislation, and the preparation of regulations) with respect to existing and proposed actions concerning export controls, international aviation, regulation of international oil companies, and the law of the sea.

d. Represents General Counsel in all policy aspects of "transfer pricing," and drafts all applicable regulations.

e. Provides continuing legal services and guidance on all aspects of energy resource development programs, excluding coal conversion, but including programs to define the appropriate federal role in energy resource development to include coordination of federal programs, encouragement of prompt and orderly state action and development of comprehensive estimates of near-term energy requirements and near-to-mid-term energy supplies. Advises concerning legal requirements directly applicable to FEA and suggests and evaluates alternative courses of action and provides interpretations of legal authorities and requirements applicable to the energy resource-related programs of other agencies and departments with which FEA is concerned. Drafts regulations and legislation as may be required with respect to resource development programs.

f. In cooperation with the Office of Legislation, (A (2) above), performs the functions of that office with respect to legislation and policy as it relates to oil import controls, export controls, other international programs, and resource development programs generally.

(2) Office of Conservation and Environment

a. Provides legal advice in connection with the substantive activities of the Division of Conservation and Environment; provides the legal assistance necessary to develop possible plans for mandatory energy conservation in the public and private sectors including rationing if required; drafts briefs, and other legal documents supporting FEA's position on conservation before state and federal regulatory bodies.

b. Advises FEA in matters concerning statements, reports and other activities required of it under the National Environmental Policy Act. Monitors the action of FEA to insure that its actions and regulations are in full compliance with all environmental legislation.

c. Provides advice and acts on legal matters pertaining to antitrust questions with respect to all FEA activities, reviews and supervises for legal sufficiency all required reports concerning competition and the impact of allocation programs on independent marketers and refiners.

d. Represents the General Counsel, provides legal advice and drafts legislation as required in connection with utility regulation, energy taxation, and natural gas regulation.

e. Reviews proposed actions designed to accomplish goals of Project Independence and advises FEA of the necessity for new legislation or regulations to accomplish such goals.

f. In cooperation with the Office of Legislation, (A (2) above), performs the functions of that office with respect to legislation and policy as it relates to the areas of this office's expertise.

E. ASSISTANT GENERAL COUNSEL FOR LITIGATION

The Assistant General Counsel for Litigation is responsible for all litigation involving FEA and coordinates with the Department of Justice in the development of litigation strategy and the preparation of pleadings in all cases brought by or against FEA. In carrying out these responsibilities, the incumbent reviews all proposed enforcement actions (affirmative suits) before referral to the Department of Justice, supervises the preparation of affidavits, briefs, and other

pleadings in both affirmative litigation and defensive litigation (*i.e.*, suits filed against FEA seeking to enjoin an agency order, regulation or action). In addition, the incumbent provides legal advice on proposed legislation and regulations and on the interpretation of FEA regulations and those laws administered by or applicable to FEA.

(1) Office for Program Challenges and Legal Advice

a. With respect to major regulatory programs (such as the mandatory crude oil allocation programs or the coal conversion program), the office actively participates in the development of such programs in order to improve the agency's litigation posture in the event lawsuits are filed challenging the implementation of such programs.

b. In connection with challenges to major programs, the office:

1. Justifies, supports and defends these programs in all litigation involving the agency. To date, lawsuits have involved FEA actions taken pursuant to the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, the Energy Supply and Environmental Coordination Act of 1974 and the Trade Expansion Act of 1962.

2. Prepares or coordinates with the Department of Justice in the preparation of all court papers (affidavits, briefs, answers, complaints, and other pleadings) and participates in the formulation of litigation strategy.

3. Where necessary, participates in the preparation of witnesses, conduct of discovery and settlement negotiations.

c. Provides general advice to all agency personnel concerning the subject matter of pending litigation.

d. As it relates to current or potential litigation, provides legal advice on (i) proposed legislation, (ii) proposed regulations, rulings, interpretations, exception and appeal decisions and (iii) questions regarding the interpretation of statutes administered by or applicable to FEA, including the Emergency Petroleum Allocation Act, the Federal Energy Administration Act, the Energy Supply and Environmental Coordination Act, the Trade Expansion Act, the National Environmental Policy Act and the Administrative Procedure Act.

e. Based on a review of pending or potential litigation, recommends to the General Counsel such changes in FEA policy as are deemed necessary.

(2) Office for Affirmative Litigation and Non-program Challenges

a. In coordination with the Assistant General Counsel for Compliance, reviews recommendations on whether to initiate enforcement proceedings against individuals or corporate entities and, where appropriate, refers such matters to the Department of Justice for civil or criminal enforcement. If the Department concurs in the agency's recommendation, the office prepares or assists the Department of Justice in the preparation of all necessary court pleadings. The office also performs whatever other functions are necessary to seek a satisfactory resolution of all such enforcement action.

b. With respect to lawsuits which do not challenge an entire regulatory program and which instead relate to a particular agency action, such as a remedial order, exception, or appeal decision, allocation order or interpretation, the office prepares and/or coordinates with the Department of Justice in the preparation of all necessary court papers. When such actions involve matters administered by the regional offices, the office coordinates with the appropriate regional counsel in the preparation of affidavits, briefs, etc.

F. ASSISTANT GENERAL COUNSEL FOR COMPLIANCE

The Assistant General Counsel for Compliance has the responsibility for supervising those legal activities pertaining to FEA's compliance efforts. The Division assists the National Office of Compliance in the preparation of notices of probable violation and remedial orders and provides legal advice and assistance on compliance matters. The Division assists and advises the Regional offices, through the Regional Counsel, in their compliance efforts.

(1) Office of Compliance Policy

a. Advises Office of Compliance (national and regional FEA) concerning administrative compliance and enforcement orders, programs and policies.

b. Assists National Office of Compliance in connection with the formulation and execution of compliance priorities and policies and guidelines.

c. Provides advice to all FEA personnel regarding applicability and enforceability of regulations and orders.

d. Coordinates FEA compliance efforts with other federal and state agencies, including the Department of Justice and other law enforcement agencies.

(2) *Office of Regional Cases*

a. Through regional counsel, coordinates from a legal standpoint compliance matters arising in the regional offices.

b. Participates on an active basis with regional counsel in cases of unusual complexity or novelty and in cases having substantial national impact in terms of precedential importance; attends conferences and participates in negotiations regarding regional cases of major importance.

c. Coordinates and consults with regional counsel on routine basis to insure uniform application of FEA regulations and uniform policy regarding enforcement action in cases of noncompliance.

d. Prepares and coordinates periodic conferences of all regional counsel to keep such regional personnel abreast of latest regulatory actions and policies and to review sufficiency of current enforcement procedures.

(3) *Office of National Cases*

a. Reviews and concurs in all formal enforcement actions initiated by the Office of Compliance. Such review consists of making a determination as to the factual and legal sufficiency supporting the enforcement action to be taken.

b. Prepares subpoenas, notices of probable violation, remedial orders, memoranda and opinion letters providing legal foundation for specific enforcement actions; participates in settlement or other disposition of such actions; participates in negotiations of civil penalty cases.

c. Coordinates all contacts between FEA compliance personnel and the Department of Justice and U.S. Attorneys; with the Assistant General Counsel for Litigation, supervises follow through on all referrals of enforcement cases, such as injunctions, civil penalty cases, and criminal penalty cases.

Senator HASKELL. We will now adjourn. Thank you again, Mr. Butler.

[Whereupon, at 10:20 a.m., the hearing was adjourned.]





