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95-61 FEA AUTHORIZATION—FISCAL YEAR 1978

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HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

LEGISLATIVE PROPOSALS TO PROVIDE FUNDING FOR THE
FEDERAL ENERGY ADMINISTRATION FOR FISCAL YEAR 1978

APRIL 1, 1977

Serial No. 95-61

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FEA AUTHORIZATION—FISCAL YEAR 1978

FRIDAY, APRIL 1, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. John D. Dingell (chairman) presiding.

Mr. DINGELL. The subcommittee will be in order.

Today the subcommittee begins hearings on legislative proposals to provide funding for the Federal Energy Administration for fiscal year 1978. As of yesterday evening, the Office of Management and Budget had not yet finally approved the draft of this legislation, and so we are holding today's hearings on the basis of the tentative figures submitted by the Administration for this coming fiscal year.

Today's hearings will explore a number of issues addressed in the FEA budget. These issues will include the extent of and planning for the strategic petroleum reserve program, the compliance and enforcement program, progress in the coal conversion program, which incidentally is lagging, the extent to which statutory conservation deadlines have been missed and the steps to be taken to meet those deadlines, and also FEA's progress toward the development of a rational and usable energy information data system. I have problems with each of these areas and I know that other members of the subcommittee do as well.

Time is short and I believe that we would be best served by proceeding immediately to the matter before the subcommittee.

The first and only witness today will be Hon. John E. O'Leary, Administrator of the Federal Energy Administration, who will be accompanied by a number of his associates.

Mr. O'Leary, we are pleased you are here with us today and we will recognize you for your statement, but we ask, however, that you identify those of your associates who are at the table with you.

(1)

STATEMENT OF HON. JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION; ACCOMPANIED BY GORMAN C. SMITH, ACTING DEPUTY ADMINISTRATOR AND ASSISTANT ADMINISTRATOR, REGULATORY PROGRAMS; JOHN D. CHRISTIE, ASSISTANT ADMINISTRATOR, ENERGY INFORMATION AND ANALYSIS; MARTIN SENECA, JR., ACTING ASSISTANT ADMINISTRATOR, ENERGY CONSERVATION AND ENVIRONMENT; ROBERT I. HANFLING, ACTING ASSISTANT ADMINISTRATOR, ENERGY RESOURCE DEVELOPMENT; MARTIN D. HOWELL, ASSOCIATE ADMINISTRATOR, MANAGEMENT; ROBERT DAVIES, ACTING DEPUTY ASSISTANT ADMINISTRATOR, STRATEGIC PETROLEUM RESERVE; ALLAN WEEKS, ACTING DIRECTOR, MANDATORY PROGRAMS, ENERGY CONSERVATION AND ENVIRONMENT; AND ERIC J. FYGI, ACTING GENERAL COUNSEL

Mr. O'LEARY. I am John F. O'Leary, the Administrator of FEA and I have with me Gorman C. Smith, Acting Deputy Administrator and the Assistant Administrator for Regulatory Programs; Robert Davies, Acting Deputy Assistant Administrator, Strategic Petroleum Reserve; John D. Christie, Assistant Administrator, Energy Information and Analysis; Martin Seneca, Jr., Acting Assistant Administrator, Energy Conservation and Environment; Robert I. Hanfling, Acting Assistant Administrator, Energy Resource Development; Martin D. Howell, Associate Administrator, Management; and Eric J. Fygi, Acting General Counsel of the organization.

Mr. DINGELL. Very well, you may consider yourself recognized.

Mr. O'LEARY. Thank you, Mr. Chairman, I have a statement. What is your wish? Should I read this into the record?

Mr. DINGELL. I think we can insert it fully in the record and we can then let you summarize in such fashion as you deem appropriate.

Without objection the full text of your statement will be inserted in the record and we will recognize you for such comments as you choose to make.

FISCAL YEAR 1978 BUDGET REQUEST

Mr. O'LEARY. Mr. Chairman, briefly, we are asking for a total budget of \$3,363,243,000 in fiscal year 1978. This would be accompanied by 4,031 positions. This contrasts with our revised estimate of \$1,009,041,000 in 1977 and this shows a slight decline of positions in fiscal 1977. The authorized position level in 1977 was 4,073 so we will be down 42 positions.

The significant increase between 1977 and 1978, Mr. Chairman, falls in the stockpiling or strategic petroleum reserve program. That takes the bulk of the increase and I would like to spend just a minute with the committee on the absolutely imperative nature of that.

STRATEGIC PETROLEUM INCREASE

You will recall under the original authorizing legislation we are authorized to go to an initial fill level of 150 million barrels of oil.

Early on coming into office the new administration took a look at the 150 million and the overall strategic risk position of the United States and concluded we should fill just as rapidly as possible up to the maximum level that was permitted by the physical constraints in the system.

The answer came back from the staff that we could go up with surety to about 220 million barrels of oil in fiscal 1978.

Our response to that was to go back and look again at those figures and see if we assumed a 75 percent probability of accomplishing our objectives if that could do better. Staff, after another review of the matter, came back and indicated under that ground rule they could fill, they thought, 250 million barrels by the end of fiscal year 1978.

I understand, Mr. Chairman, that there has been some concern as to the attainability of that figure, that concern was expressed particularly by the House Budget Committee. My own view is that there is an open question as to whether we can get beyond the 220 million. However I think it is important for purposes of showing our determination to move forward with this and that we receive authorization for the full amount that is outlined in our budget submission for this year.

If we are unable to fill entirely by the end of the fiscal year, it will be no problem, we are asking for no-year money. It would certainly not be more than a month or two into the next fiscal year.

Although I recognize in most programs the utility of being conservative in funding proposals of this nature, in this particular situation I regard the conservative course as going on the high level of funding, not on the low level of funding.

COAL CONVERSION

I would also like to address myself, Mr. Chairman, to the coal conversion program. We are now 3 years into the program; and as yet, Mr. Chairman, we have not converted a single plant.

Now, there have been one or two conversions that are associated with the program but my understanding is those plants were prepared to go from their earlier fuel to coal anyway, and in consequence we have a very slow-moving program here.

I have asked the staff why that is so. I don't get a clear answer, indeed I have asked for the Department of Justice to come in, since most of the questions revolve around legal matters, and provide an unbiased view, not that I felt we couldn't get a lack of bias from Office of General Counsel but simply because the Office of General Counsel was so deeply enmeshed in the history of this program that I thought perhaps it would be better to bring in an outside observer, and that process is now going forward.

We expect to hear from the Department of Justice umpire in this matter sometime within the next few days. My understanding is early next week.

FEA'S COAL CONVERSION PROGRAM CONCLUSIONS

Now, I will share with you my preliminary conclusions, Mr. Chairman, with regard to this program. I think first of all it was not re-

garded as very important by previous administrations. It was underfunded and understaffed. Only in the last few months has the staff been brought up to a reasonable strength level.

Second, Mr. Chairman, it is my conviction in looking at it that the statutory framework for the program, throwing as it did the burden on the Government in this particular case and being, as it is, a unique program, that is to say, plowing new ground, it may well have been that the legal attitude of the FEA Office of General Counsel tended to be more conservative than absolutely necessary.

On the other hand I have heard in discussions with industry that they feel that the program ultimately will be tied up in the courts as a result of what they regard as some relatively obvious flaws in the statute.

One time will tell whether we could have been less conservative in our legal application or indeed we were driven to the conservatism because of the litigated risk. I think we will get, however, some useful insights into that from the Department of Justice.

Finally, I think we have to say for a variety of reasons there was not the constant dedicated management to this program that I would like to have seen, and I am taking steps, I will be taking additional steps as soon as Mr. Goldman is fully aboard, to strengthen the management of this program.

Further, Mr. Chairman, I have testified before Senator Jackson's committee in the other House with regard to the necessity for legislative overhaul. I would like to discuss that with you at an appropriate time. It seems to me—

Mr. DINGELL. I think that merits a great deal of attention. I want to hear your comments on that matter not only with regard to defects and failures, but I want you to be prepared to submit to us proper drafting service to indicate the fashion in which we can reform that program so you have some authority to make the matter go forward.

Mr. O'LEARY. Yes, Mr. Chairman, I certainly will. As a first step I would be more than pleased to share with you the testimony I presented to the committee in the Senate.

Mr. DINGELL. I think it would be appropriate that we submit it in the record at the appropriate place. Without objection that will be done and we will let you give such comments as you want. [See p. 14.] I want you to structure your testimony this morning in a fashion that best meets your approval and that you deem to be the most appropriate fashion going forward.

M. O'LEARY. I want to take these up in the order of their importance.

ENERGY PRIORITIES

It is quite evident that as we look at the strategic imperatives of this country that the first thing we have to do is to get ourselves in a secure position with regard to petroleum. That is why I made the first observations I did with regard to the absolute necessity of letting the world know we are serious about the stockpiling program and going as rapidly as we possibly can without violating the law in order to attain the fill rate.

I think we are at peril for every moment that this country exists without a fully fleshed out strategic stockpile of oil and we should move rapidly to correct it.

Second, I regard it as imperative that this Nation move from oil and gas as primary fuels to coal. I think there have been errors in the past with regard to the conversion program, and the country has not realized the absolute seriousness we must attach to that program. I think this administration does realize that and you may be assured it will be accorded very, very high priority in the President's April 20 message.

Mr. DINGELL. I am referring to this coal conversion program, I think it tends to reflect a weakness in your statutory authority which I know is highly inefficient. I sat in on portions of the conference, and it was the expectation of most of the conferees that it wasn't going to accomplish much.

Mr. O'LEARY. I think there was a natural recognition it had to accomplish a great deal at that time.

Mr. DINGELL. I point out that there has not been a single order which has brought about coal conversion.

Mr. O'LEARY. As I said in my earlier remarks, it is a matter of some sadness to me to note after 3 years in the program we haven't converted a drop of oil or molecule of gas.

Mr. DINGELL. I don't want to lay blame at your doorstep—you are unfortunately new to this responsibility—but I think if we have natural gas crises in this country, shortages of oil, heavy imports and other things that are extremely destructive to our economy and we don't have an effective program, we have something you and I both have to answer for. I don't propose to have it on my legislative record or my soul that I didn't try to do something about correcting this thing.

Mr. O'LEARY. It is absolutely imperative that we move this economy from its current reliance on oil and gas to coal, and that means we have to address this coal conversion problem with the utmost seriousness.

The third area I would like to address, this runs again to one of the pivots of the President's program, the conservation area. Here again, if you review the statutory history and the record of implementation on the part of government agencies, including FEA—FEA is not alone by any means in this—I think you find at bottom a lack of a national perception of the absolute requirement for this country to move forward to conservation.

This, of course, is a principal element in the President's April 20 message to the Congress.

CONSERVATION TIMETABLE

In looking over the statutory timetables, you and I had an exchange of letters and you will note that we have begun by shifting personnel into the conservation area. In this case my recollection is we authorized 13 additional attorneys for this and 80 other support personnel. We have made a fairly reasonable improvement in the schedule for some of the conservation standards.

Unfortunately we are so far down the line on these that it was impossible, simply because of history to recover to anything approaching statutory deadlines but I want you to know that we have made a conscientious effort to put priority on that and I think that this increased priority and effort is reflected in that letter exchange with you.

In some cases we have been able between now and a forecast date of August to carve about 2 months, or in one case I believe 2½ months, off the forecast schedule.

We are not doing that because 2 months or 2½ months will save the world, but I think we have to say to ourselves, you and I, if we are serious about this conservation business, it must take high priority in the allocation of our resources and that letter to you is in earnest to that.

In regard to the timetable set forth in that letter, I hope to improve on every one of those date's; the staff is on notice that any failure to meet the negotiated limits inked in that letter will be reviewed with the utmost seriousness on my part. I do want improvement over the dates set forth therein.

Mr. DINGELL. I will indicate at this time I have great respect and affection for you and I am satisfied that is your goal. I am satisfied you will do your level best to carry it out. I have to say in like fashion I will look to you with some vigor to see that that transpires.

Mr. O'LEARY. Yes, and I think that is fair. I want to put that before you in an open hearing so we will be judged by our performance and there should be a clear understanding of that.

Mr. DINGELL. I think in order that we can be helpful I will probably have to appear before the Appropriations Committee on this matter to make sure you get adequate funding. But I want to make it clear I want to know of any defects or failures in funding, or the Office of Management and Budget, or anything else that would cause problems with regard to you having the mechanism in hand that is necessary for you to prescribe or rather to carry forward your proper responsibilities.

In other words, if OMB doesn't permit you to spend the money, or you don't have an adequacy of funds, or there are some inhibitions placed on you through some process, congressional or administrative above you, I want to hear of it punctually so we can work to get the matter corrected.

Mr. O'LEARY. Mr. Chairman, if I might detour a little to tell you my views on how we got into this nonmeeting of deadlines mode that the Agency operates in, let me just tell you the situation as I found it when I entered the Agency.

In administering complicated organizations with complicated missions in the past, I found that things don't happen by accident or by good will. They happen as a result of first of all the development of realistic schedules and then the development of strong management controls so that realistic schedules are observed at all levels in the organization.

That is to say, it is simply removed from reality to have an ambitious schedule and plug that into the program office without at the same time in our case, the General Counsel, being fully apprised of the

schedule, and the personnel people being fully apprised of the schedule so proper resources can be marshaled to meet the requirements.

By way of background, I will recall some of the experience of my tenure in the Atomic Energy Commission. When I went there, the time for developing, for example, an environmental impact statement was about 30 months. Two years later when I left it was about 6 months. This was purely and simply by the application of rigorous management controls to the system.

LACK OF MANAGEMENT CONTROLS

Now I found that those rigorous management controls did not for a variety of reasons exist in FEA. In the last month we have been putting into place a relatively rigorous management control system with strict accountability up and down with information placed out to all of the elements of the staff that need information so that each element of the staff would know what they are supposed to be doing and how that is going into place. Without that you don't have an operating organization.

Though I would say probably one of the difficulties that we have encountered in meeting deadlines is not that OMB was blocking us, not that we didn't have sufficient personnel or sufficient funds, but we didn't have the management systems in place that would have permitted us to operate forward.

IMPROVEMENT OF REGULATORY PROGRAM OPERATIONS

Now, Mr. Chairman, I have covered the stockpiling program, the conservation program, the coal conversion program, and I want to talk about one other that is, I think, much less important from the standpoint of the strategic imperatives of this country, but is absolutely important from the standpoint of the credibility of the agency administrator, that is the regulatory programs.

I think it is fair to say from the very beginning the Federal Energy Administration and before that the Federal Energy Office construed its mission as being one of getting out of the regulatory business and there has been a mind set that tomorrow morning, if all goes well, or certainly no later than Monday of next week, we will be out of the regulatory business.

Now that has led to a very vexing set of conditions from the standpoint of someone coming newly into the organization. I found, for example, that the predicate for many, many, many of the actions that we are bringing had to do in one example with the definition of transaction. I found in fact that you really couldn't move forward on an enormous volume of backlog cases unless transaction was identified and defined.

And here we are 3 years into a regulatory program and we haven't stipulated the rule governing that basic predicate, what is a transaction? It wasn't indeed until about 1 month ago that we began to lay that particular chicken to rest and we find this all through the program, badly construed regulations that the staff never really thought it imperative to correct because tomorrow morning they were going out of business.

Now the instructions to the staff have been twofold, first of all you must regard your role in the regulatory side of the house as one being in business 10 years from now, not going out of business tomorrow morning. Second, we have gone to the outside to bring in help to give us a thorough outside review of the program. The first step in that was to bring in two people I have been associated with at the Mitrel Corp., a research institute, who are alien to the program but superb analysts, to take a look at it.

They filed a report—and I think that report may be available to the staff of this committee. If it isn't, I would like to make it available—in which they confirm we could do better.

The second step is to bring in some people with very, very extensive regulatory experience who will help us in a task force to set up the working role that the organization will be applying as we go forward into the compliance business.

I want the Chair and staff to know that, so far as I am concerned, I look upon getting the regulatory aspects of this Agency under control as important as anything we are doing in the short term, although I think you understand that the other programs that I have discussed are much more important from the standpoint of the long-term welfare of this country. But this will receive very high priority. It is receiving, I suspect at present something approaching 80 percent of my attention at the moment.

Just an enormous amount of attention is going into it, although I am sure it won't be a fast turnaround. I hope a year from now we have a regulatory program we can take pride in. Today I do not take a great deal of pride in it.

Mr. Chairman, those are the points I thought worthwhile to bring before you in the form of an opening statement.

[Mr. O'Leary's prepared statement and the statement of March 21, 1977, before the Senate Subcommittee on Energy, Production and Supply, follow:]

STATEMENT OF THE HONORABLE JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL
ENERGY ADMINISTRATION

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today in support of the Federal Energy Administration's Fiscal Year 1978 Authorizations.

The primary authorizations for FEA are the Energy Policy and Conservation Act (EPCA) of 1975 and the Energy Conservation and Production Act (ECPA) of 1976. These laws specifically assign to FEA responsibilities for establishing and operating near-term programs which promote energy conservation, provide for emergency petroleum requirements, maintain a national energy data base, encourage optimal development and use of energy resources, and regulate certain petroleum products.

To carry out our responsibilities in the area of energy conservation the Federal Energy Administration has requested funds in the FY 1978 budget for five major activities. First, the Weatherization Program as mandated by the ECPA is designed to provide assistance to low income persons, especially the elderly and handicapped, in weatherproofing their homes. The emphasis of this program is on actions that would conserve energy, and at the same time reduce the fuel costs of those most in need. Without this program it is likely that the same people who experienced costly heating bills this past winter will be faced with the same problem the next winter and each winter thereafter. The FEA program is designed to solve the weatherization problem in a relatively permanent fashion

by providing primarily materials for the weatherproofing of homes. This is a very cost effective approach since the value of the energy conserved offsets the cost of the materials is less than two years. By limiting funding to these improvements we can assure that a great number of poor people are given weatherization assistance. As you know, the FEA Weatherization Program was authorized last summer by the Energy Conservation and Production Act. Funds have been requested by FEA rather than the Community Services Administration in order to maintain a coordinated energy policy and to simplify administration of the program. FEA is ready to proceed with the program; and we feel we should start to resolve the problems addressed by the Weatherization Program, especially when the benefits are so great and are permanent.

Our budget request of \$65 million together with another \$55 million requested in our FY 1977 Supplemental Budget will provide for the permanent weatherization of approximately 880,000 homes.

Second, our budget includes two State Grant programs, each focusing on a different aspect of energy conservation. The initial program, which is currently in operation under the EPCA, provides that participating States must implement five energy conservation actions; and if funds are still available, they may develop other innovative approaches aimed at achieving a five percent reduction of projected energy consumption in the State by 1980. Grant funding of \$47 million would be provided in FY 1978 to assist the States in this endeavor. The other State conservation program is for Supplemental State Grants designed to provide the States with increased financial and technical assistance in developing and promoting additional energy conservation plans. These plans are expected to include provisions for energy audits of single family homes, public education efforts, and development of procedures within each State for effective coordination of conservation programs administered by all levels of government. The supplemental grant funding will provide \$23.5 million to the States in FY 1978. While the bulk of the funding requested for these programs is for grants, FEA support is needed for preparation of model plans and for administration of the grant programs.

A third activity, the Obligation Guarantee Program, is authorized by Congress to foster conservation in existing buildings owned by States or local governments, institutions, or business by guaranteeing, for up to 25 years, loans for the installation of approved materials or devices which either conserve energy or generate energy from a renewable source. Supplemental funding for determining the most cost-effective design and initial implementation was requested in FY 1977. The FY 1978 portion of this program provides \$15 million in no year funds for possible default payments and \$5 million for implementation, application processing, development and implementation of a management information system monitoring, and program evaluation.

Fourth, conservation is being promoted through a Utility Demonstration program. This program provides co-funding of projects with State Public Utility Commissions and electric or natural gas utilities to test the impact of various techniques such as load management, time-of-day metering and rate reform on energy consumption, the need for new generating capacity, and consumer costs. The \$5.2 million requested in FY 1978 will provide for the completion of all projects presently in progress as well as four new ones in this budget. A total of thirty demonstration projects will have been fully funded if funds previously requested in the FY 1977 Supplemental and this budget are approved.

The fifth major conservation request is \$25 million for the development of innovative conservation programs. This funding is designed to accelerate energy conservation. Specific proposals will be based upon identification of those sectors of the economy which would benefit most from Federal programs and to allow for rapid advancement into areas where energy conservation can have the greatest pay-off. The rapid changes that have occurred in the energy field and the need to respond to a crisis situation make it important to maintain some flexibility. Specific conservation initiatives involving the use of these funds will be included in the President's comprehensive energy policy announcement scheduled for April 20, 1977. We are requesting these funds now to provide for the lead time necessary to act on these new initiatives.

Other conservation efforts reflected in this FY 1978 budget include the Appliance Efficiency Program which is designed to inform consumers of the relative energy efficiency of similar appliances; the Industrial Reporting Program which

promotes energy conservation in major industries; grants for State Offices of Consumer Services which will permit utility customers to have a greater input to State utilities regulatory proceedings, and the Federal Energy Management Program which promotes conservation of Federal Government energy utilization.

FEA has had some problems in terms of the timely implementation of the energy conservation programs established by the Energy Policy and Conservation Act and the Energy Conservation and Production Act. We fully support these initiatives, and maximum available resources are now being dedicated to the implementation of these programs. As you know, FEA has not yet received additional FY 1977 appropriations for the ECPA authorizations. And we have had to spread our available resources very thinly. The accelerated implementation of these ECPA programs, therefore, will have to await supplemental funding which we hope and anticipate will be available this month.

Based on this funding assumption, final guidelines for the Weatherization Program will be published in the *Federal Register* by May 24, 1977. Grants can then be awarded in sufficient time for the States to obtain weatherization materials and to insulate homes before next winter. Final guidelines for the ECPA Supplemental State Grant Program will be issued by May 13, 1977. Industrial energy improvement targets will be finalized and published by June 1, 1977. Efficiency improvement targets for all 13 categories of appliances will be finalized by the end of this calendar year. And, final regulations governing energy audits and publication of the related Energy Measures List for the Obligation Guarantee Program will be accomplished within three and one half months.

The ECPA provides for the creation of a Strategic Petroleum Reserve (SPR) in order to diminish the vulnerability of the United States from the effects of an energy supply interruption. Plans to accomplish an Early Storage Reserve (ESR) of 150 MMB by December 1978 have been submitted to Congress. This amended budget provides for acceleration of these plans to attempt to have 250 MMB in storage by December, 1978 and 500 MMB by December, 1980. This accelerated program is recommended because it appears feasible and because it is desirable to move quickly to reduce our vulnerability to threatened or actual embargoes. The national security and potential economic benefits of this accelerated program are significant. The SPR Plan which is now before Congress for approval will shortly be amended to reflect these changes. The total budget request for FY 1978 is \$3 billion of which \$2.5 billion is for oil acquisition with the remainder for storage facilities and program management.

This budget also requests funds for the Office of Energy Resource Development to more adequately develop and utilize our national reserves of coal and other energy sources which will in turn reduce our dependence on foreign energy supplies. The major funding increase in this area is for expansion of the Coal Conversion Program to accelerate the conversion from oil and gas to coal by utilities and industrial firms.

In 1974, the Energy Supply and Environmental Coordination Act (ESECA) provided the Federal Energy Administration with authority to prohibit existing utility and major fuel burning installations from burning petroleum or natural gas. It granted authority to order new utility power plants to be constructed with coal burning capability. The ordering authority under ESECA expired on June 30, 1975, with enforcement authority extending to December 31, 1979. In December of 1975, the ESECA authorities were extended by the Energy Policy and Conservation Act (EPCA). Ordering authorities were extended to June 30, 1977, and enforcement authorities were extended to December 31, 1984. In addition, overall program authority was expanded to new major fuel burning installations, whereby they, too, could be required to be constructed with coal burning capability.

Both Acts require FEA to select candidates on a case-by-case basis. The burden of proof rests on the Federal Energy Administration to make a series of statutory findings for each case. These include: coal supply and coal transportation, financial practicability, the existence of coal burning capability in existing facilities, and the impact on reliability of service for utility power plants. In addition, both the Environmental Protection Agency (EPA) and FEA must insure full compliance with all environmental requirements.

The result is a complex four-part regulatory program. Once findings are made, a Notice of Intention (NOI) is issued. This informs the candidate facility of the Agency's intention to issue a Prohibition Order to an existing facility, or a Con-

struction Order to a new facility in the early planning process. Following this, there is generally a public hearing to allow for comment. After evaluating the public comments, and if the statutory findings can still be substantiated, the second phase is completed by issuance of a Prohibition or Construction Order. The issuance of the Order requires environmental analysis pursuant to the National Environmental Policy Act (NEPA). Either an Environmental Impact Statement (EIS) or Environmental Assessment is prepared for each order. In the case of existing plants, EPA is then required to certify that the Order would meet air quality standards and requirements. Upon completion of FEA's environmental analysis which includes a public hearing for EIS's, a Notice of Effectiveness (NOE) can be issued to the candidate. The NOE defines the date and schedule for implementing the Order. The fourth part of the process is the enforcement of the Order, leading to the actual burning of coal.

To date, no Notices of Effectiveness have been issued to facilities that were not already independently planning to burn coal. It also appears that from the beginning of the process until coal is actually burned could take from 2 to 8 years. Nearly 3 years of operation with this program has led us to conclude that there are many problems with the current statutory approach:

First, the burden of proof is on FEA, which requires detailed finding on a case-by-case basis.

Second, the required environmental statements for each candidate are very time consuming.

Third, there is no jurisdiction over major users of oil and gas in existing facilities that do not already have coal burning capability.

Fourth, there is no jurisdiction over new gas turbine or combined cycle facilities.

Fifth, the current program is too uncertain. This results in the appearance of inadequate national commitment to proceed with coal conversion.

Sixth, there are extensive uncertainties in proposed Clean Air Act amendments, including the issues of non-attainment, prevention of significant deterioration, the requirement for best available control technology, and revisions in State Implementation Plans.

Several bills are under consideration which address a number of these problem areas. These include S. 977, the proposed Coal Utilization Act of 1977; and other measures as provided in S. 273, the Natural Gas and Petroleum Conservation and Coal Utilization Act of 1977; as well as in S. 272, the Natural Gas Consumption Act of 1977. Philosophically, these bills attempt to minimize the use of gas as a boiler fuel and use oil only in those cases where it is totally infeasible to switch to coal. Generally, these areas of infeasibility would relate to geographical, environmental, or severe financial hardship situations resulting from burning coal. The problem that these bills address in a comprehensive and forthright manner is of great significance to the Nation.

I have testified earlier this week that I consider a six-month extension of current ESECA-EPCA authorities to be important. This would in no way prejudice or delay the future implementation of new comprehensive legislation such as that being proposed by the Senate. I do not believe that a lapse in authorities, such as occurred between June, 1975, and December, 1975, is in the Nation's interest nor in the interest of a firm national coal policy.

Let me give you a brief status report of where the program stands. Revised regulations were published in draft form in the FEDERAL REGISTER on March 21, 1977. A hearing to elicit public comment will be held April 13th. We anticipate addressing any issues that arise during the public comment period, and publishing final regulations during the first week in May.

We held a public hearing on the draft Environmental Impact Statement (EIS) on March 23. The 45-day public comment period expires April 8. We anticipate publishing the final EIS by April 29; the 30-day waiting period required by NEPA would end on May 30.

The timetable for these two documents is important. NOI's for the Major Fuel Burning Installation (MFB) Construction Order Program cannot be issued until final program regulations are published on May 5. Orders for the MFB Program cannot be issued until the programmatic EIS has been a matter of public record for 30 days (May 30).

FEA staff is completing the findings necessary for issuance of Notices of Intent for a number of utility power plants and major fuel burning installations.

It is a difficult task ahead. Statutory and managerial difficulties have made it difficult to achieve program goals by the June 30, 1977, deadline when order-issuing authorities expire. We are making, and will continue to make, every effort to achieve program objectives within the statutory timeframe. We have taken firm action to strengthen the program by dedicating twenty additional personnel to the program, increasing the priority of the program within the Agency as a whole, and changing the management structure of the "ESECA" office to provide better administrative and execution control.

In addition, we will continue to do everything possible within our resources to meet the June 30th objectives.

With respect to our energy data gathering activities, the ECPA contained a statutory requirement to establish an Office of Energy Information and Analysis and this resulted in an internal reorganization to separate policy and data analysis functions previously performed by the Office of Policy and Analysis. Also, as required by the ECPA, a National Energy Information System (NEIS) was created to insure that comparable, accurate, and credible energy information is available to the Federal Energy Administration, to other Government agencies responsible for energy-related policy decisions, to the Congress and to the public. The NEIS will permit the analysis of U.S. energy supply and demand with emphasis on consumption and the sensitivity of the supply system.

The Office of Energy Information and Analysis also performs analytical functions in support of FEA policy-making and programming, to include competition analysis, socio-economic analysis, macroeconomic analysis, and regional analysis; all statistical and forecasting analysis function in support of energy policy and program development; and design, development and operation of all data collection and data processing systems of the Agency. The above responsibility includes the operation of the Project Independence Evaluation System (PIES) and of the National Energy Information Center (NEIC), the single Federal clearinghouse for energy data. The \$39.6 million in FY 1978 for EI&A is requested to support development of the NEIS, conduct of an oil and gas reserve study, improvement of the consumption data base, and other designated EI&A functions.

The FEA currently has broad information gathering authority and has been utilizing its resources to meet many regulatory and statistical information requirements. However, certain data areas that have been specified in legislation such as periodic reserve data, and financial reporting from petroleum companies, have not yet been thoroughly addressed. As a result of recent reevaluation of these data needs and more adequate funding approvals significant progress is now being made towards collecting these types of information.

In the FY 1977 supplemental budget which I spoke of earlier, \$2 million has been requested for reporting the 1975 operator survey of oil and gas reserves. An improved detailed field audit will be included in this effort. Information from the United States Geological Survey will be directly incorporated into this study, particularly to improve offshore estimates.

In addition, the Office of Management and Budget (OMB) has directed an interagency task force with representation from all pertinent Government agencies to recommend the best approach for this survey. The conclusion of this report will be incorporated in the reserves study. With timely funding available, results of this survey should be completed by mid-1978.

Preliminary design for a Financial Reporting System was completed in late 1975. Funding has not been available, however, and nearly \$1 million must be obtained to perfect and implement this system. With prompt funding of this system, results could be available in about one year. Staff has been instructed to proceed with preliminary actions to implement this system.

The FY 1978 request for the Regulatory Programs reflects a continuation of auditing activities to identify those petroleum industry firms which have not complied with FEA's pricing, allocation, and import rules and regulations. The Compliance program has been an area of great interest and concern to me since joining FEA. Compliance has made substantial progress in the last two years in terms of its development. Its management systems and structure are in place. Many outstanding regulatory issues have been or are being resolved and staffing at the National Office level has finally reached a point that sufficient audit personnel are available to manage the Compliance program. Program results for the period July 1, 1974, to December 31, 1976, include completion of about 22,000 audits and investigations with over 8,500 violations resolved. In addition, over 1,000 addi-

tional violations have been identified and are undergoing final resolution at the present time. The total dollar violations detected and corrected amount to about \$500 million. Additionally, over \$3 million in penalties have been collected. (The estimated potential violations pertaining to open audits are estimated at about \$2 billion.) Although these accomplishments have been substantial and much progress has been made in Compliance, I have formed a Task Force headed by a highly respected individual from outside FEA and augmented by knowledgeable representatives from within FEA. This Task Force will report back to me with recommendations on regulatory issues including Compliance audit strategy, need for greater legal support for the audit functions, organizational weaknesses and special investigations. Based on the recommendations of the Task Force, I will take any actions necessary to ensure the adequate enforcement of FEA's regulations.

The request assumes continuation of crude oil pricing and allocation controls through April, 1979, as required by law. The Administration has not yet made a decision on the decontrol of petroleum products. However, additional positions and funds will be necessary if controls are continued on these products through the end of FY 1978. No change is proposed at this time pending submission of the national energy policy to be transmitted to Congress in late April, 1977.

Now, to accomplish all of these activities we have been talking about this morning, FEA will require additional authorization for both FY 1977 and FY 1978. Rather than identifying all the specific requirements at this time, I would like to submit, if I may, two charts for the record which detail our specific authorization needs.

Thank you, Mr. Chairman. This concludes my opening remarks. I will be happy to respond to any questions which you or members of the Committee may have.

FEDERAL ENERGY ADMINISTRATION, FISCAL YEAR 1977 AUTHORIZATIONS

(In thousands of dollars)

Program	Legislative citation	Current authorization	Fiscal year 1977 appropriation request	Additional authorization required for fiscal year 1977
Salaries and expenses:				
Executive direction and administration ¹	ECPA 110 1(B)	\$33,086	\$33,122	\$36
Energy policy and analysis (includes EIA and P. & P.E.)	ECPA 110 2(B)	34,971	36,236	1,265
Regulatory programs	ECPA 110 3(B)	62,459	48,027	
Conservation and environment:				
General ²	ECPA 110 4(B)	37,000	41,659	4,659
Utilities	ECPA 207(a)	13,056	6,797	
Grants for Offices of Consumer Services	ECPA 207(b)	2,000	2,000	
Weatherization	ECPA 422	55,000	55,000	
Supplemental State grants	ECPA 432	25,000	12,174	
Obligation guarantee default fund	ECPA 451	60,000	0	
Obligation guarantee program administration	ECPA 451	0	1,800	1,800
Subtotal, conservation and environment		192,056	119,430	6,459
Energy resource development:				
General	ECPA 110 5(B)	16,934	11,450	
Solar commercialization	ECPA 110 7(B)	2,500	2,005	
Subtotal, energy resource development		19,434	13,455	
International Energy Affairs	ECPA 110 6(B)	1,921	1,515	
Total, salaries and expenses		343,927	\$ 251,785	7,760
Strategic petroleum reserve	ECPA 166 (1)(2)	(³)	⁵ 755,989	
Total, FEA		343,927	1,007,774	7,760

¹ Excludes policy and program evaluation.

² Includes the EPCA section 365 State grant program authorized at \$50,000,000 (\$25,000,000 was actually appropriated) and appliance efficiency labeling authorized at \$2,200,000 in EPCA Section 339 (a) and (c). The appliance efficiency labeling request is \$3,056,000.

³ \$150,385,000 of the \$251,785,000 has already been appropriated.

⁴ As necessary.

⁵ Currently appropriated.

FEDERAL ENERGY ADMINISTRATION—FISCAL YEAR 1978 APPROPRIATION AUTHORIZATIONS

[In thousands of dollars]

Program	Legislative citation	Current authorization	Fiscal year 1978 appropriation request	Additional authorization requirements for fiscal year 1977
Salaries and expenses:				
Executive direction and administration			\$37,288	\$37,288
Energy information and analysis			39,585	39,585
Regulatory programs			47,098	47,098
Conservation and environment:				
Obligation guarantee (default)	ECPA 451	1,360,000	15,000	
Weatherization	ECPA 422	65,000	65,000	
State grants	ECPA 365	50,000	50,000	
Supplemental State grants	ECPA 432	40,000	23,948	
Grants for offices of consumer services			2,000	2,000
Appliance efficiency labeling	EPCA 339	2,200	3,236	1,036
Other			45,325	45,325
Subtotal, conservation and environment		217,200	204,509	48,361
Energy resource development			14,152	14,152
International energy affairs			1,678	1,678
Total, S. & E.		217,200	344,310	188,162
Strategic petroleum reserve	EPCA 166 (1)(2)	1,100,000	3,018,933	1,918,933
Total, FEA		1,317,200	3,363,243	2,107,095

¹ \$60,000,000 is expected to cover all defaults associated with Federal Government-guaranteed loans.

² This figure represents the amount the fiscal year 1978 budget exceeds the current authorization for the strategic petroleum reserve. However, our actual authorization request is for such funds as are necessary to complete a 500,000,000-barrel reserve.

STATEMENT OF HON. JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION

Mr. Chairman and members of the subcommittee, I am pleased to be here today to discuss the important and critical subject of coal utilization. In fact, the bills you are currently considering involve three of the major aspects of the President's energy objectives—coal utilization, conservation of our scarce resources, and maintenance of our environmental objectives. I fully support these three objectives both as the Administrator of the Federal Energy Administration and from my personal experience in the energy field. Furthermore, I firmly believe that these objectives are not mutually exclusive and can be achieved to the satisfaction of all interested parties.

I appreciate this opportunity to discuss the future of the Nation's coal substitution program as it would be established by the proposed Coal Utilization Act of 1977 and other measures as provided in S. 273, the Natural Gas and Petroleum Conservation and Coal Utilization Act of 1977, as well as in S. 272, the Natural Gas Consumption Act of 1977. These bills would lessen the Nation's reliance on foreign sources of oil and provide increased supplies of natural gas to higher priority users, essentially in the residential and commercial areas. Philosophically, these bills attempt to minimize the use of gas as a boiler fuel and use oil only in those cases where it is totally infeasible to switch to coal. Generally, these areas of infeasibility would relate to geographical, environmental, or severe financial hardship situations resulting from burning coal. The problem that these bills address in a comprehensive and forthright manner is of great significance to the Nation.

In 1975, electric utility and industrial consumption of oil and natural gas amounted to 10.2 mmb/d of oil equivalent (of which about 12 percent was used as feedstocks and process fuel). By 1990, assuming no additional Federal actions, the electric utility and industrial consumption of oil and natural gas will climb to 14.9 mmb/d of oil equivalent (of which about 14 percent will be feedstocks and process fuel). We must reduce this reliance on oil and natural gas by electric utilities and for industrial uses other than feedstocks and process fuel.

In 1974, the Energy Supply and Environmental Coordination Act (ESECA) provided the Federal Energy Administration with authority to prohibit existing

utility and major fuel burning installations from burning petroleum or natural gas. It also granted authority to order new utility powerplants to be constructed with coal burning capability. The ordering authority under ESECA expired on June 30, 1975, with enforcement authority extending to December 31, 1979. In December of 1975, the ESECA authorities were extended by the Energy Policy and Conservation Act (ECPA). Ordering authorities were extended to June 30, 1977, and enforcement authorities were extended to December 31, 1984. In addition, overall program authority was expanded to new major fuel burning installations, whereby they, too, could be required to be constructed with coal burning capability.

Both Acts require FEA to select existing and new facility candidates on a case-by-case basis, with the burden of proof resting on the Federal Energy Administration to make a series of statutory findings for each case. These findings include coal supply and coal transportation, financial practicability, the existence of coal burning capability in existing facilities, and the impact of reliability of service for utility powerplants. In addition, both EPA and FEA must insure full compliance with all environmental requirements.

The result has been a complex four-part regulatory program. After the findings are made, the specific boiler or combustor is issued a Notice of Intent (NOI). This informs the candidate facility of the agency's intention to issue either a Prohibition Order to an existing facility or a Construction Order to a new facility in the early planning process. Following the issuance of the NOI, there is generally a public hearing to allow comment on the proposed order. After evaluating the public comments and if the statutory findings can still be substantiated, the second phase is completed by issuance of an actual Prohibition Order for existing facilities or Construction Order for new facilities. The issuance of the order then requires a National Environmental Protection Act (NEPA) analysis. Either an Environmental Impact Statement (EIS) or Environmental Assessment is prepared for each order. In the case of existing plants, the Environmental Protection Agency (EPA) is then required to certify that the order would meet air quality standards and requirements. Upon completion of FEA's independent environmental analysis, which includes a public hearing for EIS's, a Notice of Effectiveness (NOE) can then be issued to the candidate. This NOE defines the date and schedule for implementing the orders. The fourth part of the process is the enforcement of the order, which would then lead to the actual burning of coal.

To date, no Notices of Effectiveness have been issued to facilities that were not already independently planning to burn coal. It also appears that, from the beginning of the current process until coal is actually burned, it could take from 2 to 8 years. Nearly 3 years of operation with this program have led us to conclude that there are many problems with the current statutory approach:

(1) The burden of proof is on FEA, which requires detailed finding on a case-by-case basis.

(2) The required environmental statements for each candidate are very time consuming.

(3) There is no jurisdiction over major users of oil and gas in existing facilities that do not already have coal burning capability.

(4) There is no jurisdiction over new gas turbine or combined cycle facilities.

(5) The current program is too uncertain. This results in the appearance of inadequate national commitment to proceed with coal conversion.

(6) There are extensive uncertainties in proposed Clean Air Act amendments, including the issues of non-attainment, prevention of significant deterioration, the requirement for best available control technology, and revisions in State Implementation Plans.

The bill currently being considered by the committee clearly addresses the first four of these problem areas: the agency's burden of proof, need for Environmental Impact Statements, and the extent of regulatory coverage. The Clean Air Act amendments are being considered separately.

While it is anticipated that these and related energy problems will be addressed in the President's April 20 energy message, it is unlikely that comprehensive energy legislation would be passed in time to prevent a lapse in Federal authorities. Such a lapse seemingly occurred between June 30, 1975, and January 1, 1976. I do not believe that such a lapse in authorities is in the Nation's interest nor in the interest of a firm national coal policy. I therefore recommend that the Committee consider a six-month extension to current ESECA—

EPCA authorities. This would in no way prejudice or delay the future implementation of new comprehensive legislation such as that being proposed by the Committee.

In general, the concepts embodied in the Coal Utilization Act of 1977 provide a firm indication of what should be expected from the Nation's consumers of oil and gas for boiler or combustor fuels. The new bill would provide a blanket prohibition for new utility facilities, continue the case-by-case approach for new industrial facilities, but provide an optional blanket prohibition for industrial groups. Existing facilities with coal capabilities would be required to be off oil and gas by January 1, 1979. Facilities currently burning gas would be required to stop by January 1, 1979, with burning of oil stopped by 1990. The bill also calls for extensive temporary exceptions, exemptions, and early retirement to mitigate the impacts of these requirements.

The Administration clearly supports the strengthening and expansion of current authorities and the establishment of clear guidelines and ground rules to all current and potential new users of oil and gas. Although we have not performed an in-depth analysis of the current draft of the Coal Utilization Act of 1977, we do have some concerns of several provisions that might lead to increased uncertainties and extensive bureaucratic review requirements. As part of the policy development for the President's April 20 message, we are evaluating alternative regulatory and other actions that could help to achieve the same objectives as the current draft of this Committee's bill. While it is premature at this time to specifically discuss these alternative suggestions, we are working with members of the Committee staff and others in an effort to mutually determine the best approaches to these ends.

Let me take this opportunity to commend the Committee and its staff for bringing such a major bill to this point and for promptly considering this action. I will be pleased to answer any questions that the members of the Committee might have.

Thank you.

Mr. MOFFETT [presiding]. Thank you.

The Chair recognizes the gentleman from Louisiana, Mr. Moore.

Mr. MOORE. Thank you, Mr. Chairman.

First, I am glad to see you, Mr. O'Leary. We appreciate your candor and I couldn't agree with you more on the problems of the regulatory program. If anyone can do it, I am sure you can.

You are asking for some additional funds over and above what was appropriated for fiscal 1977, although it is a nominal increase. Your plans now to ask for more money to go into various areas, how does that fit with the President's program to reorganize the entire energy structure which is now pending in the Operations Committee?

Mr. O'LEARY. With regard to the first point that we are asking for more funds, I think if you review the amended fiscal 1978 budget and the requests before you, we are going down roughly \$1 million and 140 positions from the revised request for fiscal year 1977. There is a decline for that overall bundle of activities taken up under the general heading of regulatory programs.

I am sorry that is so because that makes some assumptions that may not be accurate. It assumes that the gasoline program will be off during the year and we will not be back to product controls on the middle distillate and fuel oil programs.

We are now at the point where we have reached a trigger in a portion of the country with regard to the middle distillate program and it is not clear whether we will have to reimpose controls to bring stability to that market. As you know with regard to gasoline, the previous administration on January 19 did put forward an action before the Congress that would have had the effect of decontrolling

gasoline. That was withdrawn when I arrived in FEA and we are now looking at a possible shortage of gasoline during the summer, although happily we are going into the summer with very, very high stocks.

It may be that we will be required to continue controls on that product. I think we are walking on the narrow edge with this decline.

The second element, how does it fit in the new agency? We will have to bring it in, in the early stages, intact. I think we have to say there is a long statutory history and a long regulatory history and an enormous judicial history with regard, for example, to the FPC programs coming into the Agency and they will have to be dealt with discreetly as are these. The thing we can do is harmonize these programs over time. I think right now it is not sensible to have, for example, propane regulations that simply doesn't take into account what is happening in natural gas, because here is an enormous amount of fungibility between propane on the one hand and natural gas on the other as we saw last winter.

We should find ways in which the regulatory attitudes of these more or less interchangeable resources are asserted.

Mr. MOORE. I assume other elements are funded by the organizations that will be combined such as ERDA. I assume the Federal Power Commission, each will be approaching Congress, as you are, asking for full funding for your Agency and the feeling, once you are combined, then you might effect any sort of economizing that could be accomplished?

Mr. O'LEARY. I think clearly over time there will be economies as a result of the combination into the Department of Energy. We can't look forward to those economies the first year, however.

Mr. MOORE. One thing I point out in, I know your department in its area of energy resource development has looked at solar energy and geothermal and I understand ERDA is spending money doing the same thing. Not that we are not spending enough money, but it might be best if we are in-house looking at what each is doing in spending those funds.

Mr. O'LEARY. One of the happy things I can report to you is that for the last month and a half we have been working very closely with ERDA, with the ERDA organization, and to a degree are already beginning to use ERDA and FEA as a single organization, a single entity. In some of these programs, for instance the solar program, there is a very, close working relationship already in being. The conservation program has a leader that happens to come from ERDA that is my nominee along with that of Bob Fri. Although the reorganization is not here, we are beginning to take a look at these areas of obvious conflict and overlap and trying to sort them out.

One further example, last night we spent a long and productive session with an element of ERDA staff and our staff taking a look at another problem area and that had to do with the provision of the enrichment services.

I think what we are beginning to see in this and other areas, FPC, for example, you probably have already recorded the very close working relationship between FPC and the energy staff during the last few months during the emergency and we are beginning to break down the

historical barriers faster than I, as an old Washington bureaucrat, have ever seen in my history here.

Mr. MOORE. I have one last question, a minor thing in terms of money, but I understand from staff that the FEA has awarded \$8,000 of Agency funds to Consumers Union of America to enable them to participate in some proceedings before the FEA. The Comptroller ruled there is a precedent for this having happened before the Nuclear Regulatory Commission that sets out standards by which you can do this. It is a little disturbing. I assume every agency will use discretion in determining when to give out funds for a private agency or private body. It appears to me this is the kind of argument we get into and I think your job is to look out for the consumer and I wonder if there is this necessity for an organization to come in and do something that you are supposed to be doing?

Mr. O'LEARY. When you have a long history where people roughly know the rules and have been at it for a long time, ever since 1938, the Federal Power Commission in many cases is arbiter between two sets of very, very skillful interests. Let us take a municipality, a large city, for example, or the State of New York as a case in point, they are very, very well-represented before the Federal Power Commission. They have indeed as their formal representative a former General Counsel of the Federal Power Commission.

Let us take a Federal pipeline serving the State of New York, very well represented, employing very good counsel, they come before the FPC in a litigated hearing and you hear what I call a heads up game, the consumer interest, as represented by the State of New York, is very much there, the private sector interest is very much there by the pipeline company, and all the facts get out on the table.

Let us transfer that setting to the case in point, here essentially unidentified consumer interest versus the industry. We didn't have a way in which there was a sufficient interest at any point in the line backed up with sufficient financial resources to get into that analog to the State of New York.

The Consumers Union people came to us and said:

We would like to represent consumers in this.

We said:

Well, we are certainly not going to simply on our own hook go out and accolade you the consumer representative, but you have a reasonable position. What we will do is go out and see if people will bring in ideas to us and proposals from which we will select someone and do a little bit of funding in order to get that very necessary element of a thoroughly professional expression of a legitimate point of view that might not otherwise come before the Agency.

We then went out, had, I think, three proposals that came to us and we chose the one finally advanced by the Consumers Union and are in the process of running that experiment further. I think that is a very, very useful precedent for our Agency because it brings to our deliberations a dimension that otherwise, simply because of the watered-down set of interests, although it is very important in the aggregate for all consumers, for you as an individual, when you think of spending a great deal of time on something that might only be \$10 or \$20 to you a year, it simply isn't worth it to you.

I think that the history of Government agencies, with the best will in the world, is that they haven't represented that set of interests very well. So I am really pleased to see a very cautious and very well modulated entry of this consumer interest into the regulatory process.

I stress cautious and well-modulated.

Mr. MOFFETT. The gentleman's time has expired.

Mr. MOORE. Thank you, Mr. Chairman.

Mr. MOFFETT. I'm sorry to have been a little late. Major war has broken out on the question of shoe imports, and our New England members—

Mr. O'LEARY. Is that known as a shoe-in?

Mr. MOFFETT. Yes.

I am glad to hear you again state your belief that the regulatory process will be around for a long time and that FEA will continue its regulation of energy matters. I think that eliminating any uncertainty there is very helpful.

But there is still a great deal of uncertainty, at least from what we know about the Department of Energy on paper, as to what would be the extent of regulation. There appears almost to be a contradiction between what you are saying, a strong regulatory posture on one hand and what the Department of Energy seems to offer with regard to regulations. May I have your reaction to that?

Mr. O'LEARY. Yes, Mr. Chairman, I do not see that contradiction at all. The fact of the matter is that, both in natural gas and petroleum, we are going to see a very long-lived regulatory regime.

There are substantial difficulties in concerting the activities in the regulatory sphere in something in energy where the relationships are so close and so pervasive without having them under a single policy head. Let me give you one example from my experience in the Federal Power Commission, if I may.

During a period in 1967 and 1968 we were very much concerned over the appropriate attitude in natural gas to Canadian imports. Canada was pressing on the U.S. market, was attempting to get deeper and deeper into U.S. markets and time and time again the then Chairman of the Federal Power Commission, Lee White, complained about the fact he was unable to get policy guidance as to how he should handle those cases.

The result was they were handled on a case-by-case basis and handled without any real regard as to where we should be going in that particular arena.

Another case in point has to do with the LNG reports. We have an element that is case oriented. It is not a policy element, never has been, and comes before it now an applicant that makes a good case that is precedential and the LNG facilities are built. A year later comes a second applicant making an equally good case, the precedent applies and that facility is built. Finally, after many years of that process, we might find ourselves 25 percent dependent on LNG, due to a shortfall in the policy area.

So there is no attempt on the part of the new agency to diminish the input of the House. There is an attempt to impose a standpoint of policy to bring common guidelines without at all interdicting the judicial nature of the regulatory process.

Mr. MOFFETT. As I recall, your regulatory budget, however, assumes an example that all products but propane would be decontrolled by the end of the year?

Mr. O'LEARY. That is correct and, if there is an error in that, we will be before you for a supplemental and I would say the odds are about 50-50 that we will be before you in this area for a supplemental.

Mr. MOFFETT. You would come before the Congress for a supplemental?

Mr. O'LEARY. Yes, we would come before you.

Mr. MOFFETT. An authorization?

Mr. O'LEARY. If it were not authorized, if the authorization level were below this level, we would have to have additional authorization.

Mr. MOFFETT. That doesn't recognize the problems we have with the procedures imposed upon us by the Budget Act, does it?

Mr. O'LEARY. It is an imperfect—

Mr. MOFFETT. Then why put us in that position?

Mr. O'LEARY. What position is that, Mr. Chairman?

Mr. MOFFETT. Of coming up for a supplemental. Why do we start out with, as I understand it, a cutback in positions by 140 from fiscal year 1977, a cutback which supposedly was based on OMB assumption about decontrolled products.

Mr. O'LEARY. One second off the record, Mr. Chairman.

Mr. MOFFETT. Yes, of course.

Mr. O'LEARY. Mr. Chairman, I can understand the problem that you are referring to and I have the same problem.

Mr. MOFFETT. A problem with OMB?

Mr. O'LEARY. This stems from an assumption built into the budget that we will in fact be out of the control except for propane, as you point out, during the fiscal year. You will recall the same assumption was made with regard to the 1977 budget and it turned out so far as gasoline is concerned not to be true.

Mr. MOFFETT. But, Mr. O'Leary, with all due respect, there is a fundamental contradiction between what you are telling us and what OMB seems to believe about regulations.

Mr. O'LEARY. No, Mr. Chairman, let me say the policy predicated at the moment is that we will in fact be able to decontrol gasoline and will not be required by events to reimpose controls on middle distillate during fiscal 1978. I suggest there is a 50 percent probability that will not hold. There is conversely a 50 percent probability it will hold. We do have a perfectly valid mechanism in the event that the predicate behind this budget turns out to be inaccurate. We do have a perfectly valid predicate to come before Congress to seek additional authorization and additional funds and that is one of the contingencies that we encounter in all programs. Mr. Chairman.

Mr. MOFFETT. I understand. But do you understand that we are talking about a very critical date, which is May 15?

Mr. O'LEARY. Yes, I understand that.

Mr. MOFFETT. How can all these things be reconciled?

Mr. O'LEARY. It won't be. We won't know whether we are out of controls on gasoline until the fall. If it turns out we will be into controls on gasoline through the fall and winter, we will be back to seek a supplemental appropriation.

Mr. MOFFETT. I don't understand why we should not authorize for that.

Mr. O'LEARY. Mr. Chairman, I think that is a matter of your will. If you wish to authorize full funding with the assumption (a) of a continuation of gasoline controls and (b) of the reimposition of other product controls, then that is a matter for your judgment.

Mr. MOFFETT. I understand now.

With regard to whether controls are reimposed on middle distillates, let me refer to the Oil Daily article of March 29, last Tuesday, in which you are quoted as saying:

FEA's best estimate is not good enough. He says FEA's monitoring system is flawed and will require more of FEA's resources to get in shape.

Now, you and I have been back and forth and around and around on this as I have with Mr. Smith. I understand that one reason given for the breaking of the trigger in the North Central States was that FEA relied on the historical relationship between residential and industrial costs which this past winter did not turn out to be the case.

I have a couple of questions, one of which is: Did FEA have a sufficient number of persons working on the program so that industrial as well as residential prices could be surveyed, was it the fault of the system as designed, or both?

Mr. O'LEARY. I think the fundamental flaw in that was that we did sampling rather than cover essentially all of the universe.

Mr. MOFFETT. There are then implications for the budget?

Mr. O'LEARY. Not enormous. They are handleable, I think, within a matter of—this is a shift of four or five personnel, in that range. This is purely on the monitoring.

I really don't think that we can rely with discretion, and we found this to be true when we took a look at the State data. Let me put it this way, Mr. Chairman, I think that the sampling of the smaller dealers is valid for the region, for example, within the limits of statistical sampling, valid for New England.

By the admission of the staff in discussions we have had over the last months, it is not valid for individual States within the region and probably what we should have done was set up a system that gave us confidence not only regionally but recognizing that your interest really is, of course, in the region but much more discrete with regard to your State, one that satisfies your interest. I would say that is a flaw in the program.

Mr. MOFFETT. Does that explain why the trigger has not been broken for Connecticut?

Mr. O'LEARY. No, I don't think so. We have taken a look just in the last 72 hours with each of the State energy agencies and taken a look at their sample versus our sample and we find that actually their sampling, by and large, and I think Connecticut is not an exception to this, is more conservative than ours.

Mr. MOFFETT. We are talking about whether you have enough people to do the job.

Let me ask, with regard to Connecticut, do you think you were getting all the information you needed for Connecticut?

Mr. O'LEARY. No, I think that the next time we do this we will get better data, not simply on a regional basis but data with a sufficiently

high confidence level so we can answer with absolute precision the questions you raise with regard to Connecticut and that others raise with regard to Massachusetts, Maine, Vermont, or what have you. That is the flaw in the system as I see it now.

We have, Mr. Moffett, incidentally, extended the reporting date for a month. I am meeting this afternoon with a group of consumer representatives and with our data people, to go over with them the basis for our data and where we come out and where the State energy agencies come out. I really think at bottom we did not fudge the figure to show a nontriggering system in New England as a whole or with regard to the residential section in New England. The figures we have reduced in going to the State agencies and plowing out our own numbers shows we agree on the amount of increase. Our numbers show consistently a slightly larger increase and percentage of increase than the State energy agency figures show. So if there is a bias between the two, ours is a bias that is more conservative than theirs.

However, people are not satisfied with the numbers and I have learned to my regret that it is one thing to have numbers that are good enough and numbers that are believed to be good enough. In this case the flaw is the numbers are not believed to be good enough and, if we are going to be in this business, we have to be sensitive to that and work on it.

Mr. MOFFETT. Maybe I have been spending too many Saturday afternoons sitting in shopping malls at my card table receiving home heating bills from people. I am not sure your job is to try to come up with a moral implication of all our policies but we do need to do something.

Mr. O'LEARY. Mr. Moffett, we had a very, very serious winter in your part of the country and bills went up. It is true that the price of heating oil went up, in your State approximately 5.5 percent per gallon if recollection serves. But, the amounts consumed went up probably by 30 percent. Between these the householder really isn't discriminating, he probably does not look at all the fine print. He just looks at the bill that was \$40 last December and \$140 this December. In New Mexico we had precisely the same situation before I came out here and it was so serious. New Mexico, a producers' State, legislated in the session they just finished no increases in the price of natural gas, which is the first time that has been done.

Mr. MOFFETT. Let me move on to another area, the area of utilities, in which this subcommittee is very interested. Under FEA's fiscal year 1977 authorizations, the current authorization under conservation and environment for utilities seems to be \$13,056,000 and the fiscal year 1977 appropriation request seems to be \$6 million or about half of that. Again, please correct me if I am wrong about that.

Mr. O'LEARY. Just one moment.

Mr. MOFFETT. Certainly.

Mr. O'LEARY. Mr. Chairman, Martin Seneca, who heads that particular program, is with us.

Mr. MOFFETT. What is the status of that utility program? When I look at the fiscal year 1978 appropriation authorization, this chart I have here under conservation and environment, there are obligation guarantees, supplemental State grants, grants for Office of Consumer Service, appliance efficiency labeling, and others, but I don't see utility demonstrations. Is there some reason for not including that category?

Mr. O'LEARY. It is under the regulatory institution program. The fiscal 1978 request is \$10.6 million.

Mr. SENECA. To bring this into perspective, in fiscal year 1977 and continuing into fiscal year 1978, we will have pulled together a total of 30 demonstrations involving not only electric utility demonstrations but also some gas utility demonstrations.

The direct response to your question is, "Yes," the utility program is on line. We have requested approximately \$10 million for that program counting utility consumer grants in going into base fiscal year 1977 and then about the same amount in 1978. Keep in mind that the \$13,056,000 which is authorized for this program covers obligations during the transition quarter as well as fiscal year 1977.

Mr. MOFFETT. There was a February 1 letter from Mr. Schlesinger to Mr. Lance, for example, in which Mr. Schlesinger asked, as I read it here, for an additional \$4.6 million in fiscal year 1977 and 1978 for the public utility conservation program which he said would allow for expansion of FEA's utility rate demonstration program and for increased technical assistance. He further stated that would be beneficial to the conservation effort. Mr. Schlesinger said that the FEA has a small program and has been successful in its resources. Did he get the extra money?

Mr. SENECA. We have approximately \$2 million for that program. We have requested an additional \$8 million in the fiscal year 1977 supplemental on which we have not received action at this point.

Mr. O'LEARY. But it was approved by the administration.

Mr. MOFFETT. What about for 1978?

Mr. O'LEARY. In 1978 the request is also for \$10 million and that again is up to you.

Mr. MOFFETT. What about the time table and the deadlines? We have had some instances where FEA has not met deadlines, to say the least. With regard to FEA reporting deadline proposals to Congress, statutorily there was a February 14, 1977, deadline, as I recall. We have an estimated timetable here that says the final deadline is January 16, 1978. Would you like to comment on that?

Mr. SENECA. Yes, Mr. Chairman. When that statutory deadline was established, some of the problems that we encountered in developing that study were not anticipated. We have submitted an interim report to the Congress on March 4 which contains the proposals and the analysis that we have accomplished at this time.

The problem area comes with regard to a model and in terms of providing the analysis necessary on those proposals, we have entered into a contractual relationship with Teknekron, Inc., to develop the model for the analysis of those proposals.

The development of that model has proved to be extremely difficult. We first considered a May 14 time frame in which that model would be up and allow us to provide the Congress with the analysis accompanying those proposals. In recent conversations with our contractor that slipped to August and now we are in a mode where there is serious doubt as to whether that model can get up at all.

Because of those kinds of considerations we have indicated the January time frame to comply with congressional mandate to provide the complete analysis that the Congress requested in title II of EPCA.

We are doing everything that we can do in terms of our resources and in terms of the technology in that model program to get the project completed.

Mr. MOFFETT. Are you happy with the contract or would you like to go to another contract?

Mr. SENECA. I think in terms of our contract with the present group, we feel that we have the best effort that we can get forward right now.

Mr. MOFFETT. Mr. Smith was shaking his head no. That would not show up in the record but I would like to hear what he has to say.

Mr. SMITH. Mr. Moffett, I am not aware of the details of the individual contracting, and without criticizing the contractor, who may have been given more of a job than is reasonable in this, I think the answer to your question is we are certainly not happy with this particular approach to the solution of this problem and we are going to explore other approaches to be as responsive as we know how to be. The preparation of the initial report highlighted a number of areas where we simply don't know enough to make sweeping conclusions that apply to the majority of the utility systems.

One of the things we found out in the development and preparation of this report was the wide diversity of characteristics that exist among different systems, depending on their load characteristics, the nature of their generating capacity, their ability to interconnect with other systems, the kind of customer distributions they have and this kind of thing. So some of the first order results one gets by looking at electricity utility systems turns out to have some second and third order effects that get you tangled up because one system will not react to that initiative in the way way as another.

Mr. MOFFETT. I understand that.

Mr. SMITH. I don't mean to take up your time describing the problem. The answer is we are not happy with this approach to the solution of the problem and will look for and communicate to you better approaches to answer as much as we can the congressional concerns sooner than the first of next year.

Mr. MOFFETT. Beyond what you are mandated to do statutorily because of the Congress interest in utilities, is there an ongoing interest of your own? Do you want to do more on your own?

Mr. O'LEARY. With regard to the utility sector, it is far and away the longest sector of our concern in this country. It is an enormous consumer of capital. Any time you can find ways to either improve the fuel efficiency or capital efficiency of that industry through software, it is worth a try and we are really dedicated to the proposition that the utility industry is a key to the solution of this problem.

Mr. MOFFETT. You may be aware once again this term—in fact yesterday the distinguished subcommittee chairman, Mr. Dingell, myself, and others on the subcommittee introduced a utility reform bill. We would appreciate your reaction and your cooperation on that piece of legislation not only in formal settings like this but informally as well.

Mr. Smith brings up the point about how difficult it is to deal with different systems and utilities. That is also true with regard to industry and industrial conservation.

Amendments, for example, that were offered in this subcommittee last year were rejected for a variety of reasons. I think partly it was because some of us found it very, very difficult to determine what the proper standard is when you are dealing with industries which vary greatly. Mr. Moore of Louisiana and I were before the National Association of Manufacturers a week ago today. I asked of the industry people there what kind of consulting advice they get from the Government on ways to conserve. I recall Mr. Zarb telling this subcommittee that indeed there is a program out in the field to provide assistance for industry; that if industry desired help in seeking ways to conserve they could find help at the FEA. Yet in talking with industries in my own district, I could not find any evidence that FEA was providing assistance to them. I asked questions at the NAM meeting as to whether FEA's help was available. Again the answer was "No," we never hear from them.

The question is how involved should FEA be in this area? I would like to know in terms of dollars and cents in the budget what you currently offer industry in the way of consultation and what you plan to offer. It appears now we are offering little, if anything. I think that is correct, is it not?

Mr. O'LEARY. Let me give a little historic perspective on that. Early in 1974 there was a thoroughly sustained interest in industry performance and during 1974 and 1975 there were a number of arrangements made between FEA and leading industries with regard to voluntary conservation programs. The metal industry said they would reduce their energy consumption by 1980 by x percent, the glass industry by a wide percentage and so on.

My understanding is that by and large these sort of objectives are now being observed quite seriously by industry. However, we have some other contraindications. There are, for example, very little in the way of evidences in the macroeconomic sense that indeed the economy is conserving at all. It appears that although we have industry after industry telling us that they are moving, progressing toward their 1980 targets, it is difficult to find any energy savings if you go back to the basic relationship of energy in and products out for the economy as a whole. This raises, I think, a very serious question.

Incidentally, this question will be addressed in the April 20 message. One of the difficulties with this comes about this way—if you are interested in this, Mr. Chairman, I refer you to a publication done by the National Industrial Conference Board for the Ford Foundation energy study under the Freeman energy project. A half-hour or hour with that model will indicate to you the absolute complexity of doing this on an industry-by-industry basis, principally because we don't have a static situation. Every firm and certainly every industry is constantly changing its process and its flows. Very little is fixed over time and to develop in a meaningful sense some sort of absolute standards for an industry I think is a very, very difficult chore.

The other weakness in this business is that we do not under the present regime receive segregated data. Under the ECPA there is the authority in the FEA to shift the reporting burden to an aggregated data that comes out of industry. This goes down to 2 numbers in the FEA data.

Let me give you two other examples in the difficulty of dealing with this. Let's say in the steel industry we say you have to show us a saving of 15 percent within 5 years. There are a variety of ways to do that. The easiest is to change the nature of the feed into a steel plant. If they went from scrap to iron ore, they would show the saving immediately, transferring then the cost to another segment of the economy.

We are very much aware of this and are attempting to deal with this in the April 20 submission. I do not regard the present program as really getting to this. We are doing voluntary things, aggregated data, workshops. I think we have 600 workshops scheduled around the country. It is not doing a lot of good and I am not surprised that the National Association of Manufacturers takes a dim view of it. I don't want to defend that history, but I think it goes fundamentally to the problem that we didn't take conservation as a serious objective.

Mr. MOFFETT. Thank you.

I would like to discuss the issue of coal conversion. Before I yield to counsel, I have one question. Further unnecessary delays in the issuance of notices of effectiveness for the issuer orders promulgated in 1975 have resulted from the unexplained disappearance of files for coal conversions. Does that sound familiar to you?

Mr. O'LEARY. I hear these charges all the time.

Mr. MOFFETT. Can you tell us what you know about that?

Mr. O'LEARY. I think there is a black hole somewhere in FEA. It has been rumored that it is in the administrator's office, people complain that documents come into my office and disappear. Every afternoon at 4 we regularly go around looking under the furniture for some things. It is claimed, with some merit, I think, the General Counsel's office is involved with this. We do have a problem that over time the place has so much paper floating around it, Mr. Chairman, it is literally awash in a sea of paper and crucial documents are mislaid, stolen, or get lost. That has been a factor in the effectiveness of the agency. It goes back to the point I made earlier, that one of the things that we did not find in an agency that, after all, grew like topsy and expected to go out of business tomorrow morning were fundamental management systems, including paperwork management.

Mr. MOFFETT. As someone who loses things all the time, I can understand that. But we are talking about a file cabinet here, aren't we, not just a piece of paper?

Mr. O'LEARY. Here is the fellow that probably lost the file, Mr. Chairman.

Mr. HANFLING. I didn't know we lost the file cabinet, but we will look again.

Mr. BARRETT. When was it noticed that the file cabinet was missing?

Mr. HANFLING. I don't know that there is a file cabinet missing.

Mr. SMITH. My understanding is that the reference is to a set of calculations that had been done with respect to certain of those orders.

Mr. BARRETT. As I understand what has happened has been that the coal findings which were necessary to support your original 32 orders that were issued in 1975 have been lost. Those findings may or may not have been in this file cabinet that has disappeared; is that correct?

Mr. HANFLING. The gentleman much closer to the details has indicated to me that it is not a file cabinet, it is some calculations on coal

findings that the Office of General Counsel feels should be attached to and provided with some of the analysis and it is the backup calculations that cannot be found.

Mr. BARRETT. General Counsel's office feels this is essential to the establishment of their cases, don't they; isn't that correct? Mr. Fygi is at the table. Perhaps he can say yes or no.

Mr. O'LEARY. One of the statutory requirements is that we have to go into a long elaborate statement with regard to availability of coal for each of these boilers 7 or 8 years in advance of the conversion date.

As I say, I think the statutory requirement here leads off silly, but in fact the way the statute is developed, it does require a statement of availability. That is quite correct. This is the first I have heard a file cabinet is missing. That is interesting, but I think not a terribly relevant point. The relevant point is that the file, a document relating to these conversion cases is missing. The data is indeed an essential element of the legal side of the case and that, I think, unless Mr. Fygi has something to add, summarizes the situation.

Mr. FYGI. One other point, Mr. Barrett, although I am not familiar with the details of what may or may not be absent, it is apparent that the agency would have to have available to it the documentation and the records that supported its findings because that would be the basis upon which any subsequent judicial review would have to occur were the order to be challenged.

Mr. BARRETT. What I am getting at is these findings which are necessary for your first 32 orders, which are the only prohibition orders that have been issued to date and which have been issued and outstanding for some 2 years, these important files are missing and you may not be able to prove your case.

Mr. O'LEARY. I don't think so at all. Any statement we made with regard to coal availability can be replicated. There are excellent data sources with regard to the seven data points that we regard as essential here and it is simply a matter of going back and reconstructing those files should that in fact be a point in litigation.

So I don't regard that in any sense of the word crippling to the final result. I think it is a real statement or commentary on lax administration but nothing beyond that.

Mr. BARRETT. You testified in your opening statement, I understand, that the Justice Department is going to report to you sometime next week.

Mr. O'LEARY. Yes. Not the Justice Department but an attorney from the Department of Justice Office of Legal Aspects, whether indeed the legal requirements that the Agency had imposed on this program were overly elaborated. We hope to hear from them, as I say, next week.

Mr. BARRETT. You have in fact been furnished some kind of interim report as of last Wednesday?

Mr. O'LEARY. That may be, Mr. Chairman, but my understanding is the final document will be available to us, I think, Monday or Tuesday of next week.

Mr. BARRETT. I would ask, Mr. Chairman, that we could be provided with a copy of that report.

Mr. O'LEARY. I would be delighted to furnish that.

Mr. DINGELL. Without objection, the report will be inserted in the record at the appropriate place.

[The following letter was received for the record:]

DEPARTMENT OF JUSTICE,
Washington, D.C., March 30, 1977.

Hon. JOHN F. O'LEARY,
Administrator, Federal Energy Administration,
Washington, D.C.

DEAR MR. O'LEARY: This is in response to the March 14, 1977 memorandum of your Special Assistant, Mr. Raoul Henri Alcala, requesting our views concerning implementation of the coal-utilization provisions of the Energy Supply and Environmental Coordination Act. Mr. Alcala asked us to provide you with an assessment of the correctness of (1) FEA's interpretation of the statute and (2) the "alternative methodologies" set forth in the February 9, 1977 memorandum of Mr. Gerald J. Parker, Deputy Director of FEA's Office of Coal Utilization.

In order to respond to Mr. Alcala's request, we reviewed the provisions of the Act, FEA's implementing regulations, the legislative history, the sample orders and other documents provided by Mr. Alcala, memoranda prepared by Mr. Parker and the March 23, 1977 memorandum of Mr. James H. Hefferman, Acting Assistant General Counsel. Before discussing the issues, we should make clear the nature of or limits upon our response.

Mr. Parker has asserted that FEA's coal-utilization program has been a failure. In his February 25, 1977 memorandum, he attributes this to three factors—ineffective program management (which he describes as the most important problem), overly complicated and time-consuming procedures, and the size and qualifications of the staff of the Office of Coal Utilization.

It seems evident that thus far the results of the coal-utilization program have been extremely limited. While we have addressed the legal issues raised by Mr. Parker's criticisms of FEA's procedures, we have not attempted to determine whether those procedures or other factors have occasioned the limited results. According to Mr. Parker's March 18, 1977 letter to the Staff Director of the House Subcommittee on Energy and Power, you indicated that Mr. Parker would be removed from his position at FEA if our "investigation" did not support his views, in the February 9 memorandum, on program methodology. We wish to reiterate that we have not conducted an investigation, but a review of legal issues. Moreover, it is not our intent to influence in any way your decision regarding Mr. Parker's employment. The main points which he has raised, such as the quality of management, are outside the scope of our inquiry. As will be explained below, in our view, many of the legal issues are such that either Mr. Parker's approach or the present approach seems permissible.

Finally, we also should make clear that we are not attempting to say what course FEA should take between now and June 30, 1977 with regard to the coal-utilization program. Such matters as determining priorities, whether to modify the procedures, and whether to seek new legislation are, of course, for your agency to decide.

Our views regarding the legal issues may be summarized as follows:

a. Mr. Parker's basic point is that FEA should have instituted a less complex, less time-consuming approach to implementation of the coal-conversion provisions. It seems clear, particularly in light of the 1974 conference report, that different means of enforcement would have been permissible. Still, Congress' action in extending the ESECA provisions in 1975 may properly be regarded as ratification of the basic aspects of the approach taken by FEA. Whether the methods of implementation should be modified is essentially a matter within the discretion of FEA.

b. According to Mr. Parker, the FEA format for findings needed to support a coal-conversion order is unduly burdensome. Regarding the finding on availability of coal, the difference between Mr. Parker and the General Counsel's Office relates to the amount of detail required for the finding, a matter within the agency's discretion. Regarding the "practicability" finding, we disagree with Mr. Parker's view that FEA need not determine the reasonableness of the cost of coal-conversion orders.

c. It is proper for FEA to treat prohibition orders, rather than notices of effectiveness, as "orders" for purposes of the statutory deadline on issuance of orders.

d. FEA's failure to use its short-term ordering authority seems mainly to raise questions of priorities, matters we are unable to evaluate.

1. BACKGROUND

a. *Statutory provisions.*—The Energy Supply and Environmental Coordination Act (ESECA), Public Law 93-319, 15 U.S.C. 791-796 (1975 Supp.), was enacted on June 22, 1974. Section 2, 15 U.S.C. 792 (1975 Supp.), provides the basis for the coal-conversion program. Originally, § 2(a) directed FEA to prohibit, by order, any powerplant from burning natural gas or petroleum products as its primary energy source, if (1) FEA determined that, as of June 22, 1974, the plant had the capability and necessary equipment to burn coal and (2) FEA made other specified findings. Before such an order could take effect, certain steps relating to protecting the environment were required.

The 1974 Act also authorized FEA to issue such prohibition orders to "major fuel burning installations," other than powerplants. In addition, under § 2(c), FEA was authorized to issue construction orders to powerplants in the early planning process, *i.e.* orders requiring that a plant be designed and constructed so as to be capable of using coal as its primary energy source.

Under the 1974 Act, FEA's authority to issue such orders expired on June 30, 1975, and its authority to enforce the orders was to expire on December 31, 1978.

The Act was not amended before June 30, 1975, but in December of that year it was amended by the Energy Policy and Conservation Act, Public Law 94-163.

The 1975 amendments extended, to June 30, 1977, the date for issuing prohibition and construction orders and extended, to December 31, 1984, the date for enforcing them. In addition, the scope of FEA's order-issuing authority was broadened in some respects.

b. *Regulations; methods of implementation.*—In May 1975, FEA issued regulations implementing the 1974 Act. 10 CFR parts 303-307. Regulations implementing the 1975 amendments to ESECA have not yet been issued, but, on March 21, 1977, proposed regulations were published in the Federal Register. 42 Fed. Reg. 15320.

Mr. Parker has criticized the delay in the issuance of regulations, but it is our understanding that, with certain exceptions, he is not critical of the provisions of the regulations. His main criticisms relate to the manner in which the provisions are carried out.

FEA's method of implementing the statute and the regulations can be illustrated by discussing issuance of a prohibition order to a powerplant. Under § 2(a)-(b) of ESECA, before such an order may be issued, FEA must find that the plant has (or is designed with) the capability and necessary equipment to burn coal or that it is subject to a construction order; that the burning of coal by the plant is practicable and consistent with the purposes of ESECA; that coal and coal transportation facilities will be available during the period when the order is in effect; and that the order will not impair the reliability of electric service in the area served by the plant.

To determine whether there is a basis for making the findings, FEA conducts a study of the plant. The regulations spell out the factors which FEA considers. 10 CFR § 305.3. If FEA determines that a basis exists to make the requisite findings, it issues a notice of intent to issue a prohibition order. 10 CFR § 305.5 (b). This notice sets forth in detail the bases for the proposed findings. Mr. Parker asserts that, regarding certain matters, excessive detail is now provided.

After issuance of a notice of intent, interested persons, *e.g.*, the utility company, are given the opportunity to submit written comments and to take part in an informal hearing. ESECA § 2(b)(3)(A); 10 CFR § 305.5(b).

Subsequent to the hearing, FEA determines whether to issue the prohibition order. If an order is issued, the matter is then considered by the Environmental Protection Agency. Section 2(b)(3)(B) of ESECA provide that an order may not become effective until (1) EPA notifies FEA that the plant is able, without a "compliance date extension,"¹ to burn coal and comply with all applicable air pollution requirements or (2) the date which EPA certifies is the earliest date that the plant will be able to comply with the air pollution requirements of § 119 of the Clean Air Act.²

In addition to the determination by EPA with regard to air pollution, another prerequisite for the effectiveness of a prohibition order is FEA's completing the

¹ See 42 U.S.C. 1857c-10(c) (1975 Supp.).

² 42 U.S.C. 1857c-10 (1975 Supp.).

environmental analysis required by the National Environmental Policy Act. This analysis involves consideration of the environmental effects (air, water, etc.) of burning coal at the particular plant.³ ESECA § 7(c), 42 U.S.C. 793(c) (1975 Supp.) ; 10 CFR § 305.9.

Upon completion of the foregoing steps, if the facts warrant, FEA is to issue a notice of effectiveness stating the date when the prohibition order takes effect. 10 CFR § 303.37.

Different procedures are applicable to construction orders. ESECA § 2(c) ; 10 CFR part 307. For example, there is no requirement for a hearing.

c. Actions taken by FEA.—On June 30, 1975, FEA issued prohibition orders affecting 74 powerplant units located at 32 generating stations. No additional orders of that type have been issued, but FEA plans to issue another 107 before June 30, 1977, when its order-issuing authority expires.

To date, EPA has issued proposed compliance date extensions or the alternative notification or certification regarding 63 of the 74 powerplants. However, FEA has not yet issued a notice of effectiveness of a prohibition order.

On June 30, 1975, FEA issued construction orders regarding 74 powerplants at 42 generating stations. On June 30, 1976, notices of effectiveness were issued to 30 of the powerplants. An additional 68 powerplant construction orders have been issued.

FEA plans to issue both prohibition and construction orders to (nonpower-plant) major fuel burning installations prior to June 30, 1977, but no orders regarding such installations have yet been issued.

2. DISCUSSION

We wish at the outset to outline some general concepts of administrative law which seem pertinent. Often, when Congress establishes a regulatory program, it sets forth the basic elements in the statute, but leaves to the administering agency the task of filling in the details. In implementing such a statute, the agency's obligation is of course to carry out the intent of Congress. Still, within the limits of the statute's terms and any applicable requirements of the Constitution, the agency usually has considerable discretion with regard to the precise nature of the procedures and means of implementation. In other words, there is a range of possibilities and any enforcement system within that range would be legally permissible.

In our opinion, the coal-utilization provisions of ESECA are an example of such a statutory scheme. We turn now to the legal issues raised by Mr. Parker.

a. General approach to implementation.—The first point raised in the February 9 memorandum is Mr. Parker's general assertion that a simpler, more expeditious approach to implementation of the coal-conversion program should have been or should be adopted.

The conference report on ESECA stated the following:

In light of this limitation on FEA's order issuing authority [i.e., the June 30, 1975 deadline for the issuance of prohibition orders], the conference substitute requires only informal and expedited procedures prior to the issuance of such orders. No formal adjudication or rulemaking is intended, nor is 5 U.S.C. 554, 556, or 557 to apply in the issuance of such orders or in any other proceeding under this Act. * * * To the extent that constitutional requirements may necessitate some opportunity for cross-examination with respect to some issues of fact, it is anticipated by the conferees that this opportunity would be provided by the courts in judicial review or enforcement proceedings or by means of a remand to the appropriate Administrator.

H.R. Rep. No. 93-1085, 93d Cong., 2d Sess. (1974), p. 28. Considering the terms of ESECA and the above statements in the conference report, it seems clear that FEA could properly have adopted different, less time-consuming procedures.

In April 1975, during debate on the Senate version of the bill that was to become the Energy Policy and Conservation Act, Senator Randolph criticized FEA's failure to issue any coal-conversion orders and the agency's "conservative" methods of implementing the statute. 121 Cong. Rec. S 5606 (daily ed., Apr. 9, 1975). Yet, Senator Randolph proposed, and the Senate adopted, an amendment extending FEA's authority, without change, for six months, from June 30 to December 31, 1975.

³ In addition, the regulation calls for a "programmatic" environmental impact statement relating to the over-all coal-conversion program. 10 CFR § 305.9(a).

In July 1975, the House bill was reported. H.R. Rep. No. 94-340, 94th Cong., 1st Sess. It went beyond simple extension and broadened FEA's coal-conversion authority in certain respects,⁴ i.e., the House bill provided the basis for the amendments to ESECA that were ultimately enacted. Highly relevant to the present issue are the following statements in the House report (p. 101):

The bill does not propose any major changes in the program under ESECA at this early stage in its implementation. What is provided is an extension of the scope and duration of FEA's authority. * * *

Thus, it is proper to conclude that, when Congress re-enacted the coal-conversion provisions in December 1975, it ratified or at least acquiesced in the basic means of implementation chosen by FEA.

It could be argued that Congress' action in 1975 rested on the assumption that, in the near future, there would be substantial results from FEA's program. Still, this possibility does not alter our conclusion that the reenactment of the coal-conversion provisions supports the legality of FEA's approach. This is not to say, however, that FEA is precluded from adopting more flexible procedures.

b. *Nature of findings.*—According to Mr. Parker, in a number of respects, the finding formats developed by the Office of the General Counsel are overly detailed and go beyond both the statutory requirements and standards warranted by the nature of the data. For example, his March 15 memorandum discusses the format for the coal-availability finding. (Under § 2(b) (1) (B) of ESECA, to support a prohibition order, FEA must find "that coal and coal transportation facilities will be available during the period the order is in effect.") The format includes some ten tables concerning national or regional supply or demand. Mr. Parker states that such detailed tables, setting forth annual projections for the period 1980 to 1985, are unnecessary and that, to a great extent, the forecasts are merely guesses.

Mr. Heffernan's memorandum states that the Act requires FEA to demonstrate that coal will be available in the future and that, in view of the nature of particular powerplants, environmental requirements and the condition of the railroad industry, FEA must make site-specific findings.

The issue here is the amount of detail required to support the coal-availability finding. We are not able to assess Mr. Parker's criticism of FEA's current practice. It appears that the differences between his views and those of the Office of the General Counsel relate not to legal issues, but to matters of judgment or agency discretion. Resolution of such matters is for your agency, taking into consideration the statute and its legislative history, the June 30 deadline, the nature of the underlying data, fairness to the regulated companies, and the risk of adverse court decisions.

Another specific issue raised by Mr. Parker relates to the practicability finding. (ESECA § 2(b) (1) (A) requires a finding that the burning of coal by the plant, in lieu of natural gas or petroleum products, is "practicable.")

Mr. Heffernan states, on the basis of the 1974 conference report, that FEA must determine two aspects of practicability—economic feasibility, i.e., the ability of the company to raise the capital needed to finance conversion to coal; and reasonableness of costs, i.e., determining whether the costs of converting to coal are reasonable in light of the benefits to be obtained. Mr. Parker maintains that the latter test is not required by the statute.

This matter is discussed in the December 5, 1975 memorandum of Messrs. Carlson and Yohalem of the General Counsel's Office. They stated that, in the June 1975 prohibition orders, the practicability findings were based "principally, if not exclusively," on consideration of the company's financial capability to absorb the costs of all prohibition orders. In light of their interpretation of ESECA and FEA's regulations, they recommended determining, on a plant-by-plant basis, "reasonableness" of costs. That recommendation was followed.

In our opinion, it is proper for FEA to determine the reasonableness of the costs of complying with a prohibition order. As noted in the December 5 memorandum, such practice is consonant with the terms of the statute and is required by FEA's regulations. See 10 CFR § 305.3(b) (2).

c. *Nature of notice of effectiveness.*—As noted previously, ESECA, as enacted in 1974 and as amended, provides for expiration of FEA's "authority to issue [cost-conversion] orders." 42 U.S.C. 792(f) (1975 Supp.). FEA has interpreted

⁴ The House amendments to ESECA reflected recommendations made by FEA. See FEA's April 1975 report, Implementing Coal Utilization Provisions of Energy Supply and Environmental Coordination Act, pp. 12-15.

the deadlines as applying to issuance of, *e.g.*, a prohibition order, not to the subsequent step of issuing a notice of effectiveness. In his March 15 memorandum, Mr. Parker asserts that in fact the notice of effectiveness is the "order." That is, he maintains that the June 30, 1977 deadline pertains to issuance of notices of effectiveness. We disagree.

The statute itself distinguishes between issuing an order and the order's taking effect. See, *e.g.*, § 2(b)(3)(A) and (B); 42 U.S.C. 792(b)(3)(A)-(B) (1975 Supp.). Thus, in our view, FEA's original interpretation was warranted by the terms of § 2. Moreover, Congress was aware of that interpretation. Thus, this is precisely the kind of matter which can be regarded as having been ratified through re-enactment of the statute.

d. Short-term ordering authority.—The 1974 Act provided special procedures for prohibition orders applicable to a period ending by June 30, 1975. See § 2(b)(2); 42 U.S.C. 792(b)(2) (1975 Supp.). No such orders were issued.

According to Mr. Parker's March 15 memorandum, such orders could have had significant coal-conversion effect and the failure to issue any short-term orders (as well as the neglect of authority to issue prohibition orders to existing coal-fired plants) is an indication that FEA's methods of implementation were overly complex.

The April 1975 FEA report states (p. 2) that, because coal was in short supply during 1974, FEA decided to concentrate on its long-term authority.

This matter seems to relate to agency priorities, as well as procedures. This Office is not in a position to evaluate the questions of policy raised by Mr. Parker.

3. CONCLUSION

For the reasons indicated above, we are unable to suggest resolution of the main issues raised by Mr. Parker which involve questions of policy rather than law. Most of the matters in question, *e.g.*, the amount of detail or analysis required to support a finding, are such that FEA has leeway in resolving them. While it can be said that the statute does not *require* that degree of detail, it is also clear that the statute authorizes FEA to make the determination of how much detail should be provided.

We hope that, despite the limited nature of our response, it will be of assistance.

Sincerely,

JOHN M. HARMON,
Acting Assistant Attorney General,
Office of Legal Counsel.

Mr. BARRETT. By that I mean the interim report.

Mr. O'LEARY. Yes. As you know, I want an open shop.

Mr. BARRETT. If I can recapitulate, June 30, 1977, the agency's authority to issue orders will expire.

Mr. O'LEARY. I didn't say that, if that is a recap, Mr. Barrett.

Mr. BARRETT. In any event, no orders have been made effective?

Mr. O'LEARY. Let me recap my testimony, if I may. I said in my opening statement I regarded it with considerable chagrin that 3 years into the program as a result of a mix problem of the way the program was administered and the statutory framework against which it was administered we had not shifted a single drop of oil or molecule of gas to goal.

Mr. DINGELL. I think Mr. O'Leary is as outraged on this matter as I am. I don't think Mr. Barrett's comments are critical of you or my comments critical of you. I want that clear in the record. I have great respect for you as a fine public servant, as I said.

Mr. BARRETT. So far some \$10 million has been invested in the program over the last 3 years. FEA is requesting an additional \$8 million just for next year. You have been critical of the statutory and regulatory framework and administration of the program to date. Why should another \$8 million be invested in this program?

Mr. O'LEARY. It is a matter of salvaging what you can from it. We have a substantial investment. I think it is more than \$10 million. It is up to—I am sorry, I think you are probably about right, the investment to date has been about \$10 million and we are asking for \$5.8 million next year. That statute, as interpreted by FEA in its history of interpretation, required substantial investment to achieve a change. I want to tell you the leverage of this kind of program is enormous. The \$10 million relative to the investment that will have to be made by the affected utility industry is really a very modest part of the total investment that is contemplated in this entire program.

In order to burn the coal, the utilities are not simply going to be able to resurrect their old equipment, they are going to have to add air pollution control equipment as well and over this, what is it, 78 utilities that we are dealing with—the number of utilities we are dealing with, that approaches 100. It is going to be a very substantial investment. Unfortunately, this is one of the long leadtime items.

I think counsel understands that and I am a little bit at a loss as to why he is saying, "Why are you spending this money," when it is evident we are spending the money to get a result that is some years off in the future, trying to preserve as much of the work as has been done and not simply dropping the ball now and losing the benefit of all we have done.

In fact when I appeared before the Senate committee on the new legislation, I suggested that we ought to have at least a 6-month extension of this piece of legislation, the ordering authority, which, as you point out properly, expires at the end of June. And, as I reconsider that, I think probably we ought to have an open-ended extension of the ordering authority under the EPCA rules so that there is no skipping of beats between the ESECA-EPCA program and the new program that hopefully will be a successor sometime this fall.

Mr. DINGELL. If counsel will permit, I have some of the same concerns being expressed by Mr. Barrett here as I am sure do you and our concern is not that you should not have the money but our concern is that the money should be spent in the most effective fashion.

Mr. O'LEARY. We are absolutely together on that concern, Mr. Chairman.

Mr. DINGELL. I think our joint concern, yours, mine, and Mr. Barrett's and that of the entire subcommittee is we should give you the authorities which you need for coal conversion.

Are we to anticipate this will be a matter on which we will have a presentation of legislation? Shall we request a drafting service or undertake the matter ourselves?

Mr. O'LEARY. There is at the moment a joint effort going forward between the administration and Mr. Jackson's committee in the Senate, and we would like very much to begin early to share that experience with you so that we can find a common product. I will ask the staff to begin to work with your people if you will designate a staff member to work with us so we can march up this particular important hill together.

Mr. DINGELL. We will see to it that that is done and one of our staff will be in touch with you in order to see who will be designated to carry that project forward. This coal conversion has been a source of vast dissatisfaction to all of us.

I yield back to counsel.

Mr. BARRETT. Mr. O'Leary, you know who Jerry Parker is?

Mr. O'LEARY. Mr. Parker is in the room, yes. The young man whose face you can barely see behind me.

Mr. BARRETT. You are familiar with his complaints about the coal conversion program?

Mr. O'LEARY. Yes; that was the stimulus for my request that outside counsel from the Department of Justice come and look at the project.

Mr. BARRETT. Do you know the reason it is not working?

Mr. O'LEARY. We discussed this and he said that memorandum arose from his vast frustration of 2 years' exposure to that program.

Mr. BARRETT. He in fact wrote two memoranda; one February 9 and one February 25. You have seen them both?

Mr. O'LEARY. Yes.

Mr. BARRETT. I would ask that we be permitted to include those two memos in the record at this point.

Mr. DINGELL. Without objection, so ordered.

[The documents referred to follow:]

FEBRUARY 25, 1977.

MEMORANDUM FOR MY PERSONAL FILE

From: Gerald J. Parker, Deputy Director, Office of Coal Utilization, Energy Resource Development, Federal Energy Administration.

Subject: Federal Energy Administration (FEA), Implementation of the Energy Supply and Environmental Coordination Act (ESECA), Coal Utilization Provisions.

I. BACKGROUND

Within the last week, I have been advised in separate private meetings with my Office Director, James S. Rubin, and with Deputy Assistant Administrator Robert I. Hanfling that termination of my employment at FEA had been proposed by unnamed FEA officials; Messrs. Rubin and Hanfling both indicated that they had personally opposed any such action. The reason that I had come under attack is my criticism of FEA's implementation of the coal utilization provisions of ESECA.

II. PURPOSE

The purpose of this memorandum is to document this situation, as of February 25, 1977, in case any forthcoming adverse personnel action should require a detailed factual presentation. Hopefully, this memorandum will not be needed and will remain unread and in my personal file at home.

III. SUMMARY

Based on my 30-month involvement with FEA's implementation of ESECA, I consider this FEA effort to be a failure. During the last few months, I have openly and formally expressed my views within the FEA program office, the Office of Coal Utilization (OCU), and the Office of General Counsel (OGC). I have done so out of a desire to help shape a more successful coal utilization program; frankly, such success is important to me on a personal accomplishment basis as well as for its national energy impacts.

The three topics which I cover in this memorandum are: (1) the extent of the failure in the FEA ESECA program, (2) the reasons for this failure, and (3) my involvement and actions to date. The FEA failure to which I refer is clearly indicated by the lack of any significant ESECA order-issuance activity.

I attribute this failure to three basic problems (in order of importance): 1. ineffective program management; 2. sophisticated and time-consuming methodology; and 3. inadequate number and expertise of staff personnel.

Throughout my program involvement, I have been critical in regard to these problems; my only regret is that, in a few instances, my frustrations have resulted in some heated emotional dialogue.

IV. FEA FAILURE TO IMPLEMENT ESECA

A. *Significance of Orders Issued to Date.*—To date, FEA has issued: one round of thirty-two (32) June 30, 1975, utility powerplant Prohibition Orders, several rounds of utility powerplant Construction Orders, and no industrial Major Fuel Burning Installation (MFBI) orders. Due to OGC's overly stringent standards for NEPA documents, no Notices of Effectiveness (NOE's) have yet been issued for these Round I utility powerplant Prohibition Orders; these orders involve the less environmentally controversial units as well as a large number of coal/gas dual capable units in the Midwest which have by necessity switched to coal-firing anyway. All Construction Orders issued to date affect powerplants previously designed for coal-firing by the utility, itself, and are therefore not really significant (although much public relations activity stemmed from these Construction Orders).

B. *Order Issuance Failures to Date.*—The order-issuance failures can be divided into two categories. First, there are ordering authorities which FEA has totally neglected. The second category involves the FEA's order issuance date projections which have been continually slipped to the point where the approaching June 30, 1977, statutory deadline many preclude any real success at all.

1. *Totally Neglected Authorities*

a. *Short-term Orders*—ESECA provided a one-year short-term ordering authority which enabled FEA to issue Prohibition Orders effective through June 30, 1975. These orders would not have required FEA to follow the more complex procedural aspects of the long-term orders; nevertheless, the powerplants converted due to these short-term orders probably would have continued burning coal once the switch was made.

NO SHORT-TERM ORDERS WERE ISSUED

b. *Existing Coal-Fired Powerplants*—The ESECA Conference Report explicitly directs FEA to issue Prohibition Orders to existing coal-fired powerplants. These actions would be relatively noncontroversial but would ensure that the approximate 50 percent of the Nation's generation which is already coal-fired would remain coal-fired.

No Prohibition Orders to existing coal-fired powerplants have been, or are planned to be, issued.

2. *Order Issuance Schedule Slippage*

Without going any further back than March 1976 when OCU's current Director took charge, a history of failure to meet established ordering goals is evident.

To illustrate this history of schedule slippage, I have tabulated below the commitment dates for issuance of Notices of Intent (NOI's) to issue Round II utility powerplant Prohibition Orders and the initial MFBI Prohibition and Construction Orders from five (5) FEA documents: Document 1, briefing package for Frank Zarb—Russell Train FEA/EPA Joint Meetings; Document 2, ESECA Report to Congress; Document 3, OCU Director's ESECA Implementation Schedule to DAA Hanfling; Document 4, ESECA Status Report (No. 12) from W. G. Rosenberg to Frank Zarb; and Document 5, Utility Projects Program Planning Sheets.

TABLE OF SCHEDULED NOI ISSUANCE DATES

Scheduling document—Document date	Scheduled NOI date for utility Round II prohibition orders	Scheduled NOI date for MFBI prohibition orders	Scheduled NOI date for MFBI construction orders
1—Apr. 1, 1976	July 1976	October 1976	Not specified.
2—Apr. 29, 1976	Summer 1976	December 1976	(¹)
3—July 15, 1976	November 1976	January 1977	February 1977.
4—Sept. 21, 1976	do	February 1977	March 1977.
5—December 1976	February 1977	March 1977	April 1977.

¹ Report indicates that construction order questionnaire would be forwarded to GAO in May 1976 for clearance. Questionnaire was actually transmitted in December 1976.

Thus, on February 25, 1977, the FEA finds itself with four months of ordering authority left without having issued NOE's for Round I utility Prohibition Orders nor NOI's for Round II utility Prohibition Orders. In the MFBI sector, no orders have yet been issued during the thirty-two (32) months since the passage of ESECA.

When FEA's total neglect of certain ESECA ordering authorities is considered along with the extensive order-issuance schedule slippage, I can only evaluate the ESECA program as a failure.

V. REASONS FOR ESECA PROGRAM FAILURE

I attribute the failure of FEA's ESECA program to three basic problems. The most important problem, by far, has been the ineffective program management by the Office Director which, as a result, has enabled the other two problems to occur. Secondly, the sophisticated and time-consuming methodology promoted by OGC coupled with the failure of OCU to demand a reasonable and organized level of effort is a major contributing factor. The third basic problem, and an area of agreement between the OCU Director and myself, is the inadequate number and expertise of staff personnel; a problem which, unfortunately, has been exacerbated by the Office Director's ineffective management.

A. Ineffective Program Management.—Once again, I will address my comments to the period beginning March 1976 when the current Director took charge (although equally bad management had been the case prior to this time as well). The ineffective management I refer to stems mostly from the failure of the Director to perform the basic tasks of a manager; no significant effort has been made to organize and plan work tasks, make schedules, set deadlines, and operate through an orderly chain of command. Additionally, the Director has been opposed to preparation of formal instructions to OCU staff to accomplish program control.

The Director's view that he is a competent manager coupled with his philosophy of being personally involved in all activities and decisions, have defeated any efforts on my part as Deputy Director or on the part of other OCU staff personnel to initiate better management control of the program. The Director substantively involves himself in all levels of OCU activity in a rather chaotic fashion with little attempt to direct and prioritize activities with the OCU Division Directors. In many instances, this has resulted in disjointed and misdirected staff work.

The results of the management style I have described above can be illustrated in several areas. OCU's dealings with the FEA Regional Offices have resulted in a uniformly hostile Regional Office attitude towards OCU's chaotic management style. Similar attitudes exist in other offices which have had contact with OCU.

On the other hand, OGC has been quite comfortable with the disorganized OCU program management style. Without established specific deadlines for issue resolution, format development, etc., OGC has proceeded in an extremely slow pace with no specific level of effort defined (with supervision of the OGC ESECA effort recently being taken over by Jim Heffernan, a marked improvement in timely OGC support has resulted).

B. Program Methodology.—My February 9, 1977, memo to Jim Rubin on "Level of Legal/Technical Sophistication Necessary to Support ESECA Orders" fully documents my views on this problem. It was this memo (Attachment 1) that triggered the hostility towards me by the OCU Director and OGC ESECA staff.

C. OCU Staff Difficulties.—Given the ineffective program management by the OCU Director, the problems with the number and capability of OCU personnel become even more critical. Without addressing specific individuals by name, I will give an overview of staff difficulties.

The limited number of OCU staff (currently thirty-seven (37)) does represent a constraint on program output. To fully implement ESECA, FEA should be investing more personnel into this effort.

The capability of the current OCU staff (both at the senior staff and operating levels) is an even more important problem. Of the OCU personnel who attend senior staff meetings, one individual has not been assigned any substantive program assignment at all and another senior staff member openly admits that he has not contributed to OCU's order-issuance activities within the last year (he claims due to lack of any substantive assignment from the Director). The two key operating Division Directors are well-motivated individuals but lack any real management experience.

At the operating staff level, a number of problems exist. At least three GS-14 level staff members are not being utilized; this stems both from the lack of demonstrated output capability on their part and the management problems which I have previously described. Two general staff-level problems are the under-utilization and mismanagement of capable OCU staff members as well as the utilization of personnel who should not be handling certain assigned tasks.

VI. MY INVOLVEMENT AND ACTIONS TO DATE

In this discussion, two items are presented. First, I will outline a brief chronology of my personnel status over the last 30 months. Second, I will discuss the history of my criticism of the FEA ESECA program.

A. *My Personnel Status in ESECA Program.*—

1. *September 1974 to August 1975.*—Staff Chemical Engineer in Industrial Analysis Division reporting to Bob Riggs, and, subsequently, Frank Lalley.
2. *September 1975 to December 1975.*—Powerplant Engineering Branch Chief supervising two engineers and reporting to Frank Lalley.
3. *January 1976.*—Transferred out of OCU via detail to Office of Environmental Analysis, Deputy AA for Finance and Environment, to serve as Deputy Director, OEA.
4. *February 1976.*—Returned to OCU when selected by Bob Hanfling to serve as Deputy Director and Acting Director, OCU.
5. *March 1976 to May 1976.*—Deputy Director, OCU, reporting to Jim Rubin, Director, OCU.
6. *June 1976 to Present.*—I assumed duties of Environmental Coordination Division Director in addition to Deputy Director responsibility.

B. *My Criticism of FEA ESECA Program.*—Prior to February 1976, I was not involved at the OCU Senior Staff level. I reported to Frank Lalley instead of reporting to the then-Office Director, Judith M. Liersch; a primary reason for this was my criticisms to Ms. Liersch regarding what I foresaw as the failures I have documented elsewhere in this memorandum.

Upon Ms. Liersch's departure in February 1976, Bob Hanfling and I discussed my views on the program's faults and management difficulties and he asked that I return from OEA to OCU to serve as Deputy Director and Acting Director. Apparently, Mr. Hanfling believed my criticisms to be valid and desired to use my concepts of ESECA program management.

In March 1976, Mr. Rubin took over as Office Director. For the first month or so, I was impressed with his ability to learn the substantive aspects of the ESECA program. Unfortunately, his lack of management ability (as previously described) also became evident.

By September 1976, when established order-issuance dates were being missed and there were no signs of adequate firm management by the Director to stop this schedule slippage, heated debates at staff meetings, and in private, began between us. He recognized that my concern for organization, planning, and deadlines were aimed at achieving a successful ESECA program and, at this point, accepted my criticism without overt hostility towards me.

In December 1976, I formally (in writing) proposed to Mr. Rubin that he adopt an organized approach and agenda for staff meetings. Prior to this time, all staff meetings basically followed a "stream of consciousness" approach with no effort on his part to prepare written material on topics and action items to be covered. He has since made attempts to structure these staff meetings with favorable results (although much chaos still exists).

Due to a desire not to circumvent or undercut Mr. Rubin, I did not criticize his management to Mr. Hanfling until December 1976. Although Mr. Hanfling had sensed my concern and had asked about the situation as far back as the summer of 1976, I had refrained from criticizing Mr. Rubin and remained an OCU apologist by saying that "there is still time to get the job done." By December 1976, I could no longer say that because I didn't believe it.

At the beginning of February, I openly criticized both Messrs. Hanfling and Rubin in a brief meeting with all three of us in attendance; I criticized Mr. Hanfling for his lack of attention to the OCU ESECA efforts and criticized Mr. Rubin for his ineffective management (which I have previously described in this memo).

After sitting through several meetings during the first week of February with OGC and OCU staff in which more issues were generated than were resolved, I wrote a February 9, 1977, memorandum regarding this level of methodology "overkill" (Attachment 1). Both Mr. Rubin and Mr. Hanfling became quite upset

and indicated to Mr. Hanfling that my memo represented a grave legal problem for FEA since it undercut FEA's order finding methodology. Since my memo criticizes the findings effort as being *too* diligent and rigorous, I don't see how my imploring expediency over excellence could impugn FEA's findings; I believe OGC's ire stemmed more from embarrassment than legal concern.

This February 9, 1977, memorandum does contain some inflammatory language which I now regret using. My page one parenthetical reference to the methodology perfectionists as being "(obstructionists)" was ill-advised. To the extent that my use of the term "data manipulations" might be misconstrued to imply fraud or deception, it was a poorly chosen phrase. However, if one looks at the context in which this phrase was used as well as the four specific examples of "data manipulation" provided on page three, no such assertion of fraud or deception can be implied by the use of this phrase. The Webster's New Collegiate Dictionary definition of the "manipulation" to which I referred is "to treat or manage with the intellect."

Finally, the derogatory comments in my memo regarding regulatory attorneys were a "tongue in cheek" method to assure that adequate attention would be given to this serious methodology, "overkill" problem. Perhaps my February 9, 1977, memo is not the sole reason, but in the last few weeks OGC and Mr. Rubin have displayed a much more pragmatic approach than in the past.

On February 24, 1977, Bob Hanfling asked me to comment on a February 23, 1977, OGC memorandum which contained a draft memo for Mr. Hanfling's signature (Attachment 2). This draft memo which repudiates me, personally, was to represent a "fix" for the alleged potential legal harm caused by my February 9, 1977, memo. Attachment 3 is the brief personal note in which I describe my thoughts on the situation to Mr. Hanfling. As of today, February 25, 1977, I don't know what Mr. Hanfling plans to do about the "fix" memo (I have not received my copy of it if he has signed it).

Attachments.

ATTACHMENT 1

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., February 9, 1977.

MEMORANDUM FOR JIM RUBIN

From: Jerry Parker.

Subject: Level of legal technical sophistication necessary to support ESECA orders.

This memorandum is to present my views on what I consider to be OCU's "overkill" level of legal and technical sophistication being applied to the ESECA order issuance process. As you are aware, I have been advocating a simplicity of approach from the inception of FEA's coal conversion program; any concern I might have at this point that I might be attacked as simple minded or superficial for taking this position is outweighed by the rapidly approaching June 30, 1977, deadline which will render all of our activities useless unless we begin to expedite immediately. Let me frankly add that I am formalizing my thoughts herein in an attempt to put pressure on you and on other "perfectionists" (obstructionists) to adopt a level of effort which will give us an outside chance of meeting the June deadline.

To support my position that we are "guiding the lily" in our technical analyses and legal approaches I will address three topics: (1) statutory requirements, (2) sensitivity of data which is being manipulated, and (3) pragmatic program planning dictated by deadlines. As a paralegal thinker, I will timidly attempt to make a legal argument for simplicity. As a sophisticated (sic) engineer I will try to explain my position that many of our time-consuming technical gyrations go beyond the sensitivities and tolerances of the data being manipulated (in most cases for analytical estimating exercises anyway). Finally, as a skeptical pragmatist, I will stress the limited time left to the program to accomplish our ordering goals.

STATUTORY REQUIREMENTS

At the outset of FEA's ESECA efforts, a decision was made not to use a "shotgun" approach to ordering activities but to hone in with a "rifle" approach. Although it was agreed that the mere two (2) pages in ESECA dealing with FEA's authorities to issue orders could have been implemented in rather simple, broad-based fashion, a conscious decision was made to do detailed engineering,

financial, and coal availability studies to support "findings". In fact, it is only in the lengthy and complex Section 3 of ESECA that the promulgation of regulations is specifically mentioned (and those for EPA only). Section 2 of ESECA does not establish any such regulation promulgation requirement for FEA (although I admit some simple implementing regulations make sense from a procedural standpoint).

Early in the program, Congressional critics of FEA's progress with the ESECA program made it quite clear that a much more expeditious and less rigorous approach was envisioned when the quasi-emergency ESECA was passed. In fact, the position was taken by some that it was to be during public hearings that the order recipient candidates would have the opportunity to make a full and detailed case upon which FEA could narrow its broad findings into a final decision; a full and detailed case which was best left to them to make anyway.

Further support for a much simpler approach to order issuance is found in the ESECA Conference Report's mandate that FEA issue prohibition orders to all existing coal-fired powerplants. The reason that FEA has abdicated this mandatory responsibility is that our complex site-specific time-consuming approach makes it impossible to issue such orders. Obviously, Congress had a much simpler process in mind.

Enter esteemed regulatory attorneys; exit simplicity reasonableness, and timely program results. President Carter definitely has attorneys pegged right.

TECHNICAL ANALYSIS SENSITIVITY AND DETAIL

The application of the legally-trained (but engineering-wise ignorant) mind to the ESECA program has resulted in analyses and data manipulation which go beyond the accuracy tolerances of the data, itself, or are not justified by the nature of the predictive exercise involved. My position here is that we should strive for accuracy and reasonableness at a certain level of effort and eliminate unneeded time-consuming data manipulations. The following few specific examples from recent debates in your office are illustrative:

With the inherent and acknowledged uncertainty of forecasting fuel prices, it seems wasteful to spend the extensive analytical time we have (and will) to develop exacting numbers forecasting capacity factors, remaining useful life, etc; they all go into the same predictive equation and figures based on reasonably sound assumptions should suffice.

In regard to capacity factor, the systems planning difficulty in forecasting nuclear power availability through 1985 and similar uncertainties do not justify the fine-honed attempts to predict supposedly accurate specific capacity factors: I again suggest eliminating all obvious peaking units from consideration but assuming a minimum of 55 percent capacity factor for all of our remaining candidates.

The degree of detail in the coal finding still appears to me to be unneeded and, in some cases, inaccurate due to the limitations of quantitatively forecasting coal production for the next ten years. Again I remind you that ESECA was passed, in part, to spur increased coal production (since everyone knows we have 500 years of available coal).

The many MFBI site visits to get detailed first-hand engineering (and other) information are not needed; for all issues (and even for the land/space availability question) written submissions or phone contact should suffice (perhaps a valid PR purpose is being served at these visits, but it hasn't turned out that way in the past).

PROGRAM PLANNING (STATUTORY DEADLINE) REQUIREMENTS

The four month ordering available to us under the statute represents the most compelling argument for simplicity and expediency. There are just too many unresolved conceptual, philosophical, format, analytical techniques and "nuts and bolts" procedures at this point to allow rigorous time-consuming approaches.

From an overall scheduling standpoint I believe we are constrained by the following timetable for our orders:

February 20.—Resolution of all legal, conceptual, philosophical, and analytical technique issues.

March 1.—(1) All above translated into specific formats and procedures; and (2) All analyses completed.

March 15.—(1) OCU production and transmittal to OGC of all NOI's; and (2) Arrangements and support completed for all public hearings.

April 1 through May 15.—(1) Hold all public hearings; and (2) Ongoing review of all public hearing input.

May 1 through June 1.—(1) Final decision on all orders after public hearing input; and (2) Ongoing production of final orders (revision of findings and preparation of "discussion" sections in orders).

June 15.—(1) Final, glossy, agency-approved orders issued; and (2) Completion of all support items (press releases, order receipt verification, etc.).

Clearly, the above schedule dictates that all legal and technical requirements be met in an expeditiously reasonable fashion.

SUMMARY

Based on the above legal, technical, and pragmatic views, I would implore that reasonableness and simplicity be our guiding rule. Specifically, I believe OCU as the Program Office should not follow OGC's lead in nitpicking the hell out of the analytical and procedural aspects of the order issuance process.

Everyone's concern at this point should be to settle upon the level of effort and degree of sophistication required. Unfortunately, our current mode of operation is basically a "Spanish Inquisition" approach whereby more and detailed questions are continually being asked by OGC, you, and others, which subsequently lead to more rigorous and complex analysis (which then lends itself more easily to further debate).

Let me close by admitting that, in part, I have herein presented a strong emotional advocacy of expediency over excellence; better expediency than total failure. After all, the level of effort which we are now expending is a lot more rigorous than the one-page letter order format from the FEA Administrator to an order recipient which many in Congress envisioned when ESECA was first passed.

ATTACHMENT 2

FEDERAL ENERGY ADMINISTRATION,
OFFICE OF THE GENERAL COUNSEL,
Washington, D.C., February 23, 1977.

Memorandum for: Robert I. Hanfling, Deputy Assistant Administrator for Energy Resource Development.

From: James H. Heffernan, Office of General Counsel.

Subject: Draft response to February 9, 1977, memorandum concerning support for ESECA orders.

Attached pursuant to your request is a draft memorandum for your signature on the subject of a February 9, 1977, memorandum from the Deputy Director, Office of Coal Utilization, concerning evidentiary support for ESECA orders. I am also forwarding this draft to Eric J. Fygi and Harry M. Yohalem for their review.

Should you have any questions on the content of the proposed draft, please contact me.

FEBRUARY 23, 1977.

Memorandum for: James H. Heffernan, Office of General Counsel.

From: Robert I. Hanfling, Deputy Assistant Administrator for Energy Resource Development.

Subject: February 9, 1977, Memorandum Concerning Support for ESECA Orders.

This memorandum is in response to a February 9, 1977, memorandum from the Director, Office of Coal Utilization, from the Deputy Director, Office of Coal Utilization, on the general subject of the legal and technical bases of the ESECA program.

While all members of my staff enjoy complete freedom of expression and are, of course, encouraged to express their views on matters of importance to the office and to FEA, I find it necessary to respond formally to a number of the substantive observations which were contained in the memorandum of February 9.

It is contended in that memo that "... our time consuming technical gyrations go beyond the sensitivities and tolerances of the data being manipulated." In my opinion this is a misconstruction of the evidentiary, informational, and statistical underpinning of the ESECA program. Indeed, through a collegial effort

involving ERD, OCU, OGC, and others, the ESECA program has become both increasingly sophisticated, as well as efficient.

The ESECA program has required the implementation of a major and complex regulatory program in a new area of Federal involvement. Implementation of this program has required brand new Federal information and data gathering in such areas as coal availability and coal transportation. ESECA has thus imposed upon FEA entirely new kinds of regulatory and administrative requirements. It is not unexpected, therefore, that any such new regulatory program has involved some evolutionary frustrations associated with requirements for new programmatic decisionmaking.

Notwithstanding these considerations, it is my professional assessment that the Notices of Intention to Issue Orders and all of the subsequent Orders which have been issued by FEA have been predicated upon a substantial evidentiary foundation that has resulted from an exhaustive agency information gathering effort. This effort is continuing without interruption. While the findings which FEA must make under ESECA before Orders are issued constitute a substantial administrative burden, it is my considered opinion that all of the Prohibition Orders and Construction Orders which FEA has issued have been predicated upon a legally sufficient basis. It is also my considered opinion that FEA's ESECA regulations, which form the basis for the procedures that are employed by FEA in the preparation and issuance of its respective orders, constitute a legally and logically concise regulatory mechanism. This regulatory program is of legal necessity complex in some of its facets. Compliance with basic requirements of administrative law does not, however, mean that the ESECA regulatory mechanism is either inefficient or that it results in data being manipulated. To the contrary, it is my opinion that the current ESECA regulatory program is a well thought-out implementation of the basic ESECA statute.

On balance it is my professional assessment that, within the scope of ESECA, as currently constituted, FEA, and in particular the Office of Coal Utilization and the Office of General Counsel, have performed in an efficient and cooperative fashion in implementing the ESECA program. The collegial efforts of the Office of Coal Utilization and the Office of General Counsel have resulted in the issuance of numerous Notices of Intention and numerous Orders, which, in my opinion, have received necessarily thoroughgoing, accurate, and detailed administrative preparation and review. Such consideration of the requisites of both the general body of pertinent administrative law and of the requirements of ESECA has resulted in the issuance of legally sufficient ESECA Orders which are predicated upon a legally proper evidentiary and informational base.

I also wish to observe that I personally neither endorse nor agree with any of the derogatory remarks which were contained in the February 9, 1977, memorandum concerning the FEA Office of General Counsel or the caliber of its legal representation in regard to the ESECA program. In my opinion the dedication and competency of the ESECA staff within the Office of General Counsel has been consistently demonstrated throughout the implementation of the ESECA program. I personally evaluate the legal support which the Office of General Counsel has provided to the ESECA program to have been of the highest order of professional accuracy and excellence.

ATTACHMENT 3

FEBRUARY 24, 1977.

Re Attached "Fix" Memo.

BOB HANFLING: Privately, over lunch, I reviewed the proposed "fix" memo. I did so in the context of your assurances that you realized my purpose in writing and, to a lesser degree, the validity of my 2/9/77 memo, as well as your assurances of my secure status under your supervision.

At first, I was tempted to do some word engineering to make it read better since there are serious construction/concept problems with the "fix" memo itself. Upon reflection, I realized that I still stand by my original assertions in the 2/9/77 memo and do not want to participate in my own repudiation.

Three questions which I believe are pertinent to your decision as to what to do with the memo are:

1. Does my memo really represent a legal problem for the agency? Has OGC adequately convinced you of that fact?
2. Do you open yourself up to legal and/or personal embarrassment for repudiating my memo "on the record" in this fashion?

3. Based on a close reading of the assertions in my memo, do you really think OGC's presentation of the situation is closer to the truth than mine?

Finally, let me reiterate that I fully understand your need to appease OGC and others by taking some action in this matter. I will not hassle you no matter what your decision is.

Thanks for giving me the chance to look it over.

JERRY PARKER.

Mr. BARRETT. What did you do about his complaint besides request the Department of Justice to check out the legal implications?

Mr. O'LEARY. I discussed both complaints with him and with the General Counsel's office in an effort to reconcile the two very divergent views I had there, pointing out that I regard this as a very serious matter and one that indicated that if Mr. Parker was right, that we would have to have substantial shifts, including probably personnel shifts within the organization—that if Mr. Parker was wrong, we would have to have substantial shifts, including personnel shifts within the organization. I then thought, because there was a good deal of polarization on these issues, what we needed was an outside view and at that point I went to counsel in the Department of Justice hopefully to get that outside view of the program.

Mr. BARRETT. Referring to the personnel issue, you are referring to a shift of Mr. Parker?

Mr. O'LEARY. I think if Mr. Parker's charges turn out to be invalid, Mr. Parker's utility for that program would be seriously jeopardized.

Mr. BARRETT. Did you have anyone inside the FEA investigate the issue of Mr. Parker's charges?

Mr. O'LEARY. I made a very preliminary stab at it, Mr. Barrett, immediately on hearing the charges and reading the memorandum. When the memorandum was brought to my attention, I consulted with the people involved in the program and with the General Counsel's office and, of course, with Mr. Parker. It became evident that (a) because of the long history of involvement of the General Counsel's office in this matter, we really could not hope for a totally dispassionate view that would be regarded dispassionately by an outside observer—I regard myself in that context—and have it as a pure set of legal requirements. That was the heartland of Mr. Parker's complaint. That is when I sought the Department of Justice's advice.

Mr. BARRETT. Have you asked the Office of Coal Utilization for deadline schedules or past deadline schedules they may have worked up with respect to particular phases?

Mr. O'LEARY. No. With respect to this, what I want to do is have the predicate in hand, Mr. Barrett. Are we in fact overelaborating the legal requirements in the discharge or conduct of that program? When I have that in hand early next week—it was supposed to have been at some point late last week under the original schedule—then I will be able to make the appropriate decision to the program.

Mr. BARRETT. Are you familiar with the problem that they had with respect to the issuance of regulations under this program?

Mr. O'LEARY. Not intimately, Mr. Barrett. I have heard there were delays and problems.

Mr. BARRETT. The regulations were issued for comment on March 21 of this year to implement the statute passed in December 1975. You are familiar with that?

Mr. O'LEARY. Yes.

Mr. BARRETT. Would you say that is a reasonable length of time in which to issue regulations?

Mr. O'LEARY. Mr. Barrett, would you?

Mr. BARRETT. No.

Mr. FYGI. May I speak to that? The factor that influenced the timing of the proposed rulemaking was the pace with which the programmatic environmental impact statement was prepared. Under the CEQ interpretation of scrap 2, the programmatic environmental impact statement must also be available in draft form in advance of publication of a proposed rulemaking. While it would have been possible to accelerate the proposed rulemaking, it would prove not to be possible in terms of the contractor's work schedule to complete the draft EIS, and that was the critical stumbling block in terms of the speed with which the proposed regulations went on the street.

Mr. BARRETT. Currently there is a bifurcation of responsibilities in the Office of General Counsel with respect to coal conversion and environmental impact statements; isn't that the case?

Mr. FYGI. Well, the coal conversion program is one which historically at various stages has presented issues that cut across organizational lines in the General Counsel's Office and it has been my view that it has been sufficiently important to the program to warrant giving it on those occasions pretty heavy legal support. So for that reason on various occasions we have used not only the environmental lawyers but our litigators to examine specific issues which have arisen in the course of the design and the carrying out of that program. Had we not done so, I think the pace with which the program has proceeded would have been even slower than we have experienced.

Mr. BARRETT. I gather my question about the bifurcation, the answer is "Yes"? There is a bifurcation?

Mr. FYGI. At least a bifurcation and on occasion a trifurcation.

Mr. BARRETT. You indicated there was pretty heavy legal support in the past for the program. Until Mr. Heffernan was appointed in November of last year, there was one full-time attorney and one other attorney who spent only a fraction of her time working on—

Mr. FYGI. It was a pretty significant fraction of her time that was spent on the program. But my point is that those two more or less full-time lawyers were not the sum and substance of the entire legal support available for the program. As you may know, the budgetary assumptions that have plagued FEA during the entirety of its existence have produced some distortions in terms of the real world requirements as compared to the resources in theory available to support the allocation program which has always resulted in the nonallocation side of the General Counsel's Office subsidizing the necessary requirements of the allocation side and consequently where we have had specific issues, which required a great deal of legal work in the design of the program, we have sought the assistance of the members of the litigation, which is entirely proper because obviously one of the substantial risks that has to be taken into account in a program of this nature is the degree to which it can withstand scrutiny in the courts.

So, not only have those two lawyers been working on it in the past but in many cases we use the resources of the litigation division as well as the resources of the environmental division.

Mr. BARRETT. Mr. Chairman, I have no more questions.

Mr. DINGELL. The Chair would recognize Mr. Sharp at this time for questioning.

Mr. SHARP. Thank you, Mr. Chairman.

The coal conversion program and others are of considerable importance, of course, and I want to turn to one that can have an impact but is perhaps at this point in the scheme of things much less important, that is the distribution of information, not just the collection. I think Mr. Ain will have a number of questions about the collection of information.

I think a year ago when we went through this I was not much involved but other members were concerned about publications and how they were distributed. I perceive that as a lesser policy question except I think we have come to the conclusion that we have to get good information for people who will help make judgments that will help save our energy.

What I guess I want to know is what is being done in that? That is a very nice title for the office but I had the impression before, without having done a good survey myself, that the decisions on what to publish and for what group were rather haphazard rather than having specific goals as to what could be accomplished. If we have real goals to accomplish, I am delighted to spend the money.

There is a lot of nice work done, lots of nice printing, but in terms of its relative action, it seems to be quite minimal and I am eager to have some kind of indication of whether there is a significant kind of way this is being or will be accomplished.

Mr. O'LEARY. Let me give you a kind of history of my first exposure to this program. I was at a conference in the Rocky Mountain area. I came up from New Mexico and delivered a paper and listened with a good deal of interest to the subsequent paper, which was delivered by an official of the FEA who had an acquaintance to the conservation program and I listened with scant belief, as I remember it then and now, with regard to the sorts of programs being developed, and as I think back over this, with that sort of responsibility, I think that where we are on conservation and where we are indeed on the last question, fuel switching, the coal conversion program, and where we are 4 years into the crisis and the first gallon, the first pint of oil will go into strategic stocks in July of this year, that somehow or other we were not taking all this very seriously, including the conservation side.

One of the first things I did on coming into FEA was I asked to have a comprehensive look at our conservation program and the ERDA conservation program, and on the debriefing on that comprehensive look by staff, my conclusion was that in fact the Government did not have a conservation program and I think what you are addressing now—and we will get to the publication side—is a subelement side to that.

There has been a tendency where there has been all too little attention to the substance of a matter to fluff it, and the publications I have seen and the sort of arm waving I have seen—this is not by any means confined to FEA, it is endemic to industry. They have been doing the same thing, States; my State organization when I went there was do-

ing the same thing. It is just that everybody wants to do something in conservation but nobody knows what to do.

When you get right down to it, conservation is nitty-gritty. It is not attractive or glossy, or pleasant. It requires the application of fairly commonsense rules and I think its very basic nature has militated against being indeed substantively pursued.

Let me give you one further point. At the time I asked for a review of the government-wide conservation programs we had scheduled 600 workshops. It turned out that for the bulk of those workshops the review suggested that we didn't have anything to say and we in consequence have retrenched on that program, gone back to the barn and I think Mr. Seneca, who is with us, will want to elaborate on this point.

So with regard to the publications, to the workshops, and to the other public contacts, our difficulty is one not so much of form but of substance and we have to move, I think, vigorously to attack the substance.

MR. SHARP. I would like to say I am absolutely delighted with your statement. I appreciate the fact that you, like too few of us in Government, really will say we might not have much to say even though we have a compulsion to say it anyway. I quite agree there is a definite need for this highly specific technical information. Perhaps you won't be able to get that done. We may have to get it done in the private sector. Perhaps there is a need for better understanding, which goes nicer in glossy print, for this specific and helpful information.

MR. SENECA. As far as the workshop program is concerned, as Mr. O'Leary mentioned, we had 600 of these conferences scheduled. At least for a portion of them, we came to the realization from our pilot programs that we did not have much to say.

Since that time we have restructured the program, we have pulled back and are regearing them in order to make these workshops the kind of workshops that will provide the kind of technical information you are talking about as well as restructuring some of them to talk in terms of the new initiatives that we expect to be coming out in the very near future. To reinforce Administrator O'Leary's point, we are looking at a more substantive type of program.

MR. SHARP. It dawns on me that we might be able to institute a much more effective program with private industry whereby your agency helps to identify the leaders in the field who really have something to offer and then seek ways in which to bring that information, I am sure that is obvious and difficult, especially when competitors do not wish to give up their competitive edge, and this seems to be an increasingly competitive possibility for them.

I hope as the old programs you refer to reach the new programs begun, that we concentrate much more heavily on that. I think there is an awful lot that can be done.

One more comment on the form. It is always easy for us to criticize the form. We deal in form continually in the House of Representatives. But I think the credibility of the Agency and the Government program also depends on us trying to reduce those parts that are easily criticized. What on Earth are we wasting money on this for? Unfortunately those of us in politics and the press get sidetracked on those problems, but it makes it more difficult to generate the respect and credibility we need to get cooperation and subsequent approval.

Mr. Chairman, I don't wish to drag this out, I just wanted to emphasize I think the educational element has to become a more important part of our system.

Mr. O'LEARY. Thank you. That is very helpful.

Mr. DINGELL. The gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

Mr. O'Leary, it is good to see you again.

I guess this is a love feast and I want to add to that expression of affection—

Mr. O'LEARY. Do I have any questions for you, Mr. Brown?

Mr. BROWN. If you do, we will wait until my 5 minutes are up.

It has been a love feast and I want to note the budget has been held within reasonable limits and as a fiscal conservative thing, that is a nice idea. I am startled that we have not had all these people marching through testifying against the existence of the FEA and against maintaining it in operation with the funding we had 1 year ago. I don't know what happened to all of them, but their objections must have resolved with the election returns.

I assume we will not have any battle on the floor as to whether or not FEA ought to continue or whether or not the budgeting ought to be reduced so that it can't do its job or whether or not it should be disbursed to the other agencies of Government. Rather, as some of us felt last year when we tried to maintain the FEA and its budget, I assume it will be subsumed into the new Department of Energy eventually because like anything else the Congress does, that takes time.

But I am a little concerned about two or three things that are involved and in the spirit of my colleagues last year, I think I ought to draw them to your attention.

First, I am disturbed about the idea that FEA is going to fund consumer intervention with the taxpayers' money even though there is no specific authorization for funds to be spent in that manner. The taxpayers that I represent find the vision of the Federal Government financing one side or the other or both sides of a lawsuit pretty ridiculous and a waste of money.

If someone wants to sue the Government, their feeling is that ought to be done with funds that a worthy group puts together.

I am curious how you selected the Consumers Union as representative of all consumers and how you identify them as so indigent that they had to have Federal funding. Also would you cite the authority you have to do that.

Mr. O'LEARY. Mr. Brown, I made a very, very long explanation of that before you joined us.

Mr. BROWN. Then I will look at it in the record and drop that point.

There is another concern that I have and that relates to what apparently was general agreement before I got there that the delay of the energy standards program for appliances was because the previous stewardship of the Agency didn't want to do anything about that. As a matter of fact, there were those of us who felt the Agency had no business in that. It should have been left where it was. But, at the insistence of Congress, FEA spent all its time reinventing the wheel and actually slowing and in some instances reversing processes

that had long since begun in the Bureau of Standards of the Commerce Department, which had the voluntary appliance program.

I will give you an opportunity to deny that if you wish.

Mr. O'LEARY. I don't wish to deny that, Mr. Chairman.

Mr. BROWN. So I don't think it was so much a mind set against the legislation as it was the incompetency of that particular part of the statute, which you may be aware I opposed.

Mr. O'LEARY. I would point out, Mr. Brown, that we relied on the traditional activities of the National Bureau of Standards in assisting us to discharge that statutory responsibility, so they are very much in the group.

Mr. BROWN. Another point I would like to inquire about is the million dollars set aside in ECPA for intervention in State utility proceedings. How much of that money has been spent thus far by FEA?

Mr. O'LEARY. I am sorry, I will have to confer with my colleagues.

Mr. BROWN. If you don't know, I would appreciate your supplying that for the record and also submitting for the record a tabulation of each instance of intervention and the position taken by FEA on the issues which you were addressing. Then I would like to have you also indicate whether you were asked to address the issue or whether the FEA voluntarily intervened in a situation.

Mr. SMITH. We will provide the details for the record, but in quick summary, FEA doesn't appear unless it is asked by one of the parties. In the overwhelming majority of cases the party can go to FEA to appear against the public utility and the FEA takes no position with respect to the issue before the Commission, but rather provides technical information based on the results of its own analyses and now the preliminary results of some of its demonstration projects to provide additional analysis and information to supplement the capability of the Commission staff to digest and analyze the information presented to it with respect to the specific issues.

[The following material was received for the record:]

UTILITY REGULATORY INTERVENTION PROGRAM

FEA submissions in utility rate proceedings typically consist of direct testimony, defended on cross-examination, and often supplemented by briefs. The general thrust of FEA submissions does not change from case to case, and in general has supported rate structure reform incorporating time-of-use considerations and elimination of most declining block features of present rates. Specific data and recommendations developed in the testimony, of course, differ from case to case in accordance with the varying characteristics of individual utility systems. FEA testimony typically addresses: the economic and energy rationale for rate reform, in particular time-of-use rates, as part of a comprehensive conservation strategy; appropriate costing and pricing methods for determining such rates; the costs of implementing such rate designs; the benefits of time-of-use rates; and practical recommendations for implementing a comprehensive utility rate reform and conservation program.

It is very difficult to specifically identify results from individual intervention activities, in large part because of the complex nature of the regulatory process. Utility rate proceedings typically comprise a wide range of diverse—although sometimes allied—interests competing before a regulatory commission charged with setting “just and reasonable” rates on the basis of the broad public interest. In this context, it is very difficult to point to any one party's testimony or briefs as the determinative factor in any rate decisions. However, of the cases in which

FEA has participated, decisions in four—California, New York, North Carolina and Wisconsin—substantially reflect the recommendations FEA has made. As noted above, though, it is difficult to ascribe the results to FEA's testimony in itself. Additionally, a number of proceedings FEA has participated in are still continuing, and have yet to reach a conclusion of any kind.

Because intervention program funds are not specifically allocated towards specific activities on a case by case basis, it is difficult to identify the resources charged to any one proceeding. However, Fiscal Year 1976 figures show that FEA participated in seven rate cases as a full intervenor, at an average cost of about \$32,000. Three staff positions are presently allocated to this function in the Office of Conservation and Environment.

If and when the Fiscal Year 1977 Supplemental request is appropriated, FEA would plan to fully intervene in 25 cases at an average contract cost per case of \$30,000, with the additional workload necessitating an increase of staffing from 3 to 7 positions. Caseload will increase due to the Energy Conservation and Production Act's (Section 204(2)) authorization to FEA to honor invitations from any participant in any rate case, of which there are about 250 annually for investor-owned retailers alone, and several times this number for municipals, co-ops and wholesalers. The Fiscal Year 1978 Budget request anticipates 30 full interventions with staffing remaining at seven positions.

SUMMARY OF REGULATORY PARTICIPATION

Commission, docket number and utility	FEA status	Requested by	Testimony field	Brief filed
California PUC No. 54279 et al (Pacific Gas & Electric)....	Amicus.....	Environmental Defense Fund.	-----	Apr. 2, 1975
California PUC No. 56408 (Southern California Edison)....	Party.....	Commission..	Aug. 30, 1976	Dec. 16, 1976
Colorado PUC No. 935 (Colorado Public Service).....	Amicus.....	do.....	Oct. 8, 1976	-----
Colorado PUC No. 5693 (generic hearings).....	Party.....	do.....	(1)	-----
Connecticut PUCA No. 760204 (generic hearings).....	do.....	do.....	Nov. 1, 1976	-----
Dallas, Tex. (undocketed) (Dallas Power & Light).....	Amicus.....	City Council..	Nov. 13, 1976	-----
Delaware PSC No. 829 (Delaware Power & Light).....	Party.....	Commission..	Feb. 14, 1976	-----
Hawaii PUC No. 2793 (generic hearings).....	do.....	do.....	Feb. 2, 1976	-----
Kentucky PSC No. 6723 (Louisville Gas & Electric).....	do.....	Attorney General of Kentucky, et al.	(1)	-----
Maryland PSC No. 6808 (generic).....	Amicus.....	Commission..	Mar. 23, 1977	-----
Massachusetts DPU No. 18810 (generic ratemaking).....	do.....	do.....	Feb. 27, 1976	Sept. 2, 1976
Minnesota PSC No. ER-1 (Northern States Power).....	do.....	do.....	Sept. 15, 1976	-----
Nevada PSC No. 579 (Sierra Pacific Power).....	do.....	do.....	-----	Sept. 23, 1975
New Hampshire PUC No. Dr 75-20 (generic hearings).....	do.....	Governor's Office.	Jan. 20, 1976	May 17, 1976
New York PSC No. 26806 (generic hearings).....	Party.....	Commission..	Aug. 11, 1975	Mar. 20, 1976
North Carolina UC No. E-100, Sub 21 (generic hearings).....	do.....	do.....	Jan. 27, 1976	Apr. 9, 1976
Oklahoma CC No. 25897 (Oklahoma Public Service Co.).....	do.....	Oklahoma Sierra Club, et al.	Dec. 10, 1975	-----
Pennsylvania PUC No. 76-PRMD-7 (generic hearings).....	do.....	Commission..	Dec. 16, 1975	-----
South Dakota PSC No. F-3062 (Northern States Power).....	do.....	do.....	Mar. 31, 1977	-----
Tennessee Valley Authority (generic invest.).....	Participant..	TVA.....	Feb. 7, 1977	-----
Wisconsin PSC No. 01-ER-1 (generic ratemaking).....	Party.....	Commission..	Apr. 26, 1977	July 12, 1976
			June 7, 1976	-----
			Sept. 6, 1976	-----

¹ Participant in case, but FEA testimony not due until later date.

Mr. BROWN. I am glad to hear you say that and I want you to indicate who it was that asked you to intervene.

Mr. O'LEARY. We will be glad to do that.

Mr. BROWN. Now things that I do approve, with respect to your authorization of funds to fill the national strategic petroleum reserve, what do you think now will be the cost of filling the total reserve? If you don't have the information, you can submit it for the record.

Mr. O'LEARY. My recollection is it is between \$7 million and \$8 million.

Mr. BROWN. The strategic reserve plan did not indicate what oil—old, new, foreign—was to be purchased, or perhaps naval reserve, and at what price it was to be bought. Could you advise me of those details?

Mr. O'LEARY. Yes; I can. Did you want that for the record or now?

Mr. BROWN. I would be happy to have it now but you may submit it for the record.

[The following material was received for the record:]

TYPES OF CRUDE OIL TO BE STORED

Based on detailed studies of refinery needs, product yields, and possible import interruptions, it is planned to store only two or possibly three types of crude oil. About 60 percent of the crude will be a type with an intermediate gravity (32–36 degrees API) and a sulfur content of 1.0–1.9 percent. The remainder will consist of one or two types of low sulfur crude (less than 0.5 percent) with gravity ranging from intermediate to very light. The types of low sulfur oil to be stored will be determined in part by prices and quantities offered in response to requests for proposals.

This mix of crudes will permit the Reserve to respond effectively to a wide range of interruptions, and assure that refineries will be able to receive an acceptable crude to replace lost imports. It will minimize the cost of the SPR by avoiding the need for many separate storage facilities. It also will provide flexibility in procuring the oil and will alleviate any problem of substantially driving up market prices which might occur if only one type were obtained.

The FEA will request offers from interested sellers of oil for the Reserve. Awards will be based on criteria which will include total costs to the economy, total costs to the Federal budget, availability of adequate quantities of the desired types of oil, delivery flexibility and capability, environmental impact, and impact on world supply. The FEA also plans to revise its Crude Oil Entitlements Program to permit U.S. suppliers of oil to FEA to earn entitlements to price-controlled domestic oil if they sell crude oil for the SPR. This is expected to result in prices for the SPR oil near the national average price.

Mr. O'LEARY. What we intend to do initially is fill with imported Saudi light. We don't know which refineries will be influenced and we want a crude that will make a maximum match for facilities.

With regard to prices, with the authorization to us to buy composite, that means we will be using the entitlement program and spreading the cost between the general taxpayer at large and between the current oil user through the entitlement program.

Mr. BROWN. The estimate is how much?

Mr. O'LEARY. If we are buying in the \$11 range for the composite price, and the world price is \$13.50, there will be about a \$2.5 subsidy involved through the entitlement program.

Mr. BROWN. The remainder will be paid by the taxpayer, up to the composite price. The difference between the composite and actual market price will be paid by current oil users.

What do you estimate that will do to current bills of current oil uses around the country?

Mr. O'LEARY. I think it will remain static. It may add another penny, something in that range over the life of the program.

Mr. BROWN. How long is the life of the program?

Mr. O'LEARY. Initial fill through 1978, full fill by 1980.

Mr. BROWN. So for the next 4 years it will be a penny?

Mr. O'LEARY. Yes, in that range.

Mr. BROWN. If it isn't in that range, if you could give precise figures, I would appreciate it. Why is \$9.2 million in the budget for energy information analysis?

[The following information was received for the record:]

It is estimated that purchasing oil for the SPR Program at the national average composite price, by using the Crude Oil Entitlements Program, will increase the cost of oil to U.S. consumers by about two-tenths of a cent per gallon.

Mr. O'LEARY. Under the new department there is a much larger number and the reason is quite straightforward. Up until now the constraint on Government activities in this area has been inadequate or noncreditable data and one of the things that this whole problem—

Mr. BROWN. Wait a minute, you say it is noncreditable data?

Mr. O'LEARY. Either inadequate or noncreditable data.

Mr. BROWN. Why is that? Is that because again there was a mind set in the previous administration, because you were underfunded or because you didn't have the information?

Mr. O'LEARY. This does not relate to the previous administration, it relates to all previous administrations. Historically there has been a willingness to rely on industry data, particularly reserves and that has given rise on the part of many decisionmakers that these data are not good enough for decisionmaking purposes. In my view, one of the reasons we are not further advanced with our capacity for dealing with the energy problem today is because we simply didn't have data in which we believed.

I will tell you further, Mr. Brown, most of the data now in contention, I think, are probably okay.

Mr. BROWN. Wait a minute, that seems to be a little contradictory.

Mr. O'LEARY. It does.

Mr. BROWN. I think that data now in controversy is probably OK?

Mr. O'LEARY. I think for example, the reserves data so deeply in controversy provided us by the American Gas Association and the API are probably good enough for decision.

Mr. BROWN. Which puts you clearly on both sides of the issue.

Mr. O'LEARY. No. Let me tell you clearly where I stand. They are good enough if they were creditable. People don't believe them.

Mr. BROWN. You are saying people don't believe them, but you believe them?

Mr. O'LEARY. I think they are good enough; yes.

Mr. BROWN. I don't know what people you are talking about. I suppose some sit on this side of the table?

Mr. O'LEARY. Some.

Mr. BROWN. Some are just out there reading Newsweek and Time, something like that where they quote people sitting on this side of the table. Therefore, people are confused about them. I was going to say to you before you made that comment that, if I am on this committee—and you know that is in the laps of the gods, too. The gods for the most part are sitting on the majority side in terms of whether we have this committee or another committee, just what we do in organization of the energy issue from the congressional standpoint—

Mr. O'LEARY. I had not thought it went quite that far up, Mr. Chairman.

Mr. BROWN. It will be decided I guess as to whether we have a single committee at some future date, or this committee. If I am around and on that committee or if I am gone and can come back as a shadow and haunt, it will be to try to find out sometime whether or not we are now with this \$9.2 million gathering the same information that we always had available to us which had been paid for by the customer of energy. Now, we are going to make the taxpayer pay for it, too, and I guess they are one and the same person so we will double the bill just to assure creditability. I think that is a waste.

Mr. O'LEARY. Let me elaborate on that point; \$2 million of this is explicitly for the purpose of doing another reserve verification study. I say another because we keep doing reserve verification studies.

Mr. BROWN. How many have you done?

Mr. O'LEARY. The first reserve verification study I recall was back in probably 1967 in the Federal Power Commission. There have been since then two and maybe three additional FPC shots at this and this will be our second, I believe.

Mr. BROWN. So there have been five.

Mr. O'LEARY. And probably others. Interior is right now involved in a withholding thing, really a reserve verification.

Mr. BROWN. Would you be willing to submit for me a general estimate of the cost—maybe I should ask GAO. May be you could ask GAO—no, you can't, you are the administration.

Mr. O'LEARY. No, they work for you.

Mr. BROWN. They don't listen to me sometimes individually. They don't respond to my requests. I don't know why that is. I suppose if things were different, they might but if—maybe I can get the chairman of our committee to do it, to just ask GAO to give us a figure on how much money all of these reverification studies cost that all come out with essentially the same data, and that always is a little clouded because nobody can look in that hole and tell what is in the ground for sure, how much that costs the taxpayer and user of energy. Do you suppose we can get that done through this committee?

Mr. DINGELL. The Chair will be glad to discuss the matter with the gentleman.

Mr. BROWN. I thought that might be the kind of answer I would get.

Mr. DINGELL. The Chair is always ready to cooperate.

Mr. BROWN. Maybe I can ask you as a fellow Member of the House. A Senator of my acquaintance always asks for these verifications and I understand the Government responds to Senators somewhat better than minority Members of the House.

Thank you for your patience and thank you, Mr. O'Leary, for the answers I got and the ones I will get in the future.

Mr. DINGELL. The gentleman has made a request for information for the record which will be introduced in the record at the appropriate place.

The Chair has to recess the hearings at this time. Mr. O'Leary, I understand you will be occupied this afternoon.

Mr. O'LEARY. I have a schedule. A schedule does not mean necessarily occupation. I would be bereft if I could not join you for at least a portion of the afternoon.

Mr. DINGELL. If you have urgent business, we will proceed with your associates.

Mr. O'LEARY. I will join you for a portion of the time.

Mr. DINGELL. Is 2 o'clock a satisfactory hour to reconvene in your viewpoint?

Mr. O'LEARY. Yes, sir.

Mr. DINGELL. We will recess until 2 o'clock and return at that time and will proceed then to the conclusion of our business.

Mr. O'Leary and your associates, we thank you all for your assistance to the committee.

The committee will stand in recess until 2 o'clock.

[Whereupon, at 12 noon the subcommittee recessed, to reconvene at 2 p.m., the same day.]

AFTER RECESS

[The subcommittee reconvened at 2 p.m., Hon. Philip R. Sharp presiding.]

Mr. SHARP. The subcommittee will come to order.

The Chair recognizes counsel, Mr. Ain, for questions.

Mr. AIN. Mr. O'Leary, I would like to raise some questions on the information-gathering authority that the Federal Energy Administration has.

As you know, it was put into law in the Federal Energy Administration Act in the first instance in section 13—it was added to shortly thereafter in section 11 of the Energy Supply and Environmental Coordination Act of 1974, and in the latest amendments to your act, the Office of Energy and Information Analysis was created.

Mr. O'LEARY. I like that prefatory "As you know"—

Mr. AIN. The first thing I would like to ask you about is something that was done by the Congress in the original energy bill in December 1975, EPCA, where the Congress asked the SEC to come up with an accounting system, the observance of an accounting system by people involved in the oil and gas production area which would make its data available on a comparable basis.

That provision of law provides that the Securities and Exchange Commission shall consult with the Federal Energy Administration as well as the General Accounting Office and the Federal Power Commission.

Have they been consulting with you on this?

Mr. O'LEARY. Yes; there is consultation on this.

Mr. AIN. As you know, the Congress prescribed that the rules with respect to these accounting practices should be in effect 24 months after date of enactment.

Mr. O'LEARY. You are discussing title V now?

Mr. AIN. I am. These rules should be in place by December 1977, 24 months after the date of enactment of that act?

Mr. O'LEARY. My understanding is that the burden of this is on the SEC.

Mr. AIN. That is correct.

Mr. O'LEARY. And that they have until December in order to produce the necessary pass at a standard system of accounts.

Mr. AIN. Are you satisfied with the progress of this from what you know of it?

Mr. O'LEARY. My understanding, as a result of a check we made within the last week is that we are about on schedule; and, further, as to satisfactory now, I think that we have several things that we ought to consider in answering that question.

The first of those in form 64 on the part of the Federal Power Commission that covers very much the same ground.

The second one is the Federal Register publication of September 22, 1975, of the Federal Energy Administration which went into the same realm of financial accounting; and the third, of course, is title V, the SEC responsibility to which you have just alluded.

Now, my understanding is that the FPC effort is currently tied up in the courts and that the FEA effort was derailed because of lack of funds or lack of resolution on the part of the agency. The only one of these that is pursuing its way down the path of reason or unreason is the SEC title V effort.

It is my judgment that FEA should proceed with either the September 22, 1975, effort, or some variant thereof. I think we cannot look to the FEA effort as I currently understand it, as answering all of the questions that we properly have in the realm of financial reporting of the industry.

The FEA effort will set out, as you probably know, general criteria but will really not run to a questionnaire; and what we need, I believe, is some close coordination between SEC activity, when it finally emerges, to note the interrelationship, the FPC on form 64.

So this is one thing that I am looking at with considerable care. My own view, as the prepared testimony before you this morning indicates, is that we should proceed to develop the information that we require with regard to the financial position of the industries that we regulate with relatively high priority.

Mr. AIN. Well, I certainly agree with you that that information is critical to our analysis in the future of any path taken with respect to the regulation of that industry, and without knowing in a very accurate way how they are doing among themselves or in relation—

Mr. O'LEARY. That hasn't stopped us to date, Mr. Chairman.

Mr. AIN. The report of the Federal Energy Administration from last December states, and as the law states in section 26(a) of the Federal Energy Administration Act, that the agency is to take action, the Office of Energy Information Analysis is to take action to avoid duplication of effort.

Now in this budget request before us today I wonder if you could comment on the task to date, the accomplishments on avoiding duplication of effort and coming up with comparable data that the Congress and the public can believe in?

Mr. O'LEARY. Mr. Christie, as you know, is our nonduplicator, and I will let him assay that question, if I may.

Mr. CHRISTIE. With regard to nonduplication and ECPA, we held a meeting with representatives of other governmental agencies on

October 27, 1976, to inform and to indicate to them how they could assist us in obeying their aspect of that law where they have to provide to FEA and EIA what energy system they use to collect data, what their needs are, what their requirements are, and under what aspects of law or regulation they collect data.

I followed up with a letter to representatives of those agencies in December, and their initial submissions were due to us on February 28, 1977. Some of those came in on time; some of them came in in March, and some will come later.

That system has a number of phases. Its first phase was to gather in these February reports to assess the information which they do collect and some information on that.

Once we get the information, our objective is to review those energy data collection systems with a view toward getting more standard definitions and, if possible, for example, to get the FPC to agree to change some definition on its form so that we can use it as a secondary data source in FEA, or vice versa. Our objective is to not necessarily reduce the amount of information gathered by the Government but so we can reduce the burden and to get better and more standard definitions.

A number of systems have different definitions for the same thing because the systems were developed over different periods of time.

With regard to our budget request, there is a request in for personnel for data validation which falls into this same general framework. Currently, in my office I think there are only four people working, and that we would like to get that up to at least a dozen, because, as you may or may not be aware, there are over 200 energy data systems in the Federal Government, not that many in FEA but that many in the Federal Government.

Mr. AIN. I want to note you did provide me with minutes of that meeting. I thank you for it.

I want to note one comment on page 50 of that transcript where Mr. Biando says:

I think one of the problems is with accuracy. You compare with these various systems, there is always a tendency to round off. When you round off in millions of barrels, you can have some errors.

Chairman CURTIS. What is a couple of hundred thousand barrels between friends?

Going on for a second——

Mr. O'LEARY. Because of a suit, Mr. Chairman.

Mr. CHRISTIE. We have had larger discrepancies than that.

Mr. AIN. I want you to know that I did not intend to insert this in the record in any disparaging way.

Mr. O'LEARY. If I were to be sensitive to those sort of quotations, many of my utterances would have to be censored.

Mr. AIN. Well, certainly I think this committee and the Congress is hoping in the near term we have enacted enough in the law to provide you with the ability to minimize duplication; however, your report does indicate that there are certain areas of the law where you are going to have problems, and I would like you to comment on those areas and what we could do perhaps to solve some of these problems.

For instance, on page 18 you indicate that there is some problem with the coordination between OMB and GAO on the forms under present law?

Mr. O'LEARY. Let me take a shot at the general problem you are facing here.

This is not a new problem. My understanding is that very shortly after the Massachusetts compact there was established a paperwork commission in order to reduce duplicative requirements and reporting. It has, I might add, been a downhill battle since I don't think we are going to do perfectly in this area. and the reason for that is fairly straightforward.

As we get dispersed among Government agencies more and as concern with any given body of subject matter gets dispersed among Government agencies, it tends to create a requirement on the part of management or a requirement in response to a statutory enactment for an activity that, in turn, depends upon data. We find then that there are 240 energy data systems that we know of and probably that number is expanding at the rate of 5 or 10 a month. Certainly during the peak of the crisis it was going up at that rate.

What drives these people to do this? Commerce becomes worried about the automobile and it develops a data base to help deal with that aspect of its problem. We become concerned with financial reporting. We do that. The FPC is worried about reserves; so is the USGS.

The thing that we would like to do and that the Government has been at now for a generation through OMB and before that through the Bureau of the Budget, is to have a fairly rigorous examination of new data requirements, the theory being that if you go to the Office of Management and Budget and now to the GAO as well as the Office of Management and Budget with an energy request that reaches more than 10 respondents, they will look through their files and say, "This piece of information that you require is being captured by Agency Y; you don't need it."

Well, Mr. Chairman, their files simply aren't fast enough and large enough to do it. It is an unholy job and although I think we can do it better than we have been doing it—I think in fact we can do it much better than we have been doing it—my guess is that the burden of reporting on people in the energy fields will increase rather than decline.

The point we should bear in mind is that we should minimize any increase and hopefully Mr. Christie's activity will be doing that.

Mr. CHRISTIE. As a followup to that, the December report did recommend, inside the administration, at that time, that we thought it would be better from our perspective if all of the forms' clearances were centralized under one agency in the OMB rather than having that split responsibility between GAO and OMB.

Mr. SHARP. That was a recommendation?

Mr. CHRISTIE. That was a recommendation. It is very difficult, particularly with two split agencies, for them to look at common definitions, and people are using common definitions; it is tough for us.

Mr. SHARP. Can that be accomplished by Executive order?

Mr. O'LEARY. GAO is in the business because you put them in the business.

Mr. AIN. In your report on information gathering activities, you state that there is a need for an increased use of interagency agreements and memorandum of understanding between agencies, to coordinate activities and avoid duplication.

My question is: How many of these interagency agreements and memorandum of understanding have been executed, and what is their nature, and if you could, please supply them for the record; and is it possible to make these public in the future so that we are fully informed of whenever you are going to coordinate activities under this authority?

[The following information was received for the record:]

INTERAGENCY AGREEMENTS/MEMORANDUMS OF UNDERSTANDING

We presently have three interagency agreements/memorandums of understanding as follows: (1) EI&A/ERDA on modeling/forecasting data; (2) Bureau of Mines/EI&A on petroleum reporting; and, (3) FPC/EI&A on collection of natural gas curtailments information.

Mr. CHRISTIE. Yes, I believe FEA and ERDA have a memorandum of understanding which affects the data business; and with regard to specific forms I know that we and the Bureau of Mines have a joint form on petroleum reporting; and I know that on oil imports we have been working with various agencies to try and reduce the number of definitions of oil imports and get more common definitions. I am not sure if we will ever get down to one.

Mr. O'LEARY. Let me take oil imports as a very good case in point. It would seem to a rational person that the customs people ought to collect the data on oil imports. Let's take that as a given.

When the Department of the Interior got into the oil import control business, it found out some of these things. The customs people were interested in the movement of goods into the territory of the United States. That could include movement out of bonded warehouses and bonded refineries. We did have some bonded facilities that began to distort the numbers.

We found that as the program progressed the finest of the breaks to a customs agent is a product distinct from middle distillate, distinct from gasoline and so on. We found in time sulfur became a criterion in the imports, so we had then to develop a highly elaborate system of accounts on top of the system that Customs already had in place.

Now, Customs had to keep its system in place. Try as we would in the mid-1960's, we couldn't find common ground that would meet their requirement without distorting ours.

We have a reporting system on a reporting system. As FEA got into the business, another reporting system. This is a chronology of how these things grow.

Mr. AIN. Well, I think you have fully answered the questions relating to coordination of activities and avoiding duplication.

The next area is what we do with it once we get it? I would like to check with you on what has been happening under section 31 of the Federal Energy Administration Act with respect to the PIES model.

As you know, that act calls for you to submit to the Congress not later than September 1, 1976, a full and complete structural and parametric documentation, and not later than January 1, 1977, operating documentation of the Project Independence Evaluation System and provide access to that system to representatives of committees of Congress, also provide for use by members of the public.

Can I ask how that is coming along?

Mr. CHRISTIE. Yes. One, the September documentation is that yellow volume which Mr. Potter has, and that was submitted to the Speaker of the House and to the Vice President in September.

I apologize with hindsight and with foresight; I will try and make sure that this committee gets that at the same time that it is forwarded to them.

With regard to the January documentation, that has not been done. Our target date is around June. There was a conscious decision made on my part in the fall that we should focus our resources on getting a draft 1977 National Energy Outlook out and that that should take precedence over getting the PIES documentation; and a part of that reason was that the PIES model is being modified continually. This is the first year where we have been able to model continued gas regulation, and continued oil controls; and it was my judgment that it was more important to get that done before the documentation.

With regard to that documentation, with regard to PIES access to the Congress and to the public, we have submitted a request for funds in the 1977 supplemental and 1978 budgets, with regard to PIES activities. When we get those funds and the people aboard, we have plans to set up a system to make that access available to the Congress free of charge, and to the public at a fair and reasonable price, or exactly what the words in the law say—I forget.

Mr. O'LEARY. It is a revolutionary doctrine now.

Mr. CHRISTIE. Fair and reasonable.

Mr. AIN. Fair and reasonable fee is what is in the law.

Mr. CHRISTIE. For the public.

Mr. AIN. That is right.

Well, I understand the problems you have down there. As you know, the Congress has had some problems with the PIES model from the outset. We are glad to hear that it is being restructured to reflect some of those problems. Our concerns are the concerns you have with it; the sooner the PIES model reflects what we consider to be the real world, the more important the national energy outlook report will have for us and the public.

Mr. SHARP. Have you had requests for access to the model outside of the congressional committees, anyone in industry or academia, that you are aware of?

Mr. CHRISTIE. I was talking with a gentleman from a financial institution last week and he said that he would like to have access to the PIES, and I said, "Would you be willing to pay, depending upon what you wanted run, a few thousand or maybe over \$10,000 for some runs?" and he said, "Yes."

With regard to other parts of the Government, we have historically and are currently providing them with information and runs from

the PIES model. FPC—we are currently working with, and we have worked clearly in the past. The organization has made runs for Members of Congress or congressional committees.

Those are the ones that come to mind quickly.

Mr. SHARP. The figures you just used, is that what you are indicating might be a possible fee charge, somewhere in the neighborhood of \$2,000 or more? I realize we aren't working it out.

Mr. CHRISTIE. We used some average estimates in preparing our budget documentation to OMB. It really depends upon what one wants. If, for example, in this year's NEO we have run a case with an oil and/or gasoline tax. If somebody said turn the switch and put in five numbers and tell me that effect, the cost would be relatively low.

If someone came in and said they wanted to run a case which had some sophisticated set of conservation programs, or we had to go out and get more social and demographic information so we could get that in, and then they also wanted an economic assessment of the impact of that run, then the price could be quite high. So it would vary, and I can't give you a specific quote on what it would cost. Is that a fair answer?

Mr. O'LEARY. We ought to take a look at that for a tiny moment with regard to the new agency that the President is in the process of seeking authority to establish.

One of the key elements of that will be an administration charged with bringing together these data services. I think that before we are finished with this, Mr. Chairman, we will be spending a great deal of money.

For example, I think if we were to go to a reserve job right now for both oil and natural gas, the bill for that alone may be in the range of \$100 million a year.

Mr. SHARP. How would you come to that large a figure?

Mr. O'LEARY. I came to that large a figure as a result of discussions with the people who have been in this business, most recently with Dr. Vogley, the chairman of the Mineral Economics Department of Penn State University, in a discussion that we had 3 days ago when I had asked him sometime ago:

What do you think it will cost to get confident numbers that you, your establishment, your institution, can believe and that the administration can believe and act upon?

He came back, after mature consideration, and said it wouldn't be cheap and mentioned the number that I just mentioned.

Mr. SHARP. I presume you are talking about the need to go out and audit?

Mr. O'LEARY. It is much more than audit; it is a comprehensive understanding that does not exist now even in the oil industry with regard to price response. The ongoing discussion that I have had with Mr. Brown, for example, with regard to where you plug into the system in order to make something happen that must happen, that is to say, to optimize the contribution of the dollar to oil, toward oil finding, is that something that we are absolutely babes in the wood about. It is purely who shouts the loudest.

Mr. SHARP. Mr. Potter?

Mr. POTTER. I would like to pursue this for just a moment, Mr. O'Leary. Your figure, I think, was that this would be in the neighborhood of \$100 million per year. This is not a one-time charge; this is a more or less continuing process?

Mr. O'LEARY. No. The probability to get it up is the \$100 million. It may be less when it is up and running, when you understand it.

Mr. POTTER. It seemed to me most of the expenses that you were talking about are really setup charges.

Mr. O'LEARY. A lot of it is setting it up. It will be a several-year job to set it up.

Mr. POTTER. Obviously we are going to have to ask ourselves responsibly, is it worth it, what is the value to us of having information in which we have 99-percent confidence as opposed to anybody can pick their own figure for how much confidence they have in the present system, but it is not 99 percent.

Mr. O'LEARY. I would say probably out of that system you might get into the eighties. It is really very difficult on any projective system to get much above 80- to 85-percent confidence.

Mr. POTTER. The incremental cost for an additional 18-percent assurance?

Mr. O'LEARY. I don't think that we have anything approaching 50-percent confidence in what we are doing at the moment.

Mr. POTTER. The cost benefit ratio just improved.

Mr. O'LEARY. Yes, we took a look at a system. There is a rulemaking now that talks about costs for the State of California of \$200 million in order to cure what may be a serious problem, that is to say, the high sulfur, heavy resid problem in California and the crude, price decrement that particular crude has suffered in that market.

Mr. Potter, we have been operating on the cheap, in this area, and we have been getting really very bad results. An enormous amount of the debate that has gone on in the last 3 or 4 years, the last 3 years particularly, doesn't seem to me to be reducing itself. How should we price oil and gas, and I think that if we had some common assurance of the cause and effect relationship between injecting money at this point into the system and getting results in the way of production out of that point in the system, it would be an extremely useful think and probably worth far, far more than it would cost.

I want to stress to you that it will cost a lot. The little system that we have now price out next year at almost \$40 million.

Mr. CHRISTIE. I think maybe Mr. O'Leary would like to clarify. I think what he is talking about is more than just getting estimates of current proven reserves.

Mr. O'LEARY. Yes, this goes into the thing that who cares about reserves, who cares about the resources; they are an interesting number. The thing you want to know is what does the supply schedule look like? That is where the number comes.

Mr. POTTER. You need to know two things: You need to know what kind of supply response is this change in price policy going to produce, and we all have our own suspicions about that. I am not very optimistic that increase in price is going to do all that much for increasing supply.

Mr. O'LEARY. You characterize it correctly.

Mr. POTTER. Sure. The question that I guess you are really asking is: If you can achieve a greater degree of certainty, how much is it going to cost you?

Mr. O'LEARY. And what is it really worth, and that is the question we ought to ask ourselves and the way down the line.

Mr. POTTER. I would say only that I think this is a very important issue and one that I would like for us to be aware of as these negotiations proceed, because I think there is going to be a lot of talk about this, and we can predict with a fairly high degree of certainty that if we walk over to the floor of the House with a bill that has the kind of price tag we are talking about, that bill is not going to be received with unanimous approval.

Mr. O'LEARY. Mr. Sharp, I might tell you just as a little piece of history that the expenditure on reserve or resource projection prior to 3 years ago was essentially zero in this Government. We had resource numbers that were provided us by a number of organs. The American Petroleum Institute did some work. The American Gas Association did more, it had a formalized committee called Future Supply Committee that operated in the beginning, mid-1960, that was formally looking at the whole resource question.

The Geological Survey has a few people who are essentially working in this field. The predominant estimates of the Geological Survey that were held to be accurate 2 years ago were essentially halved 2 years less a month ago when the Geological Survey for the first time sat down and put a systemic pencil to it.

The effect of that, Mr. Chairman, was this: Depending upon the very high numbers of the geological survey, as we had historically, we had taken this country down a certain policy course that in 1973 proved to be entirely in error. What would have been the value the perception of 1975 in 1965 and having that perception generally agreed to.

Mr. AIN. Thank you. I just have a few more questions, if you will bear with me. One is on the relationship between your energy information-gathering authorities and your enforcement and compliance activities.

The Congress has been very concerned in the past, and I am sure we all are, on the effect of these multiplicity of forms hitting small businesses and other persons in rapid succession. Is there any ability—do you foresee any kind of use of consolidated forms, combined with the proper accounting procedures that would facilitate both energy and information gathering and oversight and compliance?

Mr. SMITH. Let us answer the question in two parts.

First, let Mr. Christie describe what we have already done in terms of consolidating forms and reducing the reporting burden; then I would like to return to the compliance relating aspect, if I may.

Mr. CHRISTIE. We have made progress over the last couple of years in reducing the reporting burden on industry. There has been about a 30-percent reduction per year over the last 2 years in terms of reporting burden for people reporting to FEA, down from about 9.6 million man-hours per year.

Mr. AIN. That is industry manhours?

Mr. CHRISTIE. Yes, sir; those are not Government man-hours.

Mr. AIN. Are you still getting the same amount of information or, getting less information? What causes that reduction in manhours?

Mr. CHRISTIE. In large part, we have in some cases eliminated forms; we have terminated forms before they were going to be terminated; some of them were associated with the regulatory programs; and in other cases we have tried to consolidate information to get equivalent information into the Government, but with less burden on the—

Mr. AIN. Have you had trouble getting information from the FPC? Have you had trouble getting information from Customs? Are there confidentiality problems that have been insurmountable? And have you been forthcoming in the past in giving that information to other agencies?

Mr. CHRISTIE. The short answer is, we have not had trouble getting information from the FPC. I think we and they have worked quite well together. We are currently working together on a curtailments form to go out this summer to be ready to prepare a report in the fall about next year's national gas curtailments. We have had difficulty in getting information in timely fashion in some cases from the FTC.

We have the authority to get that information. We eventually get it. I believe that FEA in terms of its ability to get data has pretty much all the authority it needs in the law.

I am not sure that is a two-way street, and that sometimes creates problems. We can demand and eventually get data from other agencies, but they cannot necessarily demand it from us, even though we are cooperative.

We do provide to other agencies proprietary and confidential information to the extent we are allowed to within the law, as long as they will handle the information in the same sense that we handle it in FEA; but I think there might be room for improvement in that area. Sometimes it has been difficult on our end getting things in a timely fashion.

Mr. AIN. Before Mr. Smith, continues, do you need legislation to get that? Do you think it could be worked out in the executive branch now without a legislative solution to it?

Mr. CHRISTIE. We are addressing that question, and I would not like to say we would need legislation until I have talked in more depth with the lawyers; but it might be helpful in terms of general sharing of information in the Government.

There are many cases where other agencies don't have exactly what we want; but clearly we and the Bureau of Mines, if you have an aggregation of three pieces of data, from three entities, you can aggregate that and avoid the confidentiality/proprietary laws; but Census has its rules and it is sometimes difficult to get what we need and desire.

Mr. AIN. Mr. Smith?

Mr. SMITH. With respect to the compliance function, Mr. Chairman, I think there we need to go at the risk of it sounding like too much else; the compliance program has been characterized in two directions at once. With respect particularly to the forms and information issue, first, let me treat the large refineries and large petroleum marketers.

The large firms in the industry that account for the overwhelming majority of the product, these firms use as the basis for their account-

ing system computerized programs of their own. In some of the smaller ends of the spectrum of large companies they utilize computer programs of a service operation.

One of the things that in my judgment we need to do, and have begun to examine how to do it, is get behind those company systems.

Right now we are operating on the front end. We take the printout of those systems and that is where our auditor starts, he then follows it back through the company's records, to see that the computations were done in accord with the regulations.

Our objective is to be able to test the system itself, and see that it is making the calculations and allocations of costs in adding margins in accord with the regulations. Once we do that all we will have to do is sample the input to the system, verify that, and check the system from time to time with our own input. We can then have confidence that the output of the system is in fact in accord with FEA regulations, and we can collect it directly.

That effort is just now underway and it is going to be a big elephant to eat, but once we get it done we will be in a position to use the companies' own systems to monitor their compliance.

For example, our first initiative in this has been with respect to independent crude oil producers. We have developed and have operational in our Dallas regional office a small desk-size programable calculator that is just outside being a minicomputer. We can feed into this the records from the operator himself with respect to volumes, prices charged, historical volumes, the other kinds of things that are required and which will tell us as an output whether the prices charged were legal maximum prices. If not, it will indicate in what months and about how much they deviated from that.

That is our first bite at this particular elephant, and that is the general approach that we need to pursue with the larger firms. This will have the result of reducing very substantially the manpower requirements now imposed on those larger firms to provide our auditors' data. Now we ask for it in the format that we want in order to reduce our own auditors' workload, but this requires the company to reshuffle, reorder, and prepare different schedules for us. Utilization of this approach will reduce our own auditors' workload and that of the industry at the same time.

With respect to smaller companies, I think we need the opposite approach. These are people whose accounting systems are so informal, so unstructured, and in many cases back-of-the-envelope kind of things, but even in the fairly well-established business accounting systems are still manually kept and they are kept in accord with that firm's business practices that were established long before anybody heard of Cost of Living Council or FEA regulations.

For firms in this category, my view is that we need the Form 1040A approach, as I call it. That is, we need a form that the firm or the operator can fill out which will tell him two things: (a) It will tell him how to comply with FEA regulations. An overwhelming majority of the people who have violated FEA regulations have done so in good faith, because they did not understand the details of the regulations and how to apply them to their particular practices; and (b) it will also record and report to us his compliance or lack thereof, just

as a form 1040 would. In comparison if one fills out the 1040 accurately, one comes up with the right amount of tax that he owes the Government.

Our intention is to do the same things to the forms that the IRS does to the 1040, namely, put them in the computer, give them a computerized screening to check arithmetic and calculations with respect to the regulations, and then flag those that don't add up, then our auditors would do sampling audits of the entries behind those calculations, to give us a reasonable degree of assurance about people who are complying with the regulations.

That effort has started. About 2 years ago, this March, and quite frankly we have been shooting at a moving target in terms of changing provisions in the regulations. The target has moved faster than our ability to design a form to keep up with it; such a form is not going to be fully developed until a final determination is made about the product side of the regulation—only when things stabilize will a form that is right when it gets out to the field yield the real advantage of this approach.

Mr. AIN. We are going to have somebody who will ask some questions about your compliance questions.

Mr. SMITH. I thought I would like to get in a little chance before we got to that particular part of the program.

Mr. AIN. I well understand.

Two more brief questions: Let me express one thing. You were discussing with Mr. Potter the supply side situation. The demand side is of critical importance in Congress evaluating and the administration and the public evaluating what to do with our shortage situation, where the fat is and where it isn't, who is using it, and this has been critically absent in a number of areas, especially in the natural gas area, with respect to boiler fuel use, because of the separation of the intrastate and interstate markets.

Did you have a comment to make? I think you are moving from what I understand to what we hope that we will see soon, the result of good data gathering on the demand side.

The last question is: It sounds like your efforts are difficult and ambitious. Is the funding adequate to carry this out at the present time?

Mr. O'LEARY. Funding is adequate in our estimation for the coming fiscal year. With the current known workload it will rise overtime.

Mr. AIN. Thank you very much.

Mr. SHARP. Thank you.

I want to ask a few questions, Mr. O'Leary, on several of the conservation programs that seem to be in delay, first on appliance efficiency. Could you give us a rundown on the situation there?

Mr. O'LEARY. Mr. Sharp, I had an exchange with Chairman Dingell.

Mr. SHARP. I have a copy here, I believe, dated March 18, 1977.

Mr. O'LEARY. I think that is the most recent. There was a letter of March 14 and a letter of March 18. It may be useful if I simply put the letters of March 14 and March 18 into the record.

Mr. SHARP. Yes. We will put both of those in.

[The letters referred to follow:]

FEDERAL ENERGY ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., March 14, 1977.

HON. JOHN D. DINGELL,

Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of February 25, 1977, requesting a timetable for implementing the energy conservation programs established by the Energy Policy and Conservation Act and the Energy Conservation and Production Act.

In response, I am enclosing an updated status report and timetable which represents the best realistic estimates our staff has been able to make for each of the conservation programs, given the resources presently available within the Federal Energy Administration. I am not satisfied, however, with this schedule and will provide you by March 18, 1977, an accelerated schedule that will reflect improvements I expect as a result of prompt additional resource commitments that I hope to bring to bear on these programs.

Please be assured of my strong support of these initiatives and of my intent to apply the full level of effort and attention needed to accelerate implementation of these programs from the schedule reflected by this timetable.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

JOHN F. O'LEARY,
Administrator.

Enclosure.

WEATHERIZATION

Statutory Program

FEA must establish a weatherization program for low-income persons. FEA can distribute funds to the States, or if the States decline, it may distribute funds directly to local governments.

DEADLINES

Action	Statutory	Actual	Estimated timetable
FEA published proposed regulations.....	Oct 14, 1976	-----	Mar 25, 1977
FEA publishes final regulations.....	Nov. 14, 1976	-----	June 1, 1977
FEA and CSA Director make annual report.....	Mar. 31, 1977	-----	Apr. 22, 1977

Status Report

Proposed regulations were formally submitted to the Director of the Community Services Administration, the Secretary of Health, Education and Welfare, the Secretary of Housing and Urban Development, the Secretary of Labor and the Director of ACTION for comment on November 19, 1976. Comments were received from these Agencies and other interested parties and were taken into consideration in redrafting the regulations for formal FEA clearance. FEA officers are reviewing and redrafting the regulations, and we expect the proposed regulations to be issued by March 25, 1977, with final regulations issued by June 1, 1977.

The statutory deadlines have not been met in part because of the extensive coordination requirements of the Act, and the lengthy internal review process. The issues involved are numerous and complex and require sufficient time for adequate consideration.

The Weatherization Program Annual Report is being reviewed internally and will be sent to the Congress by April 22, 1977. A delay of 3 weeks is needed to complete the formal clearance process.

Weatherization under Title IV, Part A of ECPA can begin at the local level this summer assuming an expedited internal review and clearance process and a timely appropriation of funds to implement the program.

STATE ENERGY CONSERVATION PROGRAMS (EPCA AND ECPA)

Statutory Program

FEA must establish guidelines for States in developing conservation plans. Governors may then submit plans, which may be funded by FEA. FEA must set conservation goals for each State, provide technical assistance, and make an annual report to the President and Congress.

DEADLINES

Action	Statutory	Actual	Estimated timetable
FEA prescribes guidelines for State conservation feasibility report (EPCA).....	Feb. 20, 1976	Feb. 20, 1976	-----
FEA prescribes guidelines for State conservation plans (EPCA).....	June 22, 1976	Sept. 28, 1976	-----
FEA makes an annual report to the President and Congress (EPCA).....	Dec. 22, 1976	-----	Apr. 14, 1977
FEA prescribes proposed guidelines for supplemental State program (EPCA).....	Dec. 16, 1976	-----	Mar. 21, 1977
FEA prescribes final guidelines for supplemental State program (ECPA).....	Feb. 14, 1977	-----	June 21, 1977

Status report

Proposed State Energy Conservation plans are due from the States on March 28, 1977. Congress has appropriated \$25 million for the State Grant Program.

State grant program

The final guidelines for the program were issued 4 months late primarily due to difficulties involved in setting up the Agency's first grant program and, to a more limited extent, to program implementation differences between FEA and the Office of Management and Budget (OMB) and to extensive revisions within FEA. When final issues between OMB and FEA were resolved the final guidelines were issued October 28, 1976, and published in the Federal Register on November 3, 1976.

Supplemental state grant program

Proposed guidelines were due by December 16, 1976, with final guidelines required by February 14, 1977. The primary reason for this delay has been the extensive time needed for internal review. A final draft is now being reviewed in conjunction with OMB. We expect issuance by March 21, 1977.

The State Energy Conservation Program Annual Report is in final preparation, and we expect to submit the report by April 14, 1977.

INDUSTRIAL CONSERVATION

Statutory program

FEA must identify the 10 most energy-consumptive industries and the 50 most energy-consumptive companies within each industry. FEA must establish energy efficiency improvement targets for each industry. Companies must then file reports on their energy consumption either directly to FEA or through an approved industry trade association.

DEADLINES

Action	Statutory	Actual	Estimated timetable
FEA identifies top 10 energy consuming industries.....	Mar. 22, 1976	Mar. 20, 1976	-----
FEA identified top 50 energy consuming companies in each industry.....	-----	Dec. 16, 1976	-----
FEA sets energy efficiency improvement targets for each industry.....	Dec. 22, 1976	-----	June 1, 1977
FEA makes annual report to Congress.....	do	-----	Apr. 1, 1977
FEA identifies top 10 energy consuming industries.....	Mar. 22, 1976	Mar. 20, 1976	-----
FEA identified top 50 energy consuming companies in each industry.....	-----	Dec. 16, 1976	-----
FEA sets energy efficiency improvement targets for each industry.....	Dec. 22, 1976	-----	June 1, 1977
FEA makes annual report to Congress.....	do	-----	Apr. 1, 1977
FEA makes forms available for industry reporting.....	-----	-----	June 22, 1977

Status report

EPCA requires FEA to establish energy efficiency improvement targets for the previously identified 10 most energy-consumptive industries by December 22, 1976. This deadline was not met by FEA and, as of this date, the final targets have not been established.

The design of appropriate targets has been a complex task. Conceptualizing the targets and resolving basic issues central to the targets slowed the early phases of this aspect of the industrial program.

Establishment of the final targets is dependent upon preparation of a final report by FEA contractors. This report will include their analysis of the public comments, a reassessment of the proposed target support documents as a result of these comments, recommendation as to the final targets, and a proposed "basis and justification" to be included in the *Federal Register* notice publishing the final industrial energy efficiency improvement targets. The contractors have required several extensions of the deadline initially given (12/22/76) for a variety of reasons.

The first deadline did not allow the contractors sufficient time after the final hearings to prepare the document, and the subsequent extension to 1/21/77 ran into the same problems. The most recent deadline (2/18/77) has been met by several of the contractors, but a number have been requested to resubmit a final report due to their failure to follow our written instructions regarding the report's content. At this time, it appears that the final targets cannot be issued until June 1, 1977.

EPCA requires the Chief Executive Officer of each identified corporation in an industry for which there has been set an industrial energy efficiency target to report the corporation's progress toward improving its energy efficiency by January 1, 1977. The Act also requires FEA to develop "a simple form" by which the report required of each Chief Executive Officer is to be submitted. FEA must hold a public hearing and solicit comments with respect to this reporting requirement. As of this date, the reporting form has not been finally formulated. The reasons for the delay are extensive legal and technical review. We expect to make the form for industrial reporting available by June 22, 1977. We expect the annual report to be submitted to Congress by April 1, 1977.

APPLIANCE EFFICIENCY

Statutory program

EPCA lists 13 appliances subject to regulation. For each appliance, FEA must prescribe test procedures for determining energy efficiency and set energy efficiency targets. Based upon the FEA test procedures, the Federal Trade (FTC) must prescribe labeling rules. FEA must conduct a consumer education program.

DEADLINES

Action	Statutory	Actual	Estimated timetable
FEA publishes proposed test procedures.....	June 30, 1976, ¹ September 30, 1976, June 30, 1977.	July 27, 1976 (room a/c only).	See attached.
FEA prescribes final test procedures.....	September 30, 1976, ¹ December 31, 1976, September 30, 1977.	-----	-----
FEA sets efficiency improvement targets.....	November 12, 1976, December 22, 1976.	-----	Proposed (1-10): July 11, 1977. Final (1-10): December 22, 1977.
FEA makes annual report.....	December 22, 1976	-----	April 1, 1977.

¹ Under sec. 323(a)(6) of EPCA, FEA may delay if necessary and it publishes such a determination in the *Federal Register*.

Status Report

The most extensive discussion regarding delays for test procedures for products (1-9) and targets for products (1-10) was contained in FEA's letter dated December 15, 1976.

Briefly, in the case of test procedures, delays have resulted because of problems concerned with the creation of test procedures that fully meet the requirements of EPCA, coordination and consultation with FTC and the National Bureau of Standards, and the need to produce two model test procedures. For targets, delays

have resulted because of problems associated with obtaining 1972 base year data, reviewing and modifying technical background papers, and preparing the economic justification for the products.

The target deadline for products (11-13) was December 22, 1976. This deadline was missed due to a technical flaw in the law. The law requires that test procedures for these products be proposed by June 30, 1977, 7 months after the deadline for targets. The problem is that without a test procedure industry cannot establish a base for the products produced in 1975 with any assurance, and therefore, targets cannot be set at this time.

A timetable for issuing proposed and final test procedures and targets is as follows:

		<i>Date of issuance</i>
Proposed test procedures for:		
Dishwashers	-----	Immediately
Clothes dryers	-----	Apr. 25, 1977
Water heaters	-----	May 6, 1977
Home heating equipment (not including furnaces) nonvented	-----	May 17, 1977
Television	-----	May 27, 1977
Refrigerators and refrigerator-freezers, and freezers	-----	June 3, 1977
Clothes washers	-----	June 22, 1977
Humidifiers and dehumidifiers	-----	July 13, 1977
Central air conditioners	-----	July 25, 1977
Kitchen ranges and ovens	-----	Aug. 4, 1977
Furnaces	-----	Sept. 16, 1977
Home heating equipment (not including furnaces) vented	-----	Sept. 30, 1977
Final test procedures for:		
Room air conditioners	-----	¹ May 24, 1977
Dishwashers	-----	Aug. 29, 1977
Clothes dryers	-----	Oct. 11, 1977
Water heaters	-----	Oct. 31, 1977
Home heating equipment (not including furnaces) nonvented	-----	Dec. 5, 1977
Television	-----	Dec. 29, 1977
Refrigerators and refrigerator-freezers, and freezers	-----	Jan. 5, 1978
Clothes washers	-----	Jan. 16, 1978
Furnaces	-----	Jan. 26, 1978
Home heating equipment (not including furnaces) vented	-----	Mar. 3, 1978
Humidifiers and dehumidifiers	-----	Mar. 15, 1978
Central air conditioners	-----	Mar. 27, 1978
Kitchen ranges and ovens	-----	Apr. 11, 1978
Proposed targets for:		
Appliances (1-10)	-----	July 11, 1977
Humidifiers and dehumidifiers	-----	Aug. 22, 1977
Central air conditioners	-----	Sept. 6, 1977
Furnaces	-----	Nov. 28, 1977
Final targets for:		
Appliances (1-10)	-----	Dec. 22, 1977
Humidifiers and dehumidifiers	-----	Feb. 2, 1978
Central air conditioners	-----	Feb. 20, 1978
Furnaces	-----	May 2, 1978

¹ Unless recently received data necessitates a further proposal.

UTILITY RATE DESIGN INITIATIVES

Statutory program

FEA must develop electric utility rate design proposals and report these proposals and report these proposals to Congress. FEA may fund demonstration projects and rate reform initiatives and may intervene in rate proceedings and judicial reviews of such proceedings. FEA may make grants to States to fund offices of consumer services to assist consumers appearing before utility commissions.

DEADLINES

Action	Statutory	Actual	Estimated timetable
FEA reports electric utility rate design proposals to Congress	Feb. 14, 1977	Interim: Mar. 4, 1977	Final: Jan. 16, 1978.
FEA makes annual report to Congress	Dec. 31, 1977	-----	Apr. 15, 1977.

Status report

The issues of electric utility rates and other regulatory practices which FEA has been directed to address under section 203 of ECPA are extremely complex and intertwined. For example, a time of use rate may lower the cost of generating electricity and improve the utilities' overall energy efficiency. However, the lower cost may stimulate greater electricity consumption, which in turn may more than offset the improved thermodynamic efficiency. The amount of oil and gas savings that result will depend on the specific generation mix of each utility, so that any simplification could be quite misleading.

The problem is further complicated by the fact that, while there is a great deal of theoretical work concerning likely responses to time of use rate, little empirical data has been available on which to base that theory. However, preliminary data is just now becoming available from the FEA rate demonstrations. This has meant that FEA has had to analyze raw data from the demonstrations before applying elasticity estimates to computer models in order to assess the national impact of time of use rates. This is a time consuming activity, and time of use rates is only one of the complicated issues that are being addressed under section 203.

It, therefore, became quickly apparent to the FEA that because of the complexities of the issues and the limited data, it was not physically possible to deliver a quality report in the time allotted by section 203. FEA has embarked on a two-part effort to satisfy the intent of this section. The first part of the effort, which was delivered to Congress on March 4, 1977, was to perform a qualitative assessment of the issues raised in section 203. The second part is a modeling effort to assess quantitatively the issues addressed in the March 4, 1977, submission. FEA signed, on an expedited basis, a \$425,000 contract with Teknekron, Inc. to adapt an existing model of the electric utility industry to address quantitatively the issues raised by section 203. The schedule of the contract required the work to be complete in time for FEA to deliver its final submission to the Congress by May 14, 1977. Unfortunately, we have just been notified that the contractor has grossly underestimated the difficulty of the problem and will not complete the work until August 31, 1977.

We are currently reviewing the contractor's revised schedule to find ways to shorten it and are optimistic that we will be able to accelerate the schedule. However, at this point we cannot commit to delivering the final detailed report before January 16, 1978.

The annual report to Congress will be submitted by April 15, 1977.

We are currently drafting regulations for the grant program for consumer services, and we expect final regulations to be issued by June 30, 1977.

ENERGY MEASURES LIST AND AUDIT REQUIREMENTS

Statutory program

FEA must develop a list of energy measures and requirements for energy audits. Both will be used to determine eligibility for Federal assistance under programs established by Title IV, Part B, C, and D of ECPA and to serve other purposes, including public education.

DEADLINES

Action	Statutory	Actual	Estimated timetable
FEA compiles list of approved conservation and renewable resource measures.	Nov. 12, 1976	-----	Draft list: June 3, 1977. Final: Sept. 2, 1977.
FEA prescribes rules for conducting energy audits.	-----do-----	-----	Draft audit rules: Apr. 8, 1977. Final: July 8, 1977.

Status report

As you are aware, no appropriations have been provided for implementing the energy measures list and energy audit provisions of section 432 of ECPA. Utilizing a minimum number of in-house personnel, we are attempting to complete the necessary analysis, issues resolution and inter-agency reviews as quickly as possible, consistent with a reasonably thorough and thoughtful solution.

Development of the energy audit rules and regulations is almost completed. The present draft has taken into account numerous intra- and inter-agency review comments, and formal concurrences of appropriate FEA offices should be received by the time this letter reaches you. We are hopeful that any additional hurdles can be cleared quickly, with publication of draft audit rules by April 8, 1977.

Regarding the measures list, the technical complexities associated with reasonable implementation of the legislative provisions have taken significantly longer to resolve than had been anticipated. Staff personnel from C&E, Energy Resource Development and General Counsel are continuing their attempt to develop a meaningful list while complying with the cost recovery provisions of the legislation. An initial draft rule has been developed; however, significant issues remain which require internal resolution. My staff would be pleased to meet with you or your staff to provide an indication of present status and alternative measures list concepts. In any event, we expect to publish the measures list for comment no later than June 3, 1977.

OBLIGATION GUARANTEES

Statutory program

FEA may conduct an obligation guarantees program.

Status report

The budget submitted on February 22, 1977, seeks FY 77 appropriations for preparing to implement the obligation guarantees program authorized under Part D, Title IV of ECPA. Given the fact that efforts to implement this multifaceted program cannot begin in earnest until appropriations are received, it is difficult to imagine that we could accept applications before next year.

Major activities which must be accomplished within only a few months include design of a management information system, promulgation of final program regulations, after review and comment on the draft, hiring and training of program personnel, inter-agency consultation and development of detailed program management manuals. This will be going on in parallel with further analysis to determine just how the program might be managed to realize the maximum benefit from an energy conservation viewpoint. I think you would agree that accomplishment of these tasks within 9 months is a tall order, and our performance in completing them is tied directly to the allocation of additional resources. While I certainly pledge an intensive effort in the event appropriations and additional resources are received, I do not believe we can establish a realistic deadline at this point and would suggest instead a continuing dialogue with your staff on the progress we are making.

FEDERAL ENERGY ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., March 18, 1977.

Hon. JOHN D. DINGELL,
Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In my March 14, 1977, letter to you, I enclosed a timetable for implementing the energy conservation programs established by the Energy Policy and Conservation Act and the Energy Conservation and Production Act. I also promised to forward a revised timetable by the end of this week.

Accordingly, I am enclosing a revised schedule of deadlines that reflects additional resource commitments by the Federal Energy Administration to accelerate implementation of these programs. This accelerated schedule is based on acquisition of additional necessary resources, and assumes the absence of significant technical difficulties encountered by the National Bureau of Standards in providing the support required for the Appliance Program. On that basis, we are committed to meeting the deadlines established in this timetable.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

JOHN F. O'LEARY,
Administrator.

Enclosure.

APPLIANCE EFFICIENCY

Statutory program—EPCA lists 13 appliances subject to regulation. For each appliance, FEA must prescribe test procedures for determining energy efficiency and set energy efficiency targets. Based upon the FEA test procedures, the Federal Trade Commission must prescribe labeling rules. FEA must conduct a consumer education program.

Action	Statutory	Actual	Deadlines	
			Estimated timetable	Accelerated timetable
FEA issues proposed test procedures.	June 30, 1976 ¹	July 27, 1976 ²	Apr. 25, 1977	Clothes dryers, Apr. 25, 1977.
		Mar. 17, 1977 ³	May 6, 1977	Water heaters, Apr. 25, 1977.
		-----	May 17, 1977	Home heating equipment (not including furnaces)—nonvented, Apr. 25, 1977.
		-----	May 27, 1977	Television, Apr. 25, 1977.
		-----	June 3, 1977	Refrigerators and refrigerator-freezers, and freezers, May 4, 1977.
		-----	June 22, 1977	Clothes washers, May 11, 1977.
		-----	July 13, 1977	Humidifiers and dehumidifiers, May 25, 1977.
		-----	July 25, 1977	Central air conditioners, May 25, 1977.
		-----	Aug. 4, 1977	Kitchen ranges and ovens, June 9, 1977.
		-----	Sept. 16, 1977	Furnaces, July 28, 1977.
		-----	Sept. 30, 1977	Home heating equipment (not including furnaces)—vented, Aug. 4, 1977.
		-----	May 24, 1977 ⁴	Room air conditioners, May 24, 1977.
		-----	Aug. 29, 1977	Dishwashers, Aug. 2, 1977.
		-----	Oct. 11, 1977	Clothes dryers, Sept. 8, 1977.
FEA prescribes final test procedures.	Sept. 30, 1976 ¹ Dec. 31, 1976 Sept. 30, 1977	-----	Oct. 31, 1977	Water heaters, Sept. 8, 1977.
		-----	Dec. 5, 1977	Home heating equipment (not including furnaces)—nonvented, Sept. 8, 1977.
		-----	Dec. 29, 1977	Television, Sept. 8, 1977.
		-----	Jan. 5, 1978	Refrigerators and refrigerator-freezers, and freezers, Sept. 15, 1977.
		-----	Jan. 16, 1978	Clothes washers, Sept. 22, 1977.
		-----	Mar. 15, 1978	Humidifiers and dehumidifiers, Oct. 11, 1977.
		-----	Mar. 27, 1978	Central air-conditioners, Oct. 11, 1977.
		-----	Apr. 11, 1978	Kitchen ranges and ovens, Oct. 24, 1977.
		-----	Jan. 26, 1978	Furnaces, Dec. 14, 1977.
		-----	Mar. 3, 1978	Home heating equipment (not including furnaces)—vented, Dec. 20, 1977.
		-----	-----	Proposed targets for:
		-----	July 11, 1977	Appliances (Jan. 10), July 8, 1977.
		-----	Aug. 22, 1977	Humidifiers and dehumidifiers, Aug. 4, 1977.
		-----	Sept. 6, 1977	Central air-conditioners, Aug. 4, 1977.
FEA sets efficiency improvement targets.	Nov. 12, 1976 Dec. 22, 1976	-----	Nov. 28, 1977	Furnaces, Sept. 23, 1977.
		-----	Dec. 22, 1977	Final targets for:
		-----	Feb. 2, 1978	Appliances (Jan. 10), Nov. 29, 1977.
		-----	-----	Humidifiers and dehumidifiers, Dec. 22, 1977.
		-----	Feb. 20, 1978	Central air-conditioners, Dec. 22, 1977.
		-----	May 2, 1978	Furnaces, Dec. 22, 1977.
		-----	Apr. 1, 1977	Apr. 1, 1977.
		-----	-----	-----
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FEA makes annual report...	Dec. 22, 1977	-----	-----	-----

¹ Under sec. 323(a)(6) of EPCA, FEA may delay if necessary and it publishes such a determination in the Federal Register.

² Room air-conditioners.

³ Dishwashers.

⁴ Unless recently received data.

ACCELERATED SCHEDULE OF IMPLEMENTATION—WEATHERIZATION

Statutory program—FEA must establish a weatherization program for low-income persons. FEA can distribute funds to the States, or if the States decline, it may distribute funds directly to local governments.

Action	Statutory	Deadlines		
		Actual	Estimated timetable	Accelerated timetable
FEA publishes proposed regulations	Oct. 14, 1976	-----	Mar. 25, 1977	Mar. 25, 1977
FEA publishes final regulations	Nov. 14, 1976	-----	June 1, 1977	May 24, 1977
FEA and CSA Director make annual report	Mar. 31, 1977	-----	April 22, 1977	April 6, 1977

STATE ENERGY CONSERVATION PROGRAMS (EPCA AND ECPA)

Statutory program—FEA must establish guidelines for States in developing conservation plans. Governors may then submit plans, which may be funded by FEA. FEA must set conservation goals for each State, provide technical assistance, and make an annual report to the President and Congress.

Action	Deadlines			
	Statutory	Actual	Estimated timetable	Accelerated timetable
FEA issues guidelines for State conservation feasibility report (EPCA).....	Feb. 20, 1976	Feb. 20, 1976	-----	-----
FEA issues guidelines for State conservation plans (EPCA).....	June 22, 1976	Oct. 28, 1976	-----	-----
FEA makes an annual report to the President and Congress (EPCA).....	Dec. 22, 1976	-----	April 14, 1977	April 14, 1977
FEA issues proposed guidelines for supplemental State program (ECPA).....	Dec. 16, 1976	-----	Mar. 21, 1977	Mar. 21, 1977
FEA issues final guidelines for supplemental State program (ECPA).....	Feb. 14, 1977	-----	June 21, 1977	May 13, 1977

INDUSTRIAL CONSERVATION

Statutory program—FEA must identify the 10 most energy-consuming industries and the 50 most energy-consuming companies within each industry. FEA must establish energy efficiency improvement targets for each industry. Companies must then file reports on their energy consumption either directly to FEA or through an approved industry trade association.

Action	Deadlines			
	Statutory	Actual	Estimated timetable	Accelerated timetable
FEA identifies top 10 energy-consuming industries.....	Mar. 22, 1976	Mar. 20, 1976	-----	-----
FEA identifies top 50 energy-consuming companies in each industry.....	None	Dec. 16, 1976	-----	-----
FEA sets energy efficiency improvement targets for each industry.....	Dec. 22, 1976	-----	June 1, 1977	June 1, 1977
FEA makes annual report to Congress.....	do	-----	Apr. 1, 1977	Apr. 1, 1977
FEA makes forms available for industry reporting.....	None	-----	June 22, 1977	June 22, 1977

UTILITY RATE DESIGN INITIATIVES

Statutory program—FEA must develop electric utility rate design proposals and report these proposals to Congress. FEA may fund demonstration projects and rate reform initiatives and may intervene in rate proceedings and judicial reviews of such proceedings. FEA may make grants to States to fund offices of consumer services to assist consumers appearing before utility commissions.

Action	Deadlines			
	Statutory	Actual	Estimated timetable	Accelerated timetable
FEA reports electric rate design proposals to Congress.....	Feb. 14, 1977	Mar. 4, 1977 ¹	Jan. 16, 1978 ²	Jan. 16, 1978 ²
FEA makes annual report to Congress.....	Dec. 31, 1977	-----	Apr. 15, 1977	Apr. 15, 1977
FEA issues final consumer services regulations.....	None	-----	June 30, 1977	June 30, 1977

¹ Interim. ² Final.

ENERGY MEASURES LIST AND AUDIT REQUIREMENTS

Statutory program—FEA must develop a list of energy measures and requirements for energy audits. Both will be used to determine eligibility for Federal assistance under programs established by title IV, part B, C, and D of ECPA and to serve other purposes, including public education.

Action	Deadlines			
	Statutory	Actual	Estimated timetable	Accelerated timetable
FEA compiles a list of approved conservation and renewable resource measures.....	Nov. 12, 1976	-----	June 3, 1977 ¹	June 3, 1977 ¹
FEA issues rules for conducting energy audits.....	Nov. 12, 1976	-----	Sept. 2, 1977 ²	July 15, 1977 ²
			Apr. 8, 1977 ¹	Apr. 8, 1977 ¹
			July 8, 1977 ²	June 20, 1977 ²

¹ Draft. ² Final.

Mr. O'LEARY. I would like to point out, Mr. Chairman, in that context, that the improvements in the schedule were largely aimed at those things that would make a conservation impact and those things that were far enough out in time on the basis of the original schedule so that we could make some hope of retrieving there; therefore, you will find that we were able to take in the October 31 timetable for water heaters and bring that back to September 8.

Mr. SHARP. I am sorry; I couldn't hear you.

Mr. O'LEARY. We were able to take an October 31, 1977, objective for water heaters and bring that back to September 8, saving 2 months less a week.

Mr. SHARP. In other words, you have tried to focus on the items where you thought you could make the greatest gains on energy efficiency?

Mr. O'LEARY. That is correct, and in order to accomplish that we are shifting 21 people into that effort to support it. It is largely people in Mr. Fygi's part of the house. We need lawyers in order to process these and we have promised him that he will have the necessary increment of lawyers in the General Counsel's office, yes.

Mr. SHARP. Mr. Schooler?

Mr. SCHOOLER. On the appliance efficiency program, which you have made some improvements on, I note that the period between the proposal of regulations and finalization of regulations generally is about 4 to 5 months. The statute indicates that about a 3-month period will be necessary. Do you believe you need further resources to bring this period down to 3 months, or is 3 months unworkable?

Mr. O'LEARY. Mr. Fygi should help us with that.

Mr. FYGI. Well, I can as far as the legal resources are concerned.

When we analyzed the problem suggested in the two pieces of correspondence to which Mr. O'Leary has referred, the opinion in the program area headed by Mr. Seneca was that added resources would not help, particularly at this stage of the program in his office, and that what was needed were added legal resources, so that we did not have the phenomenon of an increasing number of work products piling up for an increased period of time on the same lawyer's desk where, for example, an 8-day review period of a proposed standard would be adhered to, but in addition to the 8-day review actually occurring, there would be a 2-month period of that document waiting to be reviewed. That was the approach we used and the timetable suggests the consensus of the staff involved of the most ambitious, realistic appraisal that optimal increase in resources will permit.

Mr. SCHOOLER. I note also the room air-conditioner test procedures which were published in July of 1976 are not scheduled for finalization until May of this year.

Mr. FYGI. Yes.

Mr. O'LEARY. There is a problem from there with the same people. There was a sampling change from the original submission. Apparently our reliance upon the conventional National Bureau of Standards techniques in this simply wasn't good enough for a mandatory program.

There was a reference a little bit earlier in the hearing why did we depart from the continued reliance upon the Commerce standard?

The answer to that is relatively straightforward: Their standards were sufficient in order to meet the voluntary nature of the past Department of Commerce program. They were not sufficient, in the view of the legal officers of FEA, to meet the mandatory standards set up in this legislation.

Mr. SHARP. They were not as detailed or——

Mr. FYGI. As a basic distinction, the statutory provisions requiring the test procedures injected a new element that was not present, as I understand it, in the voluntary program, an estimated annual operating cost which required factoring in a good deal of disparate data and making certain assumptions to derive a meaningful average, given the variables in utility rates in different parts of the country and usage patterns and the necessity to create typical or average cycles for different types of appliances.

I recall hearing a lot from my staff during the development of the dishwasher proposal of the really thorny problems that had to be dealt with in terms of variables such as load and whether or not a specified degree of cleanliness in the end product had to be factored into the equation. The mere transition from the voluntary program to one which was mandated by law with some teeth carried a lot of weight in addition to the discrete added element that the statute overlaid on top of the voluntary program.

Mr. SCHOOLER. To follow up on that, you mentioned the dishwasher standard and the difficulty in adapting voluntary standards to mandatory standards. The notice on the dishwasher standard stated that it had been developed by the Association for Home Appliance Manufacturers; it was a draft standard developed by them.

Could you tell us how that standard was revised when it was published in the Federal Register and compare it to the voluntary standard of the Association?

Mr. FYGI. I would have to get to you on that. I am not sufficiently familiar with the distinction, whatever submission AHAM made and what we actually adopted. Perhaps Mr Seneca has an observation on that?

Mr. SENECA. We have a member of my staff here who is more familiar with the details who can speak directly to that question.

Mr. WEEKS. My name is Allan Weeks. The request which was in a letter to us, and which we are in the process of responding to, indicates that we adopted an industry standard, and that is not exactly correct. We utilized an approach that the industry had regarding the measurement of certain energy-related data, but we created our own dishwasher test procedure. Actually, there is no standard. This is a test procedure.

Mr. SCHOOLER. I understand, though, at least from the notice, there was a draft standard developed by the Association; that is the way the notice read. It had developed a draft standard.

Mr. WEEKS. They had a draft test procedure themselves. We reviewed it, looked at their approach; but we did not adopt their language. We have drafted our own language.

Mr. O'LEARY. Is the technique different?

Mr. WEEKS. The approach is the same; the procedure is different.

Mr. SCHOOLER. Then perhaps you could provide for the record a table which would show the draft standard, your standard, and where they differ?

Mr. WEEKS. Be glad to.

Mr. SCHOOLER. And the originals of both.¹

[The following material was received for the record:]

FEDERAL ENERGY ADMINISTRATION

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Notice of Proposed Rulemaking and Public Hearing Regarding Test Procedures for Dishwashers

The Federal Energy Administration (FEA) hereby proposes to amend Chapter II of Title 10, Code of Federal Regulations, in order to prescribe test procedures for dishwashers, pursuant to section 323 (42 U.S.C. 6293) of the Energy Policy and Conservation Act (Act) (Pub. L. 94-163). FEA will receive written comments and hold a public hearing with respect to this proposal.

Development of test procedures is one discrete part of the energy conservation program for appliances. Even when promulgated, final test procedures will not of themselves require testing to be conducted. They will merely establish standard methods for testing when testing is otherwise required by the Act itself or by regulations implementing other parts of the program. For example, the Federal Trade Commission (FTC), in exercising its appliance energy efficiency labeling authority regarding a particular appliance type, may well require the application of substantially less than all of the final test procedures applicable to that appliance type.

By notice issued May 10, 1976 (41 F.R. 19977, May 14, 1976), FEA proposed to establish Part 430, entitled "Energy Conservation Program for Appliances," in Chapter II of Title 10 of the Code of Federal Regulations. That notice proposed a Subpart A to Part 430, containing general provisions, and a Subpart C, containing proposed energy efficiency improvement targets. A further proposal of Subpart C will be necessary in order to meet the requirements of section 325 (a) (1) of the Act as amended by section 161 of the Energy Conservation and Production Act (Pub. L. 94-385).

By notice issued July 22, 1976 (41 F.R. 31237, July 27, 1976), FEA proposed an amendment to proposed Part 430 to add a Subpart B which would contain the appliance test procedures required to be prescribed by section 323 of the Act. The notice issued July 22 described the requirements of section 323, set forth proposed test procedures for room air conditioners and indicated that proposed test procedures for dishwashers and certain other types of appliances would be forthcoming as soon as practicable.

FEA is today proposing test procedures for dishwashers as section 430.22(c) of Subpart B. Subpart A (41 F.R. 19977, May 14, 1976), as proposed, contained definitions in proposed section 430.2, some of which are applicable to the test procedures for dishwashers. In addition, FEA is proposing to add to the definition in section 430.2 of "Basic model", a subparagraph (3) applying specifically to dishwashers and is proposing definitions of various fuels.

Section 323(a) (2) of the Act requires FEA to direct the National Bureau of Standards (NBS) to develop for 13 types of covered products test procedures for the determination of the estimated annual operating costs and at least one other useful measure of energy consumption which FEA determines is likely to assist consumers in making purchasing decisions. Pursuant to the Act, FEA directed NBS to develop test procedures for FEA's use in prescribing test procedures under the Act. As part of this undertaking, NBS was requested to evaluate existing test procedures for measuring energy consumption of dishwashers.

NBS has transmitted to FEA a test procedure review document which reviewed existing test procedures for measuring energy consumption for dish-

¹ The AHAM test procedures are classified as confidential and are not printed herein. A copy may be found in the subcommittee files.

washers and recommended test procedures. Copies of this review document will be made available for inspection by interested persons as provided for later in this notice.

NBS, prior to the enactment of the Act, had begun preliminary studies of technical literature and had commenced discussions with the Association of Home Appliance Manufacturers (AHAM) with regard to test methods for measuring energy consumption of dishwashers. A test procedure was not developed under the Department of Commerce Voluntary Labeling Program due to the passage of the Act.

The existing AHAM Standard DW-1 for dishwashers does not specifically relate to energy consumption, but is concerned with other performance characteristics of dishwashers. The AHAM Dishwasher Engineering Committee has developed a draft supplement (DW-2EC) to the AHAM dishwasher standard that will contain a standard method of measuring energy consumption. The test procedures recommended by NBS incorporate the approach contained in the AHAM draft DW-2EC for measuring energy consumption for a normal cycle and, in addition, include procedures for determining the estimated annual operating cost and energy efficiency of dishwashers.

The Act requires FEA to prescribe test procedures for the determination of estimated annual operating costs and at least one other useful measure of energy consumption which the Administrator determines is likely to assist consumers in making purchasing decisions. Since the annual operating cost of a dishwasher could differ significantly depending upon whether the water utilized is heated by gas or oil, or by electricity, FEA is proposing to establish two alternate values for the estimated annual operating cost for dishwashers: one assuming that gas-heated or oil-heated water is used and the other assuming that electrically-heated water is used. In each case, the estimated annual operating cost is the product of the representative average use cycle times the cost of energy used per cycle for the normal cycle. The cost of energy used per normal cycle is, in turn, dependent upon the representative average unit energy costs as provided by the Administrator, the machine electrical energy consumption for the normal cycle, and the energy required to heat the water consumed in the normal cycle. The normal cycle would be defined as the cycle type (including the power-dry feature) recommended by the manufacturer for a full load of dishes, and, accordingly, is proposed as the cycle type upon which the estimated annual operating cost is based.

Also proposed (section 430.22(c)(2)) as test procedures for the determination of other measures of energy consumption which are likely to assist consumers in making purchasing decisions are test procedures regarding the estimated annual operating cost for any specified cycle type other than the normal cycle. As with test procedures for the estimated annual operating cost, these test procedures could be used to provide consumers with useful cost information regarding dishwasher operation with both electrically-heated and gas-heated or oil-heated water. For example, if the estimated annual operating cost of the truncated cycle as defined in the proposed uniform test method (Appendix C), were presented to the consumer, it could encourage the consumer to purchase a dishwasher offering the truncated cycle as an optional feature. It is proposed that the estimated annual operating cost for any other specified cycle type be determined similarly to the determination of such cost for the normal cycle, except that any required tests would be run on the specified cycle and not on the normal cycle. The application of these test measures, however, is not required until an appropriate authority, such as FTC in exercising its authority pursuant to the appliance labeling provisions of Energy Policy and Conservation Act, has specified the cycle type(s) for which estimated annual operating costs are required to be measured.

An additional proposed measure that is likely to assist consumers in making purchasing decisions is the energy factor. For dishwashers that are not capable of being preset by consumers to eliminate the power-dry feature, this is defined as the reciprocal of the total per-cycle energy consumption for the normal cycle in kilowatt-hours per cycle. For dishwashers capable of being preset by consumers to eliminate the power-dry feature on the normal cycle, the energy factor is defined as the reciprocal of one-half the sum of the total per-cycle kilowatt-hour energy consumption for the normal cycle and the total per-cycle kilowatt-

hour energy consumption for the normal cycle without the power-dry feature, *i.e.*, truncated cycle. Among other possible applications, the energy factor may be used by FEA to determine the efficiency of dishwashers for the purposes of the efficiency improvement program described by section 325 of the Act.

The procedure for measuring the contribution of a switch that disables the power-dry feature assumes a 50 percent usage for the switch, which is based on a survey conducted by the Kitchen Aid Division of Hobart Corporation. Kitchen Aid conducted a consumer usage survey which indicated that 39 percent of the participants used the switch disabling the power-dry feature all of the time and 29 percent used this switch part of the time. A 50 percent frequency of use basis was established under the Department of Commerce Voluntary Labeling Program for any feature that required consumer interaction and for which actual usage was unknown. Further, in public hearings held by FEA on the initial proposed energy efficiency targets, several appliance manufacturers recommended that a 50 percent figure for consumer usage be utilized for energy saving switches when actual usage is unknown. FEA is proposing a 50 percent frequency of use for computing the energy efficiency ratio because it believes that to be a reasonable estimate of actual consumer usage. FEA will modify the contribution of energy saving features, such as the switch for eliminating the power-dry feature, if additional usage information is developed that indicates that other frequency of use patterns exist.

FEA recognizes that there may be additional useful measures of energy consumption for dishwashers other than the measures described above. Accordingly, today's proposal, in proposed section 430.22(c)(4), provides for other useful measures which the Administrator determines are likely to assist consumers in making purchasing decisions. These measures, however, must be derived from the application of the uniform test method proposed today as Appendix C to Subpart B. Dishwasher manufacturers would, if required, only have to perform various computations while still applying the same test method contained in Appendix C. For example, if the Administrator determined that a per-cycle cost for a specified cycle type would aid consumers in making purchasing decisions, this cost could be derived by applying the uniform test method for that cycle type and dividing by the annual usage to arrive at a per-cycle figure.

Section 430.23(c) would provide for sampling of each basic model to be tested when testing of dishwashers is required by the Act or by program regulations of agencies responsible for administering the Act. This provision is intended both to provide an acceptable level of assurance that test results are applicable to any entire basic model for which testing is required and to minimize the testing burden on manufacturers. FEA believes that the sampling approach proposed today will enable consumers to make meaningful comparisons of information appearing on appliance labels, and also will meet the requirements of section 323(b) of the Act that test procedures not be unduly burdensome to conduct.

Under proposed section 430.23(c), sample of sufficient size of each basic model would be tested to assure that, for each measure of energy consumption described in section 430.22(c), there is a 95 percent probability that the mean of the values of these measures of the sample is within five percent of the true mean of these measures of the basic model. The size of the sample of a particular basic model will depend upon the following factors:

(a) the level of confidence required (set at 95 percent in the proposed regulations);

(b) the maximum allowable difference between the sample mean and the mean of the basic model (expressed in the proposal as a percent of the true mean and set at five percent); and

(c) the relationship of the mean and standard deviation of the basic model.

The relationship of the mean and standard deviation of the basic model can be determined from data available to manufacturers. With this information and using standard statistical techniques, manufacturers can determine the number of units required to be tested. In any case, no fewer than three units of each basic model must be tested. Sample units would be selected randomly from the production stream.

Manufacturers and other interested persons are encouraged to comment on the sampling approach. Manufacturers are especially encouraged to submit any data which relates to the size of the samples which the provision would require to be tested. Comments alleging that the sampling provision is burdensome should include a full discussion of the facts upon which such allegation is based.

Proposed Appendix C to Subpart B provides for a controlled laboratory environment for measuring energy consumption for the various dishwashers (and their various cycle types) which are available to the consumer. The proposed test method in Appendix C measures energy consumption for heating dishwasher water in kilowatt-hours or British thermal units (Btu's) per cycle, depending on whether gas, oil or electricity is used to heat the water, and electrical energy consumption needed to perform any specified cycle on a dishwasher under test in kilowatt-hours per cycle. From these standard measures of energy consumption, using the proposed dishwasher test procedures (which include the values of the representative average-use cycle and the representative average unit costs of energy), various determinations of dishwasher energy costs and energy consumption can be derived in a standard fashion.

The nominal gas and oil water heater efficiency proposed in 4.2 of Appendix C to Subpart B for the calculation of per-cycle water energy consumption using gas-heated or oil-heated water is 75 percent. This number represents an average recovery efficiency for new gas- and oil-fueled water heaters. The water heater industry has established 70 percent as the minimum acceptable recovery efficiency through a self-certification program. According to an NBS review of industry data, energy conserving oil- and gas-fueled water heaters have recovery efficiencies as high as 78 percent. NBS has recommended to FEA that 75 percent be used as the typical recovery efficiency of gas- and oil-fueled water heaters. The 75 percent value for recovery efficiency is recommended by AHAM in their draft test standard DW-2EC, which is designed to measure the energy consumption of dishwashers. Therefore, FEA believes that 75 percent is a reasonable estimate of recovery efficiency for gas- and oil-fueled water heaters.

The nominal water heater temperature rise proposed in 4.1 of Appendix C to Subpart B and incorporated by reference in 4.2 of Appendix C for the calculation of per-cycle water energy consumption is 90°F. NBS has determined that the average temperature rise for heated water is 90°F. The 90°F temperature rise represents the national average based on a median inlet water temperature for the United States of 55°F and a normal factory-set thermostat adjustment of 145°F. The 90°F temperature rise is also recommended by AHAM in their draft test standard DW-2EC, which is designed to measure the energy consumption of dishwashers. Therefore, FEA believes that a 90°F temperature rise for heated water is a reasonable estimate for residential water heater usage.

Section 323(b)(2) (42 U.S.C. 6293(b)(2)) of the Act provides that test procedures for determining estimated annual operating costs of any covered product shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Administrator) and from representative average unit costs (as provided by the Administrator) needed to operate such product during such cycle. FEA has determined that the representative average use cycle for dishwashers is 416 cycles per year. This determination is based upon NBS' recommendation to FEA which, in turn, is based upon a Procter and Gamble field study on dishwasher use. NBS' recommendation and the Procter and Gamble field study are available for inspection as provided for later in this notice.

FEA intends to develop representative average unit costs of energy needed to calculate the annual operating cost for the representative average-use cycle and to provide this information to manufacturers and FTC on or before the effective date of test procedures for dishwashers.

While FEA is soliciting comments on all aspects of the proposed test procedures for dishwashers, FEA is particularly interested in receiving comments on any other useful measures of energy consumption or data on typical consumer usage of dishwashers in addition to those proposed today.

In addition, FEA is interested in receiving comments on any definitions described in previously proposed section 430.2, as these provisions might affect the testing of dishwashers. Comments with respect to dishwashers regarding provisions in previously proposed section 430.2 are timely until the close of the written record, as specified below. For the convenience of the reviewer, the proposed definition of "dishwasher" (41 F.R. 19979, May 14, 1976) is as follows:

Section 430.2 Definitions.

"Dishwasher" means a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system.

PUBLIC COMMENT AND HEARING PROCEDURES

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed test procedures for dishwashers set forth in this notice to Executive Communications, Room 3309, Federal Energy Administration, Box LH, Washington, D.C. 20461.

Comments should be identified on the outside of the envelope and on documents submitted to FEA with the designation "Dishwashers—Proposed Test Procedures." Fifteen copies should be submitted. All comments received by May 9, 1977, before 4:30 p.m., e.s.t., and all other relevant information will be considered by FEA before final action is taken on the proposed regulations.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. FEA reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

A public hearing in this proceeding will be held at 9:30 a.m., on May 9, 1977 at Room 2105, 2000 M Street, N.W., Washington, D.C. 20461 in order to receive comments from interested persons on the proposed test procedure for dishwashers.

Any person who has an interest in the proposed rulemaking issued today, or who is a representative of a group or class of persons that has an interest in today's proposed rulemaking, must make a written request for an opportunity to make an oral presentation. Such a request should be directed to Executive Communications, FEA, and must be received before 4:30 p.m., e.s.t., on April 29, 1977. Such a request may be hand delivered to Room 3309, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. The person making the request should be prepared to describe the interest concerned, if appropriate, to state why she or he is a proper representative of a group or class of persons that has such an interest, and to give a concise summary of the proposed oral presentation and a telephone number where he or she may be contacted through May 2, 1977. Each person selected to be heard will be so notified by FEA before 4:30 p.m., e.s.t., May 2, 1977, and must submit 50 copies of his or her statement to Regulations Management, FEA, Room 2214, 2000 M Street, N.W., Washington, D.C. 20461, before 4:30 p.m., e.s.t., May 6, 1977. In the event any person wishing to testify cannot meet the 50 copy requirement, alternative arrangements can be made with the Office of Regulations Management in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling the Office of Regulations Management at (202) 254-3345.

FEA reserves the right to select the persons to be heard at this hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An FEA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by FEA with respect to the subject matter of the hearing will be based on all information available to FEA. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked of any person making a statement at the hearing to Executive Communications, FEA, before 4:30 p.m., e.s.t., May 2, 1977. FEA will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any person who makes an oral statement and who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by FEA and made available for inspection at the FEA Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of

8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter. A copy of NBS' recommendations concerning test procedures for dishwashers along with a related Procter and Gamble field study will also be made available for inspection at the FEA Freedom of Information Office.

As required by section 7(c) (2) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), a copy of this notice has been submitted to the Administrator for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

The National Environmental Policy Act of 1969 requires FEA to assess the environmental impacts of any proposal by the Agency for "major Federal actions significantly affecting the quality of the human environment." Since test procedures under the energy conservation program for appliances will be used only to standardize certain measurements related to the energy efficiency and consumption of appliances covered by the program and will not affect energy production or usage, FEA has determined that the action of prescribing test procedures, by itself, will not result in any environmental impacts. On this basis, FEA has determined that, with respect to prescribing test procedures under the conservation program for appliances, no environmental impact statement is required.

The proposal has been reviewed in accordance with Executive Order 11821 as amended by Executive Order 11949, and OMB Circular No. A-107 and has been determined not to require evaluation of its economic impact as provided for therein.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended by Pub. L. 94-385; E.O. 11790, 39 F.R. 23185.)

In consideration of the foregoing, it is proposed to amend Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., March 17, 1977.

ERIC J. FYGI,
*Acting General Counsel,
Federal Energy Administration.*

representative average unit cost in dollars per Btu for oil or gas, as appropriate, as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(2) The estimated annual operating cost for any other specified cycle type for dishwashers shall be—

(i) when electrically-heated water is used, the product of the following three factors: (A) the representative average-use cycle of 416 cycles per year, (B) the total per-cycle energy consumption for the specified cycle type in kilowatt-hours per cycle, determined according to 4.4 of Appendix C to this subpart, and (C) the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year; and

(ii) when gas-heated or oil-heated water is used, the product of: the representative average-use cycle of 416 cycles per year times the sum of (A) the product of the per-cycle machine electrical energy consumption for the specified cycle type in kilowatt-hours per cycle, determined according to 4.3 of Appendix C to this subpart, times the representative average unit cost in dollars per kilowatt-hour as provided by the Administrator plus (B) the product of the per-cycle water energy consumption for gas-heated or oil-heated water for the specified cycle type, in Btu's per cycle, determined according to 4.2 of Appendix C of this subpart, times the representative average unit cost in dollars per Btu for oil or gas, as appropriate, as provided by the Administrator, the resulting product then being rounded off to the nearest dollar per year.

(3) The energy factor for dishwashers, expressed in cycles per kilowatt-hour, shall be—

(i) for dishwashers not having a truncated normal cycle, as defined in 1.5 of Appendix C of this subpart, capable of being preset, the reciprocal of the total percycle energy consumption for the normal cycle in kilowatt-hours per cycle, determined according to 4.4 of Appendix C of this subpart, and

(ii) for dishwashers having a truncated normal cycle, as defined in 1.5 of Appendix C of this subpart, capable of being preset, the reciprocal of one-half the sum of (A) the total per-cycle energy consumption for the normal cycle

plus (B) the total per-cycle energy consumption for the preset cycle type closest to the truncated normal cycle, each in kilowatt-hours per cycle and determined according to 4.4 of Appendix C of this subpart.

(4) Other useful measures of energy consumption for dishwashers shall be those measures of energy consumption for dishwashers which the Administrator determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix C of this subpart.

3. Section 430.23 is amended by adding a paragraph (c), to read as follows:
Section 430.23 *Units to be tested.*

(c) *Dishwashers.*

(1) When testing of dishwashers is required for a measure or measures of energy consumption described in § 430.22 (c) of this subpart, a sample of sufficient size of each basic model shall be tested to ensure that, for each such measure of energy consumption, there is a 95 percent probability that the mean of the sample is within five percent of the true mean of such measures of the basic model, except that no fewer than three units of each basic model shall be tested.

(2) The sample selected for paragraph (c) (1) of this section shall be a simple random sample drawn from the production stream of the basic model being tested.

(3) A basic model having dual voltage ratings shall be separately tested at each design voltage such that the requirements of paragraph (c) (1) of this section are satisfied at each rating.

4. Subpart B of Part 430 is amended to add an Appendix C, to read as follows:

APPENDIX C—UNIFORM TEST METHOD FOR MEASURING THE ENERGY CONSUMPTION OF DISHWASHERS

1. Definitions

1.1 "Cycle" means a sequence of operations of a dishwasher which performs a complete dishwashing operation, and may include variations or combinations of the functions of washing, rinsing and drying.

1.2 "Cycle type" means either any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation or the truncated normal cycle.

1.3 "Normal cycle" means the cycle type recommended by the manufacturer for a full load of dishes, including the power-dry feature, and typically characterized by six water changes.

1.4 "Power-dry feature" means that function in a cycle in which electrically-generated heat is introduced into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.5 "Truncated normal cycle" means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

2. Testing conditions

2.1 *Installation.*—Install the dishwasher in accordance with the manufacturer's instructions, except that undercounter dishwashers need not be installed under a counter.

2.2 *Electrical supply.*—Maintain the electrical supply to the dishwasher within two percent of 120 volts and within one percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.*—Maintain the water supply temperature between 138° F. and 142° F.

2.4 *Water pressure.*—Maintain the pressure of the water supply between 32.5 and 37.5 pounds per square inch.

2.5 *Ambient and machine temperature.*—Maintain the room ambient air temperature between 70° F. and 85° F., and assure that the dishwasher and its load, if any, are at room ambient temperature at the start of each test cycle.

2.6 *Load.*—Use an eight place setting test load of dishes. One place setting consists of the following:

- One glass, 12 oz., straight sides, made of glass,
- One cup, Corning "Centura" No. C-308,

One saucer, Corning "Centura" No. C-506,
 One dinner plate, Corning "Centura" No. C-110,
 One bread and butter plate, Corning "Centura" No. C-106,
 One fruit bowl, Corning "Centura" No. C-409,
 One dinner fork, Stainless steel,
 One salad fork, Stainless steel,
 One knife, Stainless steel, and
 Two teaspoons, Stainless steel.

3. Test cycle and measurements

3.1 *Test cycle*.—Perform a test cycle by establishing the testing conditions set forth in 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle and allowing the cycle to proceed to completion.

3.2 *Machine electrical energy consumption*.—Measure the machine electrical energy consumption, specified as the number of kilowatt-hours of electrical energy consumed during the entire test cycle, using a kilowatt-hour meter having a resolution no larger than 0.001 kilowatt-hours and a maximum error no greater than one percent.

3.3 *Water consumption*.—Measure the water consumption, specified as the number of gallons delivered to the dishwasher during the entire test cycle, using a water meter having a resolution no larger than 0.1 gallon and a maximum error no greater than 1.5 percent for all water flow rates from one to five gallons per minute and for all water temperatures encountered in the test cycle.

3.4 *Reported values*.—State the reported values of machine electrical energy consumption and water consumption as the average of these respective values measured in three identical consecutive test cycles for the cycle type under test.

4. Calculation of derived results from test measurements

4.1 *Per-cycle water energy consumption using electrically heated water*.—Calculate for the cycle type under test the per-cycle water energy consumption using electrically heated water, W_e , expressed in kilowatt-hours per cycle and defined as:

$$W_e = V \times T \times K, \text{ where}$$

V = reported water consumption in gallons per cycle for the cycle type under test.

T = nominal water heater temperature rise = 90° F.

K = water specific heat in kilowatt-hours per gallon per degree F. = .00244.

4.2 *Per cycle water energy consumption using gas-heated or oil-heated water*.—Calculate for the cycle type under test the per-cycle water energy consumption using gas-heated or oil-heated water, W_g , expressed in Btu's per cycle and defined as:

$$W_g = V \times T \times C \text{ over } e, \text{ where}$$

V and T are defined in 4.1 of this Appendix, and

C = water specific heat in Btu's per gallon per degree F = 8.34.

e = nominal gas or oil water heater efficiency = 0.75.

4.3 *Per-cycle machine electrical energy consumption*.—Calculate for the cycle type under test the per-cycle machine electrical energy consumption, M_e , expressed in kilowatt-hours per cycle, and defined as the reported value of the machine electrical energy consumption for the cycle type under test.

4.4 *Total per-cycle energy consumption when electrically heated water is used*.—Calculate for the cycle type under test the total per-cycle energy consumption, E_t , expressed in kilowatt-hours per cycle, and defined as the sum of the per-cycle machine electrical energy consumption, M_e , and the per-cycle water energy consumption using electrically-heated water, W_e , calculated for that cycle type, determined according to 4.3 and 4.1, respectively.

DISHWASHER TEST PROCEDURES

The similarities and differences between FEA and industry dishwasher test procedures are highlighted below.

TEST METHOD

The Association of Home Appliance Manufacturers (AHAM) approach that was adopted by the National Bureau of Standards (NBS) in its recommendation to FEA consisted of measuring the hot water and electricity used by the dishwasher

during its operation. Heated water and electricity are the only two components of energy consumption for a dishwasher. Therefore, the approach adopted is the only practical testing means for measuring energy consumption. Both AHAM's and FEA's approaches contain the basic syllabus of installing the dishwasher for test with proper electrical and water consumption instrumentation, operating the unit through a complete normal test cycle loaded with dishes, utensils, etc., and calculating energy consumption from the electrical energy and hot water consumed during the test cycle. In addition, the FEA approach operates the dishwasher through a truncated cycle without the power dry feature and determines energy consumption for this cycle.

The FEA procedure also reflects the output of studies performed at NBS in cooperation with FEA engineers. Tests at NBS investigating dishwasher load size and washing performance have led to NBS' recommendation of a standard 8 place setting test load as a more uniform approach to energy consumption measurements. This load is designed for all tests on all models of dishwashers. The AHAM procedure applies to a variable test load that can also vary performance as a function of energy consumption. When no place setting capacity is stated for a machine under test, the AHAM procedure states to "use good judgment" in loading the dishwasher for the energy consumption test.

MEASURE OF ENERGY CONSUMPTION

The AHAM procedure tabulates a single cycle cost of operation for various electric and gas utility rates. The FEA procedure offers an annual operating cost of electrically-heated, gas-heated or oil-heated water for both normal and truncated operating cycles and offers the ability to calculate annual operating cost for any specified cycle.

In addition, another measure of energy consumption (the energy factor expressed in cycles per kilowatt-hour) is offered by the FEA test procedure as a means to compare energy consumption for a standard test load for various dishwashers, to assist the consumer in making a purchasing decision. The FEA procedure has defined the energy factor to encompass the contribution of various design changes that will be incorporated by manufacturers in improving the efficiency of their products to meet the efficiency improvements promulgated by FEA. The AHAM procedure is not specific in its definition of efficiency or in its explanation of how to handle design innovations introduced to reduce energy use.

The FEA procedure identifies specific sampling requirements for each basic model to be tested. This provision is intended both to provide an acceptable level of assurance that test results for measures of energy consumption are applicable to an entire basic model for which testing is required, and to minimize the testing burden on manufacturers. The sampling approach will enable consumers to make meaningful comparisons of information appearing on appliance labels, and will meet the requirements of the Energy Policy and Conservation Act that the conduct of test procedures not be unduly burdensome.

The FEA dishwasher test procedure requires that a sample of sufficient size of each basic model would be tested to assure (for each measure of energy consumption described in the test procedure) that there is a 95 percent probability that the mean of the values of these measures of the sample is within 5 percent of the true mean of these measures of the basic model. The AHAM DW-2EC does not address the problem of sampling the units to be tested.

Mr. SCHOOLER. I would like to ask another question, to Mr. O'Leary, or Mr. Seneca, concerning an addition in the Office of Conservation and Environment. That is the \$25 million for the development of innovative conservation programs.

Mr. O'LEARY. I would be pleased to answer that. We expect to make a number of initiatives, not now specified, in the April 20 message, and these are in part designed to cover those.

In addition to that, we have from time to time received some very innovative ideas from the outside, from States, regulatory commissions, individuals, and companies. These are such, Mr. Chairman, that I can tell you frankly we cannot tell you what the program is at this

point in time; however, I can tell you with equal certainty that if we don't find useful ways to employ these funds, they won't be spent.

I think it is worthwhile to put in the small amount of flexibility so that we can make early starts on useful ideas as they develop or are enunciated by the President; and it is that simple.

Mr. SHARP. Of course, we are all eager to know what is going to come out on April 20 and we will have to wait.

I wondered, are you speaking here of governmental action, governmental sponsored research, grants, to outside people to do this?

Mr. O'LEARY. Yes, sir.

Mr. SHARP. To begin a program?

Mr. O'LEARY. This could take the form, for example, of working in the insulation area or working out the details of developing arrangements with banks, utilities, and others, that would undoubtedly require some piloting and would involve some use of resources in order to get the weatherization program off to an early start, beyond the low-income weatherization program already embodied in law.

I want you to understand perfectly well what that is. This is not program money; this is money aimed at the contingency that we expect will eventually result from the overall interest in conservation that has been generated in the last few months, particularly in the context of the President's April 20 message.

Mr. SHARP. So you are talking about contracting out to have certain things done on behalf of the agency or to demonstrate or—

Mr. O'LEARY. Yes. Let me give you one example: We have a number of contracts looking at useful ways of handling conservation. One of these was a contract that we let sometime ago with Auburn University in Alabama. This study took a look at the final way in which an average small boiler manufacturer who couldn't afford an engineer, a fellow who had a small boiler, could control the air nozzle cleanliness of the air that went into that boiler in order to conserve energy. We found in that particular example that there was a very substantial saving. I would be pleased to supply for the record the overall volumes in the State of Alabama that came out of the study that was done by Auburn and from a series of workshops that were sponsored by the FEA and by others. Out of this effort there have been some half-a-dozen workshops; they have been very heavily attended by industrial concerns in the State. Of course, it costs money to do these things.

Now we have taken a look at this as something we might want to put out to another 49 States. This apparently is one of those things where it is literally a show-and-tell proposition.

Our very early assessment of the benefits and cost indicates this is an extremely worthwhile program. We would not like to have to wait for a whole budget cycle in order to fund that program.

Mr. SMITH. For example, if this proved true, we wouldn't use all of the money in this \$25 million innovative program thing necessarily to conduct these workshops nationwide. What we would do is take this experience, work with the State energy offices and other agencies in the States that are interested in conservation. We would then hold or fund two or three workshops, prepare and make available the materials to conduct additional ones, and try to spread the seed of

the findings across the country. This funding would be used for the front end money for that idea. Otherwise, if we don't have anything anywhere in the budget to do that, we have to either cut back on something else or wait for another budget cycle, which is going to be 18 months after you are convinced that you can justify it before you can get the program started.

Mr. SHARP. This seems to relate to something I was interested in this thing as to how we got good information once we have collected it or discovered something.

Mr. O'LEARY. I would like to take this opportunity to invite myself to brief you on this particular aspect of the program. I think you will be interested in this one.

Mr. SHARP. Fine, and you are talking about these seminars; in other words, highly specialized—

Mr. O'LEARY. This is a seminar directed at a fellow who operates that boiler.

Mr. SHARP. In a practical way, you can make a savings right here now; you don't know the theory on where the country stands?

Mr. SMITH. This is a school janitor who comes to the seminar and learns how to save school board money. He saves the country from importing several thousand barrels of oil in one State alone.

Mr. SHARP. That strikes me as very useful. I have become highly skeptical of the multitude of conferences Congressman, Federal civil servants and private individuals fly about the country to be involved in, and they seem to generate little concrete action.

Mr. O'LEARY. In that context, there was a great little conference, or at least it had a great title, held last year, called The Last Energy Conference.

Mr. SHARP. I will believe it when I see it.

Mr. SCHOOLER. I want to finish up one thing on this \$25 million, if you could give me an idea or perhaps the subcommittee an idea of what the percentage of this amount might be used for management study as opposed to, say, sponsoring workshops?

Mr. O'LEARY. This is a matter of definition. Take the Auburn study that is the genesis of the little lesson that we have just covered. Is that a management study? If so, a portion of it would be devoted for basic studies, the remainder for spreading the word. I think probably if you take this one as a model for this sort of thing, most of it is going to be spread on applied activities and not on management activities per se.

Mr. SCHOOLER. I am going to ask a couple of other brief questions about the Office of Conservation and Environment.

One is about the industrial reporting program which we have discussed earlier. I noticed that voluntary reporting through trade associations falls under national programs and direct reporting falls under mandatory programs.

Is this situation going to remain?

Mr. O'LEARY. That is a very significant distinction. I don't understand it. Perhaps Mr. Seneca does.

Mr. SENECA. The Office of Conservation and Environment in my first acquaintance with it was organized along major use sectors; for example, buildings, transportation, and industry.

Then it was reorganized last summer, national programs, State programs, mandatory programs, and program development.

That reorganization made a definite split between voluntary industrial programs and the mandatory reporting program in order to separate our mandatory functions from those of the Department of Commerce where there was a large voluntary program in existence and operating.

As I understand the legislative history of the mandatory reporting program, the voluntary program at the Department of Commerce formed in large part the basis and provided a lot of the information and experience for, the mandatory reporting legislation. It was the thought of the previous administration that it was important to preserve the distinction between the voluntary and the mandatory programs since there were a large number of corporations or industries that would continue to report on a voluntary basis.

That is the rationale that was used when the office was reorganized.

Mr. SMITH. If I remember the question, I think the answer is, yes. They are in separate offices; and the next question is, are they going to remain so?

The answer is, we don't know yet; we have to take a look and see what is going on and make a decision whether it is appropriate to put those two together or leave them in separate functions.

Mr. SCHOOLER. My final question deals with the FEA's loan guarantee program, a major amendment in the Carter budget.

What studies have already been done in preparation for the loan guarantee program?

Mr. SENECA. There has been some preliminary effort in taking a look at those sectors that would utilize the program; and essentially what I am speaking of are institutions, small and large businesses, and commercial buildings. The effort has involved how many loans and to what amounts we would be involved in the short term and long term during the life of the program.

There also has been extensive staff involvement in studying the Federal guarantee loan programs that exist at the present time.

Mr. SCHOOLER. The budget allows 75 positions for the administration of the loan guarantee program while there are 30 positions for the administration of the weatherization program. Perhaps you could give us an indication of where the No. 75 came from?

Mr. SENECA. I would be pleased to.

Mr. SMITH. While Mr. Seneca is getting the detail, I think it is important to distinguish between those programs.

The reason for the principal difference in staffing is that the loan guarantee program is going to have to do much more detailed analysis of the individual loan applications than is the case in the weatherization program which will be dealing by and large with State applications and State programs.

Mr. O'LEARY. To give you one other measure of difference, one is administering a loan program directly that in the first year we anticipate will be in the range of half a billion dollars; the other one is buying material to the extent of \$65 million. They are just quite a different order of magnitude.

Mr. SENECA. Just to amplify a bit on those remarks, we may very well receive between 40,000 and 50,000 loan guarantee applications covering a wide variety of energy conservation and renewable resources.

In terms of being able to process this number of applications expeditiously we will need positions in our regional offices. We have 10 regional offices and the thought is to have approximately 5 people within each office to disseminate information concerning the program; they would process applications; they would review energy audits, and they would actually be issuing commitments and guarantees up to a certain dollar level.

We want 25 people in our headquarters staff. Their duties would include the continued development of the energy measures list; quality control regarding the processing of the applications; review and handling of extraordinary or complex loan guarantee applications; review of applicant appeals; administration of a management information system; and a program evaluation.

We are talking about, at least in my estimation, a fairly extensive effort, and the 75 positions would allow us to carry out the program with credibility and in compliance with the law.

Mr. SCHOOLER. Thank you.

Mr. SHARP. Thank you very much.

Mr. O'Leary, it strikes me as we go through these things that we are obviously in a period when we are reorganizing and redefining policy, which is very unsettling and complicating.

Mr. O'LEARY. This program, for example, was passed 1½ years ago and was not funded in the previous administration, this in common with most of the conservation programs. As a result, we are really starting from a base of just about 1½ months now to bring this information before you.

Mr. SHARP. Well, I am glad you are pressing on this, but the thing that now strikes me is that although our thrust has been to urge on you to get up to speed on compliance with what we previously enacted into law, is whether or not we have got our priorities right at this stage of the game, given other decisions we may be asked to make on April 20, and I am sure that has struck you people hard.

It is like I was going to ask you, you may not wish to answer, but we resorted to industrial reporting as a rather weak effort to try to bring about something in that sector, and I noticed that your deadline is June 2 for forms, and what strikes me is perhaps you are going to try to go a different direction or perhaps as a low-priority item, and we would more wisely delay that.

I almost hesitate to even suggest the option of delay, but that if we are making the switch in policy, let's not frustrate everybody along the process. If this is a valid and continuing thing, I say full speed ahead, and I certainly don't want to be one of those opening that possibility for delay.

Mr. O'LEARY. Let me refer to the area that you singled out as a model for this.

Early on it was quite evident to me as a result of some other experiences that I had had in this particular arena that the voluntary two-digit reporting is just not going to take us anywhere; there are too many ways to dodge it.

What you have to have, and particularly on an aggregated basis, is rigorous disaggregated data, carefully monitored. However, it is not a waste of time pending the passage of the proper statutory framework, and then getting that in place to move forward, to crawl, as it were, before we try to walk.

We made a very conscious decision in this particular case, because, to tell you the truth, Mr. Sharp, I was tempted to say, now, let's not proceed with this one. We went over that. My recollection is that Mr. Seneca and his staff and I went over that some three times and finally we came to the decision we will go ahead and push and proceed to permit the existing program to go into place and not disturb it, largely because of the time effacing problem of getting what I hope to be a success or a much more effective program in place. That is not counter-productive; it just isn't good enough for the full conservation.

Mr. SHARP. I am glad to see that kind of concern and thought has gone into it.

Let me ask you this: Will there be any value in this in terms of educating the companies themselves? Are they so alert to their energy costs and what not, or are we helping to force them to realize what it is costing them in terms of energy, and even though these are some of the most, in theory, top businesses in the country, obviously the businesses in terms of energy use are, in fact, rather amateurish about this as we all are?

Mr. O'LEARY. There is a good deal of value in this. It does apply a uniform discipline or ultimately will apply a discipline, uniform disciplines to the industry, and I think the industry itself will value that they will be able to look at this disaggregate base, as what their competition is doing, and I think they will learn from that.

There is potential for enormous feedback into ERDA programs when we get this energy policy under one roof. I think that that is extremely useful. If we attack this in disciplinary manner, we ought to be able to use this as a very, very effective voluntary tool for getting the whole system moving forward; and so I think that that is all to the good.

Mr. SHARP. It is not only valuable for our policy purposes—

Mr. O'LEARY. Yes.

Mr. SHARP [continuing]. In and of itself it has a disciplining effect upon the industry, you think?

Mr. O'LEARY. Yes, sir.

Mr. FINNEGAN. Mr. O'Leary, before I get into the compliance area, in the budget presentation there are provisions for the Office of Consumer Affairs, and in that Office there is a reduction of positions by a minus four. Could you explain to us why that is so?

Mr. SMITH. Mr. Finnegan, that minus four from the fiscal year 1977 level was a function of the Office of Management and Budget markup of FEA's budget request.

Mr. FINNEGAN. That is not your recommendation as an agency; is that correct?

Mr. SMITH. That is correct. I would like to supplement that by saying, when that happened and quite frankly this question was posed to Mr. Zarb. The question was whether to take that to the President as an issue, since we could not get it resolved with OMB. When

he made the determination to leave it this way in the budget, he at the same time picked up the hot line and called me and told me he was going to give me a chance to be a hero. The actual staffing in that program is not contemplated to change in fiscal year 1978. Since I had the biggest slice of the people in the agency, there is no contemplation that even if this budget is enacted the actual staffing in the Office of Consumer Affairs and Special Impact would change. What I am telling you is that will I will give over four of my positions to that Office.

Mr. FINNEGAN. From the Office of Regulatory Programs?

Mr. SMITH. Yes; and let me observe that given the hire lag involved, in a program as big as mine, with 1,623 people in the budget, I have got more than 4 vacancies just from the normal hire lapse at any particular time; so I can fund 4 positions and they can continue to be working in that area.

It is irregular, but it can be done without any noticeable impediment to the operations programs or regulatory programs. None of those funds are going to come out of compliance.

Mr. FINNEGAN. Aren't the people you are talking about already assigned to the regulatory program?

Mr. SMITH. No; what this is, I gave the Office of Consumer Affairs and Special Impact four spaces and they can use those to actually hire people into the Office of Consumer Affairs and Special Impact.

Mr. FINNEGAN. That cuts your positions?

Mr. SMITH. Cuts my authorized positions by 4, right; but because there are some 350 noncompliance positions in my office, both in the headquarters and in the regions, in any one pay period there are going to be more than 4 of those vacant anyway while I am busy hiring somebody, that is not the case with the compliance staff, because I am going to take care of keeping it up to full strength.

Mr. AIN. I believe in the statute it is generally to carry out functions assigned to an office as of a certain date. The Congress meant by that to restrict the flexibility of the FEA to take money from one area and move it into an area without some—and from what you seem to indicate, either there is more money in Consumer Affairs now than there is or that you are doing something which seems to go against the clear intent of the Congress in making sure that money stays allocated for the assigned category or is not spent, but is not transferred from one category to another. Am I misunderstanding what you are saying?

Mr. SMITH. Yes, sir, I believe you are, what we are doing is getting around the OMB decision, because the authorization on the part of the Congress included the higher staffing level.

Mr. FINNEGAN. Isn't that sort of catch as catch can?

Mr. SMITH. Yes.

Mr. O'LEARY. I am afraid I had not been aware of this. Before we make a determination, I will review this and I would like to have your permission to insert at this point in the record my disposition of this matter.

Mr. SHARP. Without objection.

[The following material was received for the record:]

CONSUMER AFFAIRS REDUCTION

The Consumer Affairs/Special Impact program will continue to fulfill its primary function, to advise the Administrator on the effect of Federal energy policy and programs on the target population. Efforts relating to the carrying out of the provisions of the Consumer Representation Plan will continue with a shift of some of the responsibility for implementation of the plan to the responsible program office. The CA/SI office will monitor the effectiveness of these program office actions and keep the Administrator advised as to their effectiveness. Support for the Consumer Affairs/Special Impact Advisory Committee will continue to be provided. The office will also retain responsibility for determining the special impact of policy, program and regulatory development activities, including the design of special impact data systems and the development of Agency policy for consumers, the poor, elderly and handicapped. In this manner CA/SI will be able to continue to carry out its present program with the staff reductions proposed without materially affecting its ability to advise the Administrator. Naturally, we will monitor this situation. Should the currently budgeted staffing level prove to be inadequate to discharge these functions effectively, we will take the necessary steps to assure that the program is able to meet its mandate.

However, no funds will be reallocated to that program without Congressional notification. The current request before Congress provides sufficient funds and man-years to sustain full staffing under this revised concept until an evaluation can be made of the impact, if any, of this reduction upon program accomplishment.

Mr. SHARP. The Consumer Affairs Office that is sponsoring the hearings around the country where individuals are coming in with their ideas for FEA, that I read about, is that one of the projects of this office?

Mr. O'LEARY. Yes; it is the same parent intergovernmental relations.

Mr. SMITH. For example, they work in the scheduling and attend many of the town meetings, series of town meetings held in each of the FEA regional office cities, to solicit input from the public in terms of the—

Mr. SHARP. Is this essentially public relations for the agency?

Mr. SMITH. No; public relations means you tell everyone else how smart you are. Believe me, I have been in a number of these hearings and that is not what we do, and we are not told how smart we are; we are told how unsmart we are in what we ought to do to be more responsive to consumer concerns.

Mr. SHARP. I have had town meetings myself, and I know the response you get, and it is healthy if your ego can stand it.

Mr. SMITH. It is not pleasant, but it is very useful.

Mr. SHARP. I guess I would like to have a little clearer idea of whether the Consumer Affairs Office has produced any impact on any policy decision within the agency. I have to tell you while I like to think of myself as a supporter of consumers' interests, I happen to think that some of the forms in which we have tried to do it simply are not wasteful.

Mr. SMITH. Yes.

Mr. O'LEARY. I think so, Mr. Chairman. We had a little bit of back and forth a little while ago, about our support of the consumer interventions. That is one area where clearly discussions in that sector have been of use. Of course, one of the principal activities of the intergovernmental group is to maintain close touch with State governments. I am particularly sensitive to the role of State governments

in this whole business; and, for example, as a result of that sensitivity and as a result of discussion with the staff, am prepared and in the process of supporting certain amendments to the current strip mining restoration bill, the reclamation bill, that would have the effect of transferring certain of the functions that normally would be in Federal hands to the States, so long as they meet a Federal standard and accept the Federal audit, so this is not by any means a useless exercise.

I think, philosophically, that an observation that a close associate of mine once made with regard to Washington and the rest of the world, that in his view, there are two Americas: One, the people downtown, and then there is the rest of the people out there, stems from the sort of "I know better than you do" attitude of the Executive and one of the ways we can bring that up short is by encouraging this sort of activity and constantly being aware there are States; there are State governments; there are competent people in the State governments; they have a direct line of communications, much closer than we can ever hope to have, with the people connected with our programs and working with them.

My own view is this is an activity that rather than being ignored ought to be strengthened.

Mr. SHARP. Well, I am pleased to hear your assessment of that.

Mr. SMITH. May I add, Mr. Sharp, that they have contributed to FEA policies in a couple of specific examples, three specific examples: One, some 2 years ago I made it a practice, after a discussion with the then head of this office, to invite a representative of the Consumer Affairs Office to any meeting I had with any representatives of industry, and announced this to the people in the industry, because there simply—I don't want to hear anything from any industry representatives that cannot be heard by a representative of the Consumer Affairs Office, and they have attended a number of such meetings and have enabled me to get a better handle on the consumer aspect and interest in the issue discussed at such meetings.

Two, they have cooperated in the regulations development process.

I found several weeks ago that I had started out a process; people had gotten busy; and the practice I initiated had fallen behind again. I reenergized that process, such that a member of the Consumer Affairs and Special Impact Office is physically located at M Street and has desk space and works with regulatory issues.

My own regulations development people answer not to me as Assistant Administrator for Regular Programs, but answer to the Director of the Office of Consumer Affairs and Special Impact.

Third, in the preparation of the Report of Utility Initiatives that was submitted to the Congress under title II of the ECPA, the Consumer Affairs Office participated in and had a number of specific comments they wanted incorporated in that report, a number of comments they wanted taken out of the report, that they made a significant contribution to the final structure of that particular report.

These are three examples where they have made differences.

At the same time, I think the commitment of the agency, although the procedures leave a good deal to be desired, that I outlined earlier, not only was it because Mr. Zarb was my boss that I didn't argue with him, but also because I thought the four people in that office were

necessary to get the job done properly, that I therefore readily agreed to the unusual procedures that I outlined earlier.

Mr. AIN. On page 30 of the black book you brought up, there is an asterisk as to the communications and public affairs spending during fiscal year 1977 which exceeded the congressional restrictions by approximately \$76,000.

Mr. HOWELL. What page is that?

Mr. AIN. Page 30. Do you find that in your record?

Mr. HOWELL. Yes, sir, and that I think explains there it is due to the pay raise.

Mr. AIN. Let me ask some questions about that.

When you say due to the pay raise, is the pay raise a mandatory matter for you to pass on to those employees, or is it a discretionary matter on the part of the Administrator who may or may not allow those employees to go up on that base?

Mr. O'LEARY. It is my understanding in the executive branch it is a right.

Mr. HOWELL. It was mandatory.

Mr. AIN. Was there any planning before the pay raise went through as to the effect of your meeting your authorized limit and not exceeding it?

Mr. HOWELL. There was discussion with the appropriations staffs and with the staff of this committee that it was our understanding that we could exceed, and that is why we are not trying to make any secret of it and that is why it is asterisked in the record.

Mr. AIN. I understand that.

Mr. HOWELL. And if that is not the wishes of the staff, we are talking about the 1978 budget, then all you have to do is transmit it to us and I will assure you we will be responsive to the mandates of Congress.

Mr. O'LEARY. I think it is important for Mr. Sharp to understand that that was a period when we were in effect reducing by half the size of the staff involved and probably this had the effect of eliminating or stretching out, eliminating for tenure of one or two people; that does not seem to me to be a major element.

Mr. FINNEGAN. Mr. O'Leary, the fiscal year 1977 request for the Office of Regulatory Programs, before a supplemental, was for 1,483 positions, according to the budget books that you provided to us. We understand that the supplemental that was submitted to Congress for fiscal year 1977, which is H.R. 4877, would increase this sum to 1,773. Could you tell us how many of those positions would be for compliance?

Mr. SMITH. Seventy of those additional positions would be for compliance.

Mr. FINNEGAN. And the rest are for what?

Mr. SMITH. The principal, 216 of those, are in the operations area, and were necessitated because, as Mr. O'Leary pointed out in his opening statement, the original 1977 budget again, assumed the decontrol from, the exemption from allocation and price controls of all petroleum products other than propane. When that didn't happen and as soon as it became clear it was not going to happen by the end of 1977, we had to go in for a supplemental, and of the total 290 additional positions incorporated in the supplemental, 216 are in the operations area, and those are primarily in the product allocation area.

Mr. FINNEGAN. Of the total 1,773, how many of those positions are compliance?

Mr. SMITH. Of those, 1,396.

Mr. FINNEGAN. That includes all of the enforcement activities; is that correct?

Mr. SMITH. That is correct.

Mr. FINNEGAN. All right. Now in fiscal year 1978 the budget estimate is for 1,623 positions; is that correct?

Mr. SMITH. That is correct.

Mr. FINNEGAN. That is again on the assumption of decontrol in fiscal year 1978; is that correct?

Mr. SMITH. That is correct.

Mr. FINNEGAN. And that is of all products except propane; is that correct?

Mr. SMITH. That is correct; possibly synthetic natural gas in terms of allocation.

Mr. FINNEGAN. That is about a 150-position drop from the fiscal year 1977 as supplemented in H.R. 4877?

Mr. SMITH. Exactly; yes.

Mr. FINNEGAN. Let me ask one further question. Of the 1,623, how many of those positions are for compliance?

Mr. SMITH. 1,384 compliance staff in 1978 is programed to decline by 12 people in the headquarters in the planning and programing staff of the headquarters from end 1977 to end 1978.

Mr. FINNEGAN. Now, of that figure, how many of those are from the regional offices?

Mr. SMITH. Of that, 1,299 are in the regional offices, which is exactly the same strength as at end of fiscal year 1977.

Mr. FINNEGAN. Now how many of those are auditors and how many are special investigators?

Mr. SMITH. As of February 28, 1977, there were out of that number a total of 735 auditors, 147 investigators, and 184 others.

Mr. FINNEGAN. 147, you say?

Mr. SMITH. 147 investigators.

Mr. FINNEGAN. What do you define "investigators" to mean?

Mr. SMITH. By an "investigator" I mean either a series 1810 or a series 1811.

Mr. FINNEGAN. You don't mean those to be criminal investigators, do you?

Mr. SMITH. Many of those have criminal investigative experience in their background. All are certified by the Civil Service Commission as having the training and skills and knowledge required to be classified as an Investigator GS-1810 or GS-1811; 1811 is specifically the criminal investigator, but there is a substantial amount of overlap in the description of the series in the civil service classification regulations.

Mr. FINNEGAN. How many of those are 1811's?

Mr. SMITH. I think it is three or four. It is just very few.

Mr. FINNEGAN. In the General Counsel's Office we understand that in fiscal year 1976 there were 62 positions for compliance, and the fiscal year 1977 submission is for 49 positions. Is there any proposal to increase those as part of the supplemental?

Mr. SMITH. It is not incorporated in the supplemental request.

Mr. FINNEGAN. So there is no increase at all in the fiscal year 1977 supplemental for the General Counsel's Office?

Mr. SMITH. In fact, the fiscal year 1977 budget would reduce the number of compliance. The number of lawyers supporting the compliance program would go from 62 in fiscal year 1976 to 52 by the end of fiscal year 1977 in that we add 3 in the 1977 supplemental.

Mr. FINNEGAN. Let me go back a second. In the 1977 fiscal year budget you said 49; you said you added 3 in the fiscal year 1977 supplemental?

Mr. SMITH. That is total General Counsel for compliance in fiscal year 1977 would be 52.

Mr. FINNEGAN. For the compliance now, let's take the compliance.

Mr. SMITH. OK.

Mr. FINNEGAN. Only 49; that is a drop from 62 to 49 in fiscal year 1977; is that correct?

Mr. SMITH. From 62 in fiscal year 1976 to 49 plus 3 or 52 in fiscal year 1977.

Mr. FINNEGAN. Sixty-two in 1976 to 49 in 1977?

Mr. SMITH. That is right.

Mr. FINNEGAN. Can you explain to us why there was that substantial drop?

Mr. SMITH. Yes, because the Office of Management and Budget did not support our entire request and because we did not get all the lawyers we asked the Appropriations Committee for, and in the 1977 supplemental and 1978 budget we did not get all of the lawyers we asked the Office of Management and Budget for.

Mr. FINNEGAN. How many did you ask for the total from Office of Management and Budget?

Mr. SMITH. I requested 94 for fiscal year 1978.

Mr. FINNEGAN. For the 1978 supplemental?

Mr. SMITH. Yes, sir.

Mr. FINNEGAN. Fiscal year 1978?

Mr. SMITH. That is correct, and was allowed 52 of those.

Mr. FINNEGAN. That is 84 or 94 did you say?

Mr. SMITH. Ninety-four.

Mr. FINNEGAN. Does the General Counsel's Office supervise the regional counsels?

Mr. FYGI. Perhaps I can speak to that. While in the past there has been some professional oversight, the supervising of the regional counsel has been by the regional administrator.

Mr. FINNEGAN. Does that mean the regional counsels are also subject to the regional administrators in terms of budgetary matters and support and all matters?

Mr. FYGI. In the last one or two budget cycles, the agency has been shifting from the arrangement you just described to inclusion of the regional counsel in the General Counsel budgetary calculations. So the budget process is not necessarily consistent with the way the chain of command has been arranged.

Mr. FINNEGAN. Why have you arranged it in such a way so the General Counsel does not have direct supervision over regional counsel?

Mr. O'LEARY. Since my personal sentiments do not necessarily coincide with the prior arrangement, I am at some difficulty to justify it.

Mr. SMITH. Let me try then, since you haven't got the best advocate of the position.

This is a determination that was made in the original days when FEA was organized and took over its regional responsibilities from the Internal Revenue Service, particularly in the compliance program. At that time the determination was made in order to be responsible for carrying out his duties, the regional administrator had to have a lawyer on his staff, a regional counsel. That regional counsel had to be responsive to him, and the regional administrator had and has the responsibility for consulting with his compliance director and his regional counsel, has the responsibility for making those decisions within the scope of the authority that I have delegated to him with respect to the compliance program.

For example, in certain kinds of cases where clear precedent has already been established and below certain dollar threshold levels the regional administration makes the final decision in the form of the NOPV, remedial order and other action.

Mr. FINNEGAN. I am aware of whom the regional administrator is responsible to as far as compliance is concerned.

Mr. SMITH. The regional administrator is responsible to me with respect to——

Mr. FINNEGAN. As assistant administrator; is that correct?

Mr. SMITH. That is correct; because I, in turn, have delegated the authority on the nonlegal authority to administer that program for Mr. Zarb.

Mr. FINNEGAN. But shouldn't the regional counsel be subject to General Counsel who, after all, is the chief legal spokesman for the agency?

Mr. SMITH. That is right; he is clearly subject to or should be subject to the General Counsel with respect to the content of his legal opinions, but the distinction was made at the time, and I might add that Mr. O'Leary has directed us to review this arrangement and see whether it is still appropriate; but at that time the distinction was made, because if the——

Mr. FINNEGAN. When was that made and who made it?

Mr. SMITH. When what was made?

Mr. FINNEGAN. That determination made and who made it.

Mr. SMITH. It was made in the early days of FEA's organization, in 1974, and it was made by Mr. Sawhill who was then the Administrator.

Mr. FINNEGAN. Could you provide to us for the record all copies of letters, memoranda or other documents relative to that determination and any reconsideration of that since then?

Mr. SMITH. Yes, I would be glad to.

[The following material was received for the record:]

FEDERAL ENERGY ADMINISTRATION—DELEGATION ORDER No. 10 TO REGIONAL COUNSEL

Pursuant to the Authority delegated to me in Delegation Order No. 7 by the Administrator of the Federal Energy Administration ("FEA"), there is hereby delegated to the Regional Counsel of each FEA Regional Office the authority to:

1. Issue interpretations, with the concurrence of the FEA General Counsel or his authorized delegate, of 10 Code of Federal Regulations, Chapter II ("FEA Regulations") ;

2. Assure the legal sufficiency of any order, Notice of Probable Violation, Consent Order or Compromise of Civil Penalty which is proposed to be issued or entered into by the Regional Office ;

3. Request, with the concurrence of the FEA General Counsel or his authorized delegate, the Attorney General (i) to bring an action in the appropriate district court of the United States to seek an injunction whenever it appears that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of FEA Regulations or any order issued thereunder ; (ii) to seek the aid of the appropriate district court of the United States in which a person may be found to compel such person to appear and give testimony or to appear and produce the requested documents, or both, if such person refuses to obey an FEA subpoena served upon him ; (iii) to bring an action to recover civil penalties from any person for violation of FEA Regulations or any order issued thereunder ; and (iv) to institute proceedings to assess such criminal penalties and sanctions as are authorized by law for violations of FEA Regulations and orders and any other laws or regulations related to the operations and functions of the FEA ;

4. When necessary and incidental to the exercise of the authority delegated hereby, request information, undertake investigations and conduct conferences and hearings with respect to the functions delegated hereby ; administer oaths and affirmations to any person and suspend or disqualify any person appearing at a conference, hearing or public hearing so convened ; issue subpoenas ; and, if appropriate, make payment of witness fees and mileage to any witness appearing in response to such subpoenas ; and

5. As Regional Counselor, as such term is defined in § 203.6(c), solicit and review data, provide counseling and make determinations with respect to questions of conflicts of interest or other matters, in accordance with 10 C.F.R., Part 203.

The authority delegated to the Regional Counsel may be further delegated, in whole or in part, to such deputies and assistants as may be appropriate.

In exercising the authority delegated in this Order or as redelegated pursuant thereto, the delegate(s) shall be governed by the regulations and rulings of the FEA and the policies and procedures prescribed by the Administrator of FEA or his delegate.

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective June 18, 1975.

ROBERT E. MONTGOMERY, Jr.

General Counsel,

Federal Energy Administration.

Mr. FINNEGAN. Is there any other agency that you are aware of that follows that procedure? For example, does the Interior Department follow that procedure?

Mr. O'LEARY. Heavens no.

Mr. SMITH. I am not familiar with other agencies' practice.

Mr. O'LEARY. The reason that I instituted the review of the matter was because of my experience in Interior and other agencies. I have never really served in an agency where you had not only a whole series of very autonomous field people, as we did in this particular case—and I might add that their autonomy is going downhill quite rapidly—but never have I been associated in an organization where you had a whole bunch of law firms scattered around the country as we have here. The reason it has not been corrected to date is because of our incapacity to assimilate that change rapidly.

I think I know how the review is coming out, is what I am telling you.

Mr. FINNEGAN. Can you give us a date when the change will be—
Mr. SMITH. I think the review just got shortened considerably.

Mr. AIN. I wanted to ask you, Mr. O'Leary—you mentioned in your opening remarks about the review of the regulatory programs and about the two gentlemen you had come in, how you were gracious enough to have come up here and brief the staff with respect to this review, and can you tell us a little bit more in detail—would it be proper at this time to tell us a little more in detail about the nature of that review and the structure of this review and the intentions on completion of that review and when the Congress might be advised of some of these critical decisions that you will be facing and resolving in the next couple of months?

Mr. O'LEARY. You have had the fruits of the first impression. My own feeling with regard to the program was that it needed a quick, careful look, by people who were totally disinterested.

At that point I brought in Mr. Pfeifer. I brought them into the scene to take a look at the operation. They said in effect that we really have to split the history of this operation into two phases: One, the preliminary startup phase, which began 3 years ago, and hopefully will end here within the next 60 days to 120 days, in which we have had an awful lot of ad hoc regulation and I don't mean this in any pejorative sense of the term, Mr. Sharp, an awful lot of catch-as-catch-can regulation that has led to disorder over time. Beyond that, it seems to me we have to get into an entirely new regulatory vein. This was the conclusion of the two people who looked at it. We have to get to the point where, when a regulation is put out, it is associated with reporting form interpretations to the degree that is necessary and to the degree that you can within the terminology in the regulation. One of the weaknesses in the past is that a regulation would come out, then 1½ or 2 years later a reporting form would come out, and then, as in the example I gave this morning, 3 years later we might get to the definition of some of the very, very important terms that are contained in this 3-year old submission.

So we really ought to get, then, to the point of regulating. This also pertains to the final discussion we had earlier today. One of the reasons that you can't regulate well in this operation is because, as compared with the Federal Power Commission, we are new at it. They have had 40 years to develop what is called in the business the standard system of accounts.

We are still arguing about whether or not we should have a standard system and what it should contain in the event that there should be one. I think the message of the Pfeifer-North reviews was, let's divide history into two phases, past and future; that lets out the requirement.

The second point. I want to take the next phase at this looking out at how you develop the past, how you overcome the past. I mentioned that we had another group at work, a task force at work; they are beginning this week; we are bringing in a team from SEC and melding it with a team of our own people to take a look at the backlog and how to handle it.

Are there blocks of cases that are really not very important that we can just throw out? Are there elements of the program that we should hit? What are the priorities that we should hit much harder than we

have in the past? This, I understand from a discussion that I had with the person who will be leading this task force, is a 60-day timeframe. We look toward results of this effort in 60 days. That is phase II.

Phase III is getting the future tied down and in fact Mr. Smith and his associates are now involved in staffing the initial arrangements to regularize the regulation on the assumption that we will not go out of business tomorrow morning but that we will be in business 10 years from now. That is going to require a thorough overhaul of the entire regulatory setting of the agency, the reporting forms and the interpretations thereof.

Mr. FINNEGAN. Just to follow up on that, you referred to the study by these two people, and I believe it is the one dated March 8, 1977?

Mr. O'LEARY. I don't know the submission, but it was the one—I think I asked them to come up and brief you.

Mr. FINNEGAN. Yes; they did refer to a transition team report or paper, on page 20 of that. Can we have a copy of that?

Mr. O'LEARY. Of course, Mr. Chairman.

[The following material was received for the record:]

COMPLIANCE PROGRAM

I. DECISION POINTS

A decision on whether to increase the staffing level of the FEA compliance program should be made by mid-January (exact date not yet determined) if it is to be reflected in President Carter's FY 1978 budget amendments to be presented to Congress on or about March 1, 1977. Relatively minor changes in the Ford Administration's budget requests can be made through FEA's testimony before the authorizing and appropriations committees in April and May without being submitted as part of the formal budget amendments.

The general direction of the compliance program should be decided by the Administrator-designate by the time he selects personnel to head the compliance program. The choice of direction chosen by the Administrator-designate will also have an impact on the appropriate staffing level to be sought.

A decision on whether to recommend legislation to the Congress to permit FEA to order that refunds be paid into the Treasury should be made as soon as possible in order to lessen the accumulation of the problems caused by the current system.

II. DECISION MAKERS

A decision on the size of the compliance program and the legislative option on refunds must be made initially by the Assistant to the President for Energy Policy and the Administrator-designate, and cleared with OMB and the President. Decisions on the general direction of the agency compliance effort within budgetary constraints are made by the Administrator.

III. STATEMENT OF THE ISSUES

1. Should the FEA compliance program be increased in size and funding, and if so, by what amount?

2. Should significant changes in the current operation of the program, particularly with regard to the matter of national office control, be instituted?

3. Should the new Administration recommend to the Congress that FEA be authorized to order firms that have been found to have violated FEA pricing regulations to pay all or some portion of the overcharges into the U.S. Treasury in cases where it is impractical or impossible to refund the sums to the ultimate down-stream victims of the overcharge?

IV. RELATIONSHIP TO NEW ADMINISTRATION POLICIES

President-elect Carter has not addressed this subject specifically. However, he has made statements on general policies that have some bearing on the question:

Competence in the operation of government programs will be given a top priority in the Carter Administration.

A greater effort should be made to crack down on "white collar" crime. The Federal budget should be brought into balance by FY 1981.

V. BACKGROUND

A. Program Description

Currently the program for enforcing FEA's oil price and allocation regulations is the responsibility of the Assistant Administrator for Regulatory Programs. (He is also responsible for developing those regulations and running the allocation and entitlements programs.) Compliance is by far the largest of the FEA's single program activities in terms of personnel and second only to Conservation & Environment in terms of appropriated funds. For FY 1977, 1,300 of FEA's total of 3,405, authorized employees and \$43,337,000 of its total appropriation of \$150,385,000 are earmarked for compliance activities, not counting most legal and other support activities.

Currently 162 of the compliance positions are under a Deputy Assistant Administrator for Compliance (Level V), located in Washington. The other 1,138 authorized positions are distributed among the 10 regional offices. The largest region, in terms of its compliance activities, is Region VI in Dallas (with an authorized compliance staff of 396), which has jurisdiction of the major production and refining activities in Texas, Oklahoma and Louisiana. The regional offices are subdivided into area offices strategically located where the large concentrations of refiners and producers are located. The field personnel report to the various Regional Administrators, who have delegations of authority from the Assistant Administrator for Regulatory Programs to operate the compliance programs in their respective regions. The national office provides general training, guidance and information resources to the regions and sets priorities for the scope of the field investigations and audits. The national compliance office must also concur in all individual compliance actions involving significant issues of first impression and violations involving more than \$1,000,000 at the Notice of Probable Violation (NOPV) stage and \$500,000 for Remedial and Consent orders. Virtually all cases involving overcharges or price miscalculations by major refiners fall within the category requiring national office concurrence.

No formal administrative compliance action can be taken without the concurrence of the General Counsel or his designate, who reviews the proposed action for legal sufficiency. The General Counsel has delegated that review authority to the 10 Regional Counsels with respect to regional cases and to his Assistant General Counsel for Compliance with respect to those cases that require the concurrence of the national office.

FEA's compliance adjudicatory proceedings are expressly exempted from the Administrative Procedure Act. Therefore, the agency's compliance procedures are relatively streamlined (and, according to some, lacking in due process) compared to many other federal agencies. Ordinarily a compliance case commences with the audit of a firm which is chosen in accordance with a targeting program established in the national compliance office, although audits may also be initiated in response to a complaint. If the FEA determines preliminarily that a violation has occurred, the first formal step is the issuance of a NOPV (usually after informal communications with the company have already narrowed issues and made clear FEA's intention to challenge specific company practices). The NOPV sets forth the alleged facts and a description of the manner in which it is believed that the regulations have been violated. The firm receiving the NOPV has 10 days in which to reply in writing and to request a "conference" with FEA personnel (usually the same personnel who issued the NOPV). No formal hearing or submission of evidence under oath is held, although informal conferences between FEA personnel and company officials are routinely held to discuss the points raised in the NOPV. At this stage of the proceeding the FEA and the firm may enter into a Consent Order if agreement can be reached to resolve the issues raised in the NOPV.

If the FEA (usually the same personnel again), after evaluating the firm's response, and in the absence of a negotiated consent order, determines that a violation has in fact occurred, a Remedial Order will be issued. That order contains findings of fact, conclusions of law, and provisions setting forth the manner in which restitution is to be made. A Remedial Order may be appealed to the FEA's Office of Exceptions and Appeals, where the firm is again given the opportunity

to submit its response in writing and to have a "conference" (again not a formal hearing) with the Exceptions and Appeals personnel assigned to the case. That Office's decision, which must receive the concurrence of the Assistant Administrator for Regulatory Programs and the General Counsel (or their designees), is a final order of the agency and may be judicially reviewed in the Federal district courts.

The Emergency Petroleum Allocation Act (EPAA) provides for the imposition of civil and criminal penalties for violations of FEA regulations. Criminal penalties, which require a finding of "willfulness," range from \$10,000 to \$50,000 per violation, depending upon the nature of the firm involved, and civil penalties range from \$2,500 to \$25,000. In the absence of express statutory authority, the FEA has assumed that it does not have legal authority to assess and impose penalties by administrative order. However, in cases involving other than inadvertent or innocent violations, the FEA often collects a civil penalty by agreeing to "compromise" the amount of the potential civil penalty in order to save both sides the expense of going to court to have a civil penalty imposed. Criminal cases are never compromised. After preliminary investigation by FEA, such cases, as well as civil penalty cases in which a penalty was sought but was not obtained, are referred by the General Counsel to the Department of Justice for prosecution.

B. Program History

Soon after the Federal Energy Office was created by Executive Order on December 4, 1973, the FEO entered into an agreement with the IRS for the latter to carry out the field compliance program. Prior to that time, IRS had performed the compliance activities of the Cost of Living Council, the petroleum pricing regulations of which were inherited by FEO. The IRS agreed to recruit and train a staff of 1,000 field employees for the FEO compliance program, for the purpose of enforcing the mandatory petroleum allocation and price regulations.

During the embargo period, compliance concentrated its efforts on insuring that FEA allocation regulations were being followed so that the effects of petroleum shortfalls would be equitably distributed among all users of petroleum products. In addition, compliance audited vast numbers of retailers and wholesalers in response to numerous complaints from the public, to redress and deter price gouging, tie-in sales and preferential treatment practices which were prevalent during the shortage period. In these early days of the compliance program, a small refinery audit staff of 64 was also established in the national office, but crude producers, natural gas liquid processors, crude resellers and importers were largely ignored during this period.

In the spring of 1974, after the end of the embargo-caused shortfalls, prices began to fall below maximum lawful levels as supplies increased and competition returned to the marketplace, and it was generally believed that controls would soon be lifted. The EPAA, under which controls were imposed, was due to expire on February 28, 1975. Accordingly, a freeze was imposed on the hiring of new compliance personnel.

On June 26, 1974 the law creating FEA as a separate agency became effective, and 855 of IRS's regional compliance personnel were transferred to FEA. Although EPAA was extended through August 31, 1975, the Administration remained determined to eliminate price and allocation controls as soon as possible and the hiring freeze remained in effect until January 1975. At that time the regions were authorized to replace employees that had been lost by attrition, but were not permitted to exceed the levels that had been authorized the previous year. The actual number of regional compliance personnel continued to dwindle to a low of 724 by July 1975 because of declining morale, which caused many employees to exercise their reemployment rights with IRS.

In the spring of 1975, the FEA compliance program was subjected to considerable criticism in Congress and the press because of alleged mishandling of individual cases and an apparent lack of significant program results, although the agency had in fact begun to shift its attention toward refiners, producers and utility suppliers and had achieved notable successes in particular cases. A number of congressional committees conducted investigations, the most thorough of which was conducted by Senator Kennedy's Subcommittee on Administrative Practice and Procedure. The hearings and report issued by that Subcommittee revealed that FEA had as few as two persons auditing major refiners like Exxon, that the case tracking system had been discontinued, that cases had gone months without any progress, that inadequate attention had been given to

crude producers and the large integrated refiners and that technical guidance necessary for adequate field audits was lacking.

The Kennedy investigation forced renewed attention to be given to the adequacy of the compliance program. It was no longer treated by FEA as a program that was in the process of being phased out. Two-hundred twenty new positions were authorized to investigate suppliers to public utilities, bringing the regional ceiling to 1,000. In August 1975 the on-board strength started to rise and more personnel were committed to refinery and producer audits. The national compliance office embarked on a program to strengthen crude producer and refinery audit procedures which included revised and improved employee training, management reorganization, and the development of a master plan to increase productivity and staffing levels substantially.

C. Staffing and Budgetary History

During its first year, as noted above, FEA's compliance program operated without any overall compliance strategy or plan. While there was some appropriate shifting of priorities with existing resource constraints, (for example, in late 1974 a decision was made to shift emphasis away from wholesalers and retailers and toward refiners and producers), staffing levels and appropriated funds steadily declined to reflect the Administration's decontrol strategy.

In the summer of 1975 the FEA reversed its compliance strategy and decided that a substantial upgrading of the program and an increase in its appropriated funds was necessary. This action was precipitated by both the Kennedy hearings and realization on the part of the Administration that Congress was not likely to go along with President Ford's January 1975 proposal for removal of price controls when the EPAA expired on August 31, 1975.

The FEA therefore began to develop a compliance audit strategy that would form the basis for the agency's budget requests. In August 1975 the compliance program submitted to FEA's top management the so-called "80-15-5" strategy, which called for annual audits of firms doing 80% of the volume of business in a given program, audits every 3 years for firms doing 15% of the business, and 5 year audits for the remaining 5%. Very rough estimates indicated that a staff of 2,400 personnel was required to carry out this program.

Administrator Zarb cut the total number of suggested personnel to 1,850, which would allow for annual audits for major refiners, biennial audits for firms in other programs doing 80% of the business, and 5 year audits for the remaining 20%.

OMB agreed to a hybrid program that provided for annual audits of major refiners and a set percentage of firms in other programs, depending on the program. The OMB plan required 1,326 positions. That was the figure submitted to and approved by Congress for FY 1977.

FEA has proposed to increase that number for the remainder of FY 1977 and FY 1978. In September the agency proposed the submission of an FY 1977 supplemental request that would give the agency a total of 1,428 compliance positions by September 30, 1977 and throughout FY 1978. Although OMB initially denied the FY 1977 supplemental request in its entirety and reduced the FY 1978 total to 1,224, subsequent negotiations established an agreed-upon compliance ceiling of 1,396 for FY 1977 and an end-of-year strength of 1,221 for FY 1978.

FEA has made a rough analysis of the cost/benefit ratios of the compliance program, comparing expenditures with return to the marketplace. For the purpose to date, the ratio has been about 3 to 1, not including major refiners, where the return has been about 19 to 1. However, it is estimated that during FY 1978 and thereafter, the ratio for non-refiners will increase by several fold, depending upon the compliance strategy that is adopted, and that it will even improve by about 100% for major refiners, since dollars invested today will show a substantial return in those years.

D. Program Results to Date

FEA has organized its compliance efforts around 10 major programs as follows: (1) Importers; (2) Crude oil resellers; (3) Independent crude oil producers; (4) Major refiners; (5) Small refiners; (6) Natural gas liquid processors; (7) Propane resellers; (8) Propane retailers; (9) Other resellers; and (10) Other retailers.

Due to staffing shortages, major ambiguities in applicable regulations that required resolution, and a general lack of attention, little effort has been made until recently to audit importers, crude oil resellers and natural gas liquid

processors. Audits in these areas are now underway and are just beginning to be completed. It is expected that the violation rates in all these areas will be found to have been very high.

The results through September 30, 1976 with respect to the other programs has been as follows:

[Dollar amounts in thousands]

Category	Assignments completed	Refunds and rollbacks	Bank adjustments	Penalties
Independent crude producers.....	1,288	\$13,986	NA	\$580
Major refiners.....	288	62,412	\$288,668	881
Small refiners.....	171	2,822	14,366	373
Propane resellers.....	484	3,810	952	112
Propane retailers.....	1,436	6,709	15	99
Other resellers.....	3,488	34,841	2,008	588
Other retailers.....	14,333	28,346	171	300
Total.....	21,488	152,926	306,180	2,933

E. Current Problems

While substantial improvements have been made in the compliance program over the past 18 months, numerous problems remain:

The most serious problem is the lack of a procedure to insure the timely interpretation of the regulations once ambiguities surface. FEA's regulations are notoriously imprecise, and the failure to effectively implement a system to clarify ambiguities expeditiously has allowed issues to remain outstanding which, when translated into dollar terms, have the potential of enormous overcharges. It is estimated, for example, that several billions of dollars hinge on the outcome of a number of currently unresolved issues, such as the definition of May 15, 1973 "transactions", the proper treatment of the passthrough of nonproduct costs and whether resellers were allowed to compute costs separately for separate inventories. In many cases, violations in the millions of dollars for a single company result from the agency's failure to clarify an ambiguous regulation that is susceptible of more than one reasonable interpretation. While it may sometimes seem unfair to order a firm that in good faith guessed incorrectly as to the proper interpretation of an ambiguous regulation to repay millions of dollars in overcharges, it is sometimes equally unfair to those firms that did comply not to require refunds from those that did not.

There are still serious backlogs in the resolution of major cases. A major reason is that under the FEA regulations especially in the refiner and propane areas the cases are so complex that inadequate resources exist at FEA to do the work necessary to determine the precise amount of a violation. As a result, the firm itself is often required by FEA to compute the amount of its own violation, without any more success than FEA has. No procedure exists for compromises that would eliminate the necessity to reconstruct millions of transactions. In a major case involving a refiner, the NOPV was first issued in June 1974, and the company has agreed in principle to some of the findings, but the manner for calculating the overcharge has yet to be resolved. Similarly, a number of cases involving the intra-firm or "transfer" prices used by the multinational oil companies as the cost basis for their imported oil, and potentially involving \$250 million in refunds or bank adjustments, were commenced in mid-1975 but are not yet resolved because resources have not been made available to do the necessary analysis.

Certain organizational defects may also contribute to delays in resolving cases. At present the program is decentralized, with most management control in the regional administrators. The bifurcation of control over compliance activities between Regional and National Offices has hindered effective and uniform enforcement of FEA regulations. Although the Regional Administrators derive their compliance authority from delegations from the Assistant Administrator for Regulatory Programs, as a practical matter in many cases there is little or no way that the National Office, at the present time, can be certain that FEA policies are being uniformly applied, especially with regard to cases not requiring national office concurrence. Each Regional Administrator places a slightly different emphasis on the importance of the compliance effort within his region. Some take an active interest in compliance; others view it of only peripheral importance.

There have been numerous instances where Regional Administrators have ordered their subordinates to take or withhold compliance action even when advised that the action contemplated is violative of FEA regulations, pertinent laws and agency policy.

Therefore, the quality of the program varies among regions, depending upon the interest and capabilities of the Regional Administrators. The current procedure of having a major case reviewed *de novo* within both the regional compliance and counsel's offices, and then in both the national compliance and the General Counsel's offices, often result in needless duplication of effort, buck-passing and more than occasional friction between offices. There also remains considerable friction between compliance auditors and compliance attorneys and, except at the highest levels, a wide-spread unwillingness to give lawyers a major role in the resolution of cases.

The current remedies in compliance cases are of dubious utility in compensating victims of overcharges and will become increasingly less useful if more products are decontrolled. While the law is not entirely clear, the FEA has presumed that it has authority to require price violators to refund overcharges to their customers. When those customers are identifiable, the refund has generally been in the form of a direct cash payment or credit memo. When they are not identifiable, the firm has generally been required to lower or "rollback" its selling prices below current levels until the amount of the overcharge has been returned to the marketplace. If the customer of the violator is himself a reseller, the refund or price reduction received will reduce his product costs, and therefore, his maximum lawful selling prices. This reduction in maximum lawful prices will cause the refund to be passed on downstream until it reaches the ultimate consumer.

This system has been imperfect at best and has been of limited utility. When a violator is forced to reduce his prices, it usually gives him a competitive advantage and the opportunity to increase his market share (sometimes enough to offset the rollback) at the expense of those marketers who did not violate FEA regulations. In addition, the reduction is passed on downstream only if all subsequent purchasers are selling at maximum lawful prices, which has not been the case for most firms since the end of the embargo. Usually the intermediate firms in the marketing chain receive a windfall and the ultimate consumers, who often absorbed most of the amount of the overcharge, receive little, if any, of the refund. This problem has become increasingly acute since the downstream decontrol of many products, although it existed even when all products were controlled, since for some time products have been sold at prices less than the maximum permitted by FEA regulations.

Until now, FEA has tried to deal with this problem in a few cases by issuing ancillary orders that require downstream purchases to reduce their current selling prices by the amount of the refund they receive, but this has also been largely ineffectual because of the administrative burden of trying to trace downstream transactions, especially in the case of a refiner or wholesaler of substantial size.

It is generally conceded that there is a lack of adequate legal personnel to handle the compliance workload. There are presently only about 16 lawyers to service about 1,100 on-board compliance personnel. Lawyers generally perform the role of reviewing the compliance cases and drafting the necessary documents at each significant stage of a case, such as the issuance of an NOPV or Remedial Order. As a result, the agency's legal offices have been the biggest bottleneck in the successful resolution of compliance cases. The need to devote almost all available compliance lawyers to case resolution has prevented the agency from assigning personnel to area offices where they can give day-to-day guidance to auditors and thereby prevent the unproductive use of audit resources. Only 12 attorneys are presently assigned to area offices to provide this kind of service.

FEA investigations have uncovered considerable evidence that, particularly during the embargo, certain crude oil and produce resellers established extremely complicated chains of transactions that appear to have had no purpose other than to circumvent FEA's pricing regulations. FEA is only now beginning to train a staff to investigate these extremely complex, cleverly concealed and possibly willful violations. As a result, many of the more egregious violations during the embargo have gone unremedied.

The House Subcommittee on Energy and Power is currently investigating the FEA's failure to provide adequate resources for these types of investigations. In

particular, the Subcommittee is looking into the FEA's failure, until recently, to devote even minimal resources to a special investigative group that would have jurisdiction to investigate these transactions fully, even if it required audit and investigation of firms and individuals located in regions other than the one in which the group is primarily based. Region IV (Atlanta) identified four such cases in 1975, but friction with other regions developed when Region IV investigators attempted to pursue leads into those other regions. Inadequate efforts were made to assign responsibility for these complex investigations or to provide adequate trained staff, and as a result they have not been vigorously pursued, even though preliminary evidence indicates that serious violations may have occurred.

VI. DECISION OPTIONS

1. Press for increased funding for compliance activities in FY 1978.
2. Reorganize the compliance program and the national/regional office relationship and revise the case resolution process to increase productivity. Changes might include: Making the Assistant Administrator for Regulatory Programs responsible solely for compliance activities; Combining the legal and auditing functions under the Assistant Administrator for Regulatory Programs; Changing the case resolution structure so as to identify ultimate responsibility for resolution of particular cases; Strengthening national office control over cases in the field; and Giving high priority to a special criminal investigation unit.
3. Increase the size of the compliance attorney staff relative to the audit investigation staff.
4. Recommend to Congress that it give FEA authority to require that refunds be paid to the U.S. Treasury when ultimate victims of the overcharge are remote in the chain of distribution and cannot be identified.

VII. ANALYSIS OF OPTIONS

1. Increased funding option

Increased funding would increase coverage of the industry and would increase the deterrent against future violations. Although the program for the most part is aimed at finding past violations for products that have already been decontrolled or soon may be, the more past violations are discovered and remedied, the more respect the public will have for any emergency wage, price or allocation program that may be imposed in the future.

Increased funding will result in the return of money to the public at a likely rate well in excess of two to one. This would be a particularly significant factor from a budgetary standpoint, especially if the refunds are paid into the U.S. Treasury.

Any increased funding will increase the budget deficit and increase the resistance of the industry to continue controls.

2. Reorganization and revision options

Making compliance the sole program responsibility of an Assistant Administrator would increase the likelihood of attracting a capable manager and would give the program greater stature and priority, more in keeping with the resources that are allocated to it.

Combining all program responsibility under the direct control of a single Assistant Administrator would tend to minimize internal conflicts and turf fights and could provide far more streamlined and uniform nationwide case resolution.

Combining the legal and auditing functions under a single Assistant Administrator might reduce to some extent the objectivity of the legal review process and might tend to lessen in stature the role of the audit staff. The Assistant Administrator should be skilled in the resolution of regulatory cases and might appropriately be required to have had legal training.

Strengthening national office control of compliance cases could tend to increase national uniformity in compliance activities but would lessen regional autonomy and perhaps regional morale and the ability to attract competent Regional Administrators. On the other hand, relieving Regional Administrators of line responsibility for compliance activities might well increase their opportunity for devoting more attention to the serious problems of Federal/state relations.

Significant changes now in the organization and operation of the compliance program could further disrupt and delay the case resolution process. Most of

the period from June 1975 to January 1976 was spent in revising the program and putting in place new procedures, with little effort being made to resolve cases. Those personnel responsible for instituting these changes will agree that this new program is just getting underway and has not yet had the opportunity to prove itself. Unless carefully selected and implemented, changes at this point might have the effect of causing further disruption and delay.

3. Increasing compliance attorney staff

The greatest delay in the case resolution process is the legal review. It is generally conceded that as cases become increasingly complex the issues become increasingly difficult to resolve and the need for case-by-case legal input increases. The need for careful legal input is also indicated by the fact that compliance cases are being increasingly appealed to the Office of Exceptions and Appeals and judicially reviewed in the courts. Any decrease in the legal quality of the compliance cases will be reflected in an increasing rate of reversal in the courts and a concomitant decrease in public respect for the agency's compliance efforts. There is also some evidence that auditors would be more productive if lawyers were available to provide guidance at the initial stages of an audit, as well as after an audit has been completed.

Without an increase in overall compliance appropriations, an increase in the size of the legal staff would have to be offset by a decrease in the size of the audit staff, meaning fewer cases will be initiated, or by borrowing resources from other parts of the agency.

There is some criticism by field compliance personnel that the backlog of cases in the legal offices is due not to a shortage of attorneys but by more legal review than is necessary. It might be worthwhile studying whether the attorney case workload could be reduced without diminishing the quality of the program by decreasing the number of legal reviews or by streamlining the review process by making greater use of pre-cleared forms, telephone sign-offs and other devices in certain types of cases.

4. Payment of refunds into the Treasury

Authority to order payment of overcharges into the public treasury in cases where the actual victims of the overcharges are not readily identifiable and the means for full compensation are not possible would greatly simplify the refund process. While actual victims would not receive compensation under the new proposal, that is also an unlikely eventuality under the present system.

The public treasury and the taxpayers in general would benefit significantly from this increased source of revenue. Resolution of current outstanding cases in which a potential overcharge has been identified could result in revenues of up to a billion dollars alone. Some savings would also be achieved through efficiencies realized as a result of not having to pursue refunds and rollbacks down through the distribution chain.

Some opposition might be voiced by middlemen and by large end users particularly, who receive some benefits (and in some cases windfalls) from the present trickle-down system, imperfect though it may be. There might also be some difficulty in reconciling the proposal with the rights of private parties to bring actions for the recovery of pricing overcharges presently conferred by the provisions of the Economic Stabilization Act incorporated into the EPAA.

Mr. FINNEGAN. Just to follow up on the General Counsel, can you give us any idea when you will have a decision on what you are doing to do as far as the regional counsel?

Mr. O'LEARY. As far as regional counsel, I think that decision was really forecast. I feel very uncomfortable having 11 different law firms in a small agency. I would really much rather have one.

Mr. FINNEGAN. Well, are we talking about a month or next month?

Mr. O'LEARY. It is our capacity to absorb it and I have to confer with my colleagues.

Mr. FINNEGAN. I am not sure what that means.

Mr. O'LEARY. Paul Bloom, a recent entry into the organization, is taking over the compliance work for the General Counsel's Office and I think that I should give him a chance to assess the situation, under-

standing this is a matter of some urgency and see how rapidly he can assimilate that responsibility along with the other responsibilities in OGC.

Mr. FYGI. It simply takes some time to inventory the individuals and the structures that prevail in each of the 10 regional offices in order to get a firm idea of how you would carry out that decision. I think that is a necessary element of the decision.

Mr. SMITH. I think what we are referring to—there has been plenty of testimony today and previously as to the tremendous workload imposed on the Office of General Counsel in the headquarters now, and it is not clear that to suddenly mandate this kind of a change and throw what is now on the regional counsels into the responsibility of the headquarters would in fact improve the productivity of the program.

The clear direction is to move in that direction as soon as we can.

Mr. FINNEGAN. Is the present budget request of the General Counsel's Office adequate to reflect that kind of a change so that the General Counsel would assume responsibility over the regional counsel?

Mr. O'LEARY. Mr. Fygi may respond to that, and I probably will have an overlay comment.

Mr. FYGI. An opportunity to veto. Well, I think, as Mr. Smith observed previously, our recommendations to the Office of Management and Budget were somewhat different than the allowances that ultimately were reflected in the budget.

In a larger sense, the entire budgetary process for the Office of General Counsel from the inception of the agency has suffered substantially, in my view, from the persistent decontrol assumptions that have permeated the Agency's budgetary process, resulting in a complete distortion of the actual resource allocations required to keep the price and allocation program serviced, with the result that those services were rendered at the cost of other appropriations which had been specifically authorized for other programs.

The time is now, I think, to complete a rather thorough reevaluation and rationalization of the entirety of the legal resource question and my own estimation is that the result of any rational inquiry will be that we do not have adequate resources now to do the jobs that we are asked to do in the time frames that both legislation and other imperatives requires.

Mr. FINNEGAN. Doesn't the fact that you have the General Counsel in Washington reviewing the work of the regional offices, or the fact that the regional counsel themselves, separate law firms, doesn't that result in the General Counsel coming in and saying:

I am going to review that person's activities in the region rather than leaving it to the region to decide as they do in other offices of the Federal Government?

Mr. FYGI. As a practical matter, even under the earlier system, there have been some classes of cases which by their nature have required national office review both from an operational standpoint and from a legal standpoint, for a variety of reasons, either the magnitude of the case or the significance of the precedent that would be reflected by it; and this result is inescapable under either regime that you have in place.

Mr. FINNEGAN. We have asked for that in connection with Wednesday. I don't want to step into that at this point.

Mr. O'LEARY. Let me address that overlay, if I may.

I have a really grave feeling of discomfort when I take a look at the bottlenecking that occurs in the General Counsel's Office on the regulatory programs as well as on the conservation programs and others.

I mentioned a little while ago that we were awash in a sea of paper, most of that paper is legal. We find indeed that we simply do not have meetings without lawyers present; we simply cannot do it. Everything that we do has a legal base and a legal implication, and I imagine that my burn of up Mr. Fygi's resources is just absolutely enormous. He must be double shifting in order to keep up with the calls that I am placing on his organization.

Everywhere that I see these failures to meet deadlines, the culprit tends to be—culprit is pejorative, and I don't intend it in that sense—tends to be in the Office of General Counsel. While recognizing the strictures that are applicable to this sort of exercise, I do want to say that one of the things we ought to look at very carefully is the historical as well as the perspective adequacies of the legal services in this agency. This agency as much as any other in Washington is really legally grounded and if we stop that, if we put a chink in that particular block, we stop the whole exercise; everything stops here. He is more or less the great funnel through which everything in the agency must pass and if that funnel chisels down too tightly, nothing passes.

Mr. SMITH. Could I add a comment on that? Our early experience with the shortage of adequate legal support was that an auditor had to make his own calls on the application of new regulations as applied to industry compliance in the absence of any definitive case history and decision guidelines; I have suffered the experience that with limited numbers of what I consider to be minimal certain number of staff available, auditors have invested literally hundreds of manhours of their time and effort in an audit based on their particular interpretation of the regulation. However, having sent in for review they were turned around and told it was not the right one; and go back and redo it according to this theory and wind up having to rework a major part of the same audit.

Mr. FINNEGAN. I don't want to ask this a question, but I would like you to consider this for the hearing on Wednesday: It is my understanding that the IRS has a procedure where the Commissioner has a review or interpretations of various regulations that do not necessarily go through the General Counsel at IRS, and those reviews are available to the auditors or the IRS people who carry out their work, so that you do not have to wait for a General Counsel's opinion.

I don't ask you to comment upon that at this point, but rather I would rather defer it until Wednesday.

Mr. SMITH. If I could observe for the record very briefly that that is true. We are in the very early stages of a regulatory procedure. When I get my tax return audited, the guy has a big thick book and thumbs through to find out about deductions, travel to reserve drills, and finds his answer.

We are only—

Mr. O'LEARY. That goes back to a tax court case of 1947.

Mr. SMITH. And we are only now going to develop that kind of system.

Mr. AIN. One question that Mr. Fygi's comments raised: Mr. O'Leary has said that you are moving away from a decontrol philosophy?

Mr. O'LEARY. We have moved.

Mr. AIN. I mean in terms of planning, not making any substantive commitment to effective regulation in the future, being caught up in a fire drill atmosphere.

Mr. Fygi has raised the point that the General Counsel's Office has been subject to that kind of attitude, and yet in the testimony received today, we find that either the Office of Management and Budget or someone else is treating the regulatory programs and the General Counsel's Office at least in terms of budgetary requirements, with the attitude we have decontrol. I think the subcommittee would be very grateful if you could supply to us in very short order what the budget effect would be without that decontrol philosophy.

Thank you.

Mr. O'LEARY. We would be pleased to do that.

[The following material was received for the record:]

COST OF CONTINUING CONTROLS

The effect on the budget of disallowing any decontrol philosophy would be to require an increase to the allocation and pricing program areas of approximately 180 positions and \$4.9 million dollars. Associated legal support would require an additional 73 positions and \$1,971,000 dollars. This would provide for continued price and allocation controls for all products to include some contract support for revising and simplifying the regulations.

Additional, although not associated with the decontrol philosophy is the possible adoption of a revised Compliance strategy. While the entire FEA Compliance effort is being reviewed and evaluated, the former FEA position was to employ an "80/20 strategy."

As previously stated, this strategy would be carried out by:

Auditing *every other year* the small number of firms that are the largest ones in a sector and account for most (80 percent) of the volumes involved.

Auditing on the average of *once every five years* the largest number of small firms that account for smallest part of total volumes involved (20 percent of total volume).

The resources required to implement this strategy would include an additional 277 positions and \$6.9 million dollars directly associated with the audit functions and an additional 62 positions and \$1,612,000 dollars for General Counsel support.

Mr. FINNEGAN. As I understand it, when you submitted your budget for 1978, under the present administration, you asked for a 80-20 strategy, and the Office of Management and Budget declined that strategy. Is that correct?

Mr. O'LEARY. That is correct; we did ask in the initial submission for 80-20. That was turned down in the initial markup. I personally went back to the OMB and sat down with the Director of OMB and discussed this with him. It was the final determination that they would stay with the present lesser level of screening.

Mr. FINNEGAN. Why is that?

Mr. O'LEARY. I think that there is a feeling that our audits place an unfair burden on small business; that apparently is the driving force. I don't think it is any feeling on the part of OMB that we

shouldn't do a good regulatory job; it is that we have been unfairly biased against small business in the past.

I regard that as an incorrect conclusion on the part of the staff of the OMB and I made that point clear in the course of that discussion. Nonetheless, they continued to believe that.

Mr. FINNEGAN. Thank you.

Thank you, Mr. Chairman.

Mr. SHARP. Mr. Potter?

Mr. POTTER. In the last few moments of consciousness remaining to us, I would like to ask a question about the Office of Consumer Services that was mandated under ECPA.

As I recall, there was \$2 million in that bill for fiscal year 1977. Is that amount going to be retained? How much money is going to be spent in 1978? Is that also—

Mr. O'LEARY. 1978 is the same amount.

Mr. POTTER. You don't need specifically to amend ECPA to do this; you are going to handle this as part of your general authorization for C&E?

Mr. O'LEARY. I was unaware there is a problem.

Mr. POTTER. I don't know that there is a problem. The money is going to be coming from someplace, and rather than go and amend ECPA for each single program, you may well be best advised to say this office is going to handle this responsibility. I just wanted to be sure that it wasn't going to get lost in the shuffle.

Mr. O'LEARY. No; it is explicit and I was not aware until you spoke that there is a problem. I will certainly look into it.

Mr. POTTER. I don't know that there is a problem. A little reassurance is nice on Friday afternoon.

Mr. O'LEARY. That is right.

Mr. POTTER. ECPA also required that there be a specific amount dedicated toward the effort of solar commercialization.

Mr. O'LEARY. That is right.

Mr. POTTER. I don't find a specific extension of that program in your budget figures, and I am wondering, between you and ERDA and whomever else, what is being done to get solar technology off the shelf and into the marketplace?

Mr. O'LEARY. Dr. Schlesinger has personally taken that task over, personally by a supplemental in the fiscal 1977-78 budget, of \$1.9 million from FEA and \$0.4 million from ERDA. My understanding is that he views that as sufficient to get to the point where there can be a substantial initiative in the form, probably, of a 1978 supplemental.

Mr. HOWELL. That is correct.

Mr. O'LEARY. We are in the study phase now. We have asked for supplemental funds in fiscal year 1977 that we hope will be coming down the track in another few weeks. Dr. Schlesinger will have a total of \$2.4 million for that purpose, which, as I recall, is authorized at \$2.5 million. He then intends apparently to use that to do the foundation studies that are required for a substantial initiative. That initiative will turn upon the outcome of those studies, and we will be hearing more about that later.

So I want you to understand, Mr. Potter, that the absence of that number, of any number dedicated, any funds dedicated for that pur-

pose in the 1978 budget is simply because we don't have the fundamental basis for it; that will flow from this 1977 supplemental.

Mr. POTTER. I understand. I sympathize with your reasoning, Mr. O'Leary; I am just troubled by the budget act implications that we were talking about this morning. If you go for a supplemental in 1978, unless we have got the authorization here in our own bill, we simply multiply the obstacles that you have to hurdle before you get to the Promised Land.

Mr. O'LEARY. Mr. Potter, let me address that problem as I will the others, and discuss this with you at a later point. I understand your problem, and let's see if we can work out something that will accommodate both of us.

Mr. POTTER. That is all the questions I have, Mr. Chairman.

Mr. SHARP. Mr. O'Leary, we appreciate the time and effort of the Agency. I detect a change might be afoot.

Mr. O'LEARY. Mr. Chairman, may I express my appreciation for the handling of this meeting this morning, as well as this afternoon, and for the real sense of—well, very intense interest that I have drawn from these discussions with the staff. I think it is really good to see a nonindifferent staff working with what I hope you believe is a nonindifferent administration on these problems.

Thank you.

Mr. SHARP. Thank you very much. We appreciate your cooperation. The hearing is adjourned.

[Whereupon, at 4:05 p.m., the hearing was adjourned.]



post in the 1977 budget is simply because we don't have the funds to meet the demand for it that will flow from the 1977 supplemental.

Mr. O'Leary: I understand. I sympathize with your reasoning. Mr. O'Leary: I am just troubled by the budget not indicating that we

are going to have a 1977 supplemental. If we go for a supplemental in 1977, we will have got the situation into it our own hands, and simply

multiply the chances that you have to handle before you get to the 1977 supplemental.

Mr. O'Leary: Mr. O'Leary: let me address that problem as I will the other, and it is this: while you in a tight budget, I understand your

problem and let's see if we can work out something that will do an

adequate job of it.

Mr. O'Leary: I think it is all the question I have. Mr. O'Leary: I

think I need a change in the way we do it.

Mr. O'Leary: Mr. O'Leary: may I express my appreciation for the handling of the meeting this morning, as well as this afternoon

and for the result - well, we have answered the question that we have been discussing with the staff. I think it is really good to see a

handshake and a working relationship with what I hope you have in a non-

independent administration on the problems.

Thank you.

Mr. O'Leary: Thank you very much. It appears your cooperation

in the meeting is appreciated.

[The following is a list of the participants in the meeting.]



