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FEA COMPLIANCE PROGRAMS

GOVERNMENT

DOCUMENTS

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HEARING

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BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 2788

A BILL TO AMEND THE FEDERAL ENERGY ADMINISTRATION
ACT OF 1974, AS AMENDED, AND FOR OTHER PURPOSES

APRIL 6, 1977

Serial No. 95-62

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Committee on Interstate and Foreign Commerce



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CONTENTS

	Page
Text of H.R. 2788.....	4
Statement of—	
Allen, Donald E., Regional Administrator, region IV, Atlanta, Ga., Federal Energy Administration.....	18
Canfield, Monte, Director, Energy and Minerals Division, General Accounting Office.....	18, 55
Cutler, Eliot, Associate Director, Natural Resources, Energy and Science, Office of Management and Budget, Executive Office of the President.....	18
Duffus, James, Assistant Director, Energy and Minerals Division, General Accounting Office.....	18, 55
Easterday, James C., Director of Compliance, region IV, Atlanta, Ga., Federal Energy Administration.....	18
Fowler, Delbert M., Regional Administrator, region VI, Dallas, Tex., Federal Energy Administration.....	18
Grimes, James W., Program Manager, Special Investigations, region IV, Atlanta, Ga., Federal Energy Administration.....	18
Hallman, F. Edwin, regional counsel, region IV, Atlanta, Ga., Federal Energy Administration.....	18
Newman, James R., Deputy Assistant Administrator for Compliance, Federal Energy Administration.....	18
O'Leary, Hon. John F., Administrator, Federal Energy Administration.....	18
Peach, J. Dexter, Deputy Director, Energy and Minerals Division, General Accounting Office.....	18, 55
Rose, Stanley D., Chief, Economic Litigation Section, Civil Division, Department of Justice.....	18
Smith, Gorman C., Assistant Administrator for Regulatory Programs, Federal Energy Administration.....	18
White, Larry W., Director of Compliance, region VI, Dallas, Tex., Federal Energy Administration.....	18
Additional material submitted for the record by—	
Federal Energy Administration:	
Background and position paper of James R. Newman.....	146
Case history reports on all "A" category cases.....	125
Correspondence between Hon. John F. O'Leary and Chairman Dingell concerning the adequacy of FEA's compliance program, the findings of the subcommittee staff set forth in their memo- randum to Chairman Dingell, and the FEA comments on that memorandum.....	40
Memorandum dated April 4, 1977, on special investigations.....	128
Memorandum dated April 5, 1977, establishing the Office of In- spector General.....	71
Office of Compliance number of open cases which have not re- corded a change in status as of March 22, 1977.....	106
Region-by-region inventory of special investigations having crim- inal prosecution potential.....	96
Responses to written questions posed by subcommittee.....	22
General Accounting office:	
Formal comments on H.R. 2819.....	63
Response to written questions on FEA's civil penalty authority..	61

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 Easterday, James C., Director of Compliance, region IV, Atlanta, Ga.
 Fowler, Delbert M., Regional Administrator, region VI, Dallas, Tex.
 Grimes, James W., Program Manager, Special Investigations, region IV,
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 Hallman, F. Edwin, Regional Counsel, region IV, Atlanta, Ga.
 Newman, James R., Deputy Assistant Administrator for Compliance.
 O'Leary, Hon. John F., Administrator.
 Smith, Gorman C., Assistant Administrator for Regulatory Programs.
 White, Larry W., Director of Compliance, region VI, Dallas, Tex.

General Accounting Office, Energy and Minerals Division:

Canfield, Monte, Director.
 Duffus, James, Assistant Director.
 Peach, J. Dexter, Deputy Director.

Justice Department, Stanley D. Rose, Chief, Economic Litigation Section, Civil Division.

Office of Management and Budget, Executive Office of the President, Eliot Cutler,
 Associate Director, Natural Resources, Energy and Science.

FEA COMPLIANCE PROGRAMS

WEDNESDAY, APRIL 6, 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 Dingell (chairman) presiding.

Mr. DINGELL. The subcommittee will come to order. The subcommittee is convened this morning to inquire into the compliance programs at FEA and consider legislation, H.R. 2788, the principal purpose of which is to establish within the Federal Energy Administration an Office of Inspector General.

This Office would audit FEA programs and operations, recommend policies to improve economy and efficiency of FEA programs and operations, investigate misconduct, and keep Congress informed about problems and deficiencies in FEA operations. A similar bill was enacted last year for the Department of Health, Education, and Welfare.

There have been too many instances of alleged misconduct of FEA personnel and other matters which have had to be investigated by high FEA officials who were not experienced in such matters and who had other more important duties. In more than one case, the Office where the alleged offense occurred investigated itself, a circumstance which I find curious. I have not been satisfied with those investigations. Even where the proper officials conduct an investigation, they have been hindered by inaction in the General Counsel's Office of the FEA. In one case, on December 23, 1975, an FEA personnel officer asked the Deputy General Counsel to review a proposed removal action. The matter then lay dormant until 1 year later, December 6, 1976, when the General Counsel's Office finally replied. On receipt of this memorandum, one FEA official noted, "The wonders of Christmastime." Two months later, the personnel action was abandoned because it was stale.

There is no record that anyone in personnel inquired about the status of this case in the General Counsel's Office which, from time to time, has been referred to as the Bermuda Triangle. I believe H.R. 2788 could help to prevent these situations, and I am pleased to see that Mr. O'Leary agrees.

On February 1, 1977, Presidential Assistant Schlesinger wrote the OMB Director urging that \$10.6 million be added to the FEA compliance budget to allow implementation of the so-called 80-20 auditing strategy. Firms with 80 percent of the production would be

audited every 2 years. Firms producing the remaining 20 percent would be audited over a 5-year period. This strategy would enable the FEA to better identify violators and gain greater compliance.

The current strategy imposed by the Office of Management and Budget calls for a phaseout of auditing, other than propane, in fiscal year 1978. In other words, the OMB is budgeting for decontrol just as the same agency did in the previous administration, even though Congress has not approved decontrol.

The FEA has a mandate to enforce the law and its regulations. It is being thwarted by OMB, whose policy apparently is to undermine the law. I have requested that the OMB be present today to defend its compliance and other policies for the FEA, and explain why the present Office of Management and Budget is so protective of the OMB of the last administration.

The FEA provided a computer printout of 3,671 open cases as of March 22, 1977. Of this number, 2,157 cases have no recorded changes in status for over 90 days. Nearly half of these cases are in the Philadelphia, Atlanta, and Dallas, regional offices.

I might add that some behaviors in both the Dallas and Atlanta regional offices have been of special concern to this Chair and to the committee. Indeed, Dallas has 547 such cases, of which 167 have not recorded any change in status for over 500 days. One such case was initiated in July 1974 and involves the Murphy Oil Corp. It is categorized as a "major refiner case." The audit was completed and a violation notice was drafted in August 1975. Since then, the case has shuffled between the regional and national office several times. The case is now recorded as sitting in the National Compliance Office since February 1976.

The situation is not unique to these regional offices. It occurs in all of them. It is disgraceful. The blame must be shared, first, by OMB because that "gray eminence," which favors a decontrol policy, refuses to fund adequately a compliance effort; and second, by the FEA, which has in the past, ignored compliance and supported the OMB and Ford administration decontrol philosophy.

The subcommittee staff also uncovered several examples where the FEA investigation of possible criminal violations has been nearly nonexistent. One such case, in the Dallas regional office, involves sales of fuel oil to a large utility in the Southeastern United States.

In an August 8, 1975, Dallas office memorandum, an FEA investigator recommended that the legal counsel determine if there was a criminal violation and requested direction for further pursuit of the issues.

On August 19, 1975, the same investigator recommended examination of a possible criminal conspiracy, noting that one person involved in the transactions was a consultant to the fuel supplier and the utility.

He found sufficient information to indicate that the petroleum transactions between two firms were apparently developed to circumvent Cost of Living Council regulations. An undated memorandum from the Director of the Regional Compliance Office through the Deputy Regional Administrator stated that the investigation report supported referral of the case to the General Counsel for prosecution for "willful disregard of the petroleum price regulations."

A violation notice of over \$8.5 million in overcharges was prepared by the area manager on November 10, 1975. From late October 1975 to May 1976, the case bounced back and forth between the area manager and Regional Compliance, where it came to rest.

On March 5, 1977, the case was assigned by the Deputy Regional Administrator to a new investigator with instruction "to devote 100 percent of your productive work time to it until the investigative work is complete."

What was the Dallas office doing from May 1976 to March 1977?

The FEA criminal compliance effort is poorly organized, understaffed, and lacks adequate direction. Few criminal cases have been referred to the Justice Department. There have been interregional squabbles over the handling of these cases.

Last month, I wrote to Mr. O'Leary about this problem. One change did occur. A two-man special investigation team was elevated from the Office of the Director of Compliance to the Office of the Assistant Deputy Assistant Administrator for Compliance.

This marvelous step up from the long bureaucratic ladder in the FEA was not without its drawbacks. The two-man team has no administrative support of their own—not even a typist.

The responsibility for compliance belongs primarily to the Assistant Administrator for Regulatory Programs, Mr. Gorman C. Smith, who has held that position for many months. He has a duty to enforce the regulations. I am not satisfied that he has done an adequate job.

He should resolve interregional conflicts and see to it that each region has an adequate staff of trained criminal investigators. I discern no effort toward this end until recently. No civil or criminal case should sit idle for months without the Chief Compliance Administrator calling on the carpet the responsible Regional Administrator to explain each delay.

As far as I can tell, this never has been done by Mr. Smith. I can only say that I expect more of this office and am confident that the improvement in the record of that office can occur with vigorous effort from those involved.

[The text of H.R. 2788 follows:]

95TH CONGRESS
1ST SESSION

H. R. 2788

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1977

Mr. DINGELL introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend the Federal Energy Administration Act of 1974,
as amended, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Federal Energy Administration Act of 1974, as
4 amended (15 U.S.C. 761, et seq.), be amended by adding
5 at the end thereof the following:

6 "ORGANIZATIONAL CONFLICTS

7 "SEC. 32. (a) The Administrator shall by regulation
8 require any person proposing to enter into a contract, agree-
9 ment, or other arrangement, whether by advertising or
10 negotiation, under this Act or any other law administered by
11 him for the conduct of research, development, evaluation

1 activities, or for technical and management support services
2 to provide the Administrator, prior to entering into any such
3 contract, agreement, or arrangement, with all relevant infor-
4 mation bearing on whether that person has a possible con-
5 flict of interest with respect to (1) being able to render im-
6 partial, technically sound, or objective assistance or advice in
7 light of other activities or relationships with other persons or
8 (2) being given an unfair competitive advantage. Such per-
9 son shall insure, in accordance with regulations published by
10 the Administrator, compliance with this section by any sub-
11 contractor of such person, except supply subcontractors:
12 *Provided*, That this requirement shall not apply to subcon-
13 tracts of \$10,000 or less.

14 “(b) The Administrator shall not enter into any such
15 contract, agreement, or arrangement unless he affirmatively
16 finds, after evaluating all such information and any other
17 relevant information otherwise available to him, either that
18 (1) there is little or no likelihood that a conflict of interest
19 would exist, or (2) that such conflict has been avoided after
20 appropriate conditions have been included in such contract,
21 agreement, or arrangement: *Provided*, That if he determines
22 that such conflict of interest exists and that such conflict of
23 interest cannot be avoided by including appropriate condi-
24 tions therein, the Administrator may enter into such contract,
25 agreement, or arrangement, if he determines that it is in the

1 best interests of the United States to do so and includes ap-
2 propriate conditions in such contract, agreement, or arrange-
3 ment to mitigate such conflict.

4 “(c) The Administrator shall publish rules for the im-
5 plementation of this section, in accordance with section 553
6 of title 5, United States Code, as soon as possible after the
7 date of enactment of this section but in no event later than
8 one hundred and twenty days after such date.

9 “PART C—INSPECTOR GENERAL

10 “ESTABLISHMENT

11 “SEC. 71. In order to provide an independent and ob-
12 jective procedure—

13 “(1) to conduct and supervise audits and investiga-
14 tions relating to programs and operations of the Federal
15 Energy Administration;

16 “(2) to provide leadership and coordination and
17 recommend policies for activities designed (A) to pro-
18 mote economy and efficiency in the administration of,
19 and, (B) to prevent and detect fraud and abuse in, such
20 programs and operations; and

21 “(3) to provide a means for keeping the Admin-
22 istrator and the Congress fully and currently informed
23 about problems and deficiencies relating to the adminis-
24 tration of such programs and operations and the neces-
25 sity for, and progress of, corrective action;

1 there is hereby created in the Federal Energy Administra-
2 tion the position of Inspector General.

3 "OFFICERS

4 "SEC. 72. (a) The Inspector General shall be appointed
5 by the President, by and with the advice and consent of
6 the Senate, solely on the basis of integrity and demonstrated
7 ability and without regard to political affiliation. The Inspec-
8 tor General shall report to, and be under the general super-
9 vision of, the Administrator or, to the extent such authority
10 is delegated, the Deputy Administrator, but shall not be
11 under the control of, or subject to supervision by, any other
12 officer of the Administration.

13 "(b) There shall also be a Deputy Inspector General
14 appointed by the Inspector General, solely on the basis of
15 integrity and demonstrated ability and without regard to
16 political affiliation. The Deputy shall assist the Inspector
17 General and shall, during the absence or temporary incapac-
18 ity of the Inspector General, or during a vacancy in that
19 position, act as Inspector General.

20 "(c) The Inspector General may be removed by the
21 President. The President shall communicate the reasons for
22 any such removal to both Houses of Congress.

23 "(d) The Inspector General and the Deputy shall each
24 be subject to the provisions of subchapter III of chapter 73,

1 title 5, United States Code, notwithstanding any exemption
2 from such provisions which might otherwise apply,

3 “(e) The Inspector General shall, in accordance with
4 applicable laws and regulations governing the civil service—

5 “(1) appoint an Assistant Inspector General for
6 Auditing who shall have the responsibility for super-
7 vising the performance of the functions, powers, and
8 duties transferred by section 76 (a) (1) of this part; and

9 “(2) appoint an Assistant Inspector General for
10 Investigations who shall have the responsibility for su-
11 pervising the performance of the functions, powers, and
12 duties transferred by section 76 (a) (2) of this part.

13 “DUTIES AND RESPONSIBILITIES

14 “SEC. 73. (a) It shall be the duty and responsibility
15 of the Inspector General—

16 “(1) to conduct audits and investigations, and to
17 supervise, coordinate, and provide policy direction for
18 such auditing and investigative activities, relating to
19 programs and operations of the Administration, includ-
20 ing, but not limited to, the conflict of interest laws,
21 regulations, provisions, and policies applicable to the
22 administration;

23 “(2) to recommend policies for, and to conduct,
24 supervise or coordinate other activities carried out or

6

1 financed by the Administration for the purpose of pro-
2 moting economy and efficiency in the administration of,
3 or preventing and detecting fraud and abuse in, its pro-
4 grams and operations;

5 “(3) to recommend policies for, and to conduct,
6 supervise, or coordinate relationships between, the Ad-
7 ministration and other Federal agencies, State and local
8 governmental agencies, and nongovernmental entities
9 with respect to (A) all matters relating to the promo-
10 tion of economy and efficiency in the administration of,
11 or the prevention and detection of fraud and abuse, in
12 programs and operations administered or financed by
13 the Administration, or (B) the identification and pros-
14 ecution of participants in such fraud or abuse; and,

15 “(4) to keep the Administrator and the Congress
16 fully and currently informed, by means of the reports
17 required by section 74 of this Act and otherwise, con-
18 cerning fraud and other serious problems, abuses, and
19 deficiencies, relating to the administration of programs
20 and operations administered or financed by the Admin-
21 istration, to recommend corrective action concerning
22 such problems, abuses, and deficiencies, and to report
23 on the progress made in implementing such corrective
24 action.

25 “(b) In carrying out the responsibilities specified in

1 subsection (a) (1), the Inspector General shall have author-
2 ity to approve or disapprove the use of outside auditors or
3 to take other appropriate steps to insure the competence and
4 independence of such auditors.

5 “(c) In carrying out the duties and responsibilities pro-
6 vided by this part, the Inspector General shall give particular
7 regard to the activities of the Comptroller General of the
8 United States with a view to avoiding duplication and insur-
9 ing effective coordination and cooperation.

10 “REPORTS

11 “SEC. 74. (a) The Inspector General shall, not later
12 than March 31 of each year, submit a report to the Admin-
13 istrator and to the Congress summarizing the activities of
14 the Office of Inspector General during the preceding calen-
15 dar year. Such report shall include, but need not be limited
16 to—

17 “(1) an identification and description of significant
18 problems, abuses, and deficiencies relating to the admin-
19 istration of programs and operations of the Administra-
20 tion disclosed by such activities;

21 “(2) a description of recommendations for correc-
22 tive action made by the Office with respect to significant
23 problems, abuses, or deficiencies identified and described
24 under paragraph (1);

1 “(3) an evaluation of progress made in implement-
2 ing recommendations described in the report or, where
3 appropriate, in previous reports and a detailed statement
4 of savings and recoveries made as a result of the activities
5 of the Inspector General; and

6 “(4) a summary of matters referred to prosecutive
7 authorities and the extent to which prosecutions and
8 convictions have resulted.

9 “(b) The Inspector General shall make reports on a
10 quarterly basis to the Administrator, with copies to the
11 appropriate committees or subcommittees of the Congress
12 identifying any significant problems, abuses, or deficiencies
13 concerning which the Office has made a recommendation
14 for corrective action and on which, in the judgment of the
15 Inspector General, adequate progress is not being made.

16 “(c) The Inspector General shall report immediately to
17 the Administrator, and within seven calendar days there-
18 after to the appropriate committees or subcommittees of the
19 Congress, whenever the Inspector General becomes aware of
20 particularly serious or flagrant problems, abuses, or deficien-
21 cies relating to the administration of programs and oper-
22 ations of the Administration. The Deputy and Assistant
23 Inspectors General shall have particular responsibility for
24 informing the Inspector General of such problems, abuses, or
25 deficiencies.

1 “(d) The Inspector General (i) may make such addi-
2 tional investigations and reports relating to the administra-
3 tion of the programs and operations of the Administration as
4 are, in the judgment of the Inspector General, necessary or
5 desirable, and (ii) shall provide such additional information
6 or documents as may be requested by either House of Con-
7 gress or, with respect to matters within their jurisdiction, by
8 any committee or subcommittee thereof.

9 “(e) Notwithstanding any other provision of law, the
10 reports, information, or documents required by or under this
11 section shall be transmitted to the Administrator and the
12 Congress, or committees or subcommittees thereof, by the
13 Inspector General without further clearance or approval.
14 The Inspector General shall, insofar as feasible, provide
15 copies of the reports required under subsections (a) and (b)
16 to the Administrator to be appended to the reports when sub-
17 mitted to Congress.

18 “AUTHORITY; ADMINISTRATION PROVISIONS

19 “SEC. 75. (a) In addition to the authority otherwise
20 provided by this Act, the Inspector General, in carrying out
21 the provisions of this part, is authorized—

22 “(1) to have access to all records, reports, audits,
23 reviews, documents, papers, recommendations, or other
24 material available to the Administration which relate to

1 programs and operations with respect to which the
2 Inspector General has responsibilities under this Act;

3 “(2) to request such information or assistance as
4 may be necessary for carrying out the duties and respon-
5 sibilities provided by this Act from any Federal, State,
6 or local governmental agency or unit thereof;

7 “(3) to require by subpoena the production of all
8 information, documents, reports, answers, records, ac-
9 counts, papers, and other data and documentary evidence
10 necessary in the performance of the functions assigned by
11 this Act, which subpoena, in the case of contumacy or
12 refusal to obey, shall be enforceable by order of any
13 appropriate United States District Court;

14 “(4) to have direct and prompt access to the Ad-
15 ministrator when necessary for any purpose pertaining to
16 the performance of functions and responsibilities under
17 this part.

18 “(5) in the event that a budget request for the ac-
19 tivities of the Inspector General is reduced, before sub-
20 mission to Congress, to an extent which the Inspector
21 General deems seriously detrimental to the adequate per-
22 formance of the functions mandated by this part, the
23 Inspector General shall so inform the Congress without
24 delay;

1 “(6) to select, appoint, and employ such officers
2 and employees as may be necessary for carrying out
3 the functions, powers, and duties of the Inspector Gen-
4 eral subject to the provisions of title 5, United States
5 Code, governing appointments in the competitive serv-
6 ice, and the provisions of chapter 51 and subchapter III
7 of chapter 53 of such title relating to classification and
8 General Schedule pay rates;

9 “(7) to obtain services as authorized by section
10 3109 of title 5, United States Code, at daily rates not
11 to exceed the equivalent rate prescribed for grade GS-
12 18 of the General Schedule by section 5332 of title 5,
13 United States Code;

14 “(8) to the extent and in such amounts as may be
15 provided in advance by appropriations Acts, to enter into
16 contracts and other arrangements for audits, studies,
17 analyses, and other services with public agencies and
18 with private persons, and to make such payments as
19 may be necessary to carry out the provisions of this
20 part.

21 “(b) (1) Upon request of the Inspector General for
22 information or assistance under subsection (a) (2), the head
23 of any Federal agency involved shall, insofar as is prac-
24 ticable, and not in contravention of any existing statutory

1 restriction, or regulation of the Federal agency from which
2 the information is requested, furnish to the Inspector Gen-
3 eral, or to an authorized designee, such information or assist-
4 ance.

5 “(2) Whenever information or assistance requested un-
6 der subsection (a) (1) or (a) (2) is, in the judgment of the
7 Inspector General, unreasonably refused or not provided, the
8 Inspector General shall report the circumstances to the Ad-
9 ministrator and to the appropriate committees or subcom-
10 mittees of the Congress without delay.

11 “(3) In the event any record or other information re-
12 quested by the Inspector General, under subsection (a) (1)
13 or (a) (2) is not considered to be available under the pro-
14 visions of section 552a (b) (1), (3), or (7) of title 5, United
15 States Code, such record or information shall be available
16 to the Inspector General in the same manner and to the
17 same extent it would be available to the Comptroller General.

18 “(c) The Administrator shall provide the Inspector
19 General and his staff with appropriate and adequate office
20 space at central and field office locations of the Administra-
21 tion, together with such equipment, office supplies, and
22 communications facilities and services as may be necessary
23 for the operation of such offices, and shall provide necessary
24 maintenance services for such offices, and the equipment and
25 facilities located therein.

1 “(d) (1) The Inspector General shall receive compen-
2 sation at the rate provided for level IV of the Executive
3 Schedule by section 5315 of title 5, United States Code.

4 “(2) The Deputy shall receive compensation at the
5 rate provided for level V of the Executive Schedule by sec-
6 tion 5316 of title 5, United States Code.

7 “TRANSFER OF FUNCTIONS

8 “SEC. 76. (a) There are hereby transferred to the
9 Inspector General the functions, powers, and duties of—

10 “(1) the office of the Administration referred to
11 as the ‘Office of Internal Review’.

12 “(2) the office of the Administration referred to
13 as the ‘Office of Security and Safety’; and

14 “(3) such other offices or agencies, or functions,
15 powers, or duties thereof, as the Administrator may,
16 with the consent of the Inspector General, determine
17 are properly related to the functions of the Office and
18 would, if so transferred, further the purposes of the part.

19 except that there shall not be transferred to the Inspector
20 General under clause (3) program operating responsibilities,
21 including responsibilities for enforcement of Federal Energy
22 Administration regulations.

23 “(b) The personnel, assets, liabilities, contracts, prop-
24 erty, records, and unexpended balances of appropriations,
25 authorizations, allocations, and other funds employed, held,

1 used, arising from, available or to be made available, of any
2 office or agency the functions, powers, and duties of which
3 are transferred under subsection (a) are hereby transferred
4 to the Inspector General.

5 “(c) Personnel transferred pursuant to subsection (b)
6 shall be transferred in accordance with applicable laws and
7 regulations relating to the transfer of functions except that
8 the classification and compensation of such personnel shall
9 not be reduced for one year after such transfer.

10 “(d) In any case where all the functions, powers, and
11 duties of any office or agency are transferred pursuant to this
12 subsection, such office or agency shall lapse. Any person
13 who, on the effective date of this Act, held a position com-
14 pensated in accordance with the General Schedule, and who,
15 without a break in service, is appointed in the Office to a
16 position having duties comparable to those performed im-
17 mediately preceding such appointment shall continue to be
18 compensated in the new position at not less than the rate
19 provided for the previous position, for the duration of service
20 in the new position.”.

Mr. DINGELL. The Chair will now recognize a panel, the Honorable John F. O'Leary, accompanied by Mr. Gorman Smith. Mr. O'Leary is Administrator for FEA; Gorman Smith is Administrator of Regulatory Programs.

Mr. Eliot Cutler is Associate Director of Natural Resources, Energy and Science, Office of Management and Budget. Monte Canfield is Director of Energy and Minerals Division, General Accounting Office, who is accompanied by Mr. J. Dexter Peach, Deputy Director, and James Duffus, Assistant Director.

Mr. Stanley Rose is Chief, Economic Litigation Section, Civil Division, U.S. Department of Justice. Gentlemen, we are pleased to welcome you all. If you will identify yourselves for purposes of the record, we will be most pleased to receive your statement.

STATEMENT OF A PANEL CONSISTING OF JOHN F. O'LEARY, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION, ACCOMPANIED BY GORMAN C. SMITH, ASSISTANT ADMINISTRATOR FOR REGULATORY PROGRAMS, DONALD E. ALLEN, REGIONAL ADMINISTRATOR, REGION IV, ATLANTA, GA., JAMES W. GRIMES, PROGRAM MANAGER, SPECIAL INVESTIGATIONS, REGION IV, JAMES C. EASTERDAY, DIRECTOR OF COMPLIANCE, REGION IV, JAMES R. NEWMAN, DEPUTY ASSISTANT ADMINISTRATOR FOR COMPLIANCE, DELBERT M. FOWLER, REGIONAL ADMINISTRATOR, REGION VI, DALLAS, TEX., LARRY W. WHITE, DIRECTOR OF COMPLIANCE, REGION VI, AND F. EDWIN HALLMAN, REGIONAL COUNSEL, REGION IV; MONTE CANFIELD, DIRECTOR, ENERGY AND MINERALS DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY J. DEXTER PEACH, DEPUTY DIRECTOR, AND JAMES DUFFUS, ASSISTANT DIRECTOR; ELIOT CUTLER, ASSOCIATE DIRECTOR, NATURAL RESOURCES, ENERGY AND SCIENCE, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT; AND STANLEY D. ROSE, CHIEF, ECONOMIC LITIGATION SECTION, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. O'LEARY. Mr. Chairman, before getting into my formal statement, I would like to comment on one element of your statement on page 3. I think, in fairness, I have testified before you and this committee that a number of other things have occurred with regard to this problem over the last 2 months.

Mr. DINGELL. I should be delighted to hear that.

Mr. O'LEARY. I will be enumerating them again in today's testimony, but I want you to know that from the day that I occupied first the role of Administrator at FEA, I was acutely aware of the regulatory problem, particularly the client problems involved.

My instructions to the staff have been to move on these 20 outstanding criminal cases as a matter of first priority in the regulatory program and they are doing that.

Mr. DINGELL. Mr. O'Leary, I want you to know that I have great respect and affection for you and you are in large part harvesting bad

seed that was sown in earlier days. I, nonetheless, expect you to harvest it with considerable vigor.

Mr. O'LEARY. Mr. Chairman, within the limits of my own capacity, I am trying to bring as much vigor to that and to a number of the other problems we have before us as I can.

It is a pleasure to appear before you today to explain the operations of the Federal Energy Administration's Office of Regulatory Programs, and in particular its compliance functions. I would also like to discuss the establishment of an Office of Inspector General at FEA as proposed in H.R. 2788. As you requested, Messrs. Smith, Newman, Allen, Fowler, Easterday, Grimes, and Hallman are also with me today.

As you are aware, the FEA has provided your subcommittee with a substantial amount of documentary material and advance written responses to questions which may arise at this hearing. It is my sincere hope that the material we have prepared, as well as our participation in this hearing, will assist the subcommittee in its review of FEA's enforcement program.

As Administrator of FEA, I am wholeheartedly committed to making our compliance program as effective as possible. Therefore, I greatly appreciate your views on the subject, and particularly welcome the opportunity to discuss the enforcement aspects of FEA's mission with you.

Immediately following my confirmation as Administrator of FEA, I initiated an overview study of FEA's compliance program which was conducted by two well-respected outside consultants. The review focused on both the audit and legal enforcement aspects of compliance. The objectives of this review were to examine FEA's enforcement program as a system and to identify in a general fashion the improvements needed to make the enforcement program more effective.

As a result of this review and the many inquiries I have made about the compliance program, I have become quite familiar with the progress compliance has made thus far. I am also aware of the problems which still require solutions. Therefore, I would like to discuss with you what I have learned and what my plans are regarding the compliance effort.

First, I believe a brief review of the progress made in the compliance program is worth some attention. At this point, compliance is at an important juncture in its development. Its management systems and structure are generally in place. Several of the outstanding regulatory issues that have impacted on compliance audits have been, or are being, settled. For the first time, the national office has sufficient audit personnel to manage the compliance program. Due to some previous budgetary limitations, the full staffing for the national office has only recently been achieved.

As for program results, about 22,000 audits and investigations have been completed with over 8,500 violations being resolved during the period July 1, 1974, through December 31, 1976.

In addition, over 1,000 additional violations have been identified and are undergoing final solution at the present time. The total dollar violations which have been detected resulted in refunds, rollbacks, and bank adjustments of about \$500 million. In addition, over \$3 million

in penalties have been collected. Estimated potential violations pertaining to open audits exceed \$1 billion.

This has been done in spite of some inherent weakness in the overall compliance program. However, rather than concentrate on the past, I would prefer to discuss my plans for improving the audit and legal aspects of the compliance process.

In this regard, I have implemented the recommendation made to me by the outside consultants whom I mentioned earlier and have directed the establishment of a task force headed by an individual from outside the FEA with substantial experience in Federal regulatory enforcement. We expect to announce the names of the members very soon. This task force is to be augmented with knowledgeable representatives from within the Office of Compliance, as well as from the Office of the General Counsel and from our regional offices.

The task force will be directed to report back to me within 60 days with plans for the near-term compliance strategy and with proposed solutions for those problems which are impeding the present compliance process. The task force will take into account Presidential policies to be announced shortly. In addition, this task force will provide a conceptual design for what I hope will be a framework for a future compliance strategy that is less complicated and less expensive to operate. I will keep the subcommittee fully informed of its progress.

Some of the areas this task force will analyze and develop proposed solutions for are as follows:

One, what should FEA's enforcement strategy be? Within the previous administration, there was much discussion concerning level of audit coverage that should be given to the 10 compliance programs. Since the inception of the program, the compliance budgets have reflected a commitment to near-term decontrol. This view has also been reflected in approved FEA staffing levels.

I have asked this task force to review carefully the strategies that had been proposed and to make a recommendation to me regarding the most appropriate strategy. Based upon the recommendations of this task force I will reevaluate FEA's audit strategy. My evaluation will also take into consideration the strategies that have been proposed in previous budget negotiations. The following three strategies have been discussed most frequently:

80-15-5 STRATEGY

This strategy was initially proposed by the Office of Regulatory Programs and called for annual audits of firms doing 80 percent of the total business in a given petroleum program. Those firms doing 15 percent of the volume would be audited every 3 years. The remaining 5 percent would be audited on a 5-year cycle. All major refiners were to be audited on an annual basis.

80-20 STRATEGY

This strategy called for audits every 2 years for those firms doing 80 percent of the total business in a program, and every 5 years of those firms doing the remaining 20 percent. Again, major refiners would have been audited annually.

CURRENT STRATEGY

After extensive interagency coordination, between OMB and FEA, the administration proposed the current strategy which provides for varying audit coverages for each of the 10 compliance programs. This strategy embodies continuous audits of major refiners and specific annual levels of audit coverage for the other programs which range from a low of 14 percent per year for propane retailers to a high of 31 percent per year for small refiners.

After extensive consideration of the resource requirements and prospective results of the 80/20 strategy and the current strategy, the Congress appropriated positions and funds to support the current strategy.

We should all understand that, Mr. Chairman. Our fiscal year 1977 supplemental and fiscal year 1978 budget requests are based on this strategy. Until the task force has concluded its review, I will support the strategy as proposed in the budget you are presently reviewing.

Second, the need for greater legal support for the audit functions. The success of the compliance effort greatly depends upon the adequacy of legal support. This support entails the review of formal actions and the issuance of interpretations and rulings. Due to many competing priorities for legal support, the audit function has not received the attention it deserves. We obviously must reduce the amount of time which expires between the recognition of a problem requiring legal attention and its ultimate resolution.

I plan to give high priority to the early resolutions of known legal issues that are delaying compliance audits. In addition, the task force will be asked to identify ways of improving the process by which legal support is given to the audit staff.

I will note in passing, Mr. Chairman, as a result of the conference committee report on our appropriation, we did lose both positions and dollars in this very important area of the provision of legal services to support the compliance program.

Organizational weaknesses. I have instructed the task force to thoroughly review the organization and management of FEA's compliance program to include both the audit and legal functions. The task force will then recommend the measures I should take to maximize the program's effectiveness. Particular attention will be given to actions which will further unite the audit and legal functions of the enforcement effort.

Special investigations. Finally, the task force will be asked to make recommendations for improving FEA's special investigation procedures. This aspect of the review will include an assessment of the proper balance of skills necessary between personnel with audit backgrounds and those with investigative backgrounds. This area is of particular importance to me, as I know it is to you.

I can assure you that I will continue to assess the progress of these investigations as well as the adequacy of the special procedures adopted by FEA in November 1976, for handling alleged willful violations. Based on my experience to date, I believe the procedures work well and, as explained in previous letters to you, are not a hindrance to the timely resolution of a willful violation.

Your letter also requested comments on H.R. 2788, a bill introduced by the chairman on February 1, 1977, that would create a position of

Inspector General within the FEA. I have reviewed the provisions of the bill with great interest, particularly since I had already determined to elevate the internal review and auditing functions of the Agency.

Since FEA has grown in size, it is now necessary that its internal review function be organized so that it reports directly to the Administrator. Only in this manner can we avoid a situation where members of an organizational unit investigate the conduct of others within that same unit. To insure complete objectivity, and—equally as important—to insure the appearance of such objectivity, our internal review staff must enjoy organizational independence.

There are several provisions of H.R. 2788 which, I believe, warrant further consideration. I agree with the principle of an Inspector General but one who is accountable only to the Administrator of FEA. Section 74 of the FEA Act that would be added by this legislation provides that the Inspector General would report his activities not only to the Agency head, but also directly to the Congress.

That provision also contemplates that the Inspector General would have the sole authority to determine the matters into which he would inquire, a degree of independence which seems buttressed by the technical authorities, such as personnel and procurement powers, that would be vested directly by statute in the Inspector General.

I confess to having some reservations about this approach to establishment of an Inspector General, not because I do not value independence of such an office, but because of my conviction that it is the Agency head—and not any of his subordinates—who must be held accountable by the Congress and by the people for the performance of his responsibilities.

An independent Inspector General reporting directly to the Administrator can be a valuable tool to enable the Agency head to carry out these responsibilities, but in the final analysis it must be the Administrator's function to determine priorities of attention within his Agency in every activity, including the investigative functions that would be carried out by the Inspector General. I believe any legislative proposal such as this must emphasize, rather than obscure, the Agency head's responsibilities to the Congress and the public.

It appears that H.R. 2788 raises certain constitutional issues; however, on this matter we would defer to the Department of Justice.

Mr. Chairman, this concludes my formal statement. In addition, I have provided for the record specific answers to the questions outlined in your letter of March 15, 1977. I would also request that my response to the subcommittee's report be included in this record.

I would now be happy to answer any questions that the subcommittee would like to direct.

Mr. DINGELL. I think that is appropriate. Without objection, the full statement, including the appendix which you have added, the questions and the correspondence from the Chair, will be inserted at the appropriate place in the record.

[The attachments to Mr. O'Leary's statement follows:]

Question 1. We understand from a December 27, 1976, memorandum, prepared for the Carter Transition Team by Mr. Smith's Office, that under the budget submitted by the FEA to the Congress for fiscal year 1977, the FEA strategy called for annual audits for major refiners, biennial audits for firms in other

programs doing 80 percent of the business in those programs, and five-year audits for all others. We also understand that in August 1975 the Compliance program submitted to FEA's top management called for annual audits of firms doing 80 percent of the volume of business in a given program, audits every 3 years for firms doing 15 percent, and audits every 5 years for the rest.

(a) Which strategy was adopted?

(b) Under the President's budget proposal for fiscal year 1978, what will be the FEA audit strategy and why?

Answer. (a) The information contained above is essentially correct. However, neither of the above strategies was adopted.

Current Strategy: After extensive interagency coordination, between OMB and FEA, the Administration proposed the current strategy which provides for varying audit coverages for each of the ten Compliance programs. This strategy embodies continuous audits of major refiners and specific annual levels of audit coverage for the other programs which range from a low of 14 percent per year for propane retailers to a high of 31 percent per year for small refiners. After extensive consideration of the resource requirements and prospective results of the 80/20 strategy and the current strategy, the Congress appropriated positions and funds to support the current strategy.

(b) The strategy agreed upon for fiscal year 1977 is being used for the fiscal year 1978 Budget. Within the previous administration, there has been a great debate over the level of audit coverage that should be given to the ten Compliance programs. Since the inception of the program, the Compliance budgets have reflected a belief in near term decontrol. This view has also been reflected in approved FEA staffing levels. To solve this problem, the recommendation made by outside consultants to establish a Task Force to study this, and other problems, is being taken. This Task Force is to be headed by a highly respected individual from outside the FEA with substantial experience in federal regulatory enforcement. This Task Force will be augmented with knowledgeable representatives from the Office of Compliance, Office of General Counsel and the regional offices. The Task Force will be charged to report back to the Administrator within 60 days with detailed plans for the near term Compliance strategy and proposed solutions to those problems which are impeding the present Compliance process. In addition, this Task Force will provide a conceptual design for what it is hoped will be a framework for designing a future Compliance strategy that is less complicated and less expensive to operate.

The Task Force has been asked to review carefully the strategies that had been proposed and to make a recommendation regarding the most appropriate strategy. Based upon the recommendations of this Task Force, the Administrator will reevaluate FEA's audit strategy.

Question 2. We have been informed that little effort has been made by the FEA to audit importers, crude oil resellers, and natural gas liquid processors.

(a) Please explain why.

(b) What steps have been taken to correct this situation and when was this done? Please provide us with all memoranda, concerning this problem since January 1976.

Answer (a). Importers: Importer audits are primarily accomplished as part of overall audits of resellers and refiners. Because audit efforts in the past emphasized domestic transactions, a relatively low priority was assigned to the Importer Program; and accordingly, significant results were not forthcoming. As a result of approval of the supplemental budget for fiscal year 1976, Compliance received a significant increase in staff between October 1976 and February 1977—the Compliance staff increased from 1,030 to 1,248. Therefore, we have now begun to audit importers.

Crude Oil Resellers: Regulatory control over Crude Oil Resellers is contained in Subpart F of the FEA's price regulations. These regulations, however, do not indicate precisely how the price rules of Subpart F should be applied to the activities of Crude Oil Resellers. In addition, Subpart F does not provide for increases in nonproduct costs by Crude Oil Resellers. Ongoing audits have disclosed additional unresolved issues which prevent their completion. As a consequence, new audit starts have been minimized pending resolution of these issues. Currently, 33 audits are open. A proposed rulemaking was promulgated on October 27, 1976. On the basis of comments received, a new rulemaking that will allow us to focus more attention on particular problem areas is being drafted. Finalization of this rulemaking should permit the final resolution of current audits and also the acceleration of audits under this Program.

Natural Gas Liquid Processors (NGLP's) : Prior to June 1976 the following regulatory changes did in fact inhibit the accomplishment of NGLP audits. Many of these changes were issued retroactively which set pricing policy for periods after such periods had expired. These regulatory changes are briefly summarized as follows:

August 19, 1973, December 31, 1974.—Subpart E: During this period, regulatory control over the pricing of NGLs and NGL products was contained in Subpart E of FEA's price regulations. These regulations, however, did not indicate precisely how the price rules of Subpart E, which did not specifically address the activities of NGLPs, should be applied. A major ambiguity of the Subpart E price rules was that they did not explicitly provide for the recovery of increased product ("natural gas shrinkage") cost incurred by NGLPs resulting from the extraction of NGL's from the raw gas stream.

In order to correct certain inequitable situations, the FEA on August 9, 1974, published an amendment to Subpart E. This amendment limited the amount of increased crude costs which could be apportioned to propane to an amount in relation to the percentage that the volume of propane produced by the refiner is of total production.

At the same time, this amendment stipulated a refiner "may not apportion to propane any increased product costs incurred prior to June 1, 1974, and not recovered through July 31, 1974." This stipulation was intended to stop the allocation of a disproportionate amount of increased crude costs to the price of propane.

December 24, 1974.—Subpart K: This regulatory policy was applicable prospectively from January 1, 1975, and was designed specifically to provide a method by which NGLPs could determine their maximum lawful prices for NGLs and NGL product. It provided (a) a method by which increased product costs could be passed through in prices charged for products, (b) a means by which those entities that had abnormally low May 15, 1973, selling prices could adjust their prices to reflect more closely the industry-wide average for such products on that date, and (c) a method by which non-product cost increases attributable to gas plant operations could be passed through in the prices charged for the product produced in such plants.

May 29, 1975: Ruling 1975-76 was promulgated which provided that for the period August 1973 through December 1974 NGLPs were subject to Subpart E and that the cost of natural gas shrinkage was considered to be an increased product cost and as such could be recovered on a dollar-for-dollar basis during that period.

August 29, 1975: A class exception was promulgated which permitted the retroactive application of the remainder of Subpart K regulatory policy to the pricing of NGLs produced in gas processing plants during the period August 1973 through December 1974.

December 12, 1975: Ruling 1975-18 was promulgated which was applicable for the entire regulatory period and dealt with the computation of increasing cost of natural gas shrinkage and as such, provided guidance to NGLYs with respect to acceptable methods of computing the increased cost of natural gas shrinkage.

June 15, 1976: An amendment to Subpart K price rules was promulgated which provided for several changes in the NGLs price rules of Subpart K. This amendment was retroactive to January 1, 1975. These changes included provisions which were previously inadvertently omitted from Subpart K. They also adopted existing provisions of Subpart K more specifically to gas plant operations. It affected such areas as first sale prices; imputed May 15, 1973, prices, non-product cost allowances; unrecovered increased product costs; certification of adjusted May 15, 1973, prices between purchasers and their suppliers; calculation of increased product costs attributable to "new" NGLs and NGL products and special propane rules.

Subsequent to the promulgation of the June 15, 1976, changes to FEA regulatory policy affecting the pricing of NGLs and NGL products, audit effort on the NGL audit program was dramatically increased, as many of the previous stumbling blocks to completion of audits were no longer present. It was at this time that the supplemental budget for fiscal year 1976, which provided for 41 percent increase in the final audit staff levels to audit NGL processors, was approved.

As a result of the above, staff hours extended on the NGL Program increased from approximately 24,000 hours as of June 30, 1976, to approximately 80,000

hours as of January 31, 1977. Approximately 75 audits of NGL processors are now in progress while 16 audits have been completed. Consent Orders have been either issued or drafted involving violations of several million dollars. The expended audit effort, however, has disclosed new regulatory problems that had not been identified earlier.

Question 3. We understand that under current guidelines the FEA's National Compliance Office must concur in:

- (a) Each Compliance action involving significant issues of first impression; and
- (b) Violations involving more than \$1 million.

This concurrence is made prior to issuance of a Notice of a Probable Violation (NOPV). In the case of a remedial order, the dollar threshold is reduced to \$500,000. These boundary conditions are said to include most overcharges of price miscalculation cases involving major refiners.

We can understand the need for the National Office to coordinate cases of first impression and reviews of proposed consent orders. We do not understand the dollar threshold criteria which are, at best, arbitrary. We would appreciate your reviewing these criteria and explaining to us why they are necessary or desirable, particularly since the regions have Regional Counsels and since the NOPV and remedial orders are not final Agency actions.

Answer. The use of dollar amounts as a yardstick for the requirement to seek National Office concurrence in Compliance actions serves several valuable purposes. While any dollar valuation of a case could be viewed as "arbitrary," the use of a dollar amount standard by FEA is helpful to the Compliance effort, not because of the amount chosen, but because of the type of case that tends to reach the National Office because of that chosen amount.

The dollar standard reflects an amount of money likely to generate substantial controversy between the Agency and the firm. Such cases are likely to involve protracted administrative proceedings in which the parties may tend to be entrenched in their respective positions. For many public corporations, a potential liability under FEA regulations may also give rise to corollary obligations under Federal law (SEC disclosure rules, for example). It is, thus, both necessary and desirable that the Agency be certain of its thinking in both the legal and policy aspects of such cases, before embarking on controversial courses of action.

In addition, the present dollar standard is generally reflective of the type of "substantial" case which would reflect Agency policy and ensure consistency among the regions. A case which alleges a violation of \$1 million may, for example, involve activity occurring over a long period of time during which regulatory provisions and directions may have been altered. Cases involving such dollar amounts tend to arise from complex regulatory circumstances; they generally span many issues and several different parts of the Agency's regulatory programs; they generate matters of national impact. The National Office is best equipped to orchestrate such activity.

The present yardstick of \$1 million represents a change from a prior level of \$500,000. This was raised, in part, as regional personnel developed necessary familiarity with case issues, policy directions, and prior precedent. As the Agency continues to develop its Compliance effort, or as cases and regulations become more "routinized," it is entirely possible that the standard could again be changed. As was noted at the outset, the amount is not nearly as important for its own sake as it is for the type of case that it tends to bring under National Office scrutiny.

The dollar amount for Remedial Orders is \$500,000. This amount is below the NOPV amount principally because, after a firm responds to an NOPV, the Agency may conclude that the amount actually involved is less than that first alleged because of factual or legal statements disclosed in the reply. As was described above, the National Office reviews ROs for the same reasons that it reviews NOPVs. Because any Remedial Order is a final enforcement action of FEA, however, the Agency has a duty to assure the propriety of any such final action undertaken by it. Although the National Office cannot review every such final action, the \$500,000 standard, coupled with the "first impression" standard, helps to ensure that all final enforcement documents receive a consistent level of attention, and that the Agency's positions are uniformly and equitably administered.

The \$500,000 level for Remedial Orders parallels the requirement for Consent Orders that require National Office concurrence. It should be noted that this

same monetary standard prevails with respect to the procedural requirement of 10 C.F.R. 205.197 for publication in the Federal Register prior to finalization of a Consent Order. Since National Office review of Consent Orders is required for cases involving \$500,000, it is appropriate that the same test be applied to cases which are settled on a non-consent basis.

Question 4. Please advise us whether the FEA has adequate statutory authority to assess and impose civil penalties administratively—subject, of course, to judicial review.

Answer. Those who violate FEA regulations and orders may be subject to civil and criminal penalties. Those penalties are derived from Section 5(a) of the Energy Petroleum Allocation Act of 1973 (EPAA) (Public Law 93-159), Section 208 of the Economic Stabilization Act of 1970 (ESA) (Public Law 92-210) provided for fines up to \$5000 for anyone who "willfully" violated any order or regulation under the Act and for fines up to \$2,500 for "other" violations. Section 452 of the Energy Policy and Conservation Act (EPCA) (Public Law 94-163) deleted the incorporation of Section 208 from the EPAA and substituted in its place provisions modifying and increasing penalties against those who violate FEA regulations and orders. Civil and criminal penalties were increased up to a maximum of \$20,000 and \$40,000 respectively for certain classes of violations; directors and officers of corporations found in violation of FEA regulations and orders are now subject to imprisonment in certain circumstances.

Section 209 of the ESA as incorporated into the EPAA provides in substance that FEA may request the Attorney General to bring actions in appropriate federal district courts to enjoin violators of FEA orders and regulations, and then empowers federal district courts to issue injunctions and order restitution of monies received in violation of FEA orders and regulations.

FEA has a continuing policy to compromise the amount of civil penalties where appropriate which a firm found in violation of its regulations is required to pay. This can be done without resort to judicial enforcement and permits the agency to extract a penalty amount which it believes to be equitable in light of the nature of both the violation and the firm. Such amounts received by the agency are not unilaterally imposed by the agency but are mutually agreed on between FEA and companies considered by the agency to be in violation of FEA orders and regulations. More than 90 percent of FEA Compliance cases are settled through consent procedures where civil penalties, if considered appropriate by the agency, are compromised and agreed to by the parties. Federal district courts, of course, have the sole authority to impose criminal penalties in regard to violations of FEA orders and regulations.

Congress has given few federal administrative agencies authority to directly impose civil penalties. Furthermore, in those few cases, the amounts of penalties are minimal. Most agencies do not have the power to impose civil penalties, and can only recommend to the Department of Justice that an action be undertaken in the federal courts to impose such penalties. FEA is currently among the latter group of agencies, and has, on numerous occasions forwarded requests to the Department of Justice for the initiation of civil proceedings to collect civil penalties.

FEA recognizes the need to examine this matter more fully. The Task Force will be asked for an evaluation and its recommendations.

Question 5. Our review of the proposed Department of Energy Bill (H.R. 4263), the accompanying fact sheets, and other materials fail to show where the Compliance program would reside and what level official or officials would administer it. We would appreciate your explaining the organization of the Compliance functions in the new Department.

Answer. Immediately following my confirmation as Administrator, I initiated an overview study of FEA's Compliance program. Based on recommendation of this study, I have directed establishment of a task force to be headed by a highly respected individual from outside FEA with extensive experience in federal regulatory programs. One of the specific functions of the task force will be to review organizational weaknesses of the Compliance program. Until review of the recommendations of the task force is completed and evaluated, I hesitate to recommend the specifics of the organization of compliance activities of the Department. I do, however, believe certain guidelines must be observed. The Compliance organization must have sufficient stature and independence to facilitate the enforcement of the regulations. It is also essential that a dedicated legal staff be organized in such a way as to provide adequate and responsive

support to the Compliance operation. H.R. 4263 will authorize the establishment of such a structure.

Question 6. Are any improvements needed in the present law to enable the FEA to carry out its enforcement responsibilities effectively and expeditiously?

Answer. A statutory amendment would be helpful with respect to FEA's power to order refunds in cases where it finds that sellers have charged prices for petroleum products in excess of maximum lawful selling prices. Under the present provisions of the Emergency Petroleum Allocation Act, it appears that FEA remedial powers are limited to ordering either refunds to identifiable customers that were overcharged or rollbacks in prices to the market where individual victims of the overcharge are not identifiable. In certain instances these remedies present practical difficulties, particularly where the customer that was overcharged was not the ultimate victim of the violation. For example, sales of crude oil in excess of ceiling prices normally involve overcharges of refiners.

However, the refiner would not necessarily be the ultimate victim of the overcharge since, by application of the refiner pricing regulations, the actual price paid for the crude oil would be included in the refiner's crude costs and be reflected in prices for petroleum products. Purchasers of such products may likewise pass through increased product costs, including increases attributable to the original overcharge by the producer, to their customers. It is entirely possible that none of the numerous intermediary distributors of a refiner's products suffered financial harm from the initial ceiling price violation at the producer level. To achieve complete restitution, therefore, would entail that FEA's refund order operate at a multitude of distribution levels to insure that refunds paid by the producer to the refiner filter through to ultimate consumers. Such a task is not only procedurally cumbersome, but virtually impossible to monitor, particularly since refunds received by intermediate resellers, although considered product cost reductions, may be offset by banks of unrecovered previous product cost increases.

A similar problem exists where the violation concerned a product that was subsequently decontrolled. Only by reimposing some form of price control by special order is it possible to insure that the reseller-recipient of a refund will pass on the benefits thereof to its customers. Where there are multiple levels of such resellers, it is extremely difficult to insure that FEA's remedial actions compensate the actual victims of an unlawful price.

For these reasons, we believe that consideration should be given under certain circumstances to requiring that the amount of an overcharge be paid to the U.S. Treasury. In this way, the firm found to be in violation could be required to disgorge the unjust enrichment which it received by virtue of the unlawful activity. While such a device could not achieve restitutions to the persons victimized by the overcharge, the amount of the overcharge would inure to the government, and thereby to all the nation's citizens. This special type of refund order would be used only where FEA finds that meaningful restitution to the actual victims could not be achieved in any event. Moreover, the funds paid into the Treasury under this program could be designated to be used for specific energy purposes, thus satisfying, at least indirectly, a form of compensation to those harmed by the overcharge.

I recognize that this concept will require further analysis and elaboration. We would be pleased to work with the Subcommittee in refining the details of this alternative method of remedial action.

In addition we would recommend that FEA auditors and investigators be included in U.S.C. 18-1114 which provides for penalties for those people interfering with specific types of government employees in the performance of their jobs.

Question 7. Your February 22, 1977 letter to us concerning the allocation of aviation fuel states (p. 2), that as a result of FEA's investigation, the "allocation procedures" were "revised." However, your letter does not detail those changes. Please explain the prior procedures and indicate how and when they were changed to achieve the results you state. Please include a copy of the new procedures and indicate where they have been published.

Answer. Allocation controls for aviation fuels commenced on November 1, 1973, and initially covered only kerosene-base aviation turbine fuel. Responsibility for administration of these controls was assigned to the Office of Oil and Gas, Department of the Interior. This responsibility later passed to the Office of Petroleum Allocation, and finally to the Federal Energy Office, subsequently designated the Federal Energy Administration. Naphtha-base aviation turbine fuel and aviation gasoline were added as covered products on January 15, 1974.

Bonded aviation fuels have never been covered under the allocation and price regulations, and authority for international air carriers to utilize non-bonded aviation fuels originated on January 15, 1974. This authority was initially restricted to naphtha-base aviation turbine fuel, and on April 15, 1974, this authority was expanded to include all aviation fuels.

At that point, the FEA was still in its formative stage and was staffed heavily with personnel on detail from other agencies. No formal procedural guidelines had yet been developed, but some degree of consistency in case resolution was already being achieved by virtue of the commonality of backgrounds of the aviation fuel program staff and existence of close working relationships. Action officers were informally employing analysis of load factors, aircraft fleet changes, changes in route structures and operating frequencies and equipment performance data along with other data for the purpose of computing fuel requirements, determining appropriate action on individual cases, and achieving equitable allocation of aviation fuels.

In mid 1974, a few international air carriers began to informally voice contentions that they were being granted less favorable consideration than were the U.S. domestic air carriers. Those contentions along with a growing recognition of the general need for formal procedures led to a full evaluation by the aviation fuels program staff of procedures then being employed, and to the subsequent development of formal guidelines for base guidelines for base period volume adjustments and assignments. These were developed under a coordinated effort by FEA, the Civil Aeronautics Board, and the Department of State, cleared through the FEA Office of General Counsel, and issued in February 1975. Copies of the guidelines were distributed to all civil air carriers who had been in contact with FEA, and additionally, the guidelines were published in the *Aviation Daily*. These guidelines were later republished without change in the *Procedures Manual, Volume 6, Aviation Fuels*, issued by the FEA Office of Operation, in September 1975. The guidelines and the criteria contained therein became the basic tool for use in case resolution immediately upon development and prior to final clearance by General Counsel and continue to be applied uniformly and without exception in all civil air carrier fuel allocation cases. The guidelines are further supported and amplified by the allocation procedures detailed in the *Procedures Manual*.

In processing assignments or adjustments for a civil air carrier, the Action Officer computes the minimum fuel volumes needed to support the carrier's operating system. In the case of international air carriers, the computation includes the minimum volumes needed to provide sufficient fuel from U.S. port of embarkation to the first foreign landing point where fuel is available. This computation is based upon type of equipment used and block hours of operations per quarter. Aircraft performance data supplied by aircraft manufacturers and supported by performance data published by CAB are used in this computation. Allowance for reserve fuel as required by Federal Aviation Regulations is based upon average incidence of delays and diversions experienced by a carrier within the system in which it operates. Final decision is based upon this computation and upon comparison of historical and projected operations, historical and projected fuel requirements, historical and projected load factors, and evidence of fuel conservation practices such as computer flight planning, cruise planning, altitude planning, fuel load planning, and equipment performance and fuel monitoring.

Copies of appropriate sections of the *Procedures Manual* including the FEA Guidelines for Base Volume Adjustments and Assignments are provided herewith.

FEDERAL ENERGY ADMINISTRATION, OFFICE OF REGULATORY PROGRAMS, OFFICE
OF OPERATIONS, PROCEDURES MANUAL

2.2.2 AVIATION FUELS ALLOCATION

(a) Scope [§ 211.141-§ 211.147]

(1) The allocation regulations apply to the mandatory allocation of aviation fuels produced in or imported into the United States. Bonded aviation fuels (i.e., aviation fuels produced outside the customs limits of the United States held in bond under continuous United States customs custody in accordance with Treasury Department regulations, and destined for use outside of the United States, its territories or possessions) are excluded from the allocation program [§ 211.141].

Aviation Fuels means aviation gasoline and aviation turbine fuel.

Aviation Gasoline means petroleum-based fuels designed for use in aircraft internal-combustion engines.

Aviation Turbine Fuel refers to all refined petroleum fuel designed to operate aircraft turbine engines. This covers both Type A (kerosene-base) and Type B (naphtha-base).

(2) The FEA National Office has the responsibility for resolving aviation fuel matters pertaining to the following categories of aviation fuel users [§ 211.147]:

Domestic, supplemental, and scheduled cargo air carriers; local service air carriers; international air carriers; intrastate air carriers; contract air carriers; and Department of Defense.

(3) The FEA Regional Offices have the responsibility for resolving aviation fuel matters pertaining to the following categories of aviation fuel users [§ 211.147]:

Air taxi/commercial operators; general aviation; public aviation; and non-aviation use of aviation fuel.

(Regional Office procedures are outside the scope of this Manual.) Multi-regional issues may be passed on to the FEA National Office for resolution.

(b) Objectives

(1) The principal objective of the allocation program for aviation fuels is to develop and maintain an equitable fuel utilization and conservation program for all classes of aviation activity. To achieve this objective, the Aviation Fuels Program Office has major responsibilities to:

Direct the allocation and distribution of product as mandated by the mandatory allocation program regulations;

Allocate product as required to account for changing supply/demand conditions;

Ensure the uniform application of regulations and procedures by the FEA;

Ensure equity of access to aviation fuels;

Maintain stability of aviation fuel supply; and

Achieve conservation through efficient use of aviation fuel resources.

3. ALLOCATION PROCEDURES

The following sections (3.1-3.3) describe the major program procedures to follow in allocating aviation fuel. These procedures relate primarily to resolution of cases and assignment of surplus product.

Some of the procedures that are described in the following sections require the judgment of Action Officers to apply relevant regulations to specific situations. For such procedures, the relevant *FEA Guidelines* are referenced and, in some instances, summarized. For a thorough understanding of decision criteria, the reader should refer directly to the quoted regulations.

3.1 ASSIGNMENT/ADJUSTMENT—(FLOW CHART 3.1)

3.1.1 Scope

Case resolution procedures involve evaluating and making decisions on three types of requests from aviation fuel purchasers for the following FEA actions:

(a) Assignment of a supplier, (b) assignment of a base-period volume, and

(c) adjustment of a base-period volume.

The procedures for purchasers' filing and for FEA processing such requests are contained in § 205.21-205.39. The following subsections show the criteria to be followed in evaluating requests for adjustment and assignment. Requests must be submitted on Form FEO 17 which is discussed below. Section 3.2 describes the administrative procedures that are followed in processing and controlling case requests.

3.1.2 Form FEO 17

(a) Wholesale purchasers of aviation fuel can request an adjustment or assignment by submitting a Form 17 to the FEA National Office (see Exhibit 3.1-1). The Form is obtained from the FEA National or Regional Offices. The following information is required (the contents of the Form are prescribed in § 205.24):

(1) Base-period volumes; (2) actual purchases in the last 12 months and the percentage of the comparable base-period month; (3) use category of purchase; (4) requested adjusted base-period supply volumes, and the percentage of the comparable base-period month; and (5) justification for volume requested.

Normally, several pages of documentation and explanation must be submitted with the Form 17 as justification for the requests (see Exhibit 3.1-2).

(b) In some situations, for the sake of expediency, a purchaser might request immediate case action from the FEA by telephone or letter. In such instances, the Action Officer begins acting on the request, but requests the company to submit the Form 17 to comply with the formal reporting requirements.

(c) A purchaser requesting an adjustment or assignment of a base-period volume must submit a Form 17. In cases where an increase in volume is requested, a Form 17 should be submitted for each supplier involved. If the request seeks to redistribute volumes previously assigned, one Form 17 for all suppliers and a supplemental sheet detailing the requested redistribution is required.

(d) For cases in which base-period suppliers are known, a purchaser need not obtain the approval or disapproval of the supplier before transmitting the Form 17's to FEA since constant contact is maintained between FEA and suppliers. It is, however, required that suppliers be informed by purchasers of requests for adjustments. In this regard, the transmittal of a copy of the Form 17 to the supplier is adequate.

(e) Purchasers requesting an assignment of a base-period supplier are required to submit Form 17's to suppliers who indicate willingness to supply on the Form and transmit the document to FEA. This procedure insures that the FEA policy requiring the purchaser to attempt to locate a willing supplier is followed.

3.1.3 Assignment of a Supplier

Case resolution activities include the evaluation of requests made by purchasers on Form 17 for the assignment of a supplier. Circumstances under which such a request are made include:

The purchaser is unable to locate a willing supplier,

The purchaser's present supplier does not handle a specific type of fuel in a particular location, and

A carrier is beginning a new operation or is serving new locations.

The procedures and criteria for evaluating assignment requests are discussed below. The relevant regulations are contained in § 205.31-205.39.

(a) Any wholesale purchaser who does not have a base-period supplier or whose base-period supplier is unable to provide him with sufficient amounts of allocated product, may apply to the FEA for assignment of a supplier and a base-period volume. The FEA may assign the wholesale purchaser to one or more suppliers and will assign a base-period volume to the wholesale purchaser when the supplier assignment is made [§ 211.12(e) (3)].

(b) The FEA requires purchasers to attempt to locate a willing supplier (with approval indicated on Form 17) before the FEA will assign one. In assigning a supplier to a purchaser, the Action Officer attempts to locate by telephone a supplier who is capable of and willing to supply the purchaser. If no willing supplier can be located, the Action Officer selects a supplier for assignment on the basis of the following factors:

- (1) The supplier with the most product available;
- (2) Purchaser preference or history (e.g., if the purchaser is served at other locations by the supplier);
- (3) The major supplier at the desired location; and
- (4) The physical ease of supply (i.e., the supplier's distribution system).

To the extent practicable, the FEA will continue any existing supplier/purchaser relationships in making such assignments [§ 211.12(e) (3) (i)].

(c) The general criteria for granting an assignment request are contained in § 205.35(b). The FEA can approve applications for assignment of a supplier only if permitted or required under Part 211 of the Mandatory Petroleum Allocation Program.

(d) Wholesale purchasers who do not have base-period suppliers, and wholesale purchasers whose base-period suppliers are unable to supply them with sufficient amounts of an allocated product, may make mutually acceptable arrangements with other suppliers [§ 211.12(e) (1) (i)]. The supplier will notify FEA within 10 days and will show the basis on which the proposed base-priced volume

was determined. The FEA may adjust the proposed base-period volume, and may also assign the purchaser to another supplier [§ 211.12(e) (1) (ii)].

(e) On the basis of an evaluation of the request, the Action Officer contacts the supplier and purchaser about the decision and issues a *Decision and Order* (see 3.1.9 and Exhibit 3.1-3) subject to the provisions of § 205.36. The *Decision and Order* is drafted and processed according to standard correspondence procedures (see Section 5).

(f) Any party aggrieved by the FEA decision may file an appeal [§ 205.28].

3.1.4 Assignment of base-period volume

Purchasers having no 1972 consumption record, and purchasers requesting assignment of a supplier may request the FEA to assign it a base-period volume [§ 205.31-205.37].

(a) In cases involving companies either without operating histories or with incomplete histories, it is FEA policy to make quarter-by-quarter allocations to build an experience background on which to determine an annual base-period volume.

(b) In assigning a base-period volume for a new operation, the Action Officer carries out the following procedures:

- (1) Makes a base-period volume assignment for two successive quarters;
- (2) Obtains data on historical fuel use, load factors, efficiency, etc., for the assignment period (proofing period) (see 3.1.6); and
- (3) On the basis of this historical data, computes an appropriate annual base-period volume (i.e., the proper amount of fuel that is needed for various types of aircraft, engine consumption, block hours, etc.) for the carrier, reflecting public need and necessity (see 3.1.8).

(c) The Action Officer notifies the supplier and purchaser of the decision and drafts a *Decision and Order* (see 3.1.9 and Exhibit 3.1-4).

(d) The Action Officer in assigning base-period volumes seeks a willing supplier who is capable of supplying the purchaser with the assigned volume.

3.1.5 Adjustment of Base-Period Volumes

Most case-resolution activities involve evaluating requests made by purchasers on Form 17 for adjustments of their base-period volume. Adjustments of base-period volume are sought when the base-period experience no longer represents the purchaser's current requirements. The criteria and procedures for evaluating such requests are set forth below. The regulations governing the adjustment process are contained in § 205.21-205.27.

(a) Civil air carriers (except air taxi/commercial operators) may apply to the FEA National Office for adjustments to base-period use based on changed circumstances. Adjustments under this paragraph will be granted by the FEA only where there are compelling situations requiring relief [§ 211.45(b) (1)]. The Aviation Fuels Program has developed a set of guidelines for use in determining what are compelling situations (see Exhibit 3.1-5).

(b) Applications for adjustment to base-period use based on changed circumstances by local service air carriers may only be granted on a determination by the FEA, after consultation with appropriate federal agencies that the adjustment is necessary to provide or improve service to locations that have inadequate scheduled air service.

(c) To receive an adjustment of a base-period volume from the FEA, a carrier must provide evidence of one or more of the following [§ 211.145]:

- (1) Unusual circumstances during the 1972 base period,
- (2) Change in public need,
- (3) Inefficient distribution of fuel supplies causing wasteful operating practices,
- (4) Change in type of aircraft,
- (5) Change in route structures, and
- (6) Change in flight frequencies.

(d) The procedures and the information utilized by the Action Officer in judging the request involve evaluating the validity of the requested change in fuel allocation on the basis of data on fuel consumption by type of aircraft, route distances, block hours, etc. (see 3.1.8).

(e) If the FEA determines that the purchaser is entitled to a corrected base-period volume or to increased requirements in excess of those provided by the supplier during the period in which the request for FEA validation is pending, FEA may order the supplier to adjust the purchaser's base-period volume, or to

supply the increased requirements, and also to supply the purchaser with additional volumes of the allocated product which the purchaser would have received if the increased base-period volume or increased requirements had been supplied during that period [§ 211.12(c) (4), (d) (1), and 211.13(d) (1)].

(f) After evaluating the request, the Action Officer notifies the supplier and purchaser of the decision, and then drafts a Decision and Order [§ 205.26] (see 3.1.9 and Exhibit 3.1-6).

(g) In granting a base-period adjustment, the Action Officer attempts to ensure that the supplier is capable of and willing to supply the adjusted volume.

(h) Any party aggrieved by the decision (adjustment or assignment) may file an appeal with the FEA Office of Exceptions and Appeals (OEA) within 30 days [§ 205.28]. The Action Officer may be called on to provide information relative to the appeal, or may be required to reopen the case or to take other action as determined by the OEA.

3.1.6 Temporary and Emergency/Spot Allocations

(a) Emergency or spot allocations are a "one shot" assignment, made under the following circumstances:

- (1) Emergency or mercy flights,
- (2) Diversion due to extenuating circumstances (weather),
- (3) Ferry flights,
- (4) New aircraft purchase,
- (5) Foreign government requests, and
- (6) Initial fill of new airport facilities, such as hydrant systems. Allocation levels and allocation fractions do not generally apply to spot allocations because they are intended to be a single occurrence.

While there is no regulatory limit to the number of temporary allocations which can be granted, the carrier will be required to establish a base-period volume when continuing activity is evident.

(b) Emergency allocation requests are generally handled expeditiously in response to a telephone request. Decisions on such emergency assignment matters are usually made quickly by the Action Officer in conjunction with a supplier who is willing to supply the requested volume and is communicated immediately to the company. Standard verification and analysis procedures are not normally utilized in such cases, but the Action Officer does follow standard operating procedures by later requiring written documentation of the request and drafting a *Decision and Order* that is sent to the purchaser and supplier (see 3.1.9).

(c) Temporary allocations are used for the following purposes:

- (1) Routeproofing (i.e., to establish an uplift history for new carrier operations); and
- (2) Charters who need fuel for a specific flight or series of flights.

(d) Temporary assignments are intended to be issued when circumstances do not permit the issuance of an assignment order in the normal time period provided for in the *Guidelines* [§ 205.29 and 205.39].

(e) While decisions on emergency and temporary allocations are made quickly via telephone conversation, the Action Officer later drafts a *Decision and Order* (see 3.1.9 and Exhibit 3.1-7).

3.1.7. Case evaluation procedures

Action Officers receive written case requests from the Secretary/Administration who implements the standard case control procedures (see 3.2). For telephone requests for case action, the Action Officer fills out a *Record of Telephone Request* and submits it to the Secretary/Administration for implementation of standard case control procedures (see 3.2). The Action Officer evaluates a case according to the procedures set forth below. The following procedures are generally followed by the Action Officers for each of the various categories of air carrier. Procedures specific to each category are discussed in Section 3.1.10.

(a) The Action Officer examines the Form 17 and accompanying documentation to determine whether sufficient information has been provided as justification for the request. If the documentation is insufficient, he drafts a request to the company asking for additional documentation (see Exhibit 3.1-8).

(b) The Action Officer then verifies the company's monthly base-period volume as indicated on the request. This is done by:

- (1) Calling the company for verification, and
- (2) Calling the supplier for verification.

(c) The Action Officer then verifies the uplift consumption data on the request for the last 12 months by the above procedures or by utilizing monthly uplift data which air carriers have been requested to submit (see 3.4.3).

(d) If there are any discrepancies between the uplift or base-period volume figures on the case request and the data from the company or data from the purchaser, the company is requested to provide a photostatic copy of its billings.

(e) The Action Officer then verifies the data on engine fuel consumption, routes, types of aircraft, and operating rights, etc., which the companies provide as documentation for their requests. Verification procedures include:

- (1) Contacting the company,
- (2) Utilizing available data sources (see 3.1.8), and
- (3) Checking with other federal agencies, such as the CAB, Bureau of Economics, and Bureau of Operating Rights.

(f) If all the required information has been provided and verified, the Action Officer then evaluates the request for adjustment or assignment.

(g) For cases involving adjustment or assignment of a base-period volume, the Action Officer determines the additional fuel needed, based on the data about aircraft consumption, routes, distances, etc. (see 3.1.8).

(h) The Action Officer then confirms that the purchaser's supplier is willing to and capable of supplying the additional volume, and then drafts a *Decision and Order* (see 3.1.9).

(i) The Action Officer maintains telephone communication with the supplier and the purchaser during resolution of each case. The Action Officer telephones the supplier for at least three purposes:

- (1) To verify the purchaser's base-period volume and 12-month uplift data,
- (2) To discuss the purchaser's request, and
- (3) To inform the supplier of the mandate.

It is FEA policy that if the supplier does not accept the FEA mandate, an attempt will be made to locate a supplier who is capable of and willing to provide the assigned base-period volume.

3.1.8 Case evaluation data

In analyzing requests by purchasers for adjustments or assignments of base-period volumes, the Action Officer must estimate the purchaser's additional fuel requirements based on such data as route structures, load factors, etc.

The Aviation Fuels Program Office has compiled a list of some of the factors considered by the Action Officers (see Exhibit 3.1-9). Source of data used by Action Officers include the following:

(a) Route Mileage:

- (1) The Official Airline Guide (gives route mileage and schedules between major world points).
- (2) The CAB Book of Official Airline Route Maps, and
- (3) The Department of Defense flight information publications.

(b) Aircraft Fuel Consumption:

- (1) Data provided by air carriers by flight, type of aircraft and the system as a whole (see Exhibits 3.1-10, 3.1-11),
- (2) Pilots' aircraft performance charts,
- (3) Requests made to companies and manufacturers,
- (4) Documented evidence on fuel consumption from airline fuel managers (see Exhibit 3.1-12),
- (5) The CAB's Aircraft Operating Cost and Performance Report (see Exhibit 3.1-13),
- (6) Data on system performance from periodicals, such as *Aviation Daily* or *Air Transport World*,
- (7) Data on quarterly fuel consumption submitted by the airlines (see 3.4.3), and
- (8) Aircraft manufacturers performance data.

(c) Other:

- (1) A listing of worldwide locations of aviation fuel suppliers, and
- (2) Data from the International Air Transport Association (Montreal and Geneva).

In performing their general case resolution activities, Action Officers must keep informed on performance of various types of aircraft and airline systems and on route awards by the CAB. This is done by utilizing reports and studies pro-

duced by other federal agencies, such as the CAB, and by reading aviation industry periodicals (e.g., *Aviation Daily*). The AF Office receives and keeps on file CAB studies by the Bureau of Economics dealing with fuel consumption and related matters.

3.1.9 Decision and order

Following a decision on a case, the Action Officer drafts a *Decision and Order* telegram to the supplier, with a copy to the purchaser. The *Decision and Order* must contain a brief statement of the factual and legal basis of the order and a statement that aggrieved parties may file an appeal (see Exhibits 3.1-3, 3.1-4, and 3.1-5) [§ 205.26 and 205.36].

(a) The Action Officer writes the *Decision and Order* and a Memorandum for the Record (MFR) that explains the basis of the decision (see Exhibit 3.1-14) and delivers the draft copies to the Secretary/Typist for typing and assembling of case package. The package is returned to the Action Officer for review.

(b) If no written response to a case is necessary, the Action Officer prepares an MFR, attaches it to the case documents and returns the case file to the Secretary/Administration.

3.1.10 Action Officer categories

The two preceding sections describe general procedures followed by all the Action Officers. This section describes the procedures for each specific category of air carrier.

(a) The Action Officer for United States Scheduled Airlines resolves cases involving: Domestic trunk airlines, domestic local service airlines, and U.S. international airlines.

Most case requests for this category of aviation fuel user involves adjustments of base-period volumes with few requests for either temporary or permanent assignments.

(1) Usually the purchaser airline first telephones the Action Officer concerning the request. The Action Officer advises the airline as to how to prepare the request on Form 17 and the documentation to provide as justification for the request.

(2) Because scheduled air carriers requests for adjustment are for the airlines' total system which involves thousands of segments flown each day, detailed analysis of burn rates and fuel consumption are impractical. Consequently, evaluations of requests are made on a total system performance rather than on the specific performance of one type of aircraft or one route segment.

When an adjustment is requested to meet the needs of an individual route award or an individual frequency increase, the fuel burn should be computed using the factors listed in 3.1.8.

Off-line charter fuel requirements should be computed using the factors listed in 3.1.8.

(3) Upon receipt of the Form 17 with supporting documents, the Action Officer prepares the memorandum for the record. If sufficient data has been supplied by the requesting airline to allow the Action Officer to complete an MFR that satisfies the requisites to justify the Action Officer making the award, he begins preparation of the related *Decision and Order For Adjustment* (see 3.1.9) messages. If sufficient data is not provided by the airline, the Action Officer must make the decision to disallow the request or request that the airline supply additional data or more detailed data as may be appropriate.

(4) As the Action Officer prepares the drafts of orders, he must either cite correspondence or telephone conversations wherein the oil company supplier has indicated its ability to supply the quantity of aviation fuels requested within the time or periods of time to be specified in the order. Usually telephone conversations with each of the oil company suppliers involved will be required.

(5) When an oil company supplier states that it cannot meet the demands to be included in the order, the Action Officer so informs the requesting airline and advises the airline to seek a commitment from another supplier. Having obtained such a commitment the airline so informs the Action Officer who changes the addresses for the order accordingly.

(6) If the airline is not successful in finding another supplier, the Action Officer will either counsel the airline to move the fuel requirement to another

location by modifying its operations plan or assist the airline in obtaining a supply commitment.

Having obtained the necessary supply commitments, the Action Officer completes the draft of the "Decision and Order for Adjustment" and the attendant MFR and forwards it to the Secretary/Typist.

(b) The Action Officer For Foreign Air Carriers establishes system-wide base-period volumes and assigns suppliers for all points in the U.S., where foreign international air carriers uplift aviation fuel. The case-resolution activities include the adjustments of base-period volumes, as well as emergency and temporary allocations. In addition, this Action Officer is required to accomplish the above actions for all Alaskan-based air carriers that report to national FEA Office.

The procedures followed by the Action Officer to determine minimum fuel required to support scheduled and charter air operation for the above listed air carriers include the following activities:

- (1) Verify foreign air carriers system-wide base-period volume, which includes bonded and non-bonded fuel purchased in the U.S. during the base period to determine air carrier authorization for access to U.S. domestic aviation fuel in accordance with FEA regulations.
 - (2) Validate aviation fuel consumption per block hour as it relates to the aircraft operated to accomplish scheduled and charter air operations.
 - (3) Verify aviation fuel suppliers' capability to supply product at all locations in the amounts requested by the air carrier.
 - (4) Coordinate the results of the analysis with CAB, Bureau of Economics, CAB, Bureau of Operating Rights, CAB, Bureau of International Affairs and Department of State Aviation Office, as it relates to foreign air carriers' authority to operate in U.S. in accordance with CAB regulations and Department of State coordinated bilateral agreements.
 - (5) Verify air carrier quarterly uplift of aviation fuel at all U.S. points by supplier as it relates to the volumes authorized to uplift in accordance with FEA regulations.
 - (6) Maintain monthly uplift data by supplier, by location, by air carrier from data supplied quarterly by each carrier
- (c) The Action Officer for Supplemental and Air Cargo Carriers is responsible for cases involving domestic and international certified passenger charter carriers and scheduled and non-scheduled air cargo carriers. In general, the same procedures are used in analyzing requests for action as in other carrier cases.

Passenger charter carriers are required to submit data including a list of chartering organizations, dates of flights, type of aircraft utilized and burn rates for each type of aircraft. Chartering organizations should be contacted to verify the number of flights expected to be operated. When the operation is of such magnitude to preclude a flight-by-flight analysis, other factors may be considered in determining the validity of requests. These include: Comparisons of historical and projected load factors; comparison of historical projected fuel requirements and that fuel actually uplifted—this indicates a degree of accuracy with which the carrier has predicted fuel requirements; and evidence of fuel conservation directives stressing such measures as computer flight planning, cruise planning, altitude planning, fuel load planning, and performance and fuel monitoring.

(1) Base-period volumes are often assigned on a quarter-by-quarter basis until the Action Officer is confident that an equitable annual base-period volume can be assigned. Although fuels requirements for additional flights are often realized on relatively short notice for carriers in this class, an increase in the total base volume may not be required since cancellations or redirection of flights are not uncommon. It is, therefore, important to consider all aspects of charter carrier operations when considering requests for action.

(2) Cases involving cargo carriers are analyzed utilizing similar data as for passenger carriers. Load factors in the case of cargo carriers refer to the volumetric load vs. the volumetric capacity and the weight of the load vs. the weight capacity of the aircraft.

(3) Requests for action in this category often involve requests for a temporary assignment of supplier for one flight or group of flights. Care should be exercised to insure that these flights are outside of normal opera-

tions and that flights for which fuel has been allocated have not been cancelled as a result of these additional flights. Temporary assignments should only be used when it is evident that an adjustment of base-period volume would be inappropriate.

(d) The Action Officer for *General Aviation* is the only officer who has continuing involvement in FEA Regional case resolution procedures. This officer provides technical assistance, procedural guidance and support to the Regional Offices and Regional Action Officers in case resolution activities involving air taxi/commercial operations, general aviation, public aviation, and non-flying use of aviation fuels.

The Action Officer for General Aviation is also responsible for cases involving Contract Carriers (those operators of large aircraft certified under 14 CFR Part 121) and Intrastate Air Carriers. Responsibility also includes cases involving air taxi/commercial operations, general aviation, public aviation, and non-flying use of aviation fuels when such cases cannot adequately be resolved at the Regional level and are passed to the National Office for resolution.

In general, the same procedures are used in analysis of requests for action as in other carrier cases, including analysis of sufficiency of data included in the request, analysis of operational requirements, and analysis of fuel availability and willingness of suppliers to meet adjusted volumes. Additionally, liaison with State Regulatory Agencies and trade associations as well as CAB and FAA must be established and maintained to facilitate case resolution.

3.1.11 *Changes in supplier/purchaser relationships*

Under certain specific circumstances an airline may effect changes in supplier/purchaser relationships under the provisions of § 211.145.

(a) Any wholesale purchaser may unilaterally terminate its supplier/purchaser relationship with its supplier for that portion of its base-period volume supplied at any station, provided that the termination is effective at the end of a period which corresponds to a base-period (currently a calendar quarter). The regulation § 211.145(c) (1) requires the airline to provide the supplier and the National FEA with thirty days' written notice prior to such termination. The written notice must include the name of the wholesale purchaser, the name of the supplier, the station affected and the portion of the wholesale purchaser's base-period volume affected by the termination.

(b) Except in the unusual circumstance where an airline ceases service to a location or reduces its flight activity which would reduce its fuel requirement, an airline will not terminate a supplier/purchaser relationship until it has arranged for another supplier. Correspondingly, § 211.145(c) (2) provides for any wholesale purchaser making or implementing mutually acceptable arrangements with any supplier of aviation fuel to be supplied a portion of the wholesale purchaser's base-period volume providing that the supplier has an allocation fraction of 0.96 or above at the time such arrangements are made. A supplier accepting such an arrangement shall be deemed a base-period supplier of the wholesale purchaser. The supplier shall notify the National FEA in writing within ten (10) days of making the arrangement. The notice shall include the names of the parties, the stations affected and the increased portion and the total portions of the wholesale purchaser's base-period volume to be supplied by the supplier.

(c) Upon receipt of the wholesale purchaser's notice of termination and the supplier notice of the supplier making arrangements to supply the Action Officer make the appropriate notations in the airlines case file and forwards an acknowledgment of the air carrier's transfer of base-period volume from one supplier to the other (see Exhibit 3.1-15).

3.1.12 *Reporting procedures*

It is the responsibility of the Secretary/Administration to complete three weekly case status reports on the basis of information supplied by the Action Officers.

(a) The Preliminary Weekly Status Report on Correspondence is prepared according to the following procedures:

(1) The Secretary/Administration prepares for each Action Officer, a listing of pending cases with their suspense dates (see Exhibit 3.1-16);

(2) Each Action Officer reviews the cases listed to ensure that all cases currently being analyzed have been included, and that all cases previously closed have been deleted. If a suspense date listed will not be met, the Action Officer enters a new date for estimated completion;

(3) For each case listed, the Action Officer enters its current status (see Exhibit 3.1-16), and returns the list to the Secretary/Administration;

(4) The Secretary/Administration reviews the report and resolves any discrepancies between the pending files (see 5.3.6) and the report with the Action Officer;

(5) The Secretary/Administration then types the final preliminary report and submits it to the Manager (AF) for review and initialling; and

(6) A copy of the final report is distributed to the appropriate Action Officers for information and for use in completing the next update review.

(b) A Weekly Status Report of Correspondence is prepared by the Secretary/Administration and is submitted weekly to the Director (GF) (see Exhibit 3.1-17). It is completed by referring to the case control forms. The Secretary/Administration completes the report, submits it to the Manager (AF) for review and initialling, and delivers it to the Secretary (GF). The Secretary/Administration retains a copy of the report for the Status Report File.

(c) An Energy Initiatives Report (see Exhibit 3.1-18) is prepared biweekly by the Program Assistant for the Associate Assistant Administrator for Regulatory Programs. It provides an explanation of all ongoing projects in the Aviation Fuels Program. The report includes the following information:

(1) A short summary of problems or situations for which discussion and/or problem-solving procedures have been initiated. Initiatives listed should have considerable impact on the development or review of energy policies as they relate to aviation fuels;

(2) A summary of the current status of each initiatives project as it applies to the Aviation Fuels Program and other offices which may be involved; and

(3) The approximate dates by which time the project, or stages of the project are scheduled to be completed.

The above information is completed by the Action Officer from all staff members and is given to the Secretary/Administration for typing.

One day prior to submission date of the report, the Action Officer requests the following information from all staff members:

Update on initiatives previously listed in initiatives report, and

New initiatives suitable for inclusion.

The Action Officer reviews the report after it is typed and forwards it to the Manager (AF) for initialling and approval. The report is then forwarded to the Director (GF), with copies (including a notation of the submission date of the next report) also sent to all staff members.

EXHIBIT 3.1-5—FEA GUIDELINES FOR BASE VOLUME ADJUSTMENTS AND ASSIGNMENTS

AVIATION FUELS MANAGEMENT OFFICE

Currently, civil air carriers may obtain adjustments to base period volume under § 211.145(b) (1):

"Civil air carriers may apply to the National FEA for adjustments to base period use based upon changed circumstances. Applications under this paragraph shall be fully supported by detailed facts, figures and other documentation. FEA may consult with appropriate Federal agencies in processing such applications. Adjustments under this paragraph will be granted only where there are compelling situations requiring relief."

Although the test of "compelling situations" is a desirable requirement, several months of operating under the adjustment regulation have shown the advantages of listing guidelines to aid in determining what are "compelling situations" and have provided the experience needed to create the guidelines.

There may be other circumstances which will meet the "compelling situation" test, and the following guidelines are not intended to restrict or narrow the regulation's terms. But they should enable quicker administrative action by indicating the types of situations which generally appear to satisfy the "compelling situation" test. Even where an application for adjustment falls within the guidelines, other factors present may still require a finding that the situation is not "compelling."

These guidelines merely indicate the factors present in most adjustment cases. They do not prevent consideration of other factors in individual cases.

The end goal remains "equitable allocations" of the limited supply of aviation fuel available, to assure the most economically efficient use while reducing, to the extent possible, any economic distortion caused by its scarcity.

It should be noted that most classes of aviation activity have been receiving fuel at higher allocation levels since January 1, 1975. Increases ranged from 5 percent for domestic trunk and international air carriers to 25 percent for personal and pleasure flying. Because the increased fuel allocated should satisfy minor changes in fuel demand, it is expected that applications for adjustment should decrease. The "compelling situation" test will be rigorously applied.

Previously granted adjustments will be subject to review and modification because of the increased allocation level and continuing changes in circumstances.

The following guidelines indicate the common factors that should be considered in determining what situations are "compelling."

1. Load Factors: The ratio between revenue load miles and available load miles is an important indicator of the need for additional service or larger aircraft. The percentage of payload capacity may refer to passengers, weight or cubic feet, depending on whether the flights involved carry passengers or cargo. Where both are carried, the passenger load factor and the cargo load factor will be averaged in proportion to the percentage of load capacity represented by each.

Load factors at the following levels would generally indicate substantial economical efficiency and justification for additional service and therefore constitute a "compelling situation," unless other mitigating factors are present. The load factors should be compared to those existing in 1972. A decrease or unchanged load factor could be a mitigating circumstance.

a. Load factor for entire airline system (For international air carriers this means all service outbound from U.S. points.): Truck lines and international carriers 60 percent, local service carriers 55 percent.

b. Load factor required to supplement a single periodic flight (daily, 3-per-week, etc.) between a city pair: 68 percent on that particular segment.

c. Load factor required to supplement a multi-flight schedule (more than one flight per day) between a city pair: 72 percent.

d. Average load factor required to supplement a schedule of flights between point "a" and point "b" with intermediate stops at other points: If cities served are, for the most part, over 200,000 population, 60 percent. If cities served are predominantly smaller than 200,000 population, 55 percent. However, exceptions will be made if loads on critical flight legs frequently reach 100 percent. (This exception should not divert attention from schedule rearrangement to achieve more efficient matching of capacity and demand within the existing fuel budget.)

2. Aircraft fleet charges: Larger aircraft may require more fuel. Factors such as need and reason for the change in fleet, including age and condition of the prior aircraft, will be considered.

3. New routes: The granting of operating rights by the Civil Aeronautics Board (CAB) could contribute evidence of the need for adjustment of base period volume. FEA may consult with the CAB, the Department of Transportation, the Department of State, and other Federal, State and local government agencies as appropriate.

4. Conservation measures. Calculation of fuel requirements for base period volume adjustments shall take into account fuel conserving regimens of operation prevalent in the air transport industry in the United States.

5. Actual need for international flights: In calculating adjustments for international air carriers, FEA will use the amount needed to provide sufficient fuel from the U.S. port of embarkation to the first foreign landing point where fuel is available, plus allowance for reserves as required by Federal Air Regulations, Chapter 1, Subpart U. The allowance of reserve fuel shall be related to the average incidence of delays and diversions.

Subject: Report Required to Public Law 801—July 25, 1956 (70 STAT 652) with Respect to the Establishment of an Inspector General within FEA.

FEA is in general agreement with the concept of establishing an Inspector General reporting directly to the Administrator.

Initial action has been taken to establish an Office of Inspector General, using the assets of the Office of Internal Review and the nonoperational assets of the Office of Security. The organization, staffing and functions are in consonance with the provisions of H.R. 2788.

The specific staffing level has not been determined at this time. However, a 1975 study conducted with FEA established three levels of staffing for such an office (low: 41 positions, medium: 52 positions, and optimum: 64 positions). The study concluded that any staffing below the 41 level would result in a marginally effective office. That original assessment appears to have been correct. Based on the experience of the past two years, it appears that the office should be provided with a greater capability to perform investigations and coverage of the Strategic Petroleum Reserve Program. Our review of H.R. 2788 leads us to conclude that in order to ensure a creditable Inspector General operations as envisioned by the bill, it would require 87 positions.

Pending refinement of the staffing level, an estimated annual expenditure of appropriated funds for each of the first five fiscal years starting with fiscal year 1978 is attached. The estimate is based on currently authorized and budgeted for resources in the Office of Internal Review (25) and the nonoperational elements of the Office of Security (4) in the amount of 29 positions. The FEA fiscal year 1977 budget supplement and fiscal year 1978 budget, currently under consideration by the congressional committees, would increase the total number of positions to 33. Thus, the increment of personnel reflected in the attachment for fiscal year 1978 is 54, and the full amount of 87 positions thereafter.

Enclosure.

FORECAST OF EXPENDITURES REQUIRED BY ACT OF JULY 25, 1956 (70 STAT. 652)

[In thousands of dollars]

	Fiscal year—				
	1978	1979	1980	1981	1982
Personnel costs.....	1,296	1,658	2,114	2,238	2,238
Other costs.....	478	517	485	495	498
Total costs.....	774	2,175	2,599	2,733	2,736

FISCAL YEAR EXPENDITURES

	Fiscal year—				
	1978	1979	1980	1981	1982
Budget outlay (fiscal year):					
1978.....	682	92	174		
1979.....		2,001			
1980.....			2,391	208	
1981.....				2,514	219
1982.....					2,518
Total budget outlay by fiscal year.....	682	2,093	2,565	2,722	2,727
				218	

MAN-YEAR EXPENDITURES

	Fiscal year—				
	1978	1979	1980	1981	1982
Expenditure.....	42	62	79	87	87

¹ Personnel services for fiscal year 1978 are computed for only 9 man-years. 33 of the 42 man-years for fiscal year 1978 are already included in current fiscal year 1978 budget estimates.

[The following correspondence was received for the record:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., March 8, 1977.

HON. JOHN F. O'LEARY,
Administrator, Federal Energy Administration, New Post Office Building, Washington D.C.

DEAR MR. O'LEARY: Prior to your assuming office, the Subcommittee initiated a review of a number of FEA compliance operations in the National and Regional offices. This review is continuing. Enclosed is a copy of a memorandum, dated February 28, 1977, prepared by the Subcommittee staff on their findings to date.

The memorandum draws a number of disturbing conclusions concerning the adequacy of FEA's compliance program, particularly in the investigation of potential criminal violations of FEA regulations. The memorandum also makes a series of recommendations to overcome many of the problems in the agency's program.

The Subcommittee will be holding hearings on compliance matters, including these matters, on March 29, 1977. Many of the findings and recommendations relate directly to the FEA authorization for Fiscal Year 1978. In preparation for these hearings, I request your comments by March 21 on the findings and conclusions in the enclosed staff memorandum. I specifically desire your comments on each of the staff recommendations on page 21 of the memorandum.

I would appreciate your sending a copy of the staff memorandum to each of the Regional Offices (III, IV, VI) discussed in it. Thank you for your assistance on this matter.

Sincerely,

JOHN D. DINGELL, *Chairman.*

Enclosure.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
SUBCOMMITTEE ON ENERGY AND POWER,
Washington, D.C., February 28, 1977.

MEMORANDUM

To: Chairman Dingell.

From: Subcommittee staff.

Subject: FEA compliance program.

The Subcommittee staff recently examined certain aspects of the Federal Energy Administration's compliance program. Our investigation shows there is considerable evidence of potential criminal violations of the statutes and regulations administered by FEA. However, the agency has failed to develop the means to conduct the necessary investigations for effective presentation of this evidence to the Justice Department for prosecution. Instead, FEA recently has made a few cosmetic changes including the establishment of a so-called "Special Investigations Unit" in Washington. But this unit has done little but add to the paperwork already inundating the compliance personnel in FEA's regional offices.

Some of the other matters uncovered by the Subcommittee staff are:

During compliance audit work, FEA field investigators uncovered the "daisy chain" cases. These were cases involving numerous paper sales of petroleum products with no actual movement of the product, but with an increase in price. Generally, utilities, and ultimately their consumers, were the victims of these schemes. These cases have been pending for many months with no resolution of the alleged criminal violations, except in one case.

One such "daisy chain" case was recently terminated as a criminal case by the Deputy Assistant Administrator for Compliance, Mr. James R. Newman, with the concurrence of his superior, then Assistant Administrator for Regulatory Programs, Mr. Gorman C. Smith. This was done despite Mr. Newman's finding, that the report submitted to him recommending such termination was "insufficient."

The National FEA office has refused to facilitate investigations which extend into several FEA regions. Instead, it has bowed to Regional Administrators'

insistence on sovereignty over their region, resulting in the premature termination of several cases.

Compliance cases involving millions of dollars in possible overcharges are awaiting rulings by the Office of General Counsel. Undue delay in those rulings has severely hampered the efforts of compliance auditors who must rearrange their work plans while awaiting the rulings. No deadlines have ever been placed upon the General Counsel to issue these rulings.

This memorandum details some of our findings.

I. DESPITE AN OFFICIAL RECOGNITION OF SERIOUS CRIMINAL VIOLATIONS OF LAW, THE FEA HAS NOT ESTABLISHED AN EFFECTIVE CRIMINAL INVESTIGATION EFFORT AT THE NATIONAL OR REGIONAL LEVEL

Section 5 of the Emergency Petroleum Act of 1973, as amended in 1975 (15 U.S.C. 754), establishes three categories of criminal penalties for willful violations which require enforcement by FEA. They are:

(1) Activities relating to the production, distribution, or refining of crude oil—Maximum fine \$40,000 per violation

(2) Activities relating to the distribution of residual fuel oil or any refined petroleum product not at the retail level—Maximum fine \$20,000 per violation

(3) Activities entirely relating to distribution of residual fuel oil or refined petroleum product at the retail level and all other violations—Maximum fine \$10,000 per violation

Prior to this Act, Section 208 of the Economic Stabilization Act of 1970 established criminal penalties for willful violations.

One year imprisonment is an alternative penalty. Both a fine and imprisonment may be imposed.

Criminal penalties are also prescribed in Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395) for willful violations of certain provisions of that Act.

A January 28, 1976 memorandum by FEA's Region IV's Compliance Office suggested that the 1975 amendments be discussed at a February meeting of FEA's regional officials, together with a discussion of the need to improve FEA's criminal investigation effort. The memorandum noted a backlog of criminal cases in Region IV which approximated two years at that time.

On March 16, 1976, that office wrote a second memorandum on the subject, stressing that insufficient personnel and lack of FEA management support contributed to the case backlog. The memorandum states:

"Indications from top executives within Compliance Division organization are that concept of enforcement-related investigations is repugnant to those executives.

"In the few instances wherein nominal response by management has been made, the response has been implemented by administrative assistants apparently not thoroughly grounded in matters at issue, resulting in inadequate, incomplete or unsuccessful action.

"No apparent effort has been made to implement existing investigative requirements as set forth in Compliance Manual."

The April 1976 version of the FEA Compliance Manual, and apparently the earlier version, required each Regional Compliance Director to identify and appoint "certain regional employees who have sufficient training and experience to qualify as Special Investigators." The Manual stated that these investigators are for three types of investigations—criminal investigations, so-called "sensitive" investigations which are not defined, and "complex" investigations involving cases that cross regional lines (Sections 4.901.00 to 4.901.03). The Manual required that each regional office draw these investigators from existing regional employees. No provision was made to hire new employees.

This was self-defeating, since each regional office believed it was understaffed already and did not want to assign anyone to such tasks. Also, the attitude of many regional officials is that such investigators are not needed or welcome.

Yet even this weak provision of the Manual was abandoned by FEA in July 1976. This caused Region IV's Regional counsel, Mr. F. Edwin Hallman, Jr., to prepare a memorandum which was approved by Region IV Administrator, Mr. Donald E. Allen, on September 1, 1976. The memorandum recommends reinstatement of the April 1976 version of the Manual. It also states that:

"The Office of General Counsel for Compliance and the Assistant Administrator for Compliance, have repeatedly expressed their conviction that FEA's Compliance Division is authorized and required to conduct investigations of

suspected criminal violations of FEA regulations. However, we have reason to believe that FEA has virtually no professional investigative capability, even though FEA regulates one of the largest and most powerful industries in the world.

* * * * *

"Historically, in Region IV (and, we believe, in other regions) Compliance Division employees who do not qualify for classification as 'auditors' have been classified as 'investigators,' even though virtually none of these employees have training or experience in the investigative field. Additionally, technically qualified 'auditors' have been classified as grade 12 'investigators.' Merely labeling employees as 'investigators' is not a viable solution to the problems of conducting proper investigations. Our experience indicates that auditors and nonprofessional investigators frequently tend to dwell on allegation and fail in resolving allegation due to a basic lack of technical training and experience."

A few days before, on August 27, 1976, an obviously frustrated Chief of Special Investigations in Region IV, Mr. James Grimes, urged abolition of his office and indicated that he might resign. He said that as of June 30, 1976 his Office had a backlog of 26 cases, of which 18 appeared to involve substantial indication of criminal violations of FEA's regulations and statutes, but he could not conduct "in a timely fashion the investigation required to dispose of these cases." He said that some of the cases were in an inactive status for periods of over one year "primarily due to the absence of a sufficient number of qualified investigative personnel." He continued:

As you are no doubt aware, contacts with National FEA officials over the past two years have resulted in our receipt of abundant and, in my opinion, unmistakable evidence of the National Office's direct and unwavering opposition to FEA's acquisition and utilization of professional investigators in carrying out FEA's compliance and enforcement responsibilities."

In a handwritten note on the memorandum, the Region's Director of Compliance, Mr. James C. Easterday, said that Regional Administrator Allen and he agreed that trained investigators were needed. Indeed, on September 8, 1976, Mr. Easterday shipped eight cases to the Regional Counsel for assistance, saying that something had to be done about the backlog. We understand that the Regional Counsel is handling these cases himself as best as he can.

After several weeks, then Deputy Administrator of FEA, Mr. John A. Hill, in an October 21, 1976 memorandum, asked Assistant Administrator Smith, General Counsel Michael F. Butler, Region IV Administrator Allen, and Region VI Administrator Mr. Delbert Fowler to respond to several questions in an "effort to resolve these issues and further enhance our capacity to carry out such investigations." Their responses follow:

1. On October 22, 1976, Mr. Fowler said that criminal cases require "special personnel who are knowledgeable about the rules of evidence and procedure and who are skillful" in interrogation. He recommended that each region "train a few skilled auditors as Special Auditors." He then said:

"Our understanding of current internal FEA procedures is that the FEA auditor discontinues his investigation when he believes there is significant evidence of probable criminal conduct. The case is then referred to Regional Counsel. The next step is a 'special investigation', but instructions for the 'special investigation' have been removed from the Compliance Manual and there is no provision for a 'Special Investigator'. After the 'special investigation' is completed, the case is referred through regional counsel to the Office of General Counsel who refers all cases to the Department of Justice after reviewing them for sufficiency of evidence and proper interpretation of FEA regulations."

"We have found these procedures involve too many people with too many levels of review and do not involve the one person who will be responsible for prosecuting the case if it ever reaches that level. Unnecessary delays and obstacles to closing the case result."

To eliminate these "delays," he recommended that the region be authorized to contact the local U.S. Attorney for "advice" prior to starting any criminal investigation. He also urged completion of the civil portion of investigations before the criminal investigation.

2. In a memorandum dated October 22, 1976, Assistant Administrator Smith also urged closer contact with the local U.S. Attorney. He recommended replacing the term "Criminal Investigation" in the Compliance Manual with "Special Investigation." The latter term would be defined as an "audit or investigation in which there is substantial evidence to suspect a willful violation." He defined

a criminal investigation as one which the Justice Department or U.S. Attorney decides to prosecute as a criminal case. He concluded that FEA auditors "have the ability to conduct these investigations."

3. On October 22, 1976, Mr. Allen recommended against discussion of cases with the U.S. Attorney prior to their being submitted to the Justice Department. He also said:

"Auditors are trained in accounting procedures and techniques. Normally, auditors receive only minimal training in the simple detection of false or fraudulent accounting records, and no training in the proper assembling of the legal proof necessary to resolve such matters. Our experience indicates that these matters require an extensive knowledge of applicable statutes, procedures and methods of documentation. We believe that most accountants and auditors have likewise received only minimal training in business law, and absolutely no training in criminal law.

"Since, insofar as we are aware, FEA has at most no more than a handful of qualified criminal investigators, we are forced to conclude that FEA's capacity to conduct special or criminal investigations is virtually non-existent.

* * * * *

"It is recommended that FEA create a criminal investigative organization within the national office, with counterparts in each regional office. The regional investigative staff should report directly to the national investigative organization."

4. On October 27, 1976, FEA General Counsel Butler essentially agreed with Region IV's Regional Administrator. He said that:

1. Most cases referred to the Justice Department "involved relatively routine violations of FEA regulations," but that "given the financial incentives to violate" the law, it is possible that a larger number of willful violations exist undiscovered;

2. The skills needed to investigate these cases "transcend financial cost accounting expertise";

3. FEA has the "principal role in criminal investigations" because of its familiarity with its regulations and because FBI agents are not available for this purpose;

4. the Justice Department requires referral of all civil and criminal cases to Justice "and not directly to local U.S. Attorneys";

5. Justice insists "that no informal contacts be made by FEA personnel with U.S. Attorneys at the incipient stages of investigations."

In making this latter comment, the General Counsel said:

"The Office of General Counsel concurs in the Justice Department's view that it is absolutely essential to channel all referrals to, and contacts with, U.S. Attorneys through the Department in order that consistency of policy in enforcement cases is assured, and to avoid the politicizing and overblown publicity incident to premature referral of cases to local prosecutors. Informal contacts with local prosecutors at incipient stages of investigations are counterproductive, since the local prosecutors are likely to seize control of what they may view as a highly visible "energy" case. If a case is in the U.S. Attorney's office prior to complete investigation by FEA, FEA is likely to lose all control over the direction of the matter, even if the prosecutors, enamored with the visibility of the case, have only a superficial understanding of the intricacies and ultimate impact of the case (e.g., Ven Fuel).

"In addition, FEA criminal cases of any magnitude require interpretation of complex regulations, and application of those regulations to involved facts patterns. Premature referral to, or discussion of, pending cases with U.S. Attorneys runs the high risk that the case, the ramifications of which are not fully understood by the local prosecutors, will be magnified out of proportion, compromised by undue publicity, or will be tried on regulatory theories not consistent with FEA interpretations, running the ultimate risk of spawning judicial precedent at odds with FEA regulatory policy and interpretations."

The General Counsel recommended that "each Regional Office have at least two experienced criminal investigators" and a special unit at the national office.

The Justice Department policy mentioned by the General Counsel is not unique to FEA's civil and criminal cases. A similar policy was enunciated in 1970 and 1971 by the Justice Department in connection with anti-pollution cases under the Refuse Act of 1899.

The General Counsel's comment that the Justice Department insists on this policy is appropriate. But his comments about U.S. Attorneys are inappropriate.

As the House Government Operations Committee said in a 1972 report (H. Rept. 92-1333), U.S. Attorneys are well qualified to determine whether adequate evidence exists of violations. In fact, the Committee noted that many U.S. Attorneys seized the initiative in the early 1970's and prosecuted offenders before the Federal agencies concluded that the Refuse Act was an appropriate anti-pollution tool. U.S. Attorney initiatives to enforce FEA's regulations could thus prod FEA into realizing that it has a duty to organize in a manner that will insure effective investigations of alleged criminal violations.

The recommendation of Region IV and the General Counsel were generally ignored by FEA's Deputy Administrator. Instead, Mr. Hill approved on October 27, 1976 the "Special Investigation Procedures" that effectively give second-class status to the role of criminal investigations.

A memorandum implementing the new procedures was issued on November 8, 1976. Assistant Administrator Smith's suggested definitions of the terms "Special Investigation" and "Criminal Case" were adopted. This immediately caused problems because, as noted above, it defined a special investigation as one where there is "substantial evidence to suspect" a willful violation. But what is "substantial"? No one at FEA was sure when we asked. Indeed, on December 31, 1976, FEA turned to a new term which is equally as clear, i.e., "credible".

The new procedure also calls for establishment of a special 2-man unit in Washington with the following duties:

(a) authority to resolve all conflicts and/or problems that relate to Special Investigations,

(b) develop a Regional Management Plan for those cases that involve more than one region,

(c) to assist the regions in developing a plan to conduct a special investigation,

(d) to change the status of a case from special investigation to criminal once it has been accepted as such by the Department of Justice,

(e) to coordinate initial planning sessions for Special Investigations at the region or National Office, and

(f) to track each Special Investigation case in the regions.

All of these duties are supervisory in nature. None call for actual investigations by that unit.

Provision is also made for "special investigators" in each region. However, on November 16, 1976, Deputy Assistant Administrator for Compliance Newman made it clear that these are not to be criminal investigators. He said:

"It was never the intent of the National Office to hire criminal investigators for these positions. A special investigator is an organizational title to be filled within the compliance authorization, preferably by an onboard employee."

Finally, the memorandum sets forth a complicated procedure that should frustrate even the most ardent investigator. After a minimum of 25 working days of review and decisionmaking on whether to classify a matter as a special investigation, there must be a "meeting to prepare for developing the Special Investigation" involving persons from the National and Regional Offices. The travel costs are likely to be substantial. On this procedure Region IV said:

"... the entire process envisioned by procedural steps 1 through 7 would undoubtedly require many weeks and much correspondence before a decision could be made and an investigation begun. Our experience has indicated that all this can be accomplished rather quickly by a competent investigator who works in conjunction with the Regional Administrator, Counsel, National Office and the Director of Compliance when required on the more complex cases. We have made such decisions on dozens of cases. Our problem remains getting the cases investigated after the decisions are made."

Region IV, while welcoming the new unit in Washington, observed that it is at the "fourth organizational level of the Office of Regulatory Programs and two levels below the Director of Compliance." This placement of the new unit insures that the upper levels of FEA management probably would not be involved in the decisions regarding criminal cases. Region IV had little confidence in this approach.

A December 27, 1976 memorandum, prepared in Mr. Smith's office for the Carter transition team, commented on FEA's criminal investigation effort:¹

¹ This memorandum was submitted to Mr. Douglas Robinson of the transition team by Mr. Smith, together with comments by Gordon W. Harvey, Assistant Deputy Administrator for Compliance. In a buck slip, Mr. Smith said he discussed the memorandum with Mr. Robinson.

"FEA investigations have uncovered considerable evidence that particularly during the embargo certain crude oil and product resellers established extremely complicated chains of transactions that had no purpose other than to circumvent FEA's pricing regulations. At present, FEA does not have a staff that has sufficient training 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."

Conclusion.—The law provides criminal penalties for willful violations. Assuming that such violations exist, as some within FEA contend, a competent investigative staff is needed. The new National Office unit fails to fill this need.

The Subcommittee staff agrees with the General Counsel and Region IV that auditors are not the answer. Trained investigators at the regional level appear to be needed. In addition, the red-tape procedures established last November to initiate criminal investigations should be streamlined to provide a quicker and less costly response, while insuring that cases are opened for more than flimsy reasons and that open cases are resolved promptly.

There is no evidence, however, that officials at FEA will make these changes. The officials who created the situation last year are, for the most part, still in the positions they held when the decisions were made.

II. INTER-REGIONAL SQUABBLES AT FEA HAVE RESULTED IN DELAYING RESOLUTION OF MAJOR CASES

At the request of the National office of the FEA in May, 1975, Region IV initiated an investigation of the daisy chain cases. These cases involve complicated transactions which increase the price of a product with no visible indication of product movement or actual increased costs incurred. For example, a refinery in a city located in one of our mid-western States reportedly sold over 5.5 million gallons of JP4 fuel to a barge firm at 18¢ per gallon. That barge resold the same quantity of fuel to another firm at 30¢ per gallon. That firm resold the fuel to a utility for 40¢ per gallon. In this process, the fuel never physically moved from the city where the refinery was located. Moreover, the FEA investigators were, as of October 1975, unable to locate the barge firm. There was speculation that some of the companies involved were "paper firms."

An October 3, 1975 memorandum prepared by Region IV for a meeting with Assistant Administrator Smith describes some of these transactions. The memorandum is marked "Limited Official Use—Sensitive Cases."²

The memorandum states:

"Responsibility for this case has been assigned to Region IV. This arrangement, due to the multi-regional nature of the case, has resulted in significant problems in arranging personnel details, travel funds, establishment of priorities, standardization of audit techniques, etc.

"A single highly-trained and experienced individual should be appointed within FEA's National Office with full authority and responsibility to direct and coordinate investigation in all FEA regions on a priority basis."

The memorandum was prepared for an October 3, 1975 meeting in Washington with several FEA officials at the regional and national level, including Mr. Smith and members of the General Counsel's office. An October 6, 1975 Region IV memorandum indicates that all participants believed that additional investigation of these cases "on a priority basis" was required, but the recommendation for the single unit at the National level was put off. Instead, Mr. Smith directed that Region IV, which was "most familiar with the cases" should assume full responsibility for the cases. This was the first time that Region IV had urged establishment of a criminal investigative unit in Washington and in the regions. The October 6 memorandum predicted that Mr. Smith's directive would not work:

"Smith is likely yet unaware of the extent of various regional Compliance officials' desire to control what they consider 'their' cases and 'their' personnel.

"With the support of Carter/Butz/Stuckwisch (FEA Compliance officials) in these cases thus far, considerable problems with various regional officials have been encountered. If such National Office officials have not succeeded in obtaining necessary cooperation from regions, it may well be that direct assignment of

² This term "Limited Official Use" appears on many FEA documents apparently as a means of restricting distribution. We have been unable to ascertain the basis for this. Also, in this age of the Xerox machine, we found these documents in many files. We were not satisfied at the National Office at least, that adequate procedures are established for maintaining the integrity of investigatory files.

responsibility in these cases to Region IV may result in even more resistance to extra-regional control and direction of the cases."

On November 3, 1975, Assistant Administrator Smith issued a memorandum to all Regional Administrators entitled "Procedure for Single Region Coordination of Multi-Regional Investigations." He instructed that "top priority" be given to these cases and that Region IV "assume full control and responsibility . . . in all FEA geographical regions to conclude these four cases." Each region was told to detail personnel on a full-time basis to Region IV on request. Deputy Assistant Administrator Newman was assigned coordination responsibility on "any aspects of this effort not covered by this directive."

One would assume that armed with this forceful directive, Region IV could carry out its responsibilities expeditiously and with full cooperation of the regions. But that was not to be the case.

On November 14, 1975, Region IV learned that one of these cases, the Keystone case, was to be referred to Mr. Newman. A memorandum listing a chronology of events shows that this was done on November 17. However, on November 18, Mr. Smith called Region IV "complaining about referral of the Keystone case" to the National Office. The memorandum documenting the call observes that Mr. Smith was apparently not aware of Newman's decision.

On November 28, 1975, just 25 days after the Smith directive giving control of the cases to Region IV, Mr. Newman assigned the Keystone case to Region III "effective immediately," because that region "now has qualified and sufficient compliance staff on board and is ready to assume total responsibility of the investigation." Mr. Newman said it should be handled expeditiously.

In discussions with Mr. Newman, the Subcommittee staff was unable to identify any significant changes in staffing at Region III between the date of the Smith directive and the Newman action to warrant the conclusion that this transfer be made. There appears, rather, to have been constant squabbling by persons in Region VI and III indicating a dissatisfaction with the earlier Smith directive.

The difficulties Region IV personnel encountered with Region VI Administrator Fowler, despite the Smith directive, were documented in a Region IV memorandum to the file on November 14, 1975—three days before the Keystone case was transferred to the National Office:

"Fowler made the following additional comments:

"1. Fowler has disagreed with National Office assignment of Jim Grimes to be criminal case coordinator for utilities. 'If they wanted him to do it, they should have moved his ass from Atlanta to Washington. We've got our own criminal investigators who can handle such things as well as anyone else.'"

* * * * *

"5. On any contact that Region IV makes with my people, I want to be fully informed, both before and after, or you can inform either Gifford or White. Also, with regard to the memo from Gorman Smith on our people's participation in these national or multi-regional type cases, I want it understood that people in Region VI report only to Region IV—Region IV will not supervise my people."

Region IV Administrator Allen confirmed how interregional problems forced Region IV to give up the Keystone case, in a September 1, 1976 memorandum to Assistant Administrator Smith, as follows:

This case was originally put under the direction of Region IV as the only FEA regional office with a Special Investigation Branch. NEEA officials were repeatedly informed of the progress and strong evidence of possible civil and criminal violations in this case. Coordination among the regions was needed since almost every region was affected by this case. Region IV personnel, in discharging our responsibility in this National Office case, were for the most part well received by FEA's non-Region IV personnel. However, the following problems arose which ultimately resulted in Region IV being instructed to forward all files, etc., to the National Office on November 17, 1975:

1. Region officials refused to furnish copies of workpapers developed in another region, unless specific requests were issued from the National Office. One region insisted that personnel assigned to that region must be present at any interviews conducted by Region IV on National Office cases. Employees of one region have advised that they were instructed to withhold certain information from Region IV employees conducting investigation in National Office cases.

2. Area Managers and Regional Directors of Compliance complained regarding the expenditure of travel funds and man-hours necessitated by detail of personnel to National Office cases under the direction of Region IV personnel. It

appeared that, in some instances, local FEA managers consider that such manpower details were to Region IV rather than to National Office.

3. Competing National Office priorities (Producer audits, Utilities Investigation, etc.) in many instances made it difficult if not impossible for various regions and/or Area Offices to comply with priorities established by the National Office for cases being investigated by Region IV personnel.

4. The absence of specific delegation of authority with regard to National Office cases assigned to Region IV personnel made it virtually impossible to resolve differences between the Region IV Program Manager and auditors/investigators detailed to the case from other regions, with regard to procedural matters.

5. In the instance of subpoenas resulting from National Office cases, such subpoenas had to be issued by a distant region, rather than by the National Office which was managing the case. It was administratively cumbersome to obtain subpoenas from a Regional Counsel who, in most instances, had little knowledge of these extremely complex interregional cases.

There were strong indications of possible criminal conduct involving several million dollars in overcharges at the time the aforementioned case was referred back to NFEA. Our most recent advice indicates that many months after referral of the case to NFEA, no substantive violations have yet been documented.

This situation has not changed, except that on October 21, 1976, Mr. Newman recommended to Mr. Smith that the Keystone case "be settled on a civil basis." This recommendation appears to be based on some "discussions" held the day before in the national office. But we have not seen any documentation of the basis for that recommendation.

An October 22, 1976 memorandum from Mr. Smith to then Administrator Frank Zark on this and another case discussed in the next part of this staff memorandum shows that Region III completed the audit work and "will proceed with case resolution aspects." It appears that Mr. Smith accepted Mr. Newman's recommendation of the day before. In a penned note to Mr. Smith, Deputy Administrator Hill said "I think we need faster action."

Conclusion.—The Subcommittee staff agrees with Mr. Hill's statement, but we reiterate that as of this date, no resolution is in sight. Quite clearly, however, the delay in resolving cases such as this one is directly attributable to interregional turf fights, national office failure to establish a policy relative to the handling of multi-regional cases, and ineffective monitoring of major cases once an assignment is made. The transition memorandum of last December commented on this problem as follows:

"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."

The transition memorandum suggests that one mechanism for solving this problem is to make compliance the "sole program responsibility" of an Assistant Administrator. The suggestion has merit for another reason also, namely that the function of developing and issuing FEA regulations should be separated from the function of directing compliance of those regulations. Presently, the Assistant Administrator for Regulatory Programs is responsible for both functions.

But the major need is to develop an adequate procedure for insuring that cases crossing regional lines are handled expeditiously and without the internecine conflicts that have occurred to date. The new unit in the national office mentioned in Part I of this staff memorandum has the responsibility of resolving "all conflicts" that relate to special investigations. However, it is not clear that this includes inter-regional "turf fights." It is also doubtful that this unit will have the muscle to tell a Regional Administrator that his people must assist, but not control, the investigation directed by another Region.

III. FEA'S DECISION AFTER 2 YEARS, NOT TO TREAT ONE OF THE DAISY CHAIN CASES AS A CRIMINAL CASE WAS MADE TOO HASTILY AND ON WHAT APPEARS TO BE A SKIMPY RECORD WITHOUT ANY WRITTEN CONCURRENCE OF THE GENERAL COUNSEL

In January 1975, the National Office of FEA requested Region VI to initiate an investigation of Saber Petroleum Company as part of FEA's "Project Speculator" involving dealings in propane futures. From May 1975 through January 1976, the region performed audit work. From then until the end of August 1976, the region worked on drafting a notice of violation, which was sent to the National Office in September 1976. In his October 22, 1976 memorandum to FEA Administrator Zarb, Assistant Administrator Smith said that the General Counsel was reviewing the matter and raised several questions for which answers were promised by November 22, 1976. He said:

"National Compliance and OGC will provide guidance as required and will closely monitor progress. I have talked personally to Del Fowler, secured his agreement to expedite this case and to inform me if he needs more manpower, which I will provide by detail from other regions. Other involved Regional Administrators, including Allen Andersen in Region V, have been informed and will support Fowler as required. We are to receive a weekly progress report."

Mr. Fowler submitted the report to the Assistant Administrator on Friday, November 19, 1976. He said:

"The eight questions raised by General Counsel are answered with appropriate documentation. The report recommends that the case not be pursued as a criminal violation at this time. I concur in the conclusions of the report."

On a routing slip dated Monday, November 22, 1976, which was attached to the report, Mr. Newman said:

"It is my opinion that the synopsis of this case is insufficient. I think that what we should do is build a synopsis in these cases so Mr. Smith or anyone else can pick up synopsis & see total history of case plus those specific facts that lead us to the determination it was not a criminal case."

Despite this, Mr. Newman concurred in Mr. Fowler's recommendation and the next day, Tuesday, November 23, Mr. Smith said, "So do I."

Mr. Newman's observation about the sufficiency of the synopsis does not go far enough. The entire report is only five pages long. Two of these are devoted to answering the General Counsel's questions. Page one contains a three paragraph synopsis. Page four is entitled "Related Matters." The last page contains a paragraph entitled "Conclusions and Recommendations" which states that the utility "may have been charged excessive prices under circumstances that give the appearance of actions in concert or by design with an intent to circumvent the regulations." But the investigation, the report continues, "did not produce any evidence of motivation or criminal intent," and thus, "this case should be dropped from any further consideration for willful violations."

Unless one knew, in much greater detail, the facts of this case, it would be difficult to agree with the recommendation of Region VI, based on such a spotty report. Clearly Messrs. Newman and Smith were not aware of all of the significant details. Yet they did agree and apparently did so without a written concurrence of the General Counsel. In fact, we doubt that the General Counsel even reviewed the response to his questions. Note the report presumably came from Texas on Friday, and on the next Monday and Tuesday, two top FEA officials approved it.

Conclusion.—The Subcommittee staff does not know whether or not the recommendation was proper. However, we believe that a decision of this importance, after many years of effort should not be made so hastily. We agree with Mr. Newman's observation that the report should provide sufficient data to show what led Messrs. Newman and Smith to the "determination it was not a criminal case."

IV. FEA'S CASE TRACKING SYSTEM DOES NOT WORK AND ITS NEW SYSTEM OF PRIORITIES WILL RESULT IN POTENTIAL CRIMINAL CASES BEING SHELVED PREMATURELY

Early last year the National Office became concerned about the status of various cases and whether it had a current and accurate listing of open and closed criminal investigation cases. On April 30, 1976, Mr. Newman sought such a listing from the regions.³ It soon became apparent that the National Office possessed no current knowledge on the status of those cases.

³ On June 15, 1976, Mr. Norman sent a list of cases to all ten regions saying that some were over 250 days old (one work year) and asked for an explanation as to why they could not be closed. In fact, there were over 125 such cases. Many of those cases were between 300 and 900 days old. We have not as yet ascertained what resulted from this inquiry. The list included both civil and criminal cases.

In our view, the situation has really not improved. During our review of compliance matters, we asked for a status report on cases purportedly suspended pending a regulation change or interpretation. We did this because the transition memorandum of December 27, 1976 said:

"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 expeditiously clarify ambiguities arising from this impression (sic) has allowed issues to remain outstanding which, when translated into dollar terms, have the potential of billions in overcharges. It is estimated, for example, that well over a billion dollars hinges 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 non-product costs and whether resellers were allowed to compute costs separately for separate inventories."

We were handed a 14-page computer printout indicating that quite a few cases were pending because of the need for a regulation change or interpretation. Some cases were over a year old. However when we showed this printout to persons in the Region IV Office, they disagreed with it. They said that a case shown in the printout as being initiated in November 1974 and awaiting interpretation guidance since August 1975, was in reality a possible criminal case that is not being resolved because of lack of trained investigators. Another case that reported as awaiting interpretation since February 1976 was, according to the region, in litigation. Yet many other cases, affected by these interpretations, were not among the list.

FEA has a very costly tracking system which appears not to be working effectively. Possibly this is because the regions open cases and take various actions thereon without the National Office knowing immediately about such action. Such immediate knowledge is probably unnecessary, but some improvement is obviously needed.

One aspect of FEA's review of cases was an October 28, 1976 memorandum to the regions from Mr. Newman, which opened as follows:

"In a recent meeting with Mr. Zarb, it became apparent that the present inventory of open assignments in the regions must be reduced to a manageable level. This inventory consists of assignments which are presently in the audit mode, and assignments which are awaiting resolution."

To meet this management problem, Mr. Newman established priority categories of cases. Cases in Category A are given the highest priority. Those in Category D are held in abeyance. Category A is defined as follows:

"Open assignments in which the region has decided that substantial evidence exists that willful conduct was involved in apparent violation of FEA regulations or Federal statutes and therefore the case is expected to be referred to the Justice Department. Also, includes assignments for which the FEA activity consists of providing investigative support on cases previously referred to the Justice Department."

Once again Assistant Administrator Smith's troublesome word "substantial" is creating uncertainty and a "Catch-22" situation—how can one develop the "substantial" evidence required to bring a case of possible willful violations to a priority level which allows for investigation of just such evidence?

On December 16, 1976, Region IV assigned, by memorandum, a "D" priority to six potential criminal cases that were in a "largely inactive status . . . due to lack of technically-trained investigative personnel." This means, according to Region IV officials, that these cases will probably never be investigated under current FEA policies.

Conclusion.—The priority system fails to consider whether or not a case should be given "A" priority simply because it is so old that unless action is taken soon, such action may be precluded by an applicable statute of limitations. In theory this category system may appear sound, but in practice it is not. We stress that these categories determine national budget priorities and approval of quarterly workplans for the regions. Implementation of an effective priority system requires workable definitions for categorizing cases. In addition, the case tracking system must be kept current and accurate.

V. A 1975 ALLEGATION OF A BRIBE AND OTHER WRONGDOING HAS NOT BEEN PROPERLY RESOLVED BY FEA

In July 1975, an allegation was made in a sworn statement by an FEA official that he was told by an oil company representative that he could get a fuel allocation with a payment of \$50,000. Some effort was made by Regions IV and VI

to investigate the allegation. Later the matter was apparently turned over to FEA's Office of Security.

A January 4, 1976 memorandum from Mr. William J. Neptune of that office to Mr. Ralph A. Howard, his superior, concluded that no "known FEA employee" was involved and recommended closing the inquiry. However, the memorandum then states:

"With your approval a copy of this memorandum and related files will be forwarded to the Office of the General Counsel for information and consideration for referral to the Department of Justice. There is sufficient justification to warrant a thorough investigation by the Federal Bureau of Investigation."

The above memorandum was attached to a January 5, 1977 memorandum from Mr. Neptune to Mr. Eric J. Fygi of the Office of General Counsel. That memorandum states:

"Attached is a copy of the results of the inquiries made by this office in regard to Parish Oil Company and the allegation of a \$50,000.00 bribe offer by an FEA employee, together with the file furnished to this office by Mr. Avrom Landesman, relating to previous inquiries concerning the Parish Oil Company.

"It is requested that consideration be given to referral of this matter to the Department of Justice for investigation by the Federal Bureau of Investigation. If we can be of any assistance, please advise."

We do not know what Mr. Fygi did with this memorandum, but the new Special Investigation unit at FEA is now looking into the matter. They are doing this because our Subcommittee Staff raised questions last fall and again last January about this matter and the adequacy of the investigation. A report on that investigation is due in a few days, and will be furnished to the Subcommittee by FEA.

The staff is not satisfied that such allegations should be investigated by the Compliance Office. Furthermore, we do not understand why Mr. Neptune wanted to send the matter to the Justice Department. His memorandum does not indicate any evidence of wrongdoing which would warrant an FBI investigation.

Most importantly, the initial allegation was made over 18 months ago and it has never been fully resolved by FEA. Any investigation now may prove fruitless simply because the evidence is stale.

Conclusion.—This is one of several situations where the staff has noted that FEA, in investigating allegations of wrongdoing or other problems in a particular office, has persons in that office conducting that investigation. Chairman Dingell, in a January 11, 1977 letter to Mr. Zarb, expressed concern about similar situations which occurred in the Office of General Counsel. That office was, in effect, investigating itself.

A January 12, 1977 reply by FEA to Chairman Dingell's letter of last October concerning the modification of an FEA contract, states that Assistant Administrator Smith, who, according to the letter, is "a disinterested official," investigated certain allegations with the help of one of his deputies and the Region IX Administrator.

None of these investigations were conducted by FEA employees trained in such matters. The offices of Internal Review and Security and Investigations presumably should do this work, but they report to an Assistant Administrator for Management and Administration who has many other functions, such as personnel and budget. These offices are not independent and do not report to the Administrator. Indeed, we found they are hesitant to do certain investigations unless directed to do so.

We believe that FEA should be reorganized along the lines suggested in Chairman Dingell's bill, H.R. 2788, which establishes an Inspector General's Office at FEA. Congress did this for the Department of Health, Education, and Welfare last year.

STAFF RECOMMENDATIONS

1. Consideration should be given to amending the Federal Energy Administration Act to provide for the separation of the function of developing, issuing, and revising regulations from the enforcement or compliance function. Each function should be headed by an Assistant Administrator who is subject to confirmation.

2. Consideration should be given to establishment of an Office of Inspector, as proposed in H.R. 2788, which would conduct audits and investigations, and would be independent of all FEA officials except the Administrator.

3. Procedures should be streamlined for the handling of cases of possible willful violations of FEA statutes and regulations. Unnecessary meetings, paperwork,

and concurrences should be eliminated prior to opening a special investigation. Emphasis should be placed on resolving cases opened long ago, but not completed.

4. A high level office in the Washington headquarters should be established with the responsibility for monitoring special investigations and aiding in the coordination of multi-regional investigations. This office must have the authority to require Regional Administrators to cooperate with compliance officials from other regions. The present "Special Investigations Office" is ineffective.

5. Trained criminal investigators should be hired to conduct "Special Investigations."

6. Decisions to abandon a criminal case on the grounds of insufficient evidence should be based on thoroughly documented reasons.

7. FEA's priority system for compliance cases must be revised. The use of the terms "substantial" and "credible" should be avoided, because the terms are vague and may restrict, rather than encourage, a rapid resolution of potential criminal cases. Priority must also be given to cases which might be affected by a statute of limitations.

FEDERAL ENERGY ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., March 25, 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 correspondence dated March 8, 1977, outlining the results of your Subcommittee staff's review of compliance operations at the national and regional levels.

As you are surely aware, I am wholeheartedly committed to making the Federal Energy Administration (FEA) Compliance Program as effective as possible. Therefore, I appreciate your views on the subject and particularly welcome the opportunity to comment on the report. My comments regarding the specific recommendations and conclusions stated in the report are:

Recommendation 1

Consideration should be given to amending the Federal Energy Administration Act to provide for the separation of the function of developing, issuing, and revising regulations from the enforcement of compliance function. Each function should be headed by an Assistant Administrator who is subject to confirmation.

We agree that consideration should be given to making the compliance function separate from other regulatory functions. In fact, this very concept was actively considered when we reviewed the internal organization of the FEA just after I assumed office. The same suggestion for organizational separation was made to the transition team and to me by Mr. Gorman C. Smith, the present Acting Deputy Administrator. It was my judgment that the organizational disruption that such separation would entail was not warranted at this time because of the pending reorganization proposal now before the Congress. This concept, however, and the reasons set out in the staff report will be fully considered in organizing the proposed Department of Energy.

Recommendation 2

Consideration should be given to establishment of an Office of Inspector, as proposed in H.R. 2788, which would conduct audits and investigations, and would be independent of all FEA officials except the Administrator.

To accomplish the intent of this recommendation, I have directed that the FEA Office of Internal Review report directly to me. This Office will have authority to review all allegations of official or personnel misconduct. I also agree that Compliance Investigators should not be responsible for investigating misconduct allegations regarding FEA personnel, particularly when the allegations relate to Compliance personnel. I have taken action to preclude this from happening in the future by direction that all such allegations be investigated by the Office of Internal Review.

With respect to the Parish Oil Company case cited in the staff report, it should be noted that the alleged misconduct did not, in fact, concern an FEA employee. The allegation concerned a report that an oil company representative boasted to an FEA official that he could acquire an allocation of fuel oil from the FEA by paying a certain sum of money. Subsequent investigation has

determined that the company official did not mean to imply that the payment would go to a government employee. It is also clear that the subject of that conversation, who was originally reported to be an FEA employee, is not now and never has been at any time an FEA employee.

With regard to this particular bribery allegation, the FEA has concluded that the allegation is without factual support and should not be referred to the Department of Justice (DOJ). The Office of General Counsel, however, has referred another aspect of this case to the DOJ. The aspect referred to the DOJ deals with another potential bribery that was uncovered during the investigation.

Recommendation 3

Procedures should be streamlined for the handling of cases of possible willful violations of FEA statutes and regulations. Unnecessary meetings, paperwork, and concurrences should be eliminated prior to opening a special investigation. Emphasis should be placed on resolving cases opened long ago, but not completed.

I agree that the administrative procedures for the handling of cases of possible willful violation of the FEA statutes and regulations should be streamlined. The administrative procedures adopted in November 1976, in my opinion, go a long way towards achieving this goal.

While the procedures for initiating Special Investigations set for at \$ 3,905.00 of the Compliance Manual may appear somewhat formalized, actual experience to date with these mechanics demonstrates that overall processing time is actually reduced. In fact, approval by the National Office for Special Investigations recommended by the regions since November 1976 has taken an average of only 2 days. We are confident that these procedures will result in overall efficiency because the practice of obtaining prior National Office concurrence for these investigations permits the establishment of clear priority status for such investigations to which all FEA organizational units are actively committed. These procedures also provide for the creation of a definite investigational plan to which all relevant management units contribute and to which they agree to abide. By this method, we can avoid having to send cases back for further work, and avoid the ensuing delays that often occurred prior to installation of the new procedures.

We are very satisfied with progress to date under the new procedures. Of course, it will be necessary to maintain continuous review of the new procedures and make changes whenever appropriate. In particular, you may be assured that particular stress will be placed on major investigations that have remained open for some time to insure that ultimate resolution of any potential criminal case not be thwarted because of undue delay.

Recommendation 4

A high level office in the Washington headquarters should be established with the responsibility for monitoring Special Investigations and aiding in the coordination of multi-regional investigations. This Office must have the authority to require Regional Administrators to cooperate with compliance officials from the other regions. The present "Special Investigations Office" is ineffective.

Effective March 15, 1977, the FEA's Acting Deputy Administrator, Mr. Gorman C. Smith, directed that the Special Investigations Unit be reassigned from the Director, Office of Compliance Operations, to the Assistant Deputy Assistant Administrator for Compliance, the person charged with managing the day-to-day compliance operations. The person filling this position has been given full authority to assure that the Regional Administrators give proper attention to Special Investigations to include solving any interregional disputes. All Regional Administrators have been advised of this change.

It is true that we have had problems in the past and have tried various approaches to the interregional coordination of Special Investigations. However, the Subcommittee's staff report cited weaknesses and data that existed prior to the establishment of the Special Investigations Unit in November 1976. No recent evidence was cited in the report warranting the conclusion that the Special Investigations Unit as presently positioned would be ineffective. In actuality, this Unit has improved the management of Special Investigations considerable, especially when compared to previous arrangements. Since its inception, the Special Investigations Unit has significantly reduced the inventory of Special Investigations, insuring that only those cases which qualified remained in that category. In addition to expediting the initiation of new Special Investigations, the Unit's personnel also initiated necessary revisions of the Compliance Manual and participated in the identification of Regional Special Investigators. Nevertheless, the

extra step of elevating the stature and authority of this Unit has been made to further enhance its stature and management capacity.

Recommendation 5

Trained criminal investigators should be hired to conduct "Special Investigations."

We certainly agree that Special Investigators be trained in proper criminal investigative procedures. It must be noted, however, that most violations of FEA regulations involve price overcharges. In instances where willfulness is suspected, an extra dimension is added to the investigation requiring special criminal investigative skills. However, in conducting these investigations, it is imperative that our Special Investigators be familiar with the FEA regulations and have the basic auditing skills needed to sift through complex financial and accounting records.

When the FEA set up the special investigative procedures in November 1976, each region was directed to identify at least 2 people for assignment as Regional Special Investigators. These individuals became the cadre to supervise and conduct Special Investigations. Some 22 investigative personnel were identified, of which 19 have backgrounds as FBI Agents, Secret Service Agents, Naval Investigative Service, Air Force Special Agents, and investigators from state and municipal police departments. Prior to working on the FEA matters, these Special Investigators had an average of 14 years' experience in the conduct of criminal investigations.

In January 1977 the Special Investigators were instructed in our new procedures, and refresher training on investigative techniques has been given. In addition, we are arranging with the Federal Bureau of Investigation for a special training course to be given to our Special Investigators.

We feel that this approach makes good management sense because it permits effective personnel utilization. At present, we have only 29 cases identified as Special Investigations. It should be noted that this cadre of Special Investigations is merely the minimum requirement for each region. Additional personnel, particularly experienced auditors, assist this group as needed on particular projects. In regions where there are insufficient numbers of experienced investigators or where more than the minimum number are needed, authorization will be granted to recruit additional personnel as required.

Recommendation 6

Decisions to abandon a criminal case on the grounds of insufficient evidence should be based on thoroughly documented reasons.

There can be no doubt that a case should be closed only after careful and thorough analysis supporting the determination to take no further action. Such analyses should be reduced to writing so that a permanent record exists to explain the decision. This is particularly true with respect to investigations where a willful violation was originally suspected.

The decision to terminate the investigation of Sabre Petroleum Company, described in your Subcommittee staff's report, was made only after such a thorough analysis. Extensive discussion of the case took place in Washington on October 20 and 21, 1976. Senior Compliance officials from both Washington and regional offices participated in these discussions, along with a senior attorney from the Office of General Counsel who was familiar with the case and with criminal procedures in general. It was agreed that further factual development was needed with respect to some eight designated matters. Following Region VI's completion of such supplementary investigation, Mr. Gorman C. Smith requested that the attorney go to Dallas to personally review the file and the supplementary investigation. Such review was made in Dallas on November 15 and 16, 1976.

During the course of that review, the attorney concluded that there was insufficient evidence to warrant further treatment of the case as a criminal investigation. That review was concurred in by all the senior officials of the Dallas Office familiar with the case. The attorney reported his findings to Mr. Smith upon his return on November 17, 1976.

Regional Administrator Fowler's November 19, 1976, memorandum to Mr. Smith was merely informational since the decision to transfer the case from criminal to administrative status had already been made some 3 days earlier in Dallas. Mr. Newman's comments with respect to the Fowler report concerned only the format of the report, not the merits of the decision itself. Moreover, Mr. Newman's comments were not sent to Mr. Smith, who, in any event, had

already indicated his concurrence with the decision based on the earlier oral briefing he had received.

Based on the foregoing, while I wholeheartedly agree with the principles set forth in Recommendation 6, the staff's belief that the FEA deviated from the principles in the Sabre case is incorrect.

Recommendation 7

FEA's priority system for compliance cases must be revised. The use of the terms "substantial" and "credible" should be avoided, because the terms are vague and may restrict, rather than encourage, a rapid resolution of potential criminal cases. Priority must also be given to cases which might be affected by a statute of limitations.

We believe that establishment of the procedures for handling "Special Investigations" represents a major step in clarifying the FEA's role in conducting inquiries to determine whether willful violations of our regulations have occurred. As noted in the Subcommittee's Staff Report, these procedures were implemented following a comprehensive study of the problem by a former Deputy Administrator and other senior officials with compliance responsibilities.

The new procedures were introduced to the regions by a memorandum from James R. Newman to all Regional Administrators dated November 8, 1976.

Two days later, these same materials were the subject of extensive discussion at the Quarterly Compliance Executive Workshop held in Atlanta on November 10, 1976. Those discussions were attended by senior compliance officials from Washington, including Mr. Gorman C. Smith, the Regional Directors of Compliance, the 10 Regional Counsels and the Assistant General Counsel for Compliance.

The use of the term "substantial evidence" in the definition of a Special Investigation was criticized at that session because of the possible implication that a lesser burden of proof for criminal cases was being introduced than is actually necessary to sustain criminal prosecutions. For that reason, the group adopted the term "credible," so as to make it clear that the definition referred only to a threshold level of evidence, not an ultimate burden of proof necessary to secure a conviction. It was agreed that use of the term "credible" would more clearly convey the understanding that Special Investigations were to be commenced in cases where a suspicion of criminal activity was based upon reliable evidence.

Suspicion founded merely upon conjecture or intuition should not warrant the invocation of a full-blown Special Investigation, and the resultant expenditure of resources on a priority basis. It is imperative that we balance our pursuit of willful violations against the rights and reputations of the individuals and companies involved. We must make the decision to proceed towards a criminal prosecution only in those instances in which we have sound evidence to support that threshold decision. In fact, the very lack of any reasonable standards, and management participation in the determination to initiate a Special Investigation has been responsible for too many alleged cases that led to the expenditure of scarce manpower and resources with the only tangible result being a delay in the proper processing of these cases.

Since adoption of these new procedures, several Special Investigations have been started, and all previously pending criminal investigations have been reviewed. In no instance to our knowledge has the terminology caused confusion in applying the procedures to particular investigations. We shall, however, continue to examine each occurrence; and, if in actual practice we find that our definition needs revision, we shall take appropriate action.

I should also like to comment on one of the report findings which is not specifically addressed in the staff recommendations or in our previous comments. Finding 4 of the staff report concludes that the Case Tracking System is neither current nor accurate, and that the system for assigning priority status to compliance cases is not effective. I do not believe that the evidence cited in the report substantiates the conclusion that the Case Tracking System is ineffective. Considerable effort is expended to maintain this system at a high level of accuracy. In fact, we find the system to be a very accurate and timely record of events. While the Case Tracking System, like any computer system, contains some errors, these should not be attributed to the system but generally are the result of human error. It should be noted that the Case Tracking System is an on-line system with input directly from the regions. Therefore, the relatively few inaccuracies cited in the report are not system weaknesses, but input errors made by the regional offices.

The report apparently confuses the manual procedures for assigning priorities to audits with the Case Tracking System. The only relationship, in fact is that once a priority (A, B, C, or D) is manually assigned, it is entered on the Case Tracking System. A Special Investigation, Priority A, once appropriately determined, remains a Priority A assignment until resolved. The cases involved had been jointly reviewed by Region IV and National Office personnel from the Office of General Counsel and the Special Investigations Unit. It was concluded that the information available did not support designating these cases as Special Investigations. Thus, Region IV personnel did not recategorize Special Investigations as the report implies.

As a final observation, I would like to comment on the Subcommittee report as a whole. Several good points were made and, as noted in our responses, some of the recommendations have been or are being implemented. The Subcommittee staff's comments on our Compliance Program will be helpful to me in reaching a decision in the next several months with respect to the organization of and priorities for our enforcement efforts. Needless to say, we will welcome any further suggestions which you or the Subcommittee staff may wish to make.

I trust that these comments will be helpful to the Subcommittee in evaluating the matters described in the staff's February 28, 1977, report. Please let me know if I can be of further assistance.

Sincerely,

JOHN F. O'LEARY, *Administrator.*

Mr. DINGELL. Our next witness should be Mr. Canfield. We are delighted to see you before the committee again and we look forward to your statement.

STATEMENT OF MONTE CANFIELD, DIRECTOR, ENERGY AND MINERALS DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY J. DEXTER PEACH, DEPUTY DIRECTOR, AND JAMES DUFFUS, ASSISTANT DIRECTOR

Mr. CANFIELD. Thank you, Mr. Chairman. You asked that we testify today on H.R. 2788 and the operations of the FEA's Office of Regulatory Programs. Let me first discuss briefly H.R. 2788 and then turn to your specific questions on FEA's regulatory activities.

The bill would amend the Federal Energy Administration Act of 1974 to (1) upgrade its contracting process to prevent conflicts of interest on the part of contractors, and (2) establish an Office of Inspector General within FEA.

Regarding organizational conflicts of interest, the bill would require persons entering into contracts for conducting research, development, evaluation activities, or for technical and management support services, to furnish the FEA Administrator information concerning possible organizational conflicts of interest. This provision would apply to subcontractors as well, except for supply subcontracts—in any amount—or any other subcontracts of \$10,000 or less. This proposal seems to be consistent with the intended purpose of avoiding conflict of interest to the maximum extent practicable without unreasonable delay in the procurement process. We believe its enactment will serve a useful purpose.

As to the establishment of an Office of Inspector General in FEA, our office is currently preparing formal comments on H.R. 2819—a bill to establish an Office of Inspector General within 11 separate Federal departments and agencies. Although FEA is not one of the 11 agencies, the provisions in H.R. 2788 are very similar to those in H.R. 2819. Therefore, our detailed comments on H.R. 2819 would

apply to the provisions in H.R. 2788 as well. We will provide our formal comments on H.R. 2819 to the subcommittee when they are finalized.

Mr. DINGELL. Without objection, those will appear in the record at the appropriate place. [See p. 63.]

I might say that the GAO does support the need for a strong internal audit and inspection capability in Federal agencies. We do have concern with provisions of H.R. 2788 which appear, in some areas, to remove the Inspector General from meaningful direction and supervision by the FEA Administrator. The agency head bears ultimate responsibility for agency programs and, in our opinion, and in the opinion of Mr. O'Leary, needs a strong audit capability which is directly responsible to him and independent of program activity.

Let me turn to FEA's regulatory and compliance activities and discuss that in the context of (1) our prior work in the area, (2) the three specific questions asked by the chairman of this subcommittee in his request for our testimony, and (3) our comments and views on the seven recommendations contained in the February 28, 1977, subcommittee staff report on FEA's compliance program.

Our first major report on regulatory and compliance activities was issued in July 1974. During the period July 1974 to October 1975—the date of the last major report issued by us dealing with regulatory and compliance activities—we issued a number of reports which addressed both the successes and failures of FEA's regulatory programs. We have testified on these areas before several committees of the Congress. Attached to my statement is a list of these reports and statements.

In its early years, FEA was faced with the difficult task of developing and implementing regulations for a large and diverse industry during a period when the national interest called for a quick reaction to the "energy crisis." The initial regulations contained gaps and ambiguities which required numerous revisions and interpretations. These ambiguities and the resulting need for regulatory interpretations have resulted in unresolved issues which have hampered the regulatory and compliance process.

In our May 1975 testimony before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce, we pointed out that there were numerous unresolved regulatory issues. There still remains many unresolved regulatory issues—a circumstance which continues to hamper the effectiveness of FEA's compliance effort.

In preparing for this hearing, we obtained information from FEA officials which shows that there currently are 30 unresolved issues which involve at least 202 identified cases. Examples of unresolved issues include the class of purchaser issue which requires definition of certain types of business relationships and the issue of proper determination of the base level control period for purposes of calculating subsequent allowable price increases. These issues were unresolved at the time of our May 1975 testimony and remain unresolved today.

FEA has taken steps to improve its compliance regulations. Included in these have been decisions and orders, exceptions and appeals actions, and rulemakings which have addressed some of the gaps and, in some cases, established new regulatory procedures. In addition, the

energy legislation passed over the years has addressed some of the ambiguities in FEA's regulations. For example, the Energy Conservation and Production Act passed in August 1976, limited FEA's authority to enforce its regulations on a retroactive basis.

The foregoing provides some perspective on the current environment in which FEA's Office of Regulatory Programs functions. This environment is complicated by differences between industry reporting required by FEA to meet its regulatory needs and the manner in which industry normally records its activities for financial and management purposes. The process that industry must follow to restructure its internal data into FEA's reporting formats involves numerous allocations, reclassifications, and estimates. After the fact verifications by FEA of the restructured data often is time consuming and difficult and frequently hampered by the lack of complete documentation of the steps used by industry in restructuring the data.

Given this perspective, let us comment on the three areas where you raised specific questions. Generally, you asked for our views on FEA's criteria for national office review of compliance actions; FEA's authority to assess civil penalties administratively and to compromise such penalties, and the appropriateness of FEA's strategy for auditing petroleum industry compliance with regulations.

The widespread applicability of FEA's regulations requires close control over compliance and enforcement actions to assure uniformity of application. The existence of unresolved regulatory issues provides the potential for differing interpretations. In the past, there has been inconsistent application of FEA's enforcement authority due to the lack of centralized control. Establishing dollar amounts—threshold values—under which cases in excess of these amounts would be reviewed by the national office could help to centralize decisionmaking on important issues. FEA has established threshold values of \$1 million for notices of probable violation and \$500,000 for remedial orders.

Our past reviews of FEA's compliance activities lead us to believe that the threshold values should bring most, if not all, significant issues to the attention of the national office. While we cannot say that all cases meeting the threshold criteria require national office attention, we believe that the establishment of threshold values is a step in the right direction.

We believe now, as we did in the past, that FEA's inability to effect timely resolution of unresolved regulatory issues is the most significant problem. FEA is well aware of this situation but, as indicated by the continued existence of a large number of these issues, has been unable to correct it.

On February 14, 1977, the agency implemented a priority system designed to resolve open cases in order of their significance. The system classifies cases, depending on their importance, in one of four categories.

Category A involves top priority cases in which there is a likelihood of a criminal violation.

Category B involves cases which are 1-year old and have an identified potential violation in excess of \$150,000. These cases are considered of special interest to congressional committees and require extensive inter-regional work.

Category C involves cases requiring normal audit work and if necessary, may be conducted on an intermittent basis. Audit time is programmed for these cases to insure that they progress essentially on schedule.

Category D involves cases where audit work has been suspended because of lack of resources, higher priority work, a pending regulatory decision, or a pending exception and appeal action.

Conceptually, the system appears sound from the standpoint of auditors assigning priorities to their work. However, it is not designed to expedite resolution of previously mentioned outstanding regulatory issues.

We turn now to assessing and compromising penalties. FEA takes the position that it lacks authority to "assess and impose" civil penalties by administrative order. The agency concludes that only a Federal district court can impose civil penalties on an unwilling party on the basis of a lawsuit prosecuted by the Department of Justice.

FEA does, however, follow an administrative process by which it identifies potential civil penalty cases and determines through a series of predictive factors the amount of the penalty it would expect a court to assess if the case were prosecuted. FEA settles penalties by a system of compromise whereby the agency accepts less than the statutory maximum for penalties to avoid resorting to full-scale judicial procedures.

In response to your specific questions, Mr. Chairman, our Office of General Counsel is looking at the legal issues related to assessing and compromising penalties. We will provide our detailed answers as soon as possible. Meanwhile, I can offer some comments on FEA's compromise system.

Mr. DINGELL. At this point, Mr. Canfield, can you indicate to us when you will have completed that and when they will be available for this committee? I do not need to know to the date or hour so that I can set an alarm clock but I would like to know when we can expect that.

Mr. CANFIELD. We will provide our answer in about 2 weeks.

Mr. DINGELL. We will look forward to 2 weeks.

Without objection, the record will remain open for that purpose and the response will be inserted in the record at the appropriate place. [See p. 61.]

Mr. CANFIELD. I wish we could have answered these questions for you today, but we will get it to you as soon as possible. In the meantime—

Mr. DINGELL. My comments are not critical.

Mr. CANFIELD. Let me offer some comments on FEA's compromise system. In our June 1975 testimony before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, and in our October 1975 report on FEA's efforts to audit domestic crude oil producers, we pointed out the lack of formal guidance to the FEA regional offices regarding the circumstances under which penalties should be sought and assessed. As a result, violators, because of the geographic location, were not being treated equitably.

While we have not made a detailed review of FEA's procedures since that time, we have seen nothing that has led us to believe that the problems have changed.

As of February 1977, on overcharges of about \$500 million, FEA had accepted compromises of about \$3.5 million—less than 1 percent of the overcharges. Also, there still appear to be questions of equity in assessing penalties. For instance, major refiners have compromised penalties at slightly over \$900,000 on \$355 million in overcharges—less than 0.3 percent. On the other hand, on \$19 million in overcharges, independent crude oil producers have paid \$723,000 in compromises—about 3.8 percent.

Turning now to audit strategies, FEA is faced with a difficult task of insuring compliance with price regulation involving all elements of a complex industry. In our May 1975 testimony, we pointed out that there were about 19,000 crude oil producers, 200 oil companies with a total of about 250 refineries, and 25,000 wholesalers. While we have not updated these figures, it is reasonable to assume that the numbers have not changed significantly.

FEA's compliance and enforcement program has historically been restrained by the limited number of auditors and investigators available. As of February 1977, there were 1,068 compliance and enforcement personnel in FEA's 10 regional offices.

These auditors and investigators are responsible for the review of importers, crude oil resellers, independent crude oil producers, major refiners, small refiners, natural gas liquid processors, propane resellers, propane retailers, other resellers, and other retailers.

This responsibility is quite substantial, and FEA has historically been unable to effectively audit their operations. In the area of refiners alone, without success FEA has tried several different audit strategies.

In May 1975, there were 161 auditors assigned to the refinery program. As of February 1977, there were 266 auditors assigned. To date FEA has not completely verified the accuracy of the May 1973 base period data—against which all subsequent cost increases and prices are measured.

At the request of the chairman of the Subcommittee on Government Regulation, Senate Select Committee on Small Business, we are now reviewing the compliance activities in FEA's Boston region. We are also reviewing FEA's administration of regulations concerning the transportation cost of importing foreign crude oil at the request of the chairman of the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce.

Mr. DINGELL. At this point, the Chair would request that when that information is available that you also make it available to this subcommittee, subject to the protocols that exist inside the House with regard to the proper treatment of the requesting subcommittee and the chairman.

I think these are matters of considerable concern to us as manifested by our hearings today.

Mr. CANFIELD. We will certainly do that, Mr. Chairman.

Mr. DINGELL. You may proceed.

Mr. CANFIELD. Preliminary results of our ongoing work indicate that FEA continues to have problems in carrying out its compliance and enforcement program.

Some of the problems are caused by the unresolved regulatory issues and inappropriate regulatory reporting requirements discussed earlier.

Other factors, which our previous work has shown, and which may have contributed to the existing situation, are the number of special programs such as the propane and fuel oil supplier audits which took auditors away from other review programs, interregional disputes over jurisdiction and support roles, attrition of personnel, and uncertainties over the future of the regulatory program. The subcommittee staff's efforts indicate that in differing degrees these factors still exist and continue to hamper FEA's abilities to meet its audit goals.

FEA's August 1975 proposal for annual audits of firms doing 80 percent of the volume of business in a given program; audits every 3 years for firms doing 15 percent of the business; and 5-year audits for the remaining 5 percent was, in our view, overambitious in the light of FEA's past experience.

Whether it could be accomplished with the 2,400 personnel originally requested is questionable. The fiscal year 1977 strategy, whereby a staff of 1,396 would perform annual audits of major refiners, biennial audits for firms in other programs doing 80 percent of the business, and 5-year audits for the remaining 20 percent, is also questionable.

As stated above, the fiscal year 1977 strategy calls for a staffing level of 1,396. The fiscal year 1978 plan reduces this to 1,221. Apparently, according to Mr. O'Leary, this has been further reduced. Whether either staffing level is sufficient to successfully carry out the audit strategy is questionable.

I believe our testimony today has addressed most of the areas covered in the 7 recommendations made by the subcommittee staff. They generally are consistent with the recommendations and views expressed in our previous reports and testimony, and we generally endorse them. There is one recommendation, however, that concerns us.

We do not favor a criminal investigation organization within FEA. This is the responsibility of the Department of Justice. In our view, cases involving suspected criminal activity should be referred immediately to the Department of Justice for resolution. Certainly, there should be training programs which would give FEA auditing and investigative personnel the ability to recognize potential criminal cases. As needed, FEA should provide the Department of Justice with technical assistance in following through on such cases.

Mr. Chairman, this concludes my formal statement. We will be glad to answer any questions. I have a number of my staff who know the details better than I; they are available if necessary.

[The attachment to Mr. Canfield's statement follows:]

MAJOR COMPLIANCE REPORTS ISSUED

Date and title

July 23, 1974: Problems in the Federal Energy Office's Implementation of Emergency Petroleum Allocation Programs at Regional and State Levels (B-178205).

December 6, 1974: Problems in the Federal Energy Administration's Compliance and Enforcement Effort (B-178205).

July 15, 1975: Federal Energy Administration's Efforts to Audit Fuel Oil Suppliers of Major Utility Companies (OSP-76-2).

October 2, 1975: Federal Energy Administration's Efforts to Audit Domestic Crude Oil Producers (OSP-76-4).

TESTIMONY ON FEA COMPLIANCE ACTIVITIES

Date and subject

December 11, 1974: Statement of Phillip S. Hughes, Assistant Comptroller General of the United States, on FEA's Compliance and Enforcement Activities before the Subcommittee on Reorganization, Research, and International Organization, Senate Committee on Government Operations.

May 8, 1975: Statement of Phillip S. Hughes, Assistant Comptroller General of the United States, on FEA's Compliance and Enforcement Activities before the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce.

June 19, 1975: Statement of Phillip S. Hughes, Assistant Comptroller General of the United States, on the FEA's Compliance and Enforcement Processes before the Subcommittee on Administrative Practice and Procedure, Senate Committee on the Judiciary.

[The following material was received for the record:]

This is our response to the questions concerning the Federal Energy Administrations' (FEA) civil penalty authority raised in your March 18 letter.

Your letter raised the following two issues concerning FEA's civil penalty authority:

(1) whether FEA has authority to "assess" civil penalties by administrative order under the various laws which it administers, and;

(2) whether FEA has authority to "compromise" civil penalties if it cannot assess them.

(1) ASSESSMENT OF CIVIL PENALTIES

Section 5(a)(3)(A) of the Emergency Petroleum Allocation Act of 1973, as amended, 15 U.S.C. § 754(a)(3)(A) (Supp. V, 1975), subjects persons who violate certain FEA regulations and orders issued under that Act to civil penalties, which cannot exceed specified amounts depending on the activity involved. Section 12 of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. § 797 (Supp. V, 1975), subjects to civil penalties, also stated in maximum dollar amounts, persons who violate certain rules, regulations, or orders issued under that Act.

Neither statute expressly provides any mechanism for the assessment or enforcement of the civil penalties. According, FEA takes the position that it lacks authority to "assess and impose" civil penalties by administrative order. It concludes that only a Federal district court can impose civil penalties on an unwilling party on the basis of a lawsuit prosecuted by the Department of Justice. We agree that FEA cannot formally impose civil penalties by administrative action.

The question of the use of civil penalties by administrative agencies has been exhaustively examined by the Administrative Conference of the United States. Goldschmid, "An Evaluation of the Present and Potential Use of Civil Money Penalties As a Sanction by Federal Administrative Agencies," *Recommendations and Reports of the Administrative Conference of the United States*, July 1, 1970 to December 31, 1973 (Vol. 2) p. 896. This study indicates at pp. 949-53 that a number of administrative agencies have civil penalty provisions similar to FEA's. The study concludes that these agencies are without authority under these provisions to assess or impose civil penalties. See, e.g., 7 U.S.C. §§ 203, 207(g) and 499c(a) (1970); 48 U.S.C. §§ 814, 815, 817, 831 and 844 (Supp. V, 1975), and 15 U.S.C. § 1398(a) (Supp. V, 1975). We agree with this position. We note that the Congress has enacted certain other statutory schemes which do provide detailed mechanisms for administrative assessment of civil penalties by Federal agencies, subject to judicial review and enforcement. See, for example, the statutory civil penalty procedures under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 901 et seq., as described in *National Independent Coal Operators' Ass'n v. Kleppe*, 423 U.S. 338 (1976, and *Kleppe v. Deith Mining, Inc.*, 423 U.S. 403 (1976), and the civil penalty procedures applicable under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 et seq., as described in *Atlas Roofing Company, Inc. v. Occupational Safety and Health Review Commission*, — U.S. —, 45 U.S.L.W. 4312 (March 23, 1977).

Had it been intended that FEA exercise similar authority we believe that statutes would have expressly so provided. Moreover, we note that the civil penalty provisions in the FEA legislation may be traced back to section 203(b) of the Economic Stabilization Act of 1970, as amended by Pub. L. No. 92-210 (December 22, 1971), 85 Stat. 743, which provided that anyone violating an order or regulation under that Act "shall be subject to a civil penalty of not more than \$2,500 for each violaton." The legislative history made it clear that this civil penalty authority was to be exercised by the courts. See S. Rep. No. 92-507, 9 (1971) :

"A civil penalty of \$2,500 for each violation may be imposed by a court. The power to impose a civil penalty gives a flexibility to the court by avoiding the sole alternatives of criminal sanction or nothing."

In view of the foregoing, a civil penalty under 15 U.S.C. § 754(a)(3)(A) or § 797 (Supp. V, 1975), is not "assessed," for purposes of imposing liability upon an alleged violator, until a court sets the penalty and its amount, within the statutory limits.

(2) AUTHORITY TO COMPROMISE CIVIL PENALTIES

FEA has, however, an administrative process by which it identifies potential civil penalty cases and determines, through a series of predictive factors, the amount of the penalty it would expect a court to assess if the case were prosecuted.

Thus section 5,600.00 of FEA's Compliance Manual states in part :

"* * * many companies found to have violated the regulations are willing to pay a civil penalty in an appropriate amount and save themselves the trouble and expense of litigating the matter in a federal court. FEA regulations recognize that many companies prefer this alternative; thus, when the FEA considers it appropriate or advisable, the FEA has the power to compromise and collect civil penalties. The authority to compromise applies only to civil penalties and not to violation or criminal penalties. The term 'compromise' is not intended to imply that FEA will accept penalties of a lesser amount than is warranted for a particular violation. Rather, it is intended to confer upon FEA officials the power to agree to settle a penalty matter at a figure less than the statutory maximum without the necessity of resorting to full-scale judicial procedures. * * *"

Initially, we note that there is no express statutory authority for FEA to enter into or agree to a compromise of a civil penalty as described in its compliance manual. Such a provision is often present in similar civil penalty provisions where assessment of the civil penalty by a court is required. See, e.g., 49 U.S.C. § 1471(a)(2) (1970); 15 U.S.C. § 1398(b) (1970); and note under 46 U.S.C. § 814 (Supp. V, 1975). However, we believe that although an express grant of authority to compromise civil penalties is absent here, such authority may be implied from the enforcement scheme created by the Congress. In fact, it appears that as a practical matter the enforcement scheme could not operate effectively without some compromise authority.

Under the regulatory schemes here involved, FEA must in the first instance determine whether violations have occurred and what remedial actions are appropriate. We believe it must also, of necessity, exercise some discretion in deciding whether penalties should be sought. Thus, for example, to require that FEA refer to the Justice Department violation cases for which FEA believes no penalty is warranted or is likely to be obtained would place an intolerable burden on the enforcement process.

We believe that the same approach is equally valid as applied to cases in which FEA believes a civil penalty is warranted but is able to obtain the alleged violator's agreement to pay a penalty amount which, in FEA's view, approximates the amount it anticipates a court would award. Referral of these cases to the Justice Department would, likewise, apparently serve only to bog down the enforcement process and impede voluntary settlements.

In sum, we recognize that FEA's civil penalty "compromise" authority is not entirely clear. However, for the reasons stated above, we have no basis to object to the agency's current practices in this regard as outlined in its Compliance Manual.

[The formal comments on H.R. 2819 follow:]

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 23, 1977.

HON. JACK BROOKS,
Chairman, Committee on Government Operations, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: On August 17, 1976, we commented on H.R. 14761, 94th Congress, a bill to create an Office of Inspector General in the Department of Health, Education, and Welfare (HEW) which was in substance enacted into law by Public Law 94-505. We note that H.R. 2819, 95th Congress, a bill which, if enacted would establish similar Offices of Inspector General in certain executive branch departments and agencies has been referred to your Committee. GAO must rely extensively on the effectiveness of the internal audit within the departments and agencies in carrying out its own work and we therefore have a real concern about any actions that might weaken that function. Consequently, we have prepared the following comments for your consideration. In these comments we have used the term agency to apply to both departments and agencies.

We strongly support the upgrading of the organizational status of the investigative and audit functions and the emphasis on their importance which the bill provides. However, there are some features of the bill which we believe may serve to change the internal audit function and its relationships with agency management in a manner that would serve to weaken or eliminate some of the principal functions of internal audit. We are writing to you to convey our concerns and hope that your Committee will give them careful consideration in finalizing this bill. If changed as we are suggesting, we believe the bill would be very beneficial and we would support it strongly.

As you know, the GAO has been a staunch advocate of effective internal audit for many years. We have in fact issued guidance to agencies and their internal audit staffs in a special publication on this subject which is enclosed. Moreover, GAO relies heavily on the work done by internal auditors. Without their coverage we would have to do substantially more work to discharge our own responsibilities effectively. It is a standard practice in GAO to obtain work of the internal auditors and review it before planning the scope of our own efforts. Furthermore, we regularly examine the work the audit organizations do in checking on the propriety and legality of the financial activities of their agencies and make constructive recommendations to them to try to ensure that these activities get proper internal audit attention. Our comments, which follow, are therefore intended to preserve and encourage effective internal auditing in the agencies covered by the bill.

SEVERAL FEATURES OF BILL MAY AFFECT INSPECTOR GENERAL'S ABILITY TO SERVE MANAGEMENT

There are several features of the bill which tend to weaken top management's control over internal audit and create uncertainty as to the relationship between the Inspector General and the agency heads. We believe these features may cause top management to regard the Inspector General as an adversary and therefore not use him or rely on him to help solve management's problems. In this regard, section 5(a)(5) gives the Inspector General direct access to the Congress to protest his budget and section 5(a)(6) gives him authority to select personnel independent of his agency head. Section 4(e) directs the Inspector General to provide reports issued under the authority of sections 4(c) and 4(d) directly to the Congress or committees or subcommittees of the Congress without further clearance or approval.

Although the bill makes the Inspector General subject to the "general supervision" of the agency head, the cumulative effect of the provisions cited above seems to us to outweigh any general supervision he might receive from the agency head. As a result, some of the basic tenets of the internal audit rela-

tionship with management, which were established under the Accounting and Auditing Act of 1950 may be violated. In this respect, the principal basis for the internal audit groups which today exist in Government can be found in Section 113(a) of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a (a) (1970)). This act makes the head of each executive agency responsible for establishing and maintaining systems of internal control designed to provide, among other things, effective control and accountability for all funds, property and other assets for which the agency is responsible, including appropriate internal audit.

The General Accounting Office and the Bureau of the Budget (now Office of Management and Budget) were the principal architects of this act and have continued to support the concept that Government managers need internal audit to see that their systems of internal management checks are being followed and that problems with their agency's activities are being surfaced for prompt solution. This latter concept was aptly expressed in House Report No. 456, 88th Congress, 1st Session (1963) House Committee on Government Operations which indicates the relationship between internal audit and the head of the establishment:

"* * * The head of a large executive department or agency must have his own 'eyes and ears' within the organization, responsible solely to him, independent of operations and with unlimited jurisdiction to review any and all functions wherein waste or inefficiency might exist."

These words "eyes and ears" of management are not just rhetoric. Agency heads can and do use internal auditors to help them solve management problems. In many cases, internal auditors have ferreted out developing problems which management had not become aware of, thereby permitting prompt corrective measures to be taken.

We believe the provisions of H.R. 2819 cited above run contrary to the philosophy of the Accounting and Auditing Act of 1950. If the Inspector General can protest reductions in his budget by dealing directly with Congress, choose his own people without concern for agency restrictions, issue his reports to Congress without, in many cases, obtaining the comments of his agency head and do so without any clearance or approval within his agency, he is in effect free of the supervision of the agency head and the superior-subordinate relationship is eliminated. The result, as we see it, would be that an agency head may either forgo having internal audit as a management tool or he or she may establish a separate, essentially duplicative internal audit group reporting directly to him or her. Moreover, under H.R. 2819 as it now stands it would be difficult to hold the agency head responsible for maintaining efficient and effective internal audit systems because their responsibility for this activity would be essentially shifted to the Inspector General and ultimately to Congress.

Another area of importance concerning Inspector General/agency head relationships is the matter of obtaining comments from management on all Inspector General reports. We have found that including management's comments in audit reports tends to provide a more balanced presentation of the auditors findings and that failure to give management an opportunity to comment may result in overlooking corrective actions being taken or other pertinent matters that should be considered.

We also note from the Committee report (H.R. Rep. No. 94-1573) on H.R. 15390, 94th Congress, which became title II of Public Law 94-505 that the purpose of the language "without further clearance or approval" was to:

"* * * eliminate lengthy delays in furnishing information due to HEW 'clearance' procedures."

While the Committee may have identified the existence of this problem at HEW, we do not know that there is a similar problem with respect to the 11 departments and agencies covered by H.R. 2819. Further, we believe that a potential problem of lengthy delays in obtaining Inspector General reports could be dealt with by establishing deadlines or time tables rather than by including language in the bill which tends to create uncertainty as to the relationship between the Inspectors General and the heads of the establishments involved.

In concluding on these provisions of H.R. 2819, we would like to point out that we firmly endorse the idea that internal audit should report to the highest levels in an agency—if practicable to the agency head. We also support the premise that Congress should have access to internal audit reports. We think,

however, that H.R. 2819 goes further than is necessary to ensure that the Inspector General will be effective and have enough independence to be an objective investigator and auditor. Accordingly, we believe it would be desirable to eliminate sections 5(a)(5) and 5(a)(6).

CONGRESS MAY GET TOO MANY REPORTS

Under section 4 of the bill, the Inspector General is to issue an annual report; quarterly reports; individual reports on particularly serious or flagrant problems, abuses or deficiencies; and supplementary information as may be requested by either House of Congress.

We believe the annual reporting provision will provide a valuable tool for congressional review of the activities of the affected agencies. However, the quarterly and other specialized reports and information may place too heavy a burden on the Inspector General and create a potential for flooding Congress with reports and information. We believe Congress' special needs can be met through requests made to agency heads as is the present practice. As previously noted, we do not believe that direct congressional access to the Inspector General is necessary or consistent with the philosophy of internal audit. Moreover, Congress can, of course, request copies of any other report the agency has prepared.

Accordingly, we recommend that section 4 of the bill be amended to provide in its entirety as follows:

"Section 4. (a) Each Inspector General shall, not later than March 1 of each year, submit a report to the head of the establishment involved summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to:

"(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities;

"(2) a description of recommendations for corrective action made by the Office with respect to significant problems, or deficiencies identified and described under paragraph (1);

"(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports, and

"(4) a summary of matters referred to prospective authorities and the extent to which prosecutions and convictions have resulted.

"(b) Based on the management needs of the establishment, each Inspector General shall make investigations and such further reports as may be directed by the head of the establishment involved. Such investigations and reports may also be based upon requests for reports or information from either House of Congress, its committees or subcommittees.

"(c) Each Inspector General may make such additional investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable.

"(d) The head of each establishment involved shall, not later than March 31 of each year, submit to the Congress the annual report of the applicable Inspector General. In addition, the head of the establishment involved shall make available to the Congress, or committees or subcommittees thereof, any other reports prepared by the Inspector General if requested to do so by either House of Congress, its committees or subcommittees. The comments of the head of the establishment involved may be appended to any report provided to either House of Congress, its committees or subcommittees under this section."

TITLE OF INSPECTOR GENERAL POSITION COULD BE MORE DESCRIPTIVE

The title Inspector General tends to suggest to us a narrower function than is given the Inspector General under H.R. 2819. Not only does the Inspector General have the investigative function but he has the full scope of audit which includes audits to determine financial integrity and compliance with pertinent laws and regulations, audits to identify inefficiencies or wasteful practices and audits to assess effectiveness in achieving program goals. Because the scope of the work will be so broad, we suggest that the title "Office of Inspector and Audit General" be used. We believe this change would retain the impact of the title "Inspector General" while still indicating that this official is also responsible for audit.

NEED TO INSURE THAT INSPECTOR GENERAL HAS APPROPRIATE PROFESSIONAL QUALIFICATIONS

As we expressed in our August 17, 1976, letter, we are concerned about the need to insure that those appointed to Inspector General and Deputy Inspector General positions have the professional qualifications needed to perform the highly technical work their jobs will require of them. We believe that the bill would be improved in this respect by inserting after "ability" in Section 2(a) (page 3, line 2) and Section 2(b) (page 3, line 12) of the bill:

"in the fields of accounting, auditing, financial analysis, management analysis or investigations."

AUTHORITY GIVEN FOR SUBPOENA POWER MAY BE TOO BROAD

Section 5(a) provides each Inspector General with access to all records, documents and other material available to the establishment involved and he is given the power to subpoena the production of information, data, and written material necessary to the performance of the functions assigned by the Act. We agree with the inclusion of the subpoena power for the Inspector General.

We are however concerned that, as written, the subpoena power given the Inspectors General under section 5(a) (3) leaves open the question of whether it may be used against other Federal entities. Subsections 5(a) (1) and (2) provide respectively for the availability of data within the affected establishments and the authority of the Inspectors General to request information from other governmental units. Section 5(b) recognizes by implication limits on the Inspectors' General authority to obtain information from other Federal agencies. It seems apparent from these provisions that the subpoena power is not intended to be as broad as the wording of subsection 5(a) (3) suggests. In order to make clear that the subpoena power is not applicable to Federal entities, we recommend the inclusion of the following language after "evidence," at the end of line 3 of section 5(a) (3) "in the possession of non-Federal persons or organizations and which is." We also recommend, for purposes of clarification, that section 5(a) (1) be amended by substituting the following language for line 18, page 8 of the bill: "material to which the applicable establishment is entitled and which it has in its possession and which."

SOME AGENCIES MAY BE TOO SMALL TO WARRANT INSPECTOR GENERAL

We note that the eleven establishments in which an Office of Inspector General is to be established vary in size and complexity of programs requiring inspection and audit attention. We have attached a chart (Attachment I) showing the relative size of the existing investigative and audit staffs in the establishments affected by this bill. As demonstrated by this chart, the size of staffs devoted to these functions vary substantially among the affected establishments.

We believe that at least in some cases the present audit and investigative staffs are not adequate for the function to be performed, but we do not have sufficient information to determine what the optimum staff size would be. However, since each Inspector General is to be an executive level IV appointee with a level V deputy, supported by as yet unclassified Assistant Inspectors General, such positions within certain agencies could create an unnecessary and expensive administrative superstructure. Accordingly, the Committee may wish to revise this bill to apply only to those agencies such as the Departments of Agriculture, HUD, Labor, and Transportation where the number and salary level of positions to be created by this bill can be more readily justified.

TWO AUDIT OFFICES NOT INCLUDED IN BILL

We also note that section 6(a) (1) (f) of the bill does not include the transfer of two audit offices of the Department of Transportation to the Office of Inspector General. You may want to consider including in section 6(a) (1) (f) the offices of the Department referred to as the "Office of Audits, Department of Transportation" and the "Office of Program Audit, Urban Mass Transportation Administration."

If the Committee accepts our recommendations on this bill, title II, Public Law 94-505 which created an Office of Inspector General for the Department

of Health, Education and Welfare should be amended to conform to such recommendations as well.

Sincerely yours,

ELMER B. STAATS,

Comptroller General of the United States.

Enclosure.

ATTACHMENT I

AUDIT AND INVESTIGATIVE STAFF SIZES FOR 11 DEPARTMENTS AND AGENCIES, FISCAL YEAR 1975

Agency	Audit staff size	Investigative staff size
Agriculture -----	495	342
Commerce -----	94	11
HUD -----	344	91
Interior -----	145	5
Labor -----	180	7
Transportation -----	417	34
ERDA -----	171	---
EPA -----	70	13
GSA -----	111	64
NASA -----	59	16
VA -----	70	23

Mr. DINGELL. Mr. Canfield, you appear to have the matter well in hand. The Chair thanks you for a very helpful statement.

As the Chair understands, our other witnesses, are not here to present us a statement, although if you wish to give us some comments, we would be glad to hear them.

Mr. CUTLER. I am sorry, I have no prepared statement; I will answer any questions.

Mr. DINGELL. Very well. I understand Mr. Rose has no prepared statement at this time.

Mr. ROSE. That is correct.

Mr. DINGELL. I think in fairness if we are going to have a panel, we ought to have everyone there and let them have a fair opportunity to respond as we go into the matters now before the subcommittee.

The Chair will recognize members of the committee for purposes of asking questions. The Chair recognizes first the gentleman from New York, Mr. Ottinger.

Mr. OTTINGER. Thank you. I am very much concerned about the relationship of OMB to the substantive matters with which we are concerned. Because it seems to me in a great many areas OMB is really making the critical decisions, I am not sure that ought to be.

For example, I understand that OMB cut four people from the consumer affairs budget of the FEA. I wonder what kind of thinking, what kind of relationship with FEA goes into that? That becomes a very substantive policy.

Mr. CUTLER. Mr. Ottinger, I think that FEA can speak to the policy considerations involved in the Consumer Affairs Office budget. I would say, however, first of all, that FEA did not request restoration in the Carter February budget of those cuts that had been made in the earlier Ford budget.

Second, I would point out that the Carter budget fully funded FEA's request for a \$2 million program for consumer grants to States,

a program which the Ford budget did not fund—at, I believe, the \$100,000 level for study only.

The Ford fiscal year 1978 budget did provide for a cut of 2 staff years that totaled four positions in the Office of Consumer Affairs budget in FEA. As I pointed out just a moment ago, no request for reconsideration of that cutback was made to OMB in the preparation of the Carter February budget.

Mr. OTTINGER. It all becomes a very complicated relationship. I think we in Congress have expressed our concern as FEA has been moving in the direction of trying to get particularly energy conservation, solar technology out into the field, to get it out of the research mode and to get it applied.

Also we have had a great emphasis on trying to get compliance with the various regulatory programs that we have, yet these are both areas that have been severely cut. If you are not crosswise with FEA, I think you should be because I think that is the mandate that Congress gave.

Mr. CUTLER. Excuse me, sir. I think it is fair to point out that the two areas of the FEA budget which received the greatest boost from the original fiscal 1978 budget submitted by President Ford to the subsequent fiscal 1978 budget revisions submitted by President Carter, were first, the area of conservation and environment, and second, the area of strategic petroleum reserve. The third major increase was in the area of regulatory programs.

Mr. OTTINGER. I see an item in here where the FEA requests, for instance, for regulatory programs, compliance was \$8,073,000 and the amount that OMB allowed was only \$1,200,000, which seems to be quite inconsistent with what you are saying.

Under operations of the regulatory programs, the request to OMB was \$2 million, the OMB allowance was \$1,700,000. In the solar commercialization program, which is getting solar out to the field, the request to OMB was \$3,890,000, of which OMB allowed nothing, which means, I presume, and the reason given was that you are awaiting completion of an interagency solar commercialization study.

Does that mean that you have to wait until fiscal 1979 to get that started? It seems to me that in these areas, particularly—

Mr. CUTLER. If I may, let me make two comments, one general and one a little bit more specific. First of all, it goes without saying, and I hardly need to say it to you or the chairman, that in many instances agencies submit budget requests, as one would expect them to do, which exceed the amount of available funds and which, in the aggregate, would certainly exceed the amount of available funding for all Government programs.

In many cases, agencies including the FEA request more money initially than is made available to them when the President considers all requests from all agencies.

With respect to funding for energy programs, let me make two additional points. First of all, the Carter budget, as I pointed out earlier, provided a substantial increase in the FEA budget over what the Ford budget had provided, an increase from about \$1,900,500,000 to \$3,300,000,000 for fiscal 1978, a substantial increase.

Mr. OTTINGER. What specifically is that for?

Mr. CUTLER. Specifically, for programs of conservation and environment, specifically for the strategic storage petroleum program and regulatory programs.

The second point I want to make in connection with this is that, as you know, we, the Carter administration, is in the process of developing an energy policy program which the President plans to present to the Congress on April 20.

I think it is fair to point out that it was the administration's judgment when the fiscal 1978 budget revisions were considered, that it would probably be imprudent to make substantial changes in the budget request at a time when the comprehensive energy policy was being developed.

We will be examining the need to ask for supplemental 1978 funding to support the energy policy developed by the administration.

Mr. OTTINGER. You run into Budget Control Act problems in Congress if you do that. They are not without the possibility of remedy. Once you get the initial budget passed in Congress, then every program tends to be judged on the floor against that, and it becomes exceedingly difficult.

Mr. CUTLER. I understand that, but we could not develop overnight the kind of an energy policy that I think the Congress or the American people would be satisfied with. We did not think it made any sense.

Mr. OTTINGER. In view of President Carter's already expressed interest, for instance, in solar commercialization, it seems strange that should be an area in which your office should decide to make cuts.

Mr. CUTLER. I think with respect to solar commercialization and with respect to an awful lot of other programs, the administration's general view as expressed in the fiscal 1978 budget revisions, is that the general areas of conservation and environment and the areas of strategic petroleum storage programs deserve immediate increased funding.

All of the other areas, it seems to us, require that we wait until the energy policy is developed and done, so that we can make funding decisions based on that policy.

Mr. OTTINGER. The chairman tells me my time has expired.

Mr. DINGELL. The Chair is going to recognize counsel, Mr. Finnegan, for purposes of asking questions.

Mr. FINNEGAN. Thank you, Mr. Chairman. First of all, Mr. O'Leary, in your discussion of the legislation, H.R. 2788, you indicated you had some reservations about the bill itself insofar as it involved the Inspector General. Can you tell us what those reservations are?

Mr. O'LEARY. Yes, Mr. Finnegan. They are essentially in two areas; first of all, the autonomous nature of the IG as contemplated in the bill. I believe that—I have concern, reservations in two areas of the bill.

The first has to do with the autonomous nature of the IG as contemplated in the bill. I think we have to remember that in the FEA or any other agency, we must have a direct line of responsibility to the agency head from the Congress or the President to the agency head.

It seems to me that having an autonomous IG vitiates from that responsibility. I think the IG as other employees of the agency, should work for the Administrator.

The second point of reservation—

Mr. FINNEGAN. The bill itself does provide the IG would be under the general supervision of the Administrator and report directly to the Administrator. Is that what you are objecting to?

Mr. O'LEARY. It also provides that he may ad initio initiate whatever investigations he wishes. It seems to me the running of the agency, including the investigatory function, is a responsibility of the agency head.

Mr. FINNEGAN. During the subcommittee's examination of compliance efforts in FEA over the last several months, we have had an opportunity to review several instances and to discuss with Mr. Cook, who I believe is the head of the internal review, some of these various problems.

He indicated to us that he never started any case without first getting the concurrence of the Administrator and that had to be written concurrence. Is that the normal function of an IG, for example, in other agencies where they have actually been established? Does that not give the Administrator due control?

Mr. O'LEARY. I think that is the very issue, Mr. Finnegan. The Congress can look properly to the agency head and put accountability on the agency head and this incidentally, will be the thrust of the second reservation I have with regard to the legislation.

I think when you begin to put others in that line who are independent, who can conduct, as it were, independent investigations, that you are really saying that we have two people that we are looking to for accountability in the agency.

I think that is inappropriate. The second point, so that we can discuss these in tandem, and they are very closely related, is the concept of reporting to the Congress. I think that does raise a very severe question with regard to the separation of powers, both on those grounds and the more practical grounds of the first point.

That is to say, my responsibility is to the President and of course, to the Congress for administering my agency. I really do not require, I do not need another line of reporting to the Congress that is independent of that.

You have an investigatory capability of your own. I have my colleague to my left who has been through 18 different visitations now, my colleague over the last 15 years or thereabouts and I think we are getting a good external look there.

I look upon the idea as essential and indeed we have created, Mr. Chairman, an Inspector General's office now that no longer buried into the organization but reports directly to me.

Mr. FINNEGAN. When was that created?

Mr. O'LEARY. We just concluded action on that yesterday.

Mr. FINNEGAN. Does that include—what does that include?

Mr. O'LEARY. That includes a delineation of the functions. I would be glad to provide the documentation for that to you and the designation of Mr. Cook as the acting entrant into that office.

Mr. DINGELL. Has the order for that been completed?

Mr. O'LEARY. The initial paperwork has been completed. The directive was signed yesterday establishing the independent audit function, yes.

Mr. DINGELL. It would be appreciated if you would make that available to us for review.

Mr. O'LEARY. I shall.

[The following document was received for the record:]

FEDERAL ENERGY ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., April 5, 1977.

Memorandum for: Acting Deputy Administrator, Acting General Counsel, Assistant Administrator, Associate Administrators, Office Directors, and Regional Administrators.

From: John F. O'Leary.

Subject: Establishment of the Office of Inspector General (OIG), Federal Energy Administration.

Effective immediately, the Office of Internal Review is redesignated as the Office of Inspector General. Concurrently the OIG is removed in its entirety from the AA for Management and established as a separate office reporting directly to me. Mr. Robert M. Cook has been appointed as the Acting Inspector General, FEA.

The Office of Inspector General has been established to provide me with a continuous and independent appraisal of the manner in which the FEA is performing its responsibilities under existing laws and appropriate government regulations in order to ensure the integrity and efficiency of the Agency.

To accomplish his assigned mission, the Inspector General will conduct scheduled inspections and audits of FEA Headquarters and Regional Office activities. In addition, he will conduct special inspections and special audits as directed by me or the Deputy Administrators.

The Inspector General will also conduct inquiries and investigations as directed by me or the Deputy Administrators. Reports of the results of the inquiries and investigations will be reported directly to me or as appropriate to the Deputy Administrators.

The AA for Management will provide the administrative and logistical support necessary to establish the Office of Inspector General, FEA.

Mr. DINGELL. I must say that is completed at a most timely and happy time.

Mr. O'LEARY. I wish that I had done it earlier. It has been on our agenda for about the last month and as you know, these things with automobile emission standards and compliance programs, and coal conversion programs do take time but we finally got, I think, to the third stage of review of that yesterday and resolved it.

Mr. DINGELL. You have observed that you have been—we have not been trying to harass you, or have we been trying to occupy your time; we both have better things to do if we got our druthers, but the hard fact of the matter is that we have to get these things going.

I am sure that you are aware that this is not an attempt to harass you but an attempt at an honest oversight process which we do not always have time for because of other legislative and budgetary commitments, which press us too.

Mr. O'LEARY. I understand.

Mr. FINNEGAN. You mentioned that there were some constitutional problems; could you tell us what those are?

Mr. O'LEARY. I think we run into a problem of separation of power, of having an officer in an executive agency under the President reporting in a line capacity, as I understand the legislation, directly to the Congress.

Regardless of the constitutional question, I really cannot comment on that; that really offends my feeling of the propriety of line responsibility. I am going to operate in an agency and I am going to command every person in that agency and not have a person who is either independent or reporting independently, working more or less for me.

Mr. FINNEGAN. You are aware, of course, that this same language was passed by Congress last year in connection with the Department of HEW?

Mr. O'LEARY. I understand that. I do not say anything with regard to HEW but with regard to my own view of the matter, that bill does not comport with the feeling I have of the way the things ought to be, in due respect.

Mr. DINGELL. If the counsel would permit, let me read line 4, page 4, section 72-A—

The Inspector General shall be appointed by the President, by and with the advice of and the consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation.

The Inspector General shall report to and be under the general supervision of the Administrator or to the extent that such authority is delegated, the Deputy Administrator but shall not be under the control of nor subject to supervision by any other officer of the administration.

Mr. O'LEARY. That is perfectly appropriate. I feel that is literally the way the relationship should read, Mr. Chairman.

Mr. DINGELL. I wonder how that or any other language raises Constitutional questions. He must report to the Congress in addition to reporting to the Administrator. That is done on an annual basis under section 74.

It is also required in the bill that he must report quarterly to his superior, the Administrator of FEA, and—

Mr. O'LEARY. He must report to the Congress.

Mr. DINGELL. Yes, and copies of those reports are sent to the Congress. I am curious how that causes constitutional problems? We do not get formal copies of your reports but as you are well aware, we do try to keep ourselves informed through all proper methods.

Mr. O'LEARY. Indeed, Mr. Chairman.

Mr. DINGELL. I am curious how this would impose any additional or any new burden?

Mr. O'LEARY. I am sure the attorneys could address this with much more clarity than I, Mr. Chairman, but there comes a point in the communication between the executive branch and the legislative in which executive privilege can be asserted. I think that is one of the areas.

Mr. DINGELL. What executive privilege? I guess this is where Mr. Rose comes in. I understand that it may be asserted only by the President and may be asserted only as regards communications to him by members of his immediate staff.

Mr. O'LEARY. Mr. Rose may care to address that.

Mr. DINGELL. If there is any additional executive privilege claimed today, I would like to hear of it, because I would take unkindly to it and had executive privilege been as broad as some would have liked, we would never have gotten rid of Mr. Nixon.

Mr. Rose, do you want to comment?

Mr. Rose. I think the expression "executive privilege" is used too broadly in this particular instance. Mr. O'Leary is merely claiming the right of internal communication among his subordinates.

Executive privilege at the Department requires that you go before a privilege committee and show that it is an appropriate use of it. I think I understand Mr. O'Leary's view. It is certainly one that we

use in many instances of the right of internal communication within the agency. I think that is all he is addressing.

Mr. DINGELL. I am not aware that there is any requirement that communications inside the agency would be in any fashion a privilege of Congress. I know Mr. Moss would be on you like a duck on a June bug if you came up here asserting that. I must confess that I receive it with almost as little kindness.

Mr. O'LEARY. If you will turn to the top of page 9, the subheading D, the Inspector General one, so on, you will find an area that I think fairly well crystalizes my concern.

That is not a stipulation of the prescription for a person, were he in my agency, who is working for me. That really is the heart of the matter.

Mr. DINGELL. He does do this at HEW by a similar statute.

Mr. O'LEARY. That may be and it may be that the Congress will enact this but you asked for my view of it and I think that this is bad administration.

Mr. DINGELL. I come to the view that we would be entitled to receive any report made by the Inspector General or any other agency employee to the head of the Administrator of the FEA up here on the Hill, to the Congress and to the committee, am I correct?

Mr. O'LEARY. After it has gone through the necessary reviews in the Agency, including my review, I think that would be correct, and again, Mr. Rose may wish to address this.

Mr. DINGELL. I am unaware of any requirement that we have to wait until these things are reviewed before we can get them.

Mr. O'LEARY. I think it is fair to say that the requests that you make in fact come to me.

Mr. DINGELL. I have no objection in making a request to you.

Mr. O'LEARY. Not to another officer of the agency. When we get to the point where there are other officers in the Agency that are formally reporting to you, then I am really not in charge of them.

I think it is a fine thing if the Congress wishes to establish an Inspectorate that is aside from the activity of the Administrator. The statutory officer in charge of the function, I have no complaint about that, and of course, as you know, I have cooperated extensively, absolutely, to the best of my ability with comparable efforts arising from this committee.

This is a matter of principle, however, the man works for me, he works for me.

Mr. DINGELL. Mr. O'Leary, I want to make it very clear that you have cooperated with this committee. I am very satisfied with the relationship. I commend you for that but I do have a problem when we are entitled to those reports up here; why should we not receive them if an Inspector General is set up to just receive those reports as a matter of course?

Mr. O'LEARY. I think that is fine, always remembering that the Administrator or Agency head, whoever he may be, would have the capability of reserving that. I think it is a matter of principle here that we all ought to understand.

As I say, I think it is capsulated nicely in this section D on page 9. It is a matter of the straight line of reporting. I believe if you place

a statutory responsibility on an agency head, that you may make any other investigations and inspections you wish from the outside but you do not have a person who reports to the Congress or indeed to anyone else within that agency.

You do not have a person who is independent of the administrator within that agency and that is essentially the issue. We may differ on this. If you want a considered opinion, that is my considered opinion.

Mr. DINGELL. I believe we do differ. I have some other questions. Let me hear from Mr. Canfield on this particular point, then the Chair is going to yield the floor and recognize Mr. Moorhead.

Mr. CANFIELD. I would like to distinguish the questions, the reporting and to whom you report and whether you can initiate investigations on your own.

From our point of view, I think it is important that any Inspector General, and I guess I disagree with Mr. O'Leary on this, be able to initiate investigations on his own. I think that the greatest strength of the General Accounting Office has been—in spite of the fact that it is a legislative agency—the ability for it to initiate on its own some two-thirds of the studies that we do, and work closely with the committees on this work.

It is an independent agency of the legislative branch. I think the analogy is appropriate here. I do believe that the Inspector General studies self-initiated should be made available to the head of the department or the agency.

Mr. DINGELL. While we are in complete accord—

Mr. CANFIELD. I do believe that the head of the department or agency has every right to see those things and to evaluate them and to get the opinion of the Inspector General but it does seem to me that the ability of this office to initiate its own work is crucial to its independent status.

Now, as to reporting, I do not believe we would go as far as the bill would go in terms of the continual reporting process, in part because I believe that it is the responsibility of the head of the agency to see to it that the work of the agency gets administered by the agency.

I think that Congress may get flooded by paper. I certainly see a very valid reason for an annual report and such periodic reports as may be required by the head of the agency, the President, and the Congress.

However, I would not go as far as this detailed flooding of every report that might come out of the Office of Inspector General. We are fundamentally in agreement with this section of the bill except for the amount of detail and paper flow.

Mr. DINGELL. At this time, the Chair is going to recognize members of the committee again for questions. The Chair recognizes first the gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Mr. O'Leary, I see you almost as much here as I do the members of the committee. I think that we have probably got a man down there in your agency that reports back to us almost on a daily basis, so we probably do not need anyone else.

It is my understanding that your feeling that having an additional person who reported back to the Congress would interfere with your prerogative to run your department and to be responsible solely yourself to the President and report to the Congress, as to your accomplishments; is that right?

Mr. O'LEARY. Yes. I feel that very strongly. Incidentally, Mr. Canfield has just whispered in my ear that he agrees with me on that. I would just like to have that aloud instead of quiet. I think that is just an essential element of a statutory officer receiving his authority, particularly in my case or the case of other Presidential appointees.

We are Presidential appointees confirmed by the Senate with very clearly limited statutory responsibilities. I think that you begin to impair them when you begin to build these other structures around them.

Mr. MOORHEAD. I do not have any other questions that I want to ask, but I do want to thank you for your willingness to give us your time. I think that if you are going to be here this often, we ought to have an office for you, offer the committee room.

Mr. O'LEARY. Mr. Moorhead, may I suggest that we do have a problem of separation of powers.

Mr. DINGELL. The Chair might observe I find no such problem.

The Chair recognizes the gentleman from Louisiana.

Mr. MOORE. I have had time to read Mr. O'Leary's statement. It does seem like he is here more often than many of us. I tend to agree with Mr. O'Leary on the provisions of this bill. There is one thing I want to ask that may be beyond anybody's ability to answer.

That is, you hear all the time talk in the Congress about creating independent agencies. I happen to subscribe to the theory that nobody is independent in the Government; they have to answer to somebody.

When we start building agencies that ostensibly answer nobody, that is when we start having our problems. My question is I think what Mr. O'Leary was alluding to when he said the man works for him, he in turn answers to the people of the United States, I would like to elucidate on that.

What is your feeling about statutory independent organizations, such as this one, to a certain extent?

Mr. O'LEARY. As Mr. Finnegan, I have worked in situations where there was a dilution of authority by action somewhat comparable to the dilution of authority that would be imposed by this piece of legislation.

I found it very uncomfortable, and one of the actions that I had to take early in coming into that was to fire the man in question, so this is not theory with me, this is reality. I know the sort of mischief that can arise with the wrong sort of personalities in this sort of situation.

Aside from that, I think that is an idea that really does not run to principle. The point of principle is that ultimately I was in a position to fire that man. The principle is that if you look to me to administer this agency effectively, then that is a nondivisible responsibility.

I applaud any activity in the way of strengthening the functions of the GAO and the Congress' own investigatory staffs in order to be sure that you are satisfied that I am doing that job correctly.

I offer, as I suggested to the chairman, any degree of access to the internal workings of the agency that does not reach beyond the bounds of propriety in discharging that oversight responsibility of the Congress and of its creature, the GAO.

I think that is absolutely appropriate. I might say that over the last 10 years, there has been an enormous strengthening of this outside audit, external audit, Mr. Chairman, and I applaud it.

I think it has done a great deal to keep—to make the game in government more honest. Government is always in a position where, if it is not scrutinized, it can abuse, and I believe very strongly in the old motto that power corrupts and so forth.

There have been numerous examples, the most recent, of course, in a startling fashion was Watergate, in which we have seen that proposition demonstrated. I do not want you to translate anything I am saying here to resistance to external audit.

I think the trend, a sharply accelerated trend, toward better, more professional, more sweeping external audit is a healthy sign. It is a sign of good intention between the executive and legislative, and a very useful advent of the last few years.

I am talking here about internal audit. When we get to internal audit, that is a management function, in my judgment. If you cannot manage it, then you are really not in charge of your ship, and your authority is vitiated.

I think it is a very simple, clean, straightforward proposition. If I have the responsibility, then one of my responsibilities is for me to see to it that the internal audit is accomplished appropriately. If there is any question about that, then I should be removed.

Mr. MOORE. I have no further questions, Mr. Chairman.

Mr. DINGELL. The Chair recognizes the counsel, Mr. Finnegan, again.

Mr. FINNEGAN. Mr. O'Leary, in 1975, region IV of FEA initiated an investigation at that time, which was identified as the so-called *Parrish Oil* case. As I understand the situation, the investigation resulted in the representation of region IV, who I believe may be here today, who conducted some interviews within the territory known as region VI.

Subsequent to those interviews, there was a great deal of what the chairman has talked about, squabbling between the two regional offices. Can you give us some idea of what that problem was? What the region VI Administrator had said at that time?

Mr. O'LEARY. I am aware of that cross-regional investigation and the subsequent squabble. Mr. Smith will elaborate on the history of that but let me tell you of the action that we took.

I believe on March 4, in a meeting with the Regional Administrators, one of the points that was made in Mr. Canfield's testimony, and I believe that has been alluded to by Mr. Dingell in past discussions on this point, was the bifurcation of responsibility between the national office and the 10 regional offices.

You recall that we talked a little while ago, the last time we were together on this subject, having 11 law firms in business here. This is another aspect of this, Mr. Finnegan.

In the meeting that we had with the Regional Administrators on March 4, I indicated to them that the autonomous regional setup that had been the rule up until that day quite consciously was set up that way—quite consciously perpetuated by Mr. Zarb and was no longer the rule, that the national office would begin to take over the overall direction of the programs that heretofore had been directed exclusively at the regional level and that we would begin to function as one agency.

That is the policy conclusion of the debate that, as you point out, began in early 1975. Mr. Smith may wish to elaborate on the debate itself, the discussion point itself.

Mr. SMITH. Mr. Finnegan, my understanding of the incident to which you refer was an outgrowth, as I believe you are aware, from materials we have provided to the committee, of a meeting in my office in October 1975.

Mr. FINNEGAN. I believe that was preliminary to this. I think that was a subsequent action, Mr. Smith. Let me try to refresh your memory, then we can try to pick up from that point.

As I understand the situation, the investigator for the region IV did interview some people including FEA employees within region VI.

Mr. SMITH. Right.

Mr. FINNEGAN. And thereafter the regional director or regional administrator of region VI became disturbed about the fact that there was a representative from region IV going into his territory.

Mr. SMITH. That is right.

Mr. FINNEGAN. Then there became a series of cases identified as so-called daisy chain cases, I believe, in which there was, as you describe, a meeting in October 1975. I think we pick up from there.

Mr. SMITH. The specific—the incident was precipitated by an investigator from region IV going to the New Orleans office, I believe it was, the interviewing of an FEA employee, an employee of region VI and taking a sworn statement from that FEA employee.

The region VI administrator's position was that he deemed that improper because he had not been notified prior to the taking of that statement, that one of his employees was potentially involved in such an investigation and in my judgment, he was entirely correct in that.

The procedure followed whereby one of his employees was interviewed in a manner that suggested perhaps the employee himself had been involved in some wrongdoing without the knowledge of the appropriate supervisory chain, the responsible officials being aware of what was going on and the nature of the interview. In my judgment, that objection was valid.

The misunderstanding—part of it was a misunderstanding—as it developed, the FEA employee himself was not a subject of the investigation. The investigator from region IV was seeking information—the allegation of wrongdoing ran to a non-FEA employee.

The investigator was simply seeking the information available to the people in the New Orleans office. The thing that was missing, Mr. Finnegan, in my judgment, was the information to the regional administrator and the area managers involved in region VI was to what was going on.

Mr. FINNEGAN. Was there any procedure at that time, established FEA procedure on this matter, on consulting in the region?

Mr. SMITH. To my knowledge, there was no specific direction to that effect.

Mr. FINNEGAN. Is there at this time?

Mr. SMITH. There is.

Mr. FINNEGAN. When were they established?

Mr. SMITH. The ones that are in existence now were established in November 1976 at Mr. Hill's direction. Earlier than that, I had directed some coordination procedures as an outgrowth of the pursuit of several related cases that crossed regional lines in October 1975.

Mr. FINNEGAN. So the formal procedures for all regions were not established before almost a year thereafter, after the initial problem, is that correct?

Mr. SMITH. I am not sure that there is any piece of paper that I can show you that predated the November 1976 decision, other than my own directive with respect to those specific cases.

However, in discussions at a regional compliance directors meeting and in communications with regional administrators, with respect to the regulatory parts of the programs, after my delegation of authority was issued in June 1975, I made it clear that I expected these procedures to be involved.

It runs to the same point Mr. O'Leary was making earlier with respect to discussion of H.R. 2788. It is simply common courtesy and good management that the people responsible for the supervision and actions of their employees be informed about what is happening and what is going on with respect to that.

I think I would further observe, Mr. Finnigan, that I think although the incident was an outgrowth of misunderstanding and was regrettable, I think for every incident of that sort that occurred, one could find a substantial number of incidents where the proper procedures were followed and there was effective cooperation among the regions.

I am forced to disagree with a conclusion that because this incident and two or three others occurred, where the system did not work, that characterizes the general operations of the agency's compliance programs because there have been far too many instances of effective interregional cooperation on a large number of cases that has worked successfully, that point to the opposite conclusion.

What I am saying is that we have made some mistakes but the interregional squabbling as characterized in the committee's staff memorandum is, in my judgment, substantially exaggerated as far as it impacts on the successful execution of the program is concerned.

Mr. DINGELL. First of all, one, was there or was there not interregional squabbling on this matter?

Mr. SMITH. If one defines interregional squabbling as disagreement, among people in different regions and the insistence on people that the appropriate procedures, as I outlined earlier to Mr. Finnigan, be followed, then yes, there was interregional squabbling if that is the definition of it.

Mr. DINGELL. The consequences of this was that in the end, the investigation and the case were squelched, was it not?

Mr. SMITH. No, sir, that was not.

Mr. DINGELL. Is the case still active?

Mr. SMITH. No, sir, it is not active; it has been concluded.

Mr. DINGELL. It was brought to a successful conclusion?

Mr. SMITH. Yes, sir, it was. The current status of that part of the case, first, this part of the case was resolved by the determination that there had never been any FEA employee who had made the allegation that he could get someone an allocation for a specified sum of money.

This was a question of mistaken identity on the part of the individual

who had originally made the allegation. It turned out that the individual involved was not and never had been an FEA employee but was an attorney, practicing law in New Orleans.

Second, it turns out that the attorney and other people in a position to know denied ever having made any such representation to the company concerned. Now, as an outgrowth of that investigation, two other things were learned. Those are still in progress.

One, we learned of what could possibly have been an attempted bribe of an FEA employee in the national office and had referred the facts relating to that issue to the Justice Department for their determination as to the appropriate course of action.

Second, we learned as an outgrowth of that investigation about what appears to possibly have been some misrepresentations in another one of our FEA regions with respect to certain allocation requests and actions taken thereon and that the allegation of misrepresentation and the facts with respect to the allegation in a separate region is now being pursued in that region.

I would argue that the case, taken as a whole and its development to date, show interregional cooperation a great deal more than they show the lack of it, although there was this misunderstanding initially in one of the early phases of the investigation.

Mr. DINGELL. When did these events that you alluded to as being part of the success of this investigation commence?

Mr. SMITH. I am sorry, Mr. Chairman.

Mr. DINGELL. Did not the successful part of this undertaking commence in January of 1977?

Mr. SMITH. I am not sure. It was concluded early in 1977. I read the report of the first part of the investigation some time in the last couple of months or so, certainly early in 1977.

The conclusion of the first part was arrived at in the report on that investigation, the facts relating to what could possibly be determined as an attempt to bribe an FEA employee in the national office were developed.

On the recommendation of the Office of General Counsel, that case was then transmitted to the Justice Department for their determination as to whether this was in fact a case requiring their action.

Prior to that time, the aspects relating to the alleged or possible misrepresentation with respect to allegations in a separate region had been developed and sent to that separate region for investigation.

I do not have the specific dates; I would be glad to get them and provide them for the record. I think the files are available to the subcommittee staff.

Mr. DINGELL. That would be helpful. You may submit the dates. The Chair is going to yield to Mr. Finnegan.

[The following information was received for the record:]

With regard to the possible bribe of an FEA official in the National Office, a letter dated March 21, 1977 was sent to B. R. Civiletti (Department of Justice) by E. J. Fygi, Acting General Counsel, FEA.

Work on the allocation matter in Region IX commenced on March 1, 1977. On March 28, 1977, their findings to date were reviewed and the case was approved by National Office for continuation as a Special Investigation.

Mr. FINNEGAN. Mr. Smith, is it not true that after the investigation, even about the region IV investigator and the so-called squabbling

was resolved and he was no longer to continue that investigation, nothing further really took place on that investigation until the subcommittee indicated last fall that this was an open-ended investigation and since there was such an allegation, that it would not be proper to leave it open-ended, that it ought to be completed and that was actually begun in January of this year by Mr. Gossen of the special investigations staff?

Is that your understanding of the situation?

Mr. SMITH. I am familiar with the details of it, Mr. Finnegan. Let me find out—I am informed that is correct.

Mr. FINNEGAN. So from mid-1975 until the early part of this year, the matter did in fact lie dormant until the subcommittee raised some questions?

Mr. SMITH. That is right, but I would point out that this was a consequence, not of interregional squabbling but of a different problem alluded to by Mr. Canfield in his testimony and quite frankly, of a problem in terms of the allocation of priorities, personnel, and resources to the outstanding work in the Agency that existed during that period.

In English, what this means is we did not have, until in the fall of 1976, an effective system for categorizing cases to identify those that needed top-priority work and for assigning resources to those cases.

So—plus in fairness to the people involved, once the information had been learned that there was no FEA employee involved, therefore there was no substance to the initial allegation, they frankly turned their efforts to more important efforts rather than taking the time to follow up and close out the case.

In retrospect, clearly it would have been preferable, once they found out the case did not amount to anything to go ahead and nail it down, finish it up, tie a bow around it and put it on the shelf.

In the context of the amount of work, the real work, they knew needed to be done, it is understandable, at least to me, that once they found out this one did not amount to anything, they stopped working on it and turned to more important things.

Mr. FINNEGAN. That is not exactly true; the case did amount to something. When Mr. Gossen finally did do the complete work, he first uncovered the matter to which you have referred, the Justice Department and second, he uncovered the problem of the allegations?

Mr. SMITH. That is correct, but neither of these facts was known. You are right, in the business of wrapping up the case, we found two other allegations that needed pursuing but the initial allegation of an FEA employee offering to get an allocation in return for a \$50,000 payment had been disproven and when work was set aside on the case—I am not going to argue with you that should have been done because dropping that one did turn up two others that are now being pursued.

I am simply saying that this decision to stop work on that and start work on a number of the other outstanding cases waiting for attention was an entirely reasonable and understandable decision on the part of the people at the time.

I am not saying it was a right one; I am saying it was reasonable.

Mr. DINGELL. The Chair is going to recognize the gentleman from Texas, Mr. Collins.

Mr. COLLINS. Thank you. I am interested in this bill and appreciate your consideration and the statements you all have submitted. What I cannot understand about this whole subject is how we can operate the Government if we keep putting in more and more investigating agencies.

So far, as you know, we have started in on the FBI, the CIA and have them investigating everybody. Now Congress spends all of their time investigating them. I have always found the GAO to be a very efficient and effective organization and completely neutral in all of their approaches.

They come in openminded. I would think that if we are going to review or change, that we ought to go back and within the system itself, try to find ways. Mr. O'Leary, do you have any specific suggestions on how, within our system, we can perhaps develop a better type of oversight or review without changing the system itself?

Mr. O'LEARY. Mr. Chairman, I think you really have to address two problems. I attempted to deal with those before. One is the matter of internal audit. Any agency that deals with the public money ought to have some independent internal capacity for reviewing the decisions, allegations of mismanagement, other maladministration and so on.

Most agencies have that; FEA, for example, has had that for quite a long time. The AEC had it while it was there, the Interior had it, the Federal Power Commission had it.

Mr. COLLINS. You have been a career man in Federal service; you have been in this all of your life.

Mr. O'LEARY. I have been in and out of it.

Mr. COLLINS. What you are saying is that first the internal review is necessary and they are responsible to the chief executive officer of the agency?

Mr. O'LEARY. And nominally. If you want to go into a long historical review, the internal audit function of the Department of Interior reported to the Assistant Secretary for Administration.

The internal audit for the Atomic Energy Commission reported to the General Manager, who was the fellow in charge of everything there and through him, to the Commission. The Federal Power Commission internal audit was a matter for the Executive Director, again an officer very close to the Commission.

In our organization, up until very recently, as a matter of fact up until yesterday, the internal audit was a function of the Assistant Administrator for Management. It has now been moved to the point where it reports directly to me.

Mr. COLLINS. So if we had a bill of this type, we would be more or less developing some type of a tradition, some type of a pattern that would affect the entire Government operation. We could just literally disrupt the entire—

Mr. O'LEARY. I do not think it is necessarily disruptive.

Mr. COLLINS. I am talking about if we try to do what this bill suggests. We would be adding a duplicating—

Mr. O'LEARY. No; if this bill were to pass, were to become law, it would mean that the current internal audit function would become replaced in effect and not duplicated by but replaced by the function that is contemplated here.

My quarrel with this is not the function, Mr. Collins, I think the function is absolutely essential. It has to do with these two points, whether or not an officer of an agency can do things on his own without reference to the agency head and whether or not that officer should report independently to the Congress.

Those are two key philosophical questions that I think you should address. The question of whether or not there should be an internal audit, regardless of what you call it, inspector general, management review, or what have you, is really not at issue so far as I am concerned.

The second point you have addressed has to do with external audit. As I indicated in response to a question from Mr. Moore, I have noted with considerable satisfaction the increasing discipline that has been placed on the system over the last 10 years, and particularly the last 5 by having heightened the degree of capacity both directly on the part of congressional staffs and by the GAO to overview on behalf of the Congress, the internal operations of the Government agencies that you find.

I think that is good news. It has a potential for excess but I do not think we are into diminishing returns of it by any means.

MR. COLLINS. What you are saying is that you can continue to handle an internal review yourself and that there is a stimulating, necessary, and essential good that comes out of oversight committees of Congress and the GAO?

MR. O'LEARY. Exactly.

MR. COLLINS. And that is really where we need it, the external audit is where we should come in for these matters that might have gotten out of hand?

MR. O'LEARY. Precisely.

MR. COLLINS. Thank you.

MR. DINGELL. The Chair recognizes Mr. Finnegan for questions.

MR. FINNEGAN. Mr. Smith, going on, as you alluded to a few moments ago, there was in fact, as I understand, a meeting in October 1975 with officials from the region IV and other FEA officials concerning the so-called daisy chain cases, is that correct?

MR. SMITH. That is correct.

MR. FINNEGAN. You presided at that meeting as I understand?

MR. SMITH. That is correct.

MR. FINNEGAN. What evolved out of that, what was the problem at that meeting? What was the solution at that meeting?

MR. SMITH. The nature of the problem was four complex cases that involved transactions crossing regional boundaries. The question at the meeting was how best to handle the pursuit of those four cases.

MR. FINNEGAN. May I ask you for the benefit of the record to describe what the so-called daisy chain case is?

MR. SMITH. Yes. The so-called daisy chain cases involve the allegation that during the period of the embargo, a number of nonhistorical suppliers had been inserted between the refiner who refined the product and the ultimate consumer with the apparent purpose of the alleged purpose of conducting an increased number of sales between the refiner and the ultimate consumer over and above those that had been the historical business practice.

Further, that this had been done with the intent to in effect sell product back and forth a number of times, each of the sellers taking

his particular margin and boosting prices to the final consumer higher than it would have been otherwise.

Clearly under provision of FEA's regulations, although any one of those sales may not have been contrary to the regulations, there is a provision of the regulations that any action taken to circumvent the regulations themselves is a violation of the regulation.

Therefore, in the cases that this was established that a daisy chain had existed, be the intent of the daisy chain was to increase prices to the final consumer, that would be a willful violation of FEA's regulation and therefore subject to criminal prosecution.

Four such cases had been identified potentially. These involved transactions among companies located in different FEA regions. The question at issue was how best to proceed on the investigation of those cases.

As an outgrowth of that meeting and at that meeting, I decided to give the lead responsibility to the regional administrator in region IV because he had, at that time, the biggest background of knowledge and facts on the cases and he had one of the most competent investigators in FEA's entire staff, Mr. Grimes who had been largely responsible for developing the cases to that point.

As a consequence, I issued a memorandum a few days later to all of the regional administrators involved directing that the regional administrator of region IV would have the responsibility and directing they give him the necessary support and as I recall, an appendix to the memorandum outlined the level of support in terms of some of the people that he wanted specifically that were to be accorded to support these investigations.

Mr. FINNEGAN. That memorandum, as I understand, was issued on November 3, 1975?

Mr. SMITH. I believe that is correct.

Mr. FINNEGAN. After that memorandum was issued, was it not changed or in effect changed again by Mr. Newman, at least as to one case identified as the so-called *Keystone*?

Mr. SMITH. Yes; it was because one of the bases for giving the lead to region IV on the *Keystone* case which involved transactions in Richmond, was a presentation to me at that meeting of the fact that the Richmond area office lacked and region III did not have the capability to assign a trained investigator to the pursuit of that case.

Subsequent to that meeting and the issuance of the memorandum, it came to Mr. Newman's attention that in fact region III did have a trained criminal investigator and that he was located in the Richmond office and where most of the transactions, or a substantial number of the transactions involved had occurred.

Consistent with his understanding of the objectives, of my memorandum, because he had participated in the October meeting, the fact that the region IV already had its hands full and a little more with the remaining cases, he transferred responsibility for the *Keystone* case to region III, based on the new information that it had, the resources with which to pursue that case.

I deem that entirely consistent with the objective of getting the maximum amount of work possible done on those cases and have no trouble at all with Mr. Newman's decision because it was made in accord with my policies.

It was made and had intended to have the result of a faster resolution of the case which was the objective we had in mind. I might add that Mr. Newman did that only after consulting with the appropriate people in region IV who agreed completely and had no reservations whatsoever about the transfer of that responsibility.

Mr. FINNEGAN. Those people in region IV are Mr. Easterday, Mr. Grimes?

Mr. SMITH. Mr. Grimes and Mr. Easterday were the people involved at that time.

Mr. FINNEGAN. Are they here today?

Mr. SMITH. I would be glad to ask Mr. Grimes or Mr. Easterday whether my understanding is correct. Mr. Easterday indicates that my understanding is correct and Mr. Grimes states that my understanding is correct.

Mr. FINNEGAN. I have a memorandum to you from Mr. Allen dated September 1, 1976, which indicates—recites some of this and indicates that in that memorandum that there were really problems of dealing with the other regions and that not only—eventually the *Keystone* case but the other cases were finally turned over to other regions rather than allowing region IV to take over? Is that correct?

Mr. SMITH. That is correct, at a later date, the so-called *Saber* case was turned over to region VI because the principal effort, most of the work to be done related to firms located in region VI.

The determination was made that region VI had the people capable of pursuing that case. As a specific example, when *Saber* was finally wrapped up, region VI worked in conjunction with region V people out of Chicago to pursue some of the aspects of the *Saber* case that related to transactions in the area covered by region V. The case was finally resolved in that manner.

Mr. FINNEGAN. Mr. Smith, the memorandum indicates—let me quote from Mr. Allen. It says:

However, the following problems arose which ultimately resulted in Region IV being instructed to forward all files, et cetera, to the national office on November 17, 1975.

That November 17 is before Mr. Newman issued his memorandum on November 28, I believe, 1975, and it was within only a few days after you had issued your instructions to the regions.

The memorandum goes on to say that:

Regional officials refused to furnish copies of work papers evolved in other regions unless specific requests were issued from the national office.

One region insisted that personnel assigned to that region must be present at any interviews conducted by Region IV on national office cases. Employees of one region have advised that they were instructed to withhold certain information from Region IV employees, conducting investigation in national office cases.

Area managers and regional directors of compliance complained regarding expenditure of travel funds and man hours necessitated by detail of personnel to national office cases under the direction of Region IV personnel.

It appeared that in some instances, local FEA managers considered that such man power details were to Region IV rather than to the national office.

Competing national office priorities, producer audits, utilities investigations, et cetera, in many instances made it difficult, if not impossible for various regions and/or areas offices to comply with priorities established by the national office, for cases being investigated by Region IV personnel.

The absence of a specific delegation of authority with regard to national office cases assigned to Region IV personnel made it virtually impossible to resolve differences between Region IV program managers and auditors and investigators detailed to the case from other regions with regard to procedural matters.

Was not the memorandum that you had issued on November 3 intended to be that delegation of authority and was that not an instruction to the regional administrators to coordinate and cooperate?

Mr. SMITH. It was and in that memorandum also I charged Mr. Newman with the responsibility for resolving any outstanding problems. The kinds of things cited in Mr. Allen's memorandum are again certainly not laudable but they are understandable.

Mr. FINNEGAN. Did they occur, as far as you know? You do not deny their occurrence?

Mr. SMITH. I have no personal knowledge of whether those things occurred. I have the utmost confidence in Mr. Allen and have no reason for doubting that they did occur.

Mr. DINGELL. He did submit these in a memorandum, did he not?

Mr. SMITH. That is right, Mr. Chairman.

Mr. DINGELL. Were the contents of this memorandum inquired into by anyone?

Mr. SMITH. No, sir, I did not feel it necessary. I do not have any personal knowledge; I did not see any—I had complete confidence in Mr. Allen. I did not need to waste any time investigating that because I am sure that certainly in substance they were accurate, otherwise then he would not have reported them to me.

Mr. DINGELL. Did you make any inquiry into them at all?

Mr. SMITH. Yes, sir, I did make an inquiry into them.

Mr. DINGELL. What inquiry did you make?

Mr. SMITH. I asked Mr. Newman what action was being taken because I had charged him with the responsibility of coordinating the interregional aspects of this effort.

Mr. DINGELL. What did he say?

Mr. SMITH. What I found out was that Mr. Newman had made the determination that the capability existed in region VI, that most of the work was to be done in region VI. Again, his decision was that the most expeditious way to pursue the resolution of these cases was to transfer the responsibility for them from region IV to region VI. I supported that decision.

Mr. DINGELL. Did you view these charges as being serious?

Mr. SMITH. Yes, sir, I reviewed them as being serious enough to take some action.

Mr. DINGELL. And your action was to transfer the control——

Mr. SMITH. To approve Mr. Newman's transfer of the responsibility for the pursuit of the case to region VI, yes, sir. I also——

Mr. DINGELL. Did not these matters strike you as being of sufficient gravity that you should impose some supplementary sanctions on the recalcitrant personnel involved?

Mr. SMITH. No, sir, they did not.

Mr. DINGELL. Why not?

Mr. SMITH. Because, as outlined in Mr. Allen's memorandum, and in my judgment accurately, the reasons for the reluctance of the people involved to drop everything else and respond to the request from the region IV people, were that they had insufficient people to accomplish what they needed to do.

They had an interest in the pursuit of the case, for example the requirement that a member of region VI be present whenever anybody from region IV interviewed one of the people.

I thought initially that it was unreasonable and so I asked Mr. Fowler why he wanted to do that. Mr. Fowler told me that he had other aspects of other enforcement actions ongoing with respect to that particular company and therefore he needed to be aware of whatever statements were made or whatever records were examined with respect to that investigation.

In English, Mr. Chairman—

Mr. DINGELL. He also refused to furnish copies of work papers to the other region, did he not, unless specific requests were issued from the national office? Did he refuse that; did you inquire into that? Is that true?

Mr. SMITH. Let me find out. Did you refuse to furnish work papers without a directive from the national office? Mr. Allen is here.

Mr. DINGELL. Let me ask you, did he or did he not? You are supposed to have gone into this matter.

Mr. SMITH. I went into the matter of getting the cases closed, Mr. Chairman. I did not go on a witch hunt to hang somebody.

Mr. DINGELL. I am not talking about witch hunts. Here you have one region investigating something; they asked for work papers. They advise you by memorandum that they could not get the work papers without specific approval of the national office. Is that true or not? Did they do it or not do it?

Mr. SMITH. What I inquired into was the status of the work on the case. I was not—when I was informed that the responsibility had been transferred to region VI, what I had learned was that my initial approach which was to designate region IV as being responsible and have them run around using other people's resources turned out to be creating more management problems than the alternative solution of transferring the responsibility to the region that had most of the work to do.

I did not conduct an extensive investigation into trying to find out who had or had not cooperated and delve into the history of the operation. I was much more interested in getting the case resolved in the most expeditious manner.

Mr. DINGELL. You already advised us that you assigned this responsibility to region IV because they had the best investigator that you had?

Mr. SMITH. Because at the meeting on October 25, it was represented to me that region IV knew most about it; had the capability to pursue it effectively and the other regions did not have the capability to pursue it effectively and in the development of the cases, it turned out that we learned more than we knew on October 25 and that I knew on November 3 when I signed the memorandum as an outgrowth of that meeting about how to most effectively pursue those cases, Mr. Chairman.

Mr. DINGELL. You have a statement from one of your regional directors in Region IV; he says the regional directors refused to furnish copies of work papers developed in other regions unless specific requests were issued from the national office. Did you inquire into that?

Mr. SMITH. Yes, sir, I did.

Mr. DINGELL. Was it true or false?

Mr. SMITH. I was informed that the regional administrator against whom the allegation was made by him that he was unaware of any

case, the regional officials. Now the person who wrote the memorandum is here, Mr. Grimes.

I think we ought to let Mr. Grimes say what he was talking about.

Mr. DINGELL. Maybe we should hear from Mr. Grimes. We should swear both of these regional officials. We may want to swear some of these other folks in this room before we are done with this matter.

Does it strike you that is good cooperation from one region to another?

Mr. SMITH. That could well be, depending on the nature of the work papers involved. It could well be a perfectly reasonable request.

Mr. DINGELL. That in order for one region to get the work papers from another—

Mr. SMITH. Before transferring an entire file to another region and going to the trouble of duplicating the file or transferring the file and not having it available, that the people involved wanted to be sure that those files were relevant to the case involved. It could well be a reasonable request.

Mr. DINGELL. It does not say to transfer the entire file; it just simply says that region officials refused to furnish work papers developed in another region. Let me read that to you so that you have it clear.

Mr. SMITH. I have it clear.

Mr. DINGELL. I am asking you one question and you are giving me a totally different answer. You are answering to a totally different question. It may be that your answer is a perfectly good one but it is not to the question I am asking.

The memorandum says as follows: "Regional officials refused to furnish copies of work papers developed in another region unless specific requests were issued from the national office." Is that good administration and is that good cooperation?

Mr. SMITH. No, sir, that is not good cooperation.

Mr. DINGELL. It would be appreciated, Mr. Smith, if you would answer the question that is asked, and not give us an answer to questions other than those which are asked. I do not regard that as cooperation.

Mr. SMITH. I will do that to the best of my ability, Mr. Chairman.

Mr. DINGELL. I trust you will do a little better then. Mr. Finnegan?

Mr. FINNEGAN. Mr. Smith, subsequent to the actions in November of 1975 when the fact that the cases were redistributed among the various regions, the real issue of having adequate criminal investigators on the FEA staff had still not been resolved, is that not correct?

Mr. SMITH. The issue of how many and what kind of investigators we need has still not been resolved, that is right. Now may I elaborate and try to be responsive to the chairman's direction?

The issue runs to what kind of people are required to conduct investigations of this sort and FEA has onboard some—a large number of investigators, series 1810, that has few criminal investigators, three, I think, 1811, but it has onboard as of the 28th of February, 147 people classified as investigators, GS-1810's.

The Civil Service description of what these skills, qualifications, and knowledge these people have parallel closely the description and knowledge that GS series 1811 criminal investigators have. There is a substantial degree of overlap among those.

Further, since the basic allegation in each of these cases is a willful violation of FEA's regulations, a requirement exists that to be most effective, the investigator involved must have a thorough working knowledge of FEA's regulations.

The question at issue is what kinds of people are required to effectively conduct these investigations. There is a view, it is shared by Mr. Grimes who is a very competent criminal investigator, that only trained criminal investigators, GS-1811's are qualified to pursue these kinds of investigations effectively.

That view is not shared by a number of others familiar with the program and I have not made up my mind yet which view is correct because first, the agency's own internal procedure for managing these investigations have clearly not been what they should be.

Those procedures were installed finally in November of 1976. Second, the agency has not used the resources available to it to the extent that it should have in the pursuit of these investigations and it is not immediately clear to me that the agency needs to replace a number of existing people with GS-1811's, criminal investigators, in order to effectively pursue these.

Instead, the approach taken by the agency is to get trained criminal investigators, at least two in each region and two in the national office, who know how to give direction in these particular cases.

To the investigators, we do have available on our staff, the 1810's and to certain auditors on our staff and who know how to direct and manage these investigations and then run them. If it develops that approach is not sufficient to pursue these cases effectively, then I am perfectly willing to reconsider the issue of whether we need more GS-1811's.

I would point out that given the manpower restrictions under which this program has been operating and which were cited specifically by Mr. Canfield, compared to the amount of work that we have to be done, that to date my approach has been if we can use people with dual capability, that is if we can use people who can also conduct audits and reviews of the companies with respect to FEA regulations themselves and when necessary, divert them to work criminal investigations under the guidance of some trained people, and when there are not any criminal investigations to work put them back to work in auditing, we will have a more balanced and flexible compliance force and will be able to do more with what we have available.

If that turns out to be incorrect, then I am ready to have so given it an honest try and we need more criminal investigators who cannot by and large be used to do the normal audit work with respect to FEA regulations.

Mr. DINGELL. Mr. Smith, let me try to summarize your reasons that the subcommittee is manifesting substantial dissatisfaction. FEA has been in existence how long?

Mr. SMITH. A little over 3 years, Mr. Chairman.

Mr. DINGELL. How many criminal cases have you brought and successfully completed? I think the number is eight, is it not?

Mr. SMITH. A very small number, Mr. Chairman.

Mr. DINGELL. I think it is eight; am I correct on that? Eight was in the last year?

Mr. SMITH. You mean to the Justice Department?

Mr. DINGELL. How many have been referred to the Justice Department?

Mr. SMITH. Seventy-three, I am informed.

Mr. DINGELL. A total of 73 in 3 years?

Mr. SMITH. Yes, sir.

Mr. DINGELL. I think we would like to have for the record a statement both from you and also from the Justice Department of the status of these cases.

Mr. SMITH. I can provide you the detailed numbers, Mr. Chairman. Mr. Rose informs me it is 73.

Mr. S. D. Rose (Justice) summarized the 73 cases received by DOJ as follows:

Description:	Number
Civil actions.....	40
Criminal finds.....	15
Pending with U.S. attorney.....	9
Returned to FEA.....	2
No prosecution.....	6
Principal deceased.....	1
Total	73

Mr. DINGELL. On the civil side, on overcharges of about \$500 million, you have accepted compromises of about \$3,500,000, less than 1 percent of the overcharges, according to GAO. Do you challenge that statement? Is that a true statement?

Mr. SMITH. Yes, sir, I would like to challenge that because it involves a misunderstanding, with respect to the word "overcharges."

Of the \$500 million, the appropriate word is "violations" not "overcharges"; because of that amount, \$322 million has been adjustments to banks which means that companies have, and these have represented potential overcharges to consumers that were never passed through in product prices.

In effect, a company has said, based on its application of the regulations, we now have the right to charge consumers this much and we have said, no you do not have a right but we have not done it yet, and we have said, no, you do not have the right to charge consumers that much and have required them to reduce their banks by that amount, actually \$173 million of the total represents actual refunds and rollbacks of prices that have actually be charged to consumers.

Mr. DINGELL. \$168,249,000 is the figure I have before me?

Mr. SMITH. Does the time you have here end on December 31?

Mr. DINGELL. December 30, 1976.

Mr. SMITH. As I indicated, Mr. Chairman, my rundown goes from July 1, 1974 through February 28, 1977, so it includes refunds that have been paid since December 30 but the \$168 million that you have as of December 30 is correct as of that time.

Mr. DINGELL. I get here then that you would substitute in GAO's figure for \$500 million, the figure \$320 million?

Mr. SMITH. No, sir, I would substitute the figure \$173 million of rollbacks, \$173,700,000.

Mr. DINGELL. Let us take your figure. The reason that you would make that transfer is because you have essentially engaged in a transfer to the banks on this and the transfer from the banks on this matter, is that right?

Mr. SMITH. Of the total of approximately \$500 million, I believe that is right, if I understand your comment correctly.

Mr. DINGELL. In other words, you have taken these moneys from the banks?

Mr. SMITH. That is right.

Mr. DINGELL. I may be unsophisticated or something, but the banks are not ever drawn down by the industry in any event, are they?

Mr. SMITH. That is precisely the point.

Mr. DINGELL. So what you are doing is, instead of going after them and collecting a simple penalty, you are reducing the banks that these people are never probably going to draw on anyway?

Mr. SMITH. No, sir. As I have testified on a number of occasions, the appropriate remedy in each compliance action is a function of then what the particular transaction has resulted in.

In no case, in any compliance action, have we allowed a company to reduce its bank to account for an overcharge that has actually occurred on the part of the consumers.

The \$322 million figure refers to the fact that companies primarily, but not exclusively definers, have, in doing their calculations and applying the regulations, said we now have the authority on our books, we now have banks in the amount of so much, which we can use to support increased prices in the future.

If, as a result of the compliance action, it develops that the companies have not appropriately applied the regulations, by that, the consumer has not in fact been overcharged, then the appropriate action is to reduce those banks, and the appropriate action is not to make the company write a check for a cash refund if in fact it has not collected more from the consumers than it was authorized to do under the regulation.

These amounts prevent future collections from consumers, if you will.

Mr. DINGELL. Maybe I ought to direct this question to Mr. O'Leary. Is this good policy, Mr. O'Leary? I have profound reservations about this.

Mr. O'LEARY. I would say, on the basis of what I have heard about this, I have to tell you that my experience is not deep in this area, that here is an analog that I thought we ought to think about.

Let us say the bank credits to your account a very large amount of money by error and it corrects its error. It is forced by an audit to correct its error. I really do not think that this in the real world has changed anything.

I did not get to draw on the account.

Mr. DINGELL. Let us take it a little differently. I sort of see it this way. The bank subtracts a very large amount from the accounts of its depositors—

Mr. O'LEARY. And is made to put them back.

Mr. DINGELL. And is made to put them back, the question is, should they pay a penalty for that, even though there is no clear showing that the depositors were hurt? I am not sure the depositors were not hurt; equally, I am not satisfied that some of them were not hurt.

Mr. O'LEARY. I think in these cases, when we are dealing with the bank, that we can say, Mr. Chairman, that the depositors were not hurt pretty categorically.

Mr. SMITH. In every case——

Mr. DINGELL. I am not comfortable on that statement as you are. I am not sure the depositors would share your comfort, Mr. O'Leary.

Mr. O'LEARY. Let us make sure we understand. In this case, the other depositors are the consumers who otherwise would have had to pay versus the costs were never brought through the consumer did not have to pay.

That is to say, the depositor never really had to give up anything. I think what we have here is a system where there was simply no victim, if indeed there was a crime.

Mr. DINGELL. The hard fact of the matter remains this is a question which I want you to know, gentlemen, remains open. The hard fact of the matter is that using your figure of \$173 million, you accepted compromises of \$3,500,000, which is still on the order of 2 percent.

Mr. SMITH. Yes, sir.

Mr. DINGELL. On civil penalties but interestingly enough, and I am not sure how the figures break down at the end of the GAO's comments at the end of the paragraph, but on the ratio with regard to the major refiners, they paid \$900,000 on \$355 million on overcharges, or less than three-tenths of a percent.

On the other hand, \$19 million in overcharges were levied—rather, \$19 million in overcharges, independent oil producers paid \$723,000 in compromises or about 3.8 percent. It appears that the independent producers are receiving a great deal more attention and a great deal less kindly treatment from FEA. I am not sure that this is the way that I would proceed.

Mr. SMITH. If we break those same two figures between bank adjustments and refunds and rollbacks, actual overcharges to consumers that were made to be refunded, major refiners accounted for \$61 million in refunds and rollbacks.

The remaining \$294 million were adjustments to banks. On the \$61 million of actual refunds and rollbacks, we have collected \$900,000 of penalties. Therefore, that amounts to something a little over 15 percent.

Of that 15 percent, we have collected penalties of 15 percent on the actual refunds and rollbacks of major refiners—excuse me, I am sorry, 1.5 percent.

Mr. DINGELL. That is not measurably larger. What about the independent refiners, how did their figure come?

Mr. SMITH. The small refiners would be \$2,900,000 and \$385 million.

Mr. DINGELL. What about the independent crude oil producers?

Mr. SMITH. \$19 million and \$723,000, Mr. Chairman.

Mr. DINGELL. So the GAO is correct. Mr. Canfield, did you want to make a comment on this colloquy?

Mr. CANFIELD. Yes. I think my staff will want to make comments on it as to how we had derived the ratios and the relevance of the banks. Mr. Peach?

Mr. PEACH. I think our comments in the testimony merely attempted to relate the total amount of the refunds, rollbacks, and bank adjustments to the types of compromises that were being made in penalties. Also, we show some of the differences that seem to be occurring in different categories such as producers, refiners, et cetera, that are involved.

This is an area, I might mention, that we have not been into in detail for some time but earlier, going back some 18 months ago or so, we looked at some of these questions and areas in detail. At that time we found inequities in the way that penalties were being compromised due to lack of good guidelines and the differences in the way penalties were being assessed and compromised in different regions of FEA.

Mr. SMITH. I am not suggesting that our penalty provisions are what they ought to be. Mr. Canfield's testimony about our inability to assess penalties and our requirement to go through the Federal District Court to get them is, I think, a very real part of what is going on here.

Mr. DINGELL. This is the way you interpret them. I am not satisfied that I interpret them that way and I do not think he does.

Mr. SMITH. That is the way the General Counsel has interpreted our legislation and I am bound in the agency by the General Counsel's interpretation. If that is wrong, I would be delighted, quite frankly. I would like to have the authority to assess civil penalties directly.

Mr. DINGELL. Do you have an opinion directly from General Counsel on this point, a written opinion?

Mr. SMITH. I am not sure I have a written opinion. I sure can get one. I have a directive from the General Counsel that we do not have that authority.

Mr. DINGELL. I would assume that on a matter of this gravity, that you would have a written opinion from the General Counsel's office. The influence of General Counsel appears to be quite pervasive at FEA but does he give you this information by some kind of osmotic process or does he give you a written opinion; how does he function?

Mr. SMITH. He functions by telling me what I can and cannot do and the issue came up very early in my tenure. I inquired as to whether we had the authority to assess civil penalties and I was told that we did not.

I protested that we ought to have and tried to get that authority written into the suggested extension of the FEA Act when it was extended in December of 1974 and was unsuccessful in doing so.

Mr. DINGELL. To whom did you make that recommendation or request?

Mr. SMITH. To the Office of General Counsel.

Mr. DINGELL. I am unaware of any request for that kind of authority that ever came up here.

Mr. SMITH. I am bound by the decisions made in the agency by my superiors. I can either support those decisions or if I think they are bad enough, I can quit. I would like to deal with them.

Mr. DINGELL. Let me try to get at the way this agency of yours functions now. You requested it of the General Counsel, you requested the authority to get that kind of a change in your responsibilities and powers as Deputy Administrator from the General Counsel?

Mr. SMITH. No, sir, I was not the Deputy Administrator then, I was Assistant Administrator for Regulatory Programs.

Mr. DINGELL. You requested that authority, however, from General Counsel. You told us you requested it from General Counsel.

Mr. SMITH. In the preparation of the extension, the language of the act extending the FEA, that was enacted in December of 1974.

Mr. DINGELL. Did he say no?

Mr. SMITH. I requested two things. I requested that authority and requested the designation of FEA compliance officers as Federal officers so that if somebody threw them physically out of place when they went to audit people, they could go to the Federal authorities. Right now, they have to file a civil suit or go to the local authorities to get support.

Mr. DINGELL. Very specifically, who in the General Counsel's office did you request this from?

Mr. SMITH. Mr. Montgomery was, at that time, the General Counsel.

Mr. DINGELL. You requested it from Mr. Montgomery or from somebody else? From whom did you request it, from Mr. Montgomery or somebody else?

Mr. SMITH. In a meeting of the senior FEA officials involved in this——

Mr. DINGELL. Is it too hard for you to just tell who it was you requested it from? I did not ask about a meeting; I said from whom did you request it? Maybe I am not being clear.

Mr. SMITH. No, sir. To my recollection, I do not know whether Mr. Montgomery personally was present or Mr. Fygi who handled legislative matters in the meeting where this issue came up. I do know that the Deputy Administrator at the time, and that the Administrator considered this issue and decided not to do it.

Mr. DINGELL. Maybe you can eliminate my frustration by just telling me who it was that you requested this of?

Mr. SMITH. I do not know, Mr. Chairman. May I describe the circumstances?

Mr. DINGELL. Who was it that told you no?

Mr. SMITH. May I describe the circumstances?

Mr. DINGELL. Just answer the question. We are spending a great deal of Mr. O'Leary's time and my time and everybody else's while I am trying to get a simple answer to a question. If I am unclear, inform me. If I am not, just answer my question.

Who was it that told you no?

Mr. SMITH. Who told me no was Mr. Sawhill. Mr. Sawhill told me no, the Administrator.

Mr. DINGELL. He was not the General Counsel.

Mr. SMITH. He was the Administrator. If you would let me describe how the process worked, I would be glad to answer your question.

Mr. DINGELL. After you have answered my question, my curiosity might be sufficiently peaked that I would want a description of the process but right now, I would like to know—Mr. Sawhill was not the General Counsel was he?

Mr. SMITH. No, sir, he was not.

Mr. DINGELL. Why did Mr. Sawhill tell you no?

Mr. SMITH. Because he was the Administrator who made the final decisions on what the legislative request for extension would and would not contain.

Mr. DINGELL. Was it the practice of the agency whereby the people involved made the request to General Counsel and then in some unique fashion the Administrator would respond? I am trying to figure out where the General Counsel was in the chain of command here. It strikes me that you ask him and you get your answers from the Administrator.

Mr. SMITH. When the issue of developing—the recommended legislation for the extension of the FEA Act was raised, it was raised in a staff meeting, a daily staff meeting of the senior FEA officials at which I was present.

The General Counsel had the lead responsibility in the agency because he is responsible for coordinating the preparation of legislation and coordinating with the OMB.

The senior officials of the agency were there present, a discussion ensued about what provisions should or should not be included in that legislation. At that meeting, I asked for two changes in the legislation. One was for the authority to assess civil penalties directly; and two, for the designation of FEA's compliance officers as Federal officers to increase their effectiveness because we had had some instances where they had been evicted from a service station that tried to go to the local sheriff and he was not very sympathetic.

At that—

Mr. DINGELL. Did OMB participate in this?

Mr. SMITH. No, sir they did not. This was a meeting of the senior officials at FEA. At that meeting, that and a number of other recommendations from a number of other senior staff people were considered by the people there present and as an outgrowth of that, neither of those provisions, to my recollection, was included in the legislation.

I know a provision with respect to civil penalties was not included.

Mr. DINGELL. Did OMB participate in that judgment or decision?

Mr. SMITH. The ultimate decision?

Mr. DINGELL. Yes.

Mr. SMITH. I do not know. To my knowledge, it was not presented to OMB.

Mr. DINGELL. With all due respect, I am a little like the fellow sitting here who asked what time it was and he got a description of how you made a clock. I am very interested in the making of clocks but I really want to know what time it is.

I would appreciate it if you would cooperate with me by giving me short answers instead of these long-drawn-out answers which take us all around Robin Hood's barn and contribute very little to the record but to consume a great deal of everybody's time here.

I am going to recognize Mr. Finnegan again.

Mr. FINNEGAN. The short answer, I gather, from what you have said, Mr. Smith, is that a policy decision was made at FEA not to get authority to assess civil penalties but to continue the compromise approach that it is now following; is that correct?

Mr. SMITH. That is correct.

Mr. FINNEGAN. And that in fact no written legal opinion on the issue of whether the agency can or cannot assess civil penalties has ever been made, is that right?

Mr. SMITH. I do not know whether any such written legal opinion exists. I do know that the General Counsel has concurred on the answer in response to the chairman's request which says the FEA does not now consider that it has such authority.

Mr. FINNEGAN. When you say they have concurred today in that response, what legal research, if any, was done by the General Counsel on the position?

Mr. SMITH. I do not know, Mr. Finnegan.

Mr. FINNEGAN. Did they ever write an opinion on the subject to you?

Mr. SMITH. They did not write an opinion to me. I do not demand opinions from the General Counsel.

Mr. FINNEGAN. Going back a bit to the question that was asked a few minutes ago about the number of criminal cases, just for the record, the summary of FEA cases referred to the Department of Justice between March 1976 through February 1977 was provided to us by FEA and indicates that in that period there were two cases referred to the Department of Justice.

There were eight criminal cases submitted to that agency. I am not sure where the figure 73 comes from.

Mr. SMITH. Mr. Rose informs me that he is referring to all kinds of cases that may have been referred in any way, shape, or form on FEA noncompliance cases.

Mr. FINNEGAN. That could be more than just criminal cases; is that correct?

Mr. SMITH. The correct figure is the one supplied in the material in answer to your question.

Mr. FINNEGAN. So it is not 73 criminal cases?

Mr. SMITH. That is right.

Mr. FINNEGAN. I wanted to be sure the record is straight on that point.

Mr. DINGELL. Can you tell us what the others were over and above the eight criminal cases?

Mr. SMITH. I can provide that for the record; I do not know right now.

Mr. DINGELL. Please.

Mr. SMITH. A lot of them will be requests for subpoenas and things of this sort, I am sure.

Mr. FINNEGAN. Mr. Rose seems to be shaking his head.

Mr. SMITH. I will provide that for the record. [See p. 96.]

Mr. FINNEGAN. Going back now to our question of the criminal investigators and the daisy chain cases as we continue, in the same memorandum that Mr. Allen wrote to you in September of last year, he stated that "almost exactly a year ago, our special investigator, at the request of FEA"—which I assume is the national office?

Mr. SMITH. That is right.

Mr. FINNEGAN. "Was detailed to Washington to formulate a plan for the establishment of a national office of special investigations. This detail resulted in the total proposal, including proposed training at the Federal Law Enforcement Training School, adequate credentials, current credentials that presented an historical impediment to region IV's technical, administrative and procedural policies, investigative position descriptions, staffing levels, report preparation, review and referral procedures and specific legal administrative requirements and restitutions.

"Several months later, the compliance division manual was issued which included the now detailed language regarding special investigators.

"To the best of our knowledge, no organizational element of FEA with the exception of this region, has ever attempted to implement the former requirements of the compliance manual in this respect."

What is your response to that? You have gone through this process of establishing a criminal organization or criminal investigative unit, nobody complies with it.

Mr. SMITH. The memorandum says, "to the best of Mr. Allen's knowledge, no other regional memorandum had complied with it.

Mr. FINNEGAN. Can you supply information?

Mr. SMITH. I do not believe that memorandum is correct, others had complied with it, to a different extent and in a different manner than Mr. Allen had.

Mr. FINNEGAN. Can you supply for the record what that compliance was prior to the date by region?

Mr. SMITH. Right.

[The following information was received for the record:]

The tabulation below presents a profile of our region-by-region inventory of Special Investigations having a criminal prosecution potential and is indicative of a broad response to our initial directive on Special Investigations. The "Initial Inventory" reflects each region's assessment of what they believed were cases with criminal potential as of mid-1976. The "Adjusted Inventory" shows a late 1976 approved list of cases following National Office detailed review of each case. Our "Current Inventory" reflects an approved list of cases as of mid-April 1977:

Region	Initial Inventory	Adjusted Inventory	Current Inventory	Referral to DOJ
I -----	3	1	4	1
II -----	0	0	0	0
III -----	9	7	7	0
IV -----	26	3	16	1
V -----	2	2	3	0
VI -----	8	6	5	1
VII -----	2	0	0	0
VIII -----	16	2	2	2
IX -----	10	6	7	3
X -----	0	1	1	0
Total -----	76	28	45	8

Mr. FINNEGAN. Subsequent to that, there were a number of memoranda between the regional offices establishing investigative or compliance procedures for these criminal investigations, is that not correct?

Mr. SMITH. That is correct.

Mr. FINNEGAN. Those recommendations, Mr. Allen and also the General Counsel, supported the concept of a special investigation unit as well as special investigators of the type of which Mr. Grimes is now classified as in various regions, is that not correct?

Mr. SMITH. That is correct.

Mr. FINNEGAN. You did not support that move?

Mr. SMITH. That is correct.

Mr. FINNEGAN. Again, would you explain for the record why you did not support that view?

Mr. SMITH. As I outlined earlier, I did not support that because I did not deem it necessary. It had not been demonstrated to my satisfaction that the Agency had used all of the resources available to it in the most effective manner.

The memoranda, to which you referred, as you are aware, I think, Mr. Finnegan, were all prepared in conjunction with an inquiry into

this whole question of the management of special investigations that resulted in the establishment in November of the special investigation unit in the national office and the directive to each of the regions to establish two special investigators to supervise and participate in special investigations in the regional offices.

There was a divergence of views among the people involved. My position was that we had not yet used the resources available to the Agency most effectively. I wanted the most balanced compliance staff that I could get, given what I deemed severe staff limitations under which we were operating.

Not until it was proven to me that we had used people who could do audit and other investigative work, most effectively on this function, and that was not enough, was I ready to support carving out a number of those positions and dedicating them exclusively to criminal investigators.

Mr. O'LEARY. Mr. Chairman, I have a commitment to appear before a Senate committee at 1 p.m.

Mr. DINGELL. This is exactly the thing that is bothering the Chair right now. If we can suspend for a minute here while I can discuss these matters with counsel, we will try to figure out how we treat you respectfully on your time.

I think the way we should handle this, and I think this would meet the approval of everybody, the Chair is going to request counsel to suspend this line of questioning with Mr. Smith. I think there is about one question for you, Mr. O'Leary, and maybe one or two for Mr. Canfield and some for other witnesses, then we will ask Mr. Smith to come back to assist us.

I am troubled the way we are consuming a great deal of your time and it is not my goal to keep you up here talking to us when you have important business to attend to downtown.

Mr. O'LEARY. Mr. Chairman, that important business is in the other body; I have a commitment to appear before the Energy Committee at 1 o'clock.

Mr. DINGELL. I understand very well; we will try to respect that, as I am sure will counsel.

Mr. FINNEGAN. Mr. O'Leary, in your testimony, you discuss the fact that you had appointed a task force and that task force was going to report back to you in 60 days. One of the things it will raise is the reorganization or possible reorganization of the compliance and regulatory effort.

The problem, of course, that has come up is on the reorganization both for the new Department of Energy and the chairman and others have raised questions of how this is going to happen.

As you know, that bill probably has to be reported out before May 15 which is before this task force is going to report back to you.

Is there any way of accelerating that 60-day report?

Mr. O'LEARY. Mr. Finnegan, I do not think there is; we had the quick and dirty look at this. Your staff was debriefed on that first go round.

As a result of that quick preliminary review, we have established or are in the process of establishing a task force. It seems to me that we are asking an awful lot of them to do that task in 60 days as it is.

I really think, though I cannot commit to an acceleration of that schedule, although we will do our best, however, with regard to the

underlying point, I think that what we are going to see here is something that is not reached in level of detail and the reorganization.

The fact is that we will be taking this function intact into the new organization, at least for some period of time. I really do not think we are affecting the result by permitting the full 60-day period to run and then whatever develops from that, to develop.

So far as the formal organization of the Department of Energy is concerned, I think whatever will occur at that process would probably occur with or without the new Department of Energy.

Mr. FINNEGAN. On the task force itself, you indicated there would be FEA officials on it. Is Mr. Smith going to be on it or are there going to be others?

Mr. O'LEARY. I am not sure of that. I have asked several other people to participate, Paul Bloom, who is going to be the new Deputy Counsel and is taking the leading oar for compliance, is going to participate on it.

There are several others. One of my special assistants will be participating on it. We have not really firmed up entirely the membership of that yet.

Mr. FINNEGAN. Would it not be better to have the FEA officials merely as advisory rather than as actual participants?

Mr. O'LEARY. Their function will be largely advisory. We do not want these people steering blind.

Mr. FINNEGAN. I have no further questions of Mr. O'Leary at this point.

Mr. DINGELL. The Chair will recognize Mr. Ain for some very quick questions.

Mr. AIN. One question I have and that is, since—is the FEA studying now the effect of product decontrol on the ability of FEA to enforce their regulations and has this hampered your ability in the past to enforce compliance with the pricing schedules?

Mr. O'LEARY. Yes; from several standpoints. The most easily assessable is the fact that the budgetary assumption of product decontrol has haunted the agency for the year or more.

Mr. AIN. I understand that. What I am talking about is you do not control the product downstream, how can you then lower those prices or make the people who have overcharged eat some of that overcharge subsequently?

There is no ability to do it. How would you then penalize anyone?

Mr. O'LEARY. We are really dealing in two timeframes. If someone was guilty of an improper or criminal action in the past, regardless of how the regulatory setup is at a prospective moment in time, you deal with past errors and you take whatever regulatory steps for redress are necessary.

In short, if someone had violated a regulation that was applicable to a priority, I am sorry, to a product in 1976, and in 1977 those rules no longer apply to that product, the probability would still remain.

In fact, they would have been guilty of a violation; of course the other side of your question, Mr. Ain, is simply this. When you relinquish control over a product or a series of products, you are indeed perspectively reducing the regulatory writ.

Mr. AIN. Thank you, Mr. O'Leary.

Mr. DINGELL. Mr. O'Leary, I think out of kindness and mercy we should excuse you and we thank you.

Mr. O'LEARY. Thank you very much, Mr. Chairman.

Mr. DINGELL. The Chair recognizes Mr. Ain for further questions.

Mr. AIN. With respect to the decontrol philosophy, I would like to ask the representative from OMB, when you assess the budget request of the Federal Energy Administration, how do you factor in a result that all products except propane will be decontrolled by the end of 1978?

Mr. CUTLER. I am not sure I understand your question. If you are referring to the statement that as I recall was in the Chairman's opening statement—

Mr. AIN. What I am referring to is that on Friday when we went over the budget request of the FEA, they said that this request was based upon the premise that all products would be decontrolled except propane by the end of 1978.

I am saying that you have responsibility for evaluating their money, either cutting it back or giving them more, as the case might be. You have to take into account what the regulatory posture of the agency will be at the end of 1978.

Mr. CUTLER. I am trying to correct what I think is a misimpression.

Mr. AIN. All right.

Mr. CUTLER. If you are suggesting that the current strategy imposed—first of all, I do not want to use those words, but if you are suggesting that the current strategy represented by the budget of FEA were the present compliance strategy and is based on an assumption of decontrol, I think you are confusing the Ford budget for fiscal 1978 with the revised budget that was submitted by President Carter.

The revised budget submitted by President Carter provided for a substantial number of additional positions because indeed, there was to be no assumption of decontrol.

Mr. AIN. How much is that budget increased between Ford and Carter on this point?

Mr. CUTLER. It is increased by—in terms of the number of positions, compliance positions, from 1,326—1977 base—let me phrase it another way.

In the 1978 budget, the January budget, the Ford compliance provides for 1,221 positions; this is in the data which I have available.

Mr. AIN. Yes.

Mr. CUTLER. The February budget provides for 1,384 positions.

Mr. AIN. How many did FEA request?

Mr. CUTLER. At which time?

Mr. AIN. In February?

Mr. CUTLER. Yes.

Mr. AIN. In February, let me trace what happened. FEA was given an allowance for the Carter revised budget. The allowance which represented the beginning of the discussion process between FEA and OMB provided for, as I understand and I was not there at the time, 163 additional positions to maintain the audit program through fiscal 1978.

The January budget, the Ford budget, had assumed that the program would be phased out in 1978. There was a conscious decision made

at the time that that allowance was provided, that we did not want the audit program to presume effectively the results of the decisions made with respect to the energy policy which was being developed.

So the allowance was given to FEA for the additional 163 positions. FEA then came back and made a formal request for 286 positions on top of that for 1977 and 1978 to expand on that coverage.

Sixty-eight of those, as I understand it, would have been for support. This request of FEA that came back to OMB was based on a new or different audit strategy, the so-called 80-20 strategy.

Following FEA's presentation of that request, FEA and OMB entered into a series of discussions similar to discussions they are always undertaking at the time a budget is prepared and the FEA proposal ultimately, the OMB analysis, of it, showed and FEA ultimately agreed, that there would have been insufficient payout from the relatively large increase in staffing and the decision was made to go with the 163 additional positions rather than the 80-20 strategy.

That is the audit strategy reflected currently in the budget instead of an audit strategy based on the 80-20 approach. The budget was then submitted by the President to the Congress and appropriations, as I understand it, have been made on the basis of that budget request.

Mr. AIN. So you say FEA concurred in that cutdown to 163?

Mr. CUTLER. Yes and I think Mr. O'Leary's statement this morning made that point at least two or three times.

Mr. AIN. That is based upon how many products being under control at the end of 1978?

Mr. CUTLER. That is based on an assumed change in the law. That is based instead on continuing the audit approach that has been followed heretofore and that is not based on any decontrol; there is no assumption of decontrol that underlies that strategy.

Mr. AIN. Let me ask you one other series of brief questions. The Congress can choose to either mandate certain things to be done by an agency or it can provide certain discretion in asking an agency to perform certain acts, such as in section 11 of the Environmental Energy Supply and Environmental Coordination Act of 1974.

It required the agency to collect certain information and gave them discretion to collect certain other information with a strong intent on Congress part that they do it but not provide an inflexible structure which they had to follow.

I am curious as to how OMB evaluates those discretionary programs that the Congress feels very concerned about and sometimes when we do not say "shall," in the law, OMB says well, you really do not have to.

Mr. CUTLER. Let me, if I may, depersonalize it a little bit and suggest that it is not, the budget decisions that are made, OMB decisions. The budget decisions that are made are the President's decisions.

The President submits, as you know, a budget in each fiscal year. That budget essentially attempts to provide funds to do not only those activities which are mandated to executive agencies but also some functions that are, as you describe, discretionary functions.

Now, there is, as you know, language in law after law that provides or permits, studies that permit the collection of information that permits reporting, permits a vast range of discretionary activities to be undertaken by the executive branch.

To fund all of those activities would take, I think we would agree, much more money than is available in any one current fiscal year. The President, in submitting his budget to the Congress in any fiscal year, makes certain decisions with respect to what are the most important discretionary activities to be undertaken.

That, I think, is the best description of how that process works. I think that OMB's role in that process is a role of operating a staff to the President and to provide to the President as much information and as many options as are available so that he can make his decisions.

Mr. AIN. I would like to ask you, Mr. Rose, one question. In describing the compliance and enforcement program, it has been pointed out that I believe 73 cases were referred to you since what date?

Mr. ROSE. 1973.

Mr. AIN. I would like you to evaluate for the committee the preparation that was given to you in going forward in these cases by FEA and how they related to either the success or lack of success in carrying those cases forward.

Mr. ROSE. Customarily we receive a file from the compliance section of the General Counsel's Office which, to my knowledge, has been quite adequate for us to perform an evaluation process.

There is always some additional information necessary. For example, it is necessary to check the witness to see whether he will actually say what is reported. This type of evaluation is carried on in the Department first.

Then after consultation with the U.S. attorney or one of his assistants, the whole matter is sent out to the assistant or we may procure additional information from FEA.

The whole thing follows a rather orderly procedure. To answer your question, to date, the information has been quite adequate, I think. Of the 73, only 6 were returned to FEA for considerably more data to be provided.

Mr. AIN. Were there any instances where there was a similar proceeding where the Government lost after it presented its evidence?

Mr. ROSE. Let me get down this little list which will sort of flesh out the problem for you. Of the total of 73 cases referred to us from FEA, 40 ultimately became civil actions in which civil penalties and restitution were provided; 15 criminal actions were completed resulting in criminal fines and in 2 cases, small prison sentences; 9 are still pending in the U.S. attorney's office.

Two, I see, were referred back to FEA for additional administrative development and six of them, we declined to prosecute. One was due to the death of the potential defendant and there is one now pending in the Department itself. We can check out these figures further.

Mr. AIN. Why would you decline to prosecute the case at that point?

Mr. ROSE. There is a variety of reasons for not prosecuting a case. One, just to take an example, some judges do not want cases like this or prosecution could well depend upon the dockets of the U.S. attorneys in that particular district court.

I cannot, at this moment, tell you why those six were declined.

Mr. AIN. That is all, Mr. Chairman.

Mr. DINGELL. The Chair recognizes Mr. Finnegan again.

Mr. FINNEGAN. Mr. Canfield, you in your testimony had indicated that you did not favor a criminal organization within FEA and that this is the responsibility of the Justice Department.

I note, and I would like you and Mr. Rose both to comment, that October 27, 1978, the General Counsel, when considering these issues of procedures or criminal investigation units within the agency, said:

FEA has the principal role in criminal investigations since a basic familiarity and understanding of the FEA regulations is required to successfully determine the nature and scope of alleged criminal activity and only FEA personnel possess this level of expertise in the FEA regulations.

The FBI's role in FEA cases is de minimis. Of course the Justice Department had indicated that FBI agents will not be available for routine FEA criminal cases but because FBI agents are familiar with the interpretative nuances and parts of FEA regulations, they do not have the necessary expertise to evaluate the merits of allegations of criminal violations of FEA regulations.

Do you agree with that statement, Mr. Rose?

Mr. ROSE. I understand that has been the opinion stated in the past. If you recall, when the allocation program first began, it was the IRS that did the investigation. This was about a year later that FEA was developing its own investigative capacity.

Then the FBI, at all times, was to be excluded from this and the wage price program investigations into those matters. I would think that if you were to go to the Criminal Division and say, we would like this matter investigated or prosecuted, they would ask you, first of all, the extent of your investigation and I think that is the way—

Mr. FINNEGAN. Traditionally it is done by the agency themselves?

Mr. ROSE. Up to a certain extent, at least to the extent that agency expertise is needed and is desired and then come to the Criminal Division for subsequent referral to a U.S. attorney, if we believe that we need this, then we recommend that. I think that would be the conventional answer.

Mr. FINNEGAN. Mr. Canfield?

Mr. CANFIELD. I think our position essentially is not only should you know how to identify the criminal processes; we think everybody should be trained in FEA who is in the business so to be able to identify a criminal action.

That kind of training should be universal for everybody in the Inspector General's Office. The question was whether or not you set up a separate criminal investigation organization per se within the FEA and we were drawing an analogy to our own situation. Each GAO auditor is trained to identify a potential criminal situation. He does not make opinions of his own as to whether or not there is a criminal violation but moves immediately to refer any possible criminal violation to the Department of Justice.

Mr. FINNEGAN. That then transfer the actual investigation of the criminal case to the Justice Department?

Mr. CANFIELD. That is right.

Mr. FINNEGAN. That is what you are suggesting. What I am raising, I gather from the General Counsel of FEA and Mr. Rose, is saying that may not be very practical because the FBI—these cases involve petroleum matters, they are very complex and the FBI is not going to do this and that sort of investigation.

Mr. CANFIELD. We think that the FEA should provide the full technical background and cooperation with the Justice Department in that kind of activity. That is the way we handle our own cases.

Congress might choose to handle this one in a particularly different way. We found it effective in our own operations. We think it is crucial that you not fiddle around with cases like this but immediately refer them.

Mr. FINNEGAN. When you mean immediate referral, that is what is bothering me. I am not sure I understand what you mean.

Mr. CANFIELD. Mr. Peach can tell you how we do it.

Mr. FINNEGAN. If you just accidentally fall upon so-called evidence of willful violation, are you suggesting that those kinds of cases should be immediately referred?

Mr. CANFIELD. Mr. Peach can relate how we do it in our own operation.

Mr. CUTLER. Mr. Chairman, excuse me. I have a series of meetings that begin downtown at 1:30. I was wondering—

Mr. DINGELL. I should have everybody but just the FEA folks ready to leave here in just a little. I am cognizant of your time problem. I want you to know that I have my own time problem here too.

Mr. CUTLER. Thanks.

Mr. PEACH. I think there are always questions of judgment involved in anything like this. Generally we have applied a type of rule when you find reasonable evidence that you have criminal activity, you should involve the Justice Department at that point in time and not try to carry through to the ultimate extent, the criminal investigation.

We do see and recognize the complicated aspects of FEA regulations. I agree there would have to be some kind of interface in following through any type of investigations with Justice being involved in making the determination that in fact there is criminal activity and FEA being involved in providing the kind of technical help in the way of documents and things that they feel they need to document.

Mr. FINNEGAN. Mr. Cutler, I just wanted to follow up on something that Mr. Ain asked. You talked about the 80-20 strategy as not being, I think you said cost effective because of the—

Mr. CUTLER. No; I expressly reserved a conclusion on that, Mr. Finnegan. I think what I said was that there was no evidence satisfactory to OMB and FEA to indicate that the 80-20 strategy was an effective commitment of resources beyond the strategy of audit compliance that is presently being followed and was provided for in the budget.

Mr. FINNEGAN. The present strategy is an effort on each classification area, 10 areas?

Mr. CUTLER. Including continuous compliance of the major refiners.

Mr. FINNEGAN. I understand that. When Dr. Schlesinger appealed the original OMB decision in the previous administration, he suggested that there was a benefit; in fact, he said, in terms of benefits to the public, exclusive of major refiners for which the audit strategy does not change, fiscal year 1976, the 80-20 strategy is to identify a fiscal year 1978 \$212 million in violations versus \$142 million under the current strategy, a \$70 million return for \$11 million expenditure.

Mr. CUTLER. I am not sure what letter you are referring to.

Mr. FINNEGAN. This is an attachment to—

Mr. CUTLER. To the proposal of \$286 million—

Mr. FINNEGAN. February 1, 1977.

Mr. CUTLER. I think, Mr. Finnegan, that the point I am trying to convey is that as you know during any budget process, even one which has taken only 30 days, there is give and take proposals, proposals and counterproposals.

At the end of the process, however, there is an agreement which is reached wherein all of the parties may or may not be as happy as they would have been with what they considered to have been an optimal solution to the question.

Mr. FINNEGAN. I am well aware of that, Mr. Cutler. I do not want to take up a lot of time because that is already on the record but I do point out to you that the fiscal year 1977 estimate in the blue books provides to us on the budget with the supplementary and regulatory program of 1,773 personnel.

In the program that you are proposing for fiscal year 1978, you have a cutback in that program so that you cannot even move toward the 80-20 program. You have cut back the program. Is that not anticipatory of decontrol?

Mr. CUTLER. This is not, as I understand it from Mr. Smith, in the compliance audit program.

Mr. FINNEGAN. This is the regulatory program total.

Mr. CUTLER. That it seems to me is a question separate from the compliance audit program which was, as I understood, the purposes of this discussion, the matters—

Mr. FINNEGAN. That would be absolutely no cutback from 1977 in the compliance program; let me get it from OMB. Are you suggesting there will be no personnel cutback in compliance?

Mr. CUTLER. There will be, as I understand, a cutback of 12 people in the headquarters but the figures which I have with respect to the compliance program as a whole, 1977 supplemental will be 1,396, fiscal 1978 would be 1,384 and those 12 positions would be, as I understand it, headquarters positions.

Whether that is going to have a substantial impact on the compliance audit program, I gather is—it is not FEA's view that it will. I would suggest that it is OMB's view that it will.

Mr. FINNEGAN. But OMB asked for more, is that not correct?

Mr. CUTLER. FEA, during the process, asked for substantially more positions.

Mr. DINGELL. I find it curious when you tell us that they asked for substantially more; they get substantially less.

Mr. CUTLER. Substantially less than they requested.

Mr. DINGELL. Is this going to adversely affect the compliance program and you advise me that it is not?

Mr. CUTLER. No, sir.

Mr. DINGELL. It seems to me that the cut has to affect something; it is certainly not going to benefit it.

Mr. CUTLER. At least let me make sure that I understand the cuts about which we are talking.

Mr. DINGELL. It is a cut.

Mr. CUTLER. We have a cut of 12 positions, if that is the cut about which we are talking, out of nearly 1,400.

Mr. DINGELL. They also requested more people in the field.

Mr. CUTLER. They did in fact request more people; they were not granted that request but there was no cutback beyond that which they

had been provided at some earlier time other than the 12 positions in the headquarters.

Mr. DINGELL. But they are not able to proceed to clean up the backlog and do the other things that they should have done, are they?

Mr. CUTLER. It is the position of OMB and FEA, and I should say the administration and the President, that FEA will be in as good a position to do its audit compliance job with the budget request that has been submitted as it would have been had the strategy been submitted with the 280-some odd additional positions.

Mr. DINGELL. Can you explain to me how that is so? Obviously you have some reason for making that statement; you must pardon me if I have some reservations to to how that can be true. Maybe you can enlighten me on that.

Mr. CUTLER. I think the best way to suggest why that may be true is, as I think we would all agree, that simply providing more bodies to operate a program differently from how it is being operated at the present time does not guarantee that the program will be more effectively run or that companies will be more honest.

It was the view of the administration after this discussion had taken place between FEA and OMB that there was no evidence to suggest that these additional positions and the substitution of the 80-20 strategy would have resulted in a more effective and efficient audit compliance program.

Mr. DINGELL. That seems at variance with the views of Dr. Schlesinger.

Mr. CUTLER. Dr. Schlesinger's views at the end of the budget process, sir, I think are the views that Mr. O'Leary has expressed today in his prepared statement. Those views are that the budget is sufficient.

Mr. DINGELL. Can you tell me then why he appealed this?

Mr. CUTLER. The process began with OMB's suggesting a level to FEA. FEA responded in the letter which Mr. Finnegan has read with the request for a larger number of positions. There then ensued a series of discussions which culminated in a decision which Dr. Schlesinger, Mr. O'Leary, and everyone else in the administration who was concerned supports. There may have been disagreements prior to the time the budget was finally submitted; I do not suggest there was not a question.

Mr. FINNEGAN. Did they have a choice?

Mr. CUTLER. I think the question suggests that if they had a choice the Congress might be faced with somewhere in the neighborhood of 400 separate budgets from 400 separate agencies.

Mr. FINNEGAN. I think you answered the question.

Mr. DINGELL. I find that we have here—you have warfare between the regions over policy and enforcement, people out in the regions who refuse to make papers available to other regions unless they have the concurrence of the national office and lo and behold where are you cutting, you are cutting the national office which apparently has been refereeing this warfare. How am I to call this to be better administration?

Mr. CUTLER. I think Smith ought to answer the question.

Mr. DINGELL. He did not cut those 12 positions; you did.

Mr. CUTLER. Let me say one of the reasons I do not want to answer that question is that I am not prepared to do so because I was not here when the budget was reviewed. I think Mr. Smith's answer would

be the answer that OMB would give. I would just as soon let Mr. Smith give it.

Mr. DINGELL. I just do not think Mr. Smith's answer would be the same.

Mr. CUTLER. If I can speak in theory——

Mr. DINGELL. If you cannot answer it, I am not quite sure how I can ask Mr. Smith to answer it.

Mr. CUTLER. If I can speak in theory, I am sure you have been in the same position as I a number of times when you walked into an office or agency and have seen a dozen, two dozen or three dozen more bodies than are necessary to do an effective job.

In fact, the more bodies there are, the worse the job is. I am not suggesting that is necessarily the case here, but I think it is perfectly possible.

Mr. DINGELL. We are getting highly speculative, I suspect.

Mr. FINNEGAN. I would make one final comment, Mr. Cutler. I would suggest to you that you obtain from FEA, as we have, a computer printout of the cases that have not had any recorded change after a 90-day period for the past outstanding cases.

I think that you will find, if you do that sort of thing, that in just three regions, plus the national office, there are a total of 983 cases which have not recorded any kind of change in status in more than 90 days, in some cases.

In a large number of those cases, there has been a time lapse over 500 days.

[The material referred to follows:]

OFFICE OF COMPLIANCE NUMBER OF OPEN CASES WHICH HAVE NOT¹ RECORDED A CHANGE IN STATUS AS OF MARCH 22, 1977

Area where cases originated	90-299 (a)	300-499 (b)	500-899 (c)	900 or more (d)	Total
National office -----	33	3	42	0	78
Region III -----	87	24	40	3	154
Region IV -----	121	53	27	3	204
Region VI -----	264	116	75	92	547
Total -----	505	196	184	98	983

¹ Data compiled from FEA computer printout.

Mr. CUTLER. Let me suggest, without going into this very deeply, that having handled a case or two involving FEA when I was in private practice, that the non-change in status over a period of say 90 or more days is not necessarily the FEA's fault at all.

It may have been the responsibility of the other side.

Mr. DINGELL. It does indicate when you have that large number, however, though the FEA has either not been disposed to or not able to move those cases. That is a very large number of cases that has not moved in 90 days, is it not?

Mr. CUTLER. Yes, but it is not necessarily the case, in a situation like that, that the provision of more people would have resulted in moving more cases.

Mr. DINGELL. Can you give us any idea of how one moves these cases in any other fashion, particularly in view of the fact that FEA is asking for additional people that you folks are not giving them?

It may well be that your thesis is that more folks are not going to move more cases. FEA apparently thought differently because they asked for more people that you did not give to them.

We have a large number of cases that have not moved in 90 days. One must assume that a possible contributor to that, a logical assumption on my part, would be that a fairly major contributor to that is the simple fact that the people at FEA do not have enough personnel to move those cases. Is there anything illogical about my statement?

Mr. CUTLER. Not necessarily anything illogical but there may be some missing assumptions.

Mr. DINGELL. Is there any overwhelming logic that compels me to assume that your thesis is that more folks would not enable those cases to move faster?

Mr. CUTLER. No, but in fact there was apparently no evidence, insufficient evidence, to justify—

Mr. DINGELL. You are asking me to assume that because the OMB did not give additional people that there was no case made? I do not necessarily go along with that.

Mr. CUTLER. I am not suggesting that no case was made. I am suggesting that in light of all of the cases that were made to OMB for larger staffing, of course the entire Government, even within FEA, that it was OMB's judgment that more money was needed, for example, in FEA or there was a better justification for more money in the conservation area, in the petroleum storage area and in other areas.

Mr. DINGELL. I would not argue that but am I not to infer that OMB necessarily is correct in its assumptions that more people are not going to mean more and better enforcement? I can only assume that is OMB's judgment and that at this particular point the only thing that I could accept is that is OMB's judgment. Up here we do worry about our own judgments.

Mr. CUTLER. Precisely.

Mr. DINGELL. The Chair recognizes Mr. Finnegan again.

Mr. FINNEGAN. I do not think I have any more questions. I would just point out to you that there are a number of those cases, one, for example, involving one company that was initiated in July of 1974.

A number of actions were held; the last in March of 1976 where a conference was held and there is no reported change as far as that case since then. I am not suggesting that nothing happened; in the alternative, you could argue that it is poor management if there are not enough people to do the job. Maybe it is poor management.

Of course those are some of the things that we have been discussing today.

Mr. CUTLER. I think Mr. O'Leary's task force ought to be looking at all of the questions you have raised and OMB is waiting to receive the results of that task force.

Mr. FINNEGAN. But those results will come after the main budget act requires reporting by this committee of an FEA authorization.

Mr. CUTLER. That is right but we did not feel that we could proceed with a greater authorization without any evidence that it was necessary or that it would result in a more effective program, that I admit was a judgment call.

Mr. FINNEGAN. Would the authorization that you are suggesting or that you endorsed for OMB for FEA is the same amount as the appropriation, is that not correct, for compliance?

Mr. CUTLER. The appropriation matched the authorization in the budget.

Mr. FINNEGAN. Do you not agree that if Mr. O'Leary's task force comes up with a recommendation that you could buy after 60 days and after the budget period, that you might want to send up a supplemental appropriation request?

Mr. CUTLER. I indicated that much earlier in response to Mr. Ottinger's question.

Mr. FINNEGAN. If that is done and the budget—under the Budget Act, we have passed on an FEA authorization bill, we have a problem?

Mr. CUTLER. You have a problem, yes, sir, but I do not know what the answer to that is, save to suggest that a different judgment should have been made which would not have been supported, in OMB judgment, by the evidence in front of them.

Mr. FINNEGAN. Do you not think that one answer would be not to reduce the authorization below the 1977 levels?

Mr. CUTLER. If you are talking about the 12 positions that were cut—

Mr. FINNEGAN. I am talking about the dollar authorization in the FEA authorization for fiscal year 1977, your proposal is to reduce that authorization below the fiscal year 1977 level. Would you maintain it at least?

Mr. CUTLER. We may be talking about different things. I have been talking about the budget request.

Mr. FINNEGAN. I am too, I am talking about the OMB Presidential approved budget which establishes, for all the regulatory programs including compliance, a dollar ceiling that we have in this book for fiscal year 1978 as the same ceiling you are requesting for appropriation?

Mr. CUTLER. With respect to the audit compliance program which I will say again is the one area I am prepared to discuss this morning, the only change is the 12 position cutback in the headquarters.

Mr. FINNEGAN. You are not addressing the question and I want to quit fast here. The dollar sign that you have submitted here for fiscal year 1978 for regulatory programs is the same ceiling for both the Authorization Act and the Appropriation Act, is that correct?

Mr. CUTLER. I do not know the answer to that. Mr. Smith?

Mr. FINNEGAN. You have not submitted to us a dollar ceiling higher than the appropriation level, have you?

Mr. SMITH. I am unaware of—

Mr. FINNEGAN. I am asking OMB—

Mr. CUTLER. Mr. Finnegan, if you will excuse me, I would like to—if you want an answer, I will provide it later or Mr. Smith can provide it now.

Mr. FINNEGAN. Let me just say that the dollar figure on fiscal year 1978 in the blue book of regulatory programs is \$47,098,000; is that the right figure, the same figure for appropriations and authorization?

Mr. CUTLER. Yes.

Mr. FINNEGAN. That does not give you any flexibility after May 15 to come up with a supplemental, does it, if we adopt that figure?

Mr. CUTLER. If that figure is adopted, the budget resolution, that is correct.

Mr. FINNEGAN. If we adopt it, the same figure that was authorized in fiscal year 1977 which was \$62,200,000, you would be able to come in with a supplemental, would you not?

Mr. CUTLER. But we see no reason for that at this time. Let me suggest further, I am not an expert on the Budget Act.

Mr. FINNEGAN. But you should be if you have to deal with it.

Mr. CUTLER. It seems to me, as I recall, there is the opportunity for an adjustment of that figure.

Mr. FINNEGAN. Not if you pass an authorization that puts a limitation of you. You have to get a new authorization bill as well as a supplement.

Mr. CUTLER. What you are suggesting is that there is in fact no room for supplemental in fiscal 1978?

Mr. FINNEGAN. That is right.

Mr. DINGELL. If we authorize that level, there is no room for higher appropriation, that is all. What you are saying is that the committee is going to have to authorize a higher figure if we are going to get authority for the FEA to get a higher appropriation in light of the task force's recommendation?

Essentially we are probably going to have to rescue both FEA and OMB from the situation in which they find themselves.

Mr. CUTLER. I would suggest that is prejudging the results of the task force study and the President's energy policy and the implications that it would have for this program.

Mr. DINGELL. They are not going to have any flexibility if we do not authorize.

Mr. FINNEGAN. You are prejudging it the other way, you are prejudging there will be no changes.

Mr. DINGELL. We are keeping open options and you are not. Am I wrong in that?

Mr. CUTLER. No; you are not wrong.

Mr. DINGELL. Gentlemen, we have been overlong here this morning. This afternoon, I suspect we have some additional questions for Mr. Smith and the other folks from FEA. It strikes me that we can excuse all of our witnesses here present save Mr. Smith and his folks from FEA.

Mr. Smith, what time would you like to come back here?

Mr. SMITH. We will be available at your convenience, Mr. Chairman.

Mr. DINGELL. How about 2:30?

Mr. SMITH. Any time you specify.

Mr. DINGELL. Then we will excuse all of our witnesses save our folks from FEA and we will reconvene at precisely 2:30 p.m.

[Whereupon, at 1:33 p.m., the subcommittee recessed, to reconvene at 2:30 p.m. the same day.]

AFTER RECESS

[The subcommittee reconvened at 2:30 p.m., Hon. John D. Dingell presiding.]

Mr. DINGELL. The subcommittee will come to order. This is a continuation of the hearings conducted this morning with regard to compliance programs at FEA.

We have a different panel this afternoon. For the assistance of the reporter, if those seated at the witness table will identify themselves as to name and position, we will start recognizing you gentlemen on your left and my right.

If you please, will you commence identifying yourselves? We will then recognize Mr. Finnegan for the purpose of asking questions.

Mr. GRIMES. James W. Grimes, Program Manager, Special Investigations, region IV, Atlanta, Ga.

Mr. EASTERDAY. James C. Easterday, Director of Compliance, region IV.

Mr. SMITH. I am Gorman Smith, Acting Deputy Administrator of Federal Energy Administration and Assistant Administrator for Regulatory Programs, Mr. Chairman.

Mr. ALLEN. My name is Donald E. Allen, Regional Administrator, region IV in Atlanta.

Mr. NEWMAN. James R. Newman, Deputy Administrator for Compliance, Washington, D.C.

Mr. FOWLER. Delbert M. Fowler, Regional Administrator of region VI, Dallas.

Mr. DINGELL. The Chair recognizes Mr. Finnegan.

Mr. FINNEGAN. Mr. Fowler, you said you were the Regional Administrator at Dallas. How long have you been Regional Administrator?

Mr. FOWLER. Since December 10, 1973.

Mr. FINNEGAN. Are you familiar with the case identified, for lack of a better term, as the Larcon-Matrix case?

Mr. FOWLER. I am aware that we have such a case. The details of the case, I do not have the specific details of it.

Mr. FINNEGAN. Is there anyone here at the table who is also familiar with the case?

Mr. SMITH. I have the information and status of that case, Mr. Finnegan. I have available the current information and status of that case, Mr. Finnegan.

Mr. FINNEGAN. Mr. Fowler and Mr. Smith, can you tell us when the case was started and when the audit was completed?

Mr. SMITH. The case was initiated on February 20, 1974, Mr. Finnegan.

Mr. FINNEGAN. When was the audit on the case completed?

Mr. SMITH. The information available to me is that the audit is still in progress on the seven firms involved on the case that goes by that name.

Mr. FINNEGAN. I have before me Report No. C006, page 1, dated March 10, 1977, for data as of March 1977. There is a printout of the FEA on detailed case history. On this particular case, it states: "As event number six, audit investigation, Comp., August 22, 1975."

Are you familiar with that printout that you people provided to us a couple of days ago?

Mr. FOWLER. I have not had an opportunity to go over that, no.

Mr. SMITH. I am not personally familiar with that reading, Mr. Finnegan.

Mr. FINNEGAN. I will provide you with a copy of the printout, itself. Was this case started as part of what is known as FEA's utility project, Mr. Fowler?

Mr. FOWLER. The date, indicated, of February 24 would indicate that it was probably part of the original project, Project Speculator for propane wholesalers.

Mr. FINNEGAN. There were two original investigators in this case—

Mr. Dillon, I believe, and Mr. Baum. Are they considered criminal investigators such as those like Mr. Grimes in Atlanta?

Mr. FOWLER. Mr. Dillon was.

Mr. FINNEGAN. How about the other gentleman?

Mr. FOWLER. No, he is not. They are categorized under, is it 1811 or 1810.

Mr. FINNEGAN. Is that the same category?

Mr. FOWLER. Yes.

Mr. FINNEGAN. There was a memorandum in this case dated August 8, 1977, in which there was alleged certain violations by the FEA and Cost of Living Council regulations and a regulation of referral of the case to the legal counsel for review and direction. Are you familiar with that memorandum, Mr. Fowler?

Mr. FOWLER. No; I am not.

Mr. FINNEGAN. Is there anyone else here from Dallas? I notice you have been talking to someone. Maybe you could have him come to the table and identify himself.

Mr. SMITH. If you are familiar with it.

Mr. FOWLER. Mr. Larry White, Director of Compliance in Dallas.

Mr. FINNEGAN. Mr. White, would you identify yourself?

Mr. WHITE. My name is Larry W. White, Director of Compliance, region VI.

Mr. FINNEGAN. Did you hear my question? Are you familiar with the particular memorandum?

Mr. WHITE. Yes; I am.

Mr. FINNEGAN. Are you also familiar with the second memorandum dated August 19, 1975, to the same Houston area manager, recommending the possibility of a criminal conspiracy, in that memorandum?

Mr. WHITE. I vaguely recall it, yes.

Mr. FINNEGAN. Can you tell me, Was the case at that point referred to the regional counsel?

Mr. WHITE. No; it was not.

Mr. FINNEGAN. What happened to the memorandum?

Mr. WHITE. I kept it.

Mr. FINNEGAN. You received the memorandum?

Mr. WHITE. Yes.

Mr. FINNEGAN. Can you tell me why that was not referred to the regional counsel and why you kept it?

Mr. WHITE. Surely. They were incomplete. I think a review of it would show that there were many different subject matters discussed, some of which had some basis and some of which had very little basis.

Mr. FINNEGAN. Did you give any direction of impact to the area manager concerning this case?

Mr. WHITE. Yes.

Mr. FINNEGAN. In what form?

Mr. WHITE. To carve out.

Mr. FINNEGAN. Did you give written direction?

Mr. WHITE. No.

Mr. FINNEGAN. Did you give oral direction?

Mr. WHITE. Yes.

Mr. FINNEGAN. What was that?

Mr. WHITE. To carve out what is now referred to as the Larcon-Matrix case, those transactions dealing with Florida Power Corp. They were the simplest, where we try to gather as much evidence on those particular transactions and, at the same time, pursue audits in about seven other companies.

Mr. FINNEGAN. Then, as you recall it, was there a third memorandum dated October 30, 1975, to get to the area manager, recommending that another case be closed and that this particular case be handled as a single criminal investigation?

Mr. WHITE. No; I do not recall that.

Mr. FINNEGAN. Could you check the records and provide for the record whatever information you do have on that particular program?

Mr. WHITE. Surely.

[The following information was received for the record:]

Region VI is doing exactly what was recommended in the October 30, 1975, memorandum. Thus, all aspects of the various Larcon-Matrix transactions are being actively investigated.

Mr. SMITH. Mr. Finnegan, would it be appropriate to respond to your earlier question about the audit investigation complete on the computer printout?

Mr. FINNEGAN. Yes.

Mr. SMITH. I think the computer printout shows that code 06 audit investigation was completed on August 22, 1975. Then, the next step is the NOPV drafted. That refers to the input at the area audit manager level where they considered that audit investigation complete at that time.

You will notice that the next sequence of events was the NOPV drafted on October 15 and the case was forwarded to the area manager on October 30, to regional compliance on October 31 and returned for additional work, on February 9, 1976.

Then, the initial entry on "Audit Investigation Complete" means a determination on the judgment of the auditor assigned to that case that he had done sufficient work that he deemed that audit complete.

Mr. FINNEGAN. That is on August 22?

Mr. SMITH. That is August 22. That was the case. That is right.

Mr. FINNEGAN. He deemed it completed at that point?

Mr. SMITH. That is right.

Mr. FINNEGAN. Then, as you point out on October 15, 1975, there was an NOPV notice drafted?

Mr. SMITH. There was a notice of probable violation drafted by the auditor.

Mr. FINNEGAN. What happened to that notice, as filed by Mr. White?

Mr. SMITH. The case file supporting it was then forwarded to the area manager on the 30th. He forwarded it, in turn, to the Regional Compliance Office on the 31st, where, at that particular time in the status of the program, it would have had for the first time in the regional office, a review by the regional counsel.

Mr. FINNEGAN. Is that Mr. Fowler or Mr. White? Was there, in fact, a review by the regional counsel, at that time?

Mr. WHITE. I do not believe we sent it over there, no.

Mr. FINNEGAN. It would first—

Mr. WHITE. Mr. Finnegan, the procedure would be that it first would be in the Regional Compliance Office to determine whether the audit

was, in fact, up to the standards prescribed and whether, in the judgment of the regional compliance people, the notice of probable violation was supportable in terms of the audit.

If, in their judgment, it was not, it would be returned for the completion of the audit work. If, in the judgment of the Regional Compliance Office, the case was sufficient from a technical audit standpoint, to support it, it would then be forwarded to the regional counsel office, for review.

Mr. FINNEGAN. That is the procedure, reportedly, as I understand but what actually happened in the case, Mr. Fowler and Mr. White?

Mr. WHITE. That, typically, is what happened. The NOPV came in and it was sent back.

Mr. FINNEGAN. Why?

Mr. WHITE. It also was insufficient and I believe it addressed propane. I was a little concerned about processing an NOPV at the same time we may possibly have a possibility of a wilful violation.

I thought we ought to gather more information or as much evidence as possible on all of the dealings of this particular firm before we committed ourselves, one way or another.

Mr. FINNEGAN. How did you convey those instructions back to the area manager?

Mr. WHITE. By telephone. This is, typically, how it works.

Mr. FINNEGAN. Is it normal on all of these cases that this is done with a telephone conversation rather than any written instructions?

Mr. WHITE. I believe somewhere around April 1976 we started using memorandum to send a case back. In fact, a case is sent back by memorandum whether it is sent to regional counsel, national office or back to the area office.

Mr. FINNEGAN. You have adopted a procedure of some sort of written memorandum documentation of what should be so that the area manager is not fumbling around just on a telephone conversation; is that correct?

Mr. WHITE. Surely.

Mr. FINNEGAN. In this case, you indicated that this case was sent back for additional work in February 1976? That is approximately 4 months after you received it. Did it take that long to evaluate it?

Mr. WHITE. To evaluate the entire package, yes, sir; and to decide what would be the simplest portion of the work.

Mr. FINNEGAN. Who would do that in your office? Would it be you, personally?

Mr. WHITE. A person by the name of Von Tamske.

Mr. FINNEGAN. Is he still with your office?

Mr. WHITE. No, he is not.

Mr. FINNEGAN. Where is he located now?

Mr. WHITE. He worked for HEW.

Mr. FINNEGAN. When did he leave HEW?

Mr. WHITE. I think he left in about August of 1976.

Mr. FINNEGAN. Why did he leave the Agency? Do you know?

Mr. WHITE. Yes, sir.

Mr. FINNEGAN. Please answer.

Mr. WHITE. As I understand, as it was explained to me, he wanted to get his 6(c) retirement benefits, the 20-year hazardous duty retirement. HEW had that and FEA did not.

Mr. FINNEGAN. Did he file any resignation-type papers or anything like that?

Mr. WHITE. Just a 52.

Mr. FINNEGAN. Standard form 52?

Mr. WHITE. Yes, sir.

Mr. FOWLER. He further explained to me that he thought there was more of an opportunity in HEW than he could see in FEA. He thought there was an opportunity for advancement there that he could not see at FEA.

Mr. FINNEGAN. I have a newspaper article by Mr. Paul Einstein, who said that when he, Mr. Von Temske quit,

He said that all that evidence is locked up in FEA files and that it is not going to get out. He quit the Agency last year after all efforts to prosecute the oil profiteers were blocked. It was very frustrating to see that nothing is done about these cases.

Do you agree with that statement, sir?

Mr. FOWLER. No, I do not. All I can say is that when he came in and told me about the fact that he was leaving, he was very calm, very polite. He thought he had an excellent opportunity ahead of him.

The parting was genial, in every fashion. He indicated to me, or, rather, he gave me no indication that he had had no trouble with anything that had happened in the past.

Mr. FINNEGAN. There is no memoranda or letters in his personal file or elsewhere in the Agency?

Mr. FOWLER. Not that I am aware of.

Mr. FINNEGAN. No resignation?

Mr. FOWLER. No, sir.

Mr. FINNEGAN. Would you check and report back to the committee, for the record?

[The following information was received for the record:]

A review of personnel files and records in Region VI and at the National Office did not disclose the presence of such a letter.

Mr. WHITE. He never indicated any animosity to me at all, or frustration or rage.

Mr. FINNEGAN. You indicated that this matter was then referred to the area manager on February 9, 1976. It was returned back, according to the computer printout, returned back to the regional compliance on March 12, 1976. Is that your understanding?

Mr. SMITH. I believe, on May 12.

Mr. WHITE. I do not know the exact dates.

Mr. FINNEGAN. Do you know what happened to it at that point?

Mr. WHITE. Yes, the portion concerning Florida Power Corp. was put in a separate package. There were audits going on, of other firms. When you talk about the Larcon-Matrix case, I believe you are ignoring how other firms relate to this case.

We were, basically, waiting for data from the audit of the other firms to see if we could evaluate the entire Larcon-Matrix involvement. I think that by August of 1976, we were pretty well convinced that we had about all of the evidence we were going to gather as it related to the Florida Power Corp. portion.

Mr. FINNEGAN. Who did that work at the regional compliance staff?

Mr. WHITE. Von Tamske, myself, and a person by the name of Carrie Andrews, who was also in that program.

Mr. FINNEGAN. You said—when did Mr. Von Tamske leave?

Mr. WHITE. I think that was the last thing he did. It was in August of 1976.

Mr. FINNEGAN. You said, that as far as the utility case was concerned, the case was ready for some action; is that right?

Mr. WHITE. No, I did not say it was ready. I said that at that time, I thought we had gathered all of the evidence that I thought we could get.

Mr. FINNEGAN. When you say "that portion", what does that mean in terms of the issue of a criminal violation?

Mr. WHITE. Sure, Larcon-Matrix has had many transactions with many different firms. Thirty-three of them involved Florida Power Corp. We isolated those, gathered the documentary evidence. We still had determined whether there was an overcharge, for example, but carved that out for simplicity purposes. We wanted to full pursue those other transactions.

Mr. FINNEGAN. What happened from August of 1976 which was the next event on the form, on the printout is of January 15, 1977?

Mr. WHITE. The other firms that we had identified were being audited. You cannot, in these types of transactions, make a call on a particular transaction with a particular company. You have to look at several. I think you can appreciate.

Mr. FINNEGAN. Who was doing that area audit?

Mr. WHITE. Various area offices in Region 6.

Mr. FINNEGAN. On January 15, 1977, the printout states that the case was suspended, "interpretation guidance." What was that?

Mr. WHITE. When you are going to work the civil violations portion, you have a consideration for the multiple inventory retroactivity which was passed, I think, in December. We had to consider that for just the pricing purposes of the Larcon-Matrix firm.

Mr. FINNEGAN. Are you positive there was actually an interpretation problem, because we discussed this matter with some FEA officials in the past few days. They said it was not accurate. Are you sure that is the case?

Mr. WHITE. I am sure I am. It is ruling 77-3, Cargo Sales. It is 77-3 entitled, "Cargo Sales". I think if you would read it you would see it is applicable as far as the civil violation.

Mr. SMITH. The portion of the ruling that applies in this case, Mr. Finnegan, relates to sales where a reseller purchases a cargo and sells that entire cargo to a single buyer. The ruling concludes that under the provisions of the regulations, those transactions are appropriately treated separately rather than having the reseller take that cargo into his entire inventory for purposes of weight averaging his total inventory cost.

Mr. FINNEGAN. You state that ruling is applicable for a civil case?

Mr. WHITE. Yes.

Mr. FINNEGAN. We are dealing, at least, simultaneously with what was a potential criminal violation. Did the ruling have any impact or effort on a potential criminal violation?

Mr. WHITE. It certainly could have, a willful violation.

Mr. FINNEGAN. In what respect?

Mr. WHITE. It would affect, for example, whether he exceeded his maximum lawful selling price. I believe if he did not exceed his maximum lawful selling price, we would have a tough time showing that there was willful violation.

Mr. FOWLER. To prove a willful violation, we must first prove it was a violation of our regulations. Then, in addition, show that it was willful. Our first idea is normally to try to show that there was a violation of our violations.

Mr. FINNEGAN. Were there any other criminal problems involved other than violation of your regulations? I point out to you that your early memoranda had talked about a conspiracy?

Mr. WHITE. Yes, sir.

Mr. FINNEGAN. What about that?

Mr. WHITE. It has not been pursued.

Mr. FINNEGAN. It has not been pursued?

Mr. WHITE. No, sir.

Mr. FINNEGAN. Why not.

Mr. WHITE. Because there are other transactions we ought to see, that we first ought to examine totally, first.

Mr. FINNEGAN. Incidentally, before I pursue this much further, I just want to ask one question: Is there a statute of limitations that applies to criminal cases as far as FEA is concerned? Is there anyone available here to tell me?

Mr. SMITH. I am not sure. We do not have a representative from the General Counsel here. I will find out and provide that for you.

Mr. FINNEGAN. Perhaps someone from the regional counties office who is an attorney?

Mr. SMITH. Mr. Hallman, do we have a statute of limitations that applies to criminal violations of FEA's regulations?

Mr. HALLMAN. It is my opinion that we do. My name is Ed Hallman, regional counsel from region 4. It is my opinion that we have a 5-year statute of limitations which might be applicable to any felony offence if it is a misdemeanor. It would be, perhaps, shorter than that; less than a year.

Mr. FINNEGAN. What would you characterize the cases where there is a willful violation of FEA's regulations?

Mr. HALLMAN. I would characterize them, potentially, as felonies, the ones that I know about of a substantial willful nature.

Mr. FINNEGAN. You said you started giving citations to that statute of limitations?

Mr. HALLMAN. I can find it, somewhere in title 18 of the United States Code.

Mr. DINGELL. It is a part of the general overall statute of limitations or is it a specific statute of limitations that is in the FEA act?

Mr. HALLMAN. A general statute of limitations, which, it is my opinion, would apply to FEA cases.

Mr. DINGELL. In other words, you have not specific statute of limitations dealing with FEA's affairs but you have the general statute of limitation which deals with all misdemeanors and all felonies?

Mr. HALLMAN. Yes, sir.

Mr. DINGELL. That would be the one that would apply, I would presume in the instance of felonies, it would be 5 years? Is that correct?

Mr. HALLMAN. Correct.

Mr. DINGELL. In the instance of misdemeanors, it would be a lesser period?

Mr. HALLMAN. Yes, sir; a statute, generally, that specifies a lesser statute of limitations. It is generally a year for a misdemeanor. I believe, if my memory does not fail me, that this provision of the United States Code would cover—perhaps the misdemeanors would be covered by the 5-year statute of limitations, also.

If there is a United States Code in the building, I could go and find it fairly quickly.

Mr. DINGELL. Just so we have it for the record, what is the statute of limitations with regard to civil penalties?

Mr. HALLMAN. I have never researched that point, Mr. Chairman. I could go and inquire of the statute.

Mr. DINGELL. Would I be correct in inferring that there is none?

Mr. HALLMAN. I think you would be. It is a difficult question to determine because it is not a criminal violation, per se, so my initial opinion would be that there would not be a statute of limitations upon it, since there is no provision for a specific statute of limitations upon civil action.

Mr. DINGELL. Thank you very much. Mr. Finnegan?

Mr. FINNEGAN. The subsequent—let me ask this question: When would the statute of limitations begin to run in connection with a case such as the one we are talking about, based upon your experience, Mr. Hallman?

Mr. HALLMAN. Mr. Chairman, I just finished researching this very questions with regard to a very substantial case in our region. It is my opinion that it would start to run at the time of the criminal offense.

For instance, hypothetically, if you took an act of conspiracy, if you could prove it factually, which occurred in January 1974, then your statute of limitations would run in January 1979.

This would run for purposes of indictment, not for purposes of completing an investigation and sending it over to Justice, or any other act short of a final indictment by either a grand jury or based on information or an accusation. This is obviously a point of concern in these cases.

Mr. FINNEGAN. Either Mr. White, or Mr. Fowler, is it your understanding that the particular problem which is being addressed as far as criminal violation occurred sometime in 1973?

Mr. WHITE. I am more concerned about the publicity that has been given, affecting the case, than I am about the statute of limitations.

Mr. FINNEGAN. That is always a problem. We try not to identify the individuals.

Mr. WHITE. This case has appeared in much detail in the newspaper.

Mr. FINNEGAN. Is it your understanding that in March 1977 that the deputy regional administrator designated a new person to investigate this case?

Mr. WHITE. Yes; I am.

Mr. FINNEGAN. That person was a Mr. Clarence Nelson?

Mr. WHITE. Initially, it was. That has since been changed.

Mr. FINNEGAN. He is not doing this now?

Mr. WHITE. No; he is not.

Mr. FINNEGAN. When did that change take place?

Mr. WHITE. About 2 weeks ago.

Mr. FINNEGAN. And that person is directed to devote 100 percent of his productive worktime to complete the investigative work?

Mr. WHITE. That is correct.

Mr. FINNEGAN. Is there any estimate as to when that will take place?

Mr. WHITE. We are aiming for September to have all of the Larcon transactions as well as the other firms audited, and hopefully, will have gathered all of the documentation, all of the documented evidence that we can on all of the firms.

Mr. FINNEGAN. If that is completed in September, what is the next step you will have to follow?

Mr. WHITE. We will refer up to the national office, special investigations unit, with a report of special investigation.

Mr. FINNEGAN. When you say that you are going to complete your work, you mean complete audit work? Is that correct?

Mr. WHITE. I hope to have the written report of special investigations complete by September 30.

Mr. FINNEGAN. That would first go through the regional counsel; is that correct, first?

Mr. WHITE. That is correct. They will concur in the report.

Mr. FINNEGAN. Then that person would transfer to the national office; is that correct?

Mr. WHITE. That is correct.

Mr. FINNEGAN. From your experience, what does it usually take, once you have completed the audit work to report, to have a case of that nature cleared through the national office and submitted to the Justice Department?

Mr. WHITE. That depends on the quality of work. That was, initially, one of the big problems that we had, the quality of work. Hopefully, it has improved to the point where it will go fairly quickly.

Mr. FINNEGAN. What do you mean by "fairly quickly"?

Mr. WHITE. The other one that I have experience with, the *Saber* case, I think you probably think went too quickly.

Mr. SMITH. Mr. Finnegan, I would like to interject, if I might, that one of the key elements in our procedures adopted in November for pursuit of special investigations was the early involvement of the regional counsel and general counsel in the proposed opening of an investigation.

The objective of that was to be sure that the investigators had clear guidance on the elements required and the kinds of investigation and facts necessary to make that case; so that the case was done correctly the first time.

This was done as a method of reducing the review time. More importantly, it was a method of see that the investigators time was spent on those things that were going to be necessary so that when the case did come in it could be reviewed expeditiously and we would get out of the circle we were in of sending it back two or three times for additional work.

I think the target that we have established is that our intention is to further the case to Justice by October 31.

Mr. FINNEGAN. On this particular case?

Mr. WHITE. That is right. That is assuming that everyone agrees that this is a willful violation.

Mr. SMITH. This assumes that what is now alleged or suspected turns out to be a factual one, and be established in the course of the investigation.

Mr. FINNEGAN. You will admit that the case was started in May 1975. That is a pretty long time.

Mr. SMITH. Absolutely; far longer than any of us would like.

Mr. DINGELL. What about the possibility of the statute of limitations running here? Do I have an honest apprehension on this matter?

Mr. SMITH. My understanding, Mr. Chairman, is that if we can get it over there during 1977 we will still have well over a year for the Justice Department to secure an indictment. The case does not have to come to trial or anything of that sort.

Mr. DINGELL. Would I be justified in being hopeful in that? The signs I see do not indicate that matters are progressing as they should in terms of speed. What can you give me in the way of comfort on this?

Mr. SMITH. I would offer you, Mr. Chairman, the new system of controls over special investigations that was established in November 1976 in response to precisely this kind of problem.

There is no question that up until this point the case has not received the attention it should have received since November. I think we can point to the correction of that and this case is now receiving the attention it deserves. This schedule has been established jointly between the regional office and the national office and everyone is aware of what that schedule is.

We have a unit established in the national office with no other duties than to supervise the course of this investigation, stay up to speed on this and let us know when we are getting behind so that we can take some management action to do something about it.

Mr. DINGELL. Mr. Finnegan?

Mr. FINNEGAN. That person now assigned to this case for investigation, is he or she a criminal investigator of the type that we have been talking about before?

Mr. WHITE. No, he is not. He is an auditor.

Mr. FINNEGAN. He is an auditor?

Mr. WHITE. Yes.

Mr. FINNEGAN. Is this now the work that has to be done, is that the type of work that should be performed by just an auditor?

Mr. WHITE. Not on Larcon-Matrix, no, sir. The head of the special investigations unit in Dallas has taken sworn testimony from the parties concerned in Larcon-Matrix and all that the auditor will be doing is gathering whatever additional information that will tie in, if they do, to the other firms.

Mr. FINNEGAN. Is there a person who is assigned to the case on a full-time basis who is a criminal investigator?

Mr. WHITE. To Larcon-Matrix; no, sir.

Mr. FINNEGAN. Should there be?

Mr. WHITE. No, sir, in my opinion, not, or there would be one assigned.

Mr. FINNEGAN. How many criminal investigators do you have in your region?

Mr. WHITE. We have three designated and about six, in total, I think, that have criminal investigation experience and are attorneys and are also accountants.

Mr. FINNEGAN. Can you identify them for the record?

Mr. WHITE. I can identify some by name. I would have to go back.

Mr. FINNEGAN. Go ahead.

Mr. WHITE. John Arechiga, who is out of IG, Department of Agriculture; Clarence Nelson, who is special agent, IRS; Bob Benner, who is both an attorney and accountant. Those are the three that come to mind.

Mr. FINNEGAN. Mr. Grimes and Mr. Easterday have, during previous interviews by the staff, we have discussed the problem of criminal investigators. As you recall, I think Mr. Gorman Smith and others have seen a staff memorandum in which the subcommittee staff has raised questions about the adequacy of the training of particular criminal investigators.

Do you gentlemen, Mr. Easterday and Mr. Grimes, do you know any of the gentlemen that Mr. White is talking about?

Mr. EASTERDAY. No.

Mr. GRIMES. No.

Mr. FINNEGAN. You gentlemen did prepare a document of report for the Agency, did you not, establishing procedures for selecting and training persons as criminal investigators for the FEA program?

Mr. GRIMES. If you would be a little bit more specific, I think I could—

Mr. FINNEGAN. As I understand it, there was a documentation, back, according to Mr. Allen's letter, a memorandum of last September 1976?

Mr. GRIMES. Yes.

Mr. FINNEGAN. Which I had earlier this morning but I cannot put my fingers on right at this moment, he did mention that you had prepared some kind of report?

Mr. GRIMES. That is correct, I believe, in about the summer of 1975. I was requested, at that time, to come to the national office and to develop a complete package with regard to a proposed organizational change, to make recommendations regarding the types of personnel, the experience of that personnel, and the numbers of the personnel who would be required to conduct the investigations.

Mr. FINNEGAN. Were your recommendations ever adopted?

Mr. GRIMES. That is a difficult question to answer, specifically. Basically, what was done was, my proposal was reviewed, and reconstruction of the proposal, some elements of the proposal were then included in what became the compliance manual of FEA.

Mr. FINNEGAN. Are you satisfied at this point, that enough of your proposal was adopted?

Mr. GRIMES. No, sir; I am not.

Mr. FINNEGAN. What portions of it that were not adopted, were not adopted?

Mr. GRIMES. I think, basically, the procedures that we followed within the compliance division are more geared toward civil investigations or civil audits than they are geared toward resolution of possible willful violations.

Most of the managerial personnel within the FEA, I do not believe, have been involved in the conduct of investigations or in the supervision of the conduct of investigations.

Mr. FINNEGAN. You mean, criminal investigations?

Mr. GRIMES. Yes.

Mr. FINNEGAN. In this context, there was a memorandum dated November 18, 1976, from Mr. Newman to Mr. Allen which, it states in your memorandum of November 1, 1976, referring to compliance staffing authorization, "Compliance is not authorized to fill GS-1811, criminal investigators positions."

Compliance Policy Memorandum No. 9 states:

Each regional administrator will select a minimum of two special investigators for their regions, or any number justifiable above two. It was never the intent of the national office to hire criminal investigators for these positions. The special investigator is an organizational type to be filled within the Compliance Authorization, preferably, by onboard employees.

Is that memorandum, the directive, still in existence, Mr. Newman?

Mr. NEWMAN. Yes, it is.

Mr. FINNEGAN. It is still in force at this present moment?

Mr. NEWMAN. Yes.

Mr. FINNEGAN. So that you are not hiring as investigators anyone who has this title, GS-1811; is that correct?

Mr. NEWMAN. We have not made any arrangement to hire any 1811's, to this point.

Mr. FINNEGAN. Why?

Mr. NEWMAN. We have not determined that there is a need for 1811 outside of the personnel that we have in the organization.

Mr. FINNEGAN. Earlier this morning we had a discussion about problems handling cases, interregionally. I think Mr. Smith that Mr. Grimes, I think, is an 1811, who is highly trained and is a most competent criminal investigator. I might also point that there were problems between the regions that Mr. Grimes could not really go into those other regions and conduct the same investigational activity.

Why, then, is it appropriate to have a criminal investigator in region 4 but not in the other regions?

Mr. NEWMAN. I do not know whether it is appropriate or not.

Mr. FINNEGAN. The fact of the matter is that is what the situation is today?

Mr. NEWMAN. That is correct.

Mr. FINNEGAN. Are there any in any of the other regions?

Mr. NEWMAN. Yes; we have a total of three.

Mr. FINNEGAN. What other regions are they?

Mr. SMITH. I have that, Mr. Finnegan. I am sorry, I have the people who are assigned those duties in the regions. I will have to tell you who the 1811's are. First, Mr. Johnson, region 1, is one.

Mr. NEWMAN. Max Johnson.

Mr. FINNEGAN. There is a gentleman back there shaking his head, no.

Mr. SMITH. Let me find out for you for the record and give that to you, later.

[The following information was received for the record:]

The following 1811 series investigators are currently employed in our regional offices: Robert H. Burch, region IV; George W. Raines, region III; and James W. Grimes, region IV.

Mr. NEWMAN. I believe there is also a gentleman in region 4 classified as 1811.

Mr. SMITH. One of them is in region 4.

Mr. EASTERDAY. He is not assigned to this work and is currently being reclassified.

Mr. SMITH. I understand he is not assigned to this work and is currently being reclassified.

Mr. FINNEGAN. Why?

Mr. EASTERDAY. Because he does not want to do this sort of thing.

Mr. SMITH. The third one is Mr. Raines in region 3.

Mr. FINNEGAN. Region 6 has none; is that correct?

Mr. SMITH. Correct.

Mr. FINNEGAN. Was Mr. Von Temske a GS-1811?

Mr. WHITE. No, sir, he was a 345, program management.

Mr. FOWLER. He may have been in the past, but in our organization he was a 345.

Mr. FINNEGAN. Why is it, then, that you decide there should be one in region 4 and one or two in region 3 but not anywhere else?

Mr. SMITH. Mr. Finnegan, we did not decide there should be one or two in region 3. That is what we inherited from the Internal Revenue Service. That was the remains after the normal attrition in the program, of what we had inherited from the Internal Revenue Service.

I am sorry, I am informed that three people were reclassified after we had taken them over from the Internal Revenue Service before any personnel policy was established, some time in the early days of the FEA compliance program before there was any determination on this issue.

It was not a question of saying, we are only going to have these three and they are going to be distributed like this. The question at issue was, rather, given the work force that we had, were we to get rid of a bunch of 1810's or 510 auditors and replace them with a force of 1811 criminal investigators.

For the reasons that I outlined this morning, plus an examination of the civil service standards which I think would be appropriate at this point, as far as this distinction between the two is concerned, the policy was as enunciated in Mr. Newman's guidance, but he was enunciating a policy that I was responsible for, the general investigators series.

Mr. FINNEGAN. Excuse me, when did you develop that policy?

Mr. SMITH. In conjunction with our review of the criminal investigations issues last fall, culminating in the November 6 arrangements.

Mr. FINNEGAN. You concluded that there was not a need for the hiring of the so-called 1811 investigators?

Mr. SMITH. That is true; primarily, for the reasons I outlined to you this morning. The first is the distinction between a general investigating series, GS-1810, and our criminal investigating series, GS 1811, in the civil service regulations is a fairly small one, in my judgment.

The GS-1810 includes all classes of positions, the duties of which are to administer, coordinate, supervise, or perform (a) work involving primarily investigations which are noncriminal in nature. Note that it does not say "exclusively." It says "primarily," or be work involving investigations which are not specifically included in positions under other series in this group.

Whereas, the criminal investigation series says that the series includes all classes and positions and duties which are to administer, coordinate, supervise, or perform work involving primarily investigations of suspected violations of criminal statutes of the United States.

The FEA Act and the regulations stemming therefrom, I do not view as criminal statutes of the United States.

They carry penalties for, or prospective criminal penalties for, willful violations of the statutes.

Mr. FINNEGAN. What is your definition of a criminal statutes of the United States?

Mr. SMITH. My definition of a criminal statute is that it prescribes a certain act as a Federal crime aimed at specifically prohibiting—like fraud, espionage, and things of that sort.

Mr. FINNEGAN. There is a list of felonies and felony statutes in title 18 of the United States Code.

Mr. SMITH. Exactly.

Mr. FINNEGAN. But there is also, as your regional counsel has indicated, violation of Federal regulations of FEA; are they felonies?

Mr. SMITH. I understand that, but willful violations, though.

Mr. FINNEGAN. The statute under which you operate from specifically prescribes that a willful violation is subject to a criminal prosecution; is that not right?

Mr. SMITH. That is my understanding. That is correct.

Mr. FINNEGAN. Is that a criminal statute?

Mr. SMITH. My understanding is—

Mr. FINNEGAN. That portion of the statute?

Mr. SMITH. That portion of the statute becomes a criminal statute, exactly.

Mr. FINNEGAN. So you do enforce criminal statutes?

Mr. SMITH. Yes, to that extent, we enforce criminal provisions of our statutes, yes.

Mr. FINNEGAN. Let us not mince words. It is a criminal statute as far as that provision is concerned?

Mr. SMITH. Yes, sir; that is correct. I think the issue is one that we talked about earlier, Mr. Finnegan, the requirement for an effective investigator. The allegation of a willful violation of FEA regulations includes, first, establishing the violation of the regulation.

That requires people with skills that are not normally shared by people who have, exclusively, a criminal investigation background.

Mr. FINNEGAN. First of all, you had two sets of circumstances. Somebody will have to identify a particular action by an individual or company, or whatever, as being a potential civil or criminal violation of the specific statute. Is that correct?

Mr. SMITH. That is correct. But to establish that violation, Mr. Finnegan, you have to establish the first element in the chain of proof, that the regulation, in fact, was violated.

Mr. FINNEGAN. That would require somebody to do an investigation; does it not?

Mr. SMITH. It does, and it requires somebody who has the skills of auditing the financial accounting and the knowledge and familiarity with FEA's regulations and their particular application to that particular segment of the industry.

Mr. FINNEGAN. But does it not also involve in connection with the willful violation, somebody who has some training as a criminal investigator?

Mr. SMITH. It certainly does. It involves somebody who has some training in the techniques of investigation with respect to those aspects.

It does not necessarily, in my judgment, involve an individual who has training exclusively in the areas of criminal investigation.

Mr. FINNEGAN. Mr. John R. Arechiga, I believe, and I may be mispronouncing the name, in the New Orleans office, as was mentioned earlier, he, I understand, is an auditor. What kind of criminal training does he have?

Mr. SMITH. I believe he went to the joint agency criminal training that IRS and the FBI sponsor, while he was with the Department of Agriculture; which is not too unusual for other agencies to take audit investigators and train them.

Mr. FINNEGAN. How long ago was that?

Mr. SMITH. Several years ago. He has been with us about 3 years, I think.

Mr. FINNEGAN. He is not capable of being classified as an 1811, is he?

Mr. SMITH. I think he is capable of being classified. I think he has experience that I would put up against Mr. Grimes.

Mr. FINNEGAN. But he is not so classified at the present moment?

Mr. SMITH. The mere classification is not what I am looking for. It is the talents to detect and develop evidence. Mr. Finnegan, I think we are hung up on the application of a number to somebody's job, a series in his personnel file, rather than the capabilities.

For example, we just outlined that we have only three 1811's in FEA. One of them is being reclassified into something else because he would rather do something else than be a criminal investigator.

We have a number of people. We have, for example, a Mr. James Freel, who has 23 years of experience in the Metropolitan Police Department in Topeka, Kans., including winding up as chief, working his way up through the department.

We have Mr. John Leonard, also 20 years of experience in the Metropolitan Police Department of Topeka, winding up as lieutenant; Mr. P. Addelson, Gerald Morton, and David Mc Clurg, who have 10, 9, and 5 years experience, respectively, as IRS agents.

We have Mr. Louis Lambert, a special agent of the FBI for 3 years before he joined us; Mr. Laverne Whiting, a special agent for military intelligence for 14 years. We have a whole list of these people who have the background and skills involved and years of experience.

Most of them have more years of experience than Mr. Grimes does in the criminal investigation business. Those people are capable of conducting criminal investigations.

Mr. FINNEGAN. Are they doing it?

Mr. SMITH. The people I have named are supervising and doing it as part of the staff of two people, at least two, not a maximum of two, in each region, directed to be amassed out of current resources, in the November directive.

That is the list of who those people are. All but 3 of the 22 people, designated to supervise and coordinate and perform as required, special investigations in the regions; 19 of them have experience of hands-on experience as background in this area.

They happen to have come to FEA and have an 1810 or 510 classification in the civil service system. That does not say anything about their ability to conduct these kinds of investigations. What it does say is that they can do this, they can teach other people how to do this to

the extent required to pursue their particular investigation and they can also do other things that the Agency needs done if they are not engaged in criminal investigations.

That is a more balance, and more effective work force, in my judgment, than one that is made up of a specific number of 1811's who have much less flexibility in terms of how we can employ them.

Mr. FINNEGAN. Would you provide for the record a list of the cases that you have now pending by region? I just want a number?

Mr. SMITH. I understand.

Mr. FINNEGAN. That are considered to be criminal cases, whether they are in the category A, B, C, D, or whatever you have established, that are considered to be so-called—I do not mean criminal, because they have gone to the Justice Department?

Mr. SMITH. I understand.

Mr. FINNEGAN. Let us not get confused on the definition of terms. I mean, of a nature where there is actual criminal investigation and, at the same time, indicate who the people are who are assigned to those cases.

Mr. SMITH. I can.

[The following material was received for the record:]

CASE HISTORY REPORTS ON ALL "A" CATEGORY CASES, AUDIT TIME SPENT TO DATE ON THESE CASES, AND THE AUDITOR/INVESTIGATOR ASSIGNED TO THE CASE

Case No.	Case name	Assigned auditor/investigator	Audit time (hours)
020K00006	Garry's Texaco	Whiting, LeVerne	177
130K00005	Exeter Shell Service	Miller, Karl R.	16
133K00161	Columbus Oil Co.	Gifford, C.	(1)
150H00144	Conn Refining Co.	Miller, Karl R.	47
310H00469	Zengerl, John E.	Johnson, Max C.	(1)
320K00058	Russell Miller	Raines, George	459
340H00262	Robinson Petroleum	Johnson, Max/Broniak, Tom/Sampath, Elizabeth, Esq.	1,580
350H00248	E. Manon Oil Co.	Guella, Ron/Elison, Charles	1,920
350K00232	Stouffer's Sunoco	McKay, Angus, Esq.	289
352K00213	Ron Franks Whiteside	Settle, John	(1)
352K00220	D. C. Thomas S.S., Inc.	Johnson, Max	(1)
910H00125	Parish Oil Co.	McClurg, D.	(1)
400K00106	Stevens Millford	Nanney, J.	9
400K00108	Jordan Hess Station	Griffin, Edward	(1)
400K00112	Fones Standard Station	do	(1)
400K00148	McDuff Exxon	do	(1)
412H00105	Elias Oil Co.	Hawk, Trevor	(1)
412K00047	St. Pete Air World	Goodnick, Lee, Esq.	369
412K10048	Interair Services	do	305
421X00042	Citronelle Mobile Georgia	Hawk, Trevor	787
533K00068	David A. Hetrick	Melvin John	191
550H00079	Welsh Oil Co.	do	805
570H00013	Marquette Coal & Min.	Gold, Arthur	112
650H00043	Larcon Petroleum, Inc.	Bullington, Dan	167
650X00100	Armada Oil Co.	Real, Gary	454
650X00118	Uni-Oil Corp.	Ancar, Clarence	227
660C00023	South Pott, Inc.	Clements, Harold, Esq.	390
660X00063	DaVinci, Inc.	do	291
820H00001	Gasor, Inc.	Day, Lamar	2,344
820H00020	Giraud Corp.	Worthen, V. Leroy	(1)
920K00100	Mike Dombay	McClurg, D.	(1)
920K00115	Richard E. Stiers	do	230
920K00116	James Morton Union	do	174
920K00117	Mani Guerami Mobil	do	139
920K00121	Fritz Gansalvez	do	3
920K00122	Ed Hyatt	do	18

¹ Audit hours expended are as of Feb. 28, 1977 and do not include time expended during March and April 1977. Regional counsel and some regional compliance staff do not record their time on a case-by-case basis; consequently, in many cases, more time has been expended than is reflected in the figures provided above.

Source: CTARS Report No. 2, report date Apr. 5, 1977, report period July 1, 1975 to Feb. 28, 1977.

Mr. FINNEGAN. You do not have to do it now but you can do it for the record. I ask this question of Mr. Easterday and Mr. Grimes: Do you generally agree with the comments that have been made with respect to criminal investigators, or is there a difference, for example, in looking at the transactions and the regulations, that an auditor might do, versus the investigation of circumvention of the regulations?

Mr. EASTERDAY. Mr. Finnegan, I will make the first attempt to try to answer you on that and to try to clarify what some of the problems are.

I agree to what Mr. Smith and Mr. White have said. The important thing is the ability and the experience to do these things, no really what we call them; whether they be 1810's, 1811's, all that sort of thing.

It is quite true and we would be happy to look for individuals who have an accounting background. As a matter of fact, the civil service regulations state that that is one of the prime criteria to look for in an 1810 or 1811 investigator.

I would certainly look for someone who had an accounting background. He would be far more useful to us. The problem comes, once we find this individual, and I think perhaps the Civil Service could settle the whole thing, once we find this individual and I assign him even though it be 9 months or 1 year and his primary duty is to investigate these category A which by definition are potential or alleged violations, but then I think that according to the civil service regulations I have no choice but to classify that individual as an 1811 investigator.

At such time as he ceases that type of investigations work, if he is willing to become an accountant, I would classify him as an accountant because that is what civil service regulations would require.

This is where the 1811 versus some other thing comes about. I am perfectly willing to leave that up to the Civil Service Commission. I think, based on my experience with these cases, we must have individuals, whatever we call them, who have very good experience and demonstrated ability to conduct this type of case.

Mr. FINNEGAN. Do you think we have had them, that FEA has had them?

Mr. EASTERDAY. I cannot speak to what anyone has had. We have not.

Mr. FINNEGAN. You mean, you in your region?

Mr. EASTERDAY. In Region 4.

Mr. FINNEGAN. You think additional people are needed for this kind of work?

Mr. EASTERDAY. Yes, sir; we have asked for, for some time, a total of three or four. In our experience with the numbers of cases of this type, to date, indicated to me that we could probably keep that many busy and never encounter the problem of reclassification.

Mr. FINNEGAN. Mr. Allen, do you agree with what Mr. Easterday is saying?

Mr. ALLEN. Yes; our position has always been that if we run into the situation after an audit of a case where it appears to be possible there is alleged willful violations of our regulations, that at that point, we should pursue the matter with trained qualified people, regardless of the numbers, as we have just indicated.

We have had one in region 4. I have agreed with Mr. Easterday that we need two more in order to handle the workload we are faced with in this particular area.

Mr. FINNEGAN. Have there been any case in region 4 that you had felt that you, Mr. Allen, Mr. Easterday, Mr. Grimes, were of a so-called criminal violation matter that was deferred because of a lack of people to handle them, a lack of qualified people to handle them?

Mr. EASTERDAY. If you mean by "deferred," not worked as quickly as we would like, yes, there have been a number of them.

Mr. FINNEGAN. How recently has that happened? Has that happened within the past 6 months? I mean, have you turned them down to a lower category and, therefore, there is no work on them, in effect?

Mr. EASTERDAY. We have not turned them down to a lower category, no, sir. If you have one person to do the investigative portion of them and you have eight or nine cases, this splits his time between eight or nine. That is the situation.

Mr. FINNEGAN. Mr. Smith, you seem to be shaking your head. I wonder what your reaction is to this?

Mr. SMITH. My reaction is that the regional administrator has available to him the total compliance staffing authorization, that some of the 1810's, he had 10 1810's—

Mr. ALLEN. We did at the time, in November.

Mr. SMITH. In November, when he started, we had 10 investigators on it. I am informed by Mr. Allen that some of those are not very good 1810's. They were apparently misclassified that we had inherited from IRS and had not done anything about reclassifying or separating.

My position is, quite candidly, that if we had more work in category A, special investigations, than he could do effectively, his first job should have been to use all of the resources available. His second job should have been to go to the national office and tell us whatever resources he needed.

Mr. FINNEGAN. He just testified that he did not think that the people there are qualified to do the job.

Mr. SMITH. That is where there is a basic disagreement of judgment. Mr. Allen has every right to his judgment as do Mr. Easterday and Mr. Grimes.

Mr. FINNEGAN. But they are doing the work. They are out there doing the work, doing the actual investigation and have the direct-line responsibility to do it. You are not.

Mr. SMITH. But they have not convinced me that they have inventoried all of the people available to them in region 4 and have not found anybody who is qualified to do this work.

Mr. FINNEGAN. Mr. Allen, have you done that? Have you inventoried the people and made any effort to convince Mr. Smith?

Mr. ALLEN. We have, recently; yes, since the new procedures that Mr. Smith has alluded to several times today which began last November. We have now identified several 510 auditors as well as half of the 1810's who are, by the way, working toward their 510 classification. By that I mean, they are getting training, going to school.

Four of them will be prepared to be reclassified into the 510 auditor field, probably by the summer or fall. The other four which Mr. Smith mentioned, I feel and my personnel officer feels, were misclassified in the beginning when we got them from IRS.

We, admittedly, have not reclassified them. In order to reclassify them into an area where their background may suit some other area within my office, unfortunately, I do not have any other position to put them into.

What I have done with those four is to assign them with an auditor to work with in these particular cases in the category A cases. Mr. Smith has not had an opportunity yet to read my latest request for the additional two trained qualified criminal investigators.

Mr. FINNEGAN. Would you make that request available to us and also Mr. Smith's response to it when and if it comes back? Mr. Easterday?

[The following material was received for the record:]

FEDERAL ENERGY ADMINISTRATION
Atlanta, Ga., April 4, 1977.

Memorandum: James R. Newman, Deputy Assistant Administrator for Compliance.

From: Donald E. Allen, Regional Administrator.

Subject: Special investigations.

During the Regional Administrators' (RA) meeting held March 22-23, 1977, both John O'Leary and Gorman Smith made it abundantly clear that notwithstanding other activities, the first priority of the agency was to adequately and efficiently perform our regulatory duties and responsibilities. Within that guidance, prompt priority action on those compliance cases properly identified as involving possible willful violations of FEA regulations was specifically addressed. Although there ensued a great deal of further discussion on compliance functions and matters related to the overall compliance effort, the fact remains that the RAs were directed to place top priority on completing "category A" cases.

During this discussion, Mr. Smith asked me to identify and quantify our need for trained and qualified investigative personnel to pursue such cases. Further, during an individual meeting with Mr. O'Leary, he asked that I apprise him of any action which he might take to assist this region in disposing of cases identified as involving "possible willful violations." To these ends, I shall attempt by this memo to put into perspective some of the key issues and problems relating to the conduct of "Special Investigations" as that term has been defined by the National Office of Compliance. I have attempted to avoid addressing the specific content of the Dingell Subcommittee Staff Report on the adequacy of FEA's compliance program, but because of the sameness of some of the issues addressed, there obviously will be some overlapping of discussion points. Finally, the memo responds to Mr. O'Leary's admonition concerning assistance needed and Mr. Smith's question concerning that same assistance.

This memo includes the following sections:

- a. History and development of special investigations.
- b. Civil Service classification standards.
- c. Current Region IV Workload of Special Investigation Cases.
- d. Planned Actions and Recommendations.

HISTORY AND DEVELOPMENT OF SPECIAL INVESTIGATIONS

Within Region IV there are several employees who were formerly assigned to enforcement duties within the Cost of Living Counsel, the predecessor agency of the FEA insofar as price regulations are concerned. According to these employees, in late 1973 and early 1974, the IRS was assigned the task of recruiting and training the staff which would be assigned to the FEA upon its creation as an independent executive agency. The Federal Energy Office (FEO) advised the IRS as to which qualifications should be sought in this effort. The IRS suggested two major occupational groups for the Compliance Division—the Auditor (GS-510 series), and the Investigator (GS-1810/1811 series). The FEO agreed that some professional auditors were required, but insisted that trainee investigators could do most of the work, arguing that (1) only simple cases (commonly retail gasoline outlets) were being examined, and (2) FEO was expected to be a temporary agency, and its controls were considered likely to be removed within a relatively short period of time.

Ultimately, the IRS reluctantly agreed to provide those qualifications as requested by the FEO. Those persons who possessed formal credentials as auditors (accounting degree, auditing experience, etc.) were in fact hired and classified as Auditor, GS-510. Persons hired by IRS/FEO who did not possess formal credentials as auditors were automatically classified as investigators, GS-1810, provided they could meet the minimum trainee (GS-5 level) requirements. Regardless of qualifications or lack thereof, many persons were hired as GS-1810s. There was, in fact, no other classification criteria or process in existence within the Compliance Division of Region IV, or we believe, within the other FEA regions.

Upon being hired, the new auditors and "investigators" received identical two-week training courses, consisting primarily of familiarization with FEA price and allocation regulations. In the ensuing three-year period, various other short-term training courses (focusing on management, auditing, RARP programs, crude producer programs, etc.) have been conducted within the Compliance Division.

However, to date, none of the personnel assigned to this region has ever received within FEA any training directly related to the conduct of investigations, or the fundamental theory of investigations, although in January 1977, the National Office did conduct a 2½ day of orientation of approximately 20 employees from the various regions, in the administrative handling of what we now call "Special Investigations." This training, however, was directed solely to the newly revised management procedures relating to Special Investigation cases and not to the conduct or theory of investigations.

In actual practice in Region IV, the efforts of the Compliance Division quickly changed from the simple retail gasoline outlet audits to audits of resellers, refiners, producers, etc. At all times during the three-year lifetime of Region IV's Compliance Division, our auditors have been assigned to conduct simple to complex audits and our "investigators" have been assigned to conduct simple to moderately complex audits, but always under the supervision of auditors. In fact, then, it may be more accurate to label our "investigators" as "assistant (or trainee) auditors," insofar as the actual performance of their duties is concerned, at least to this point. This situation has contributed to the generally prevalent attitude that "investigators" are non-professionals; are generally not fully productive in the accomplishment of the mission of the Compliance Division; have a dubious future within the agency; and can never aspire to supervisory positions. It has been demonstrated that all these statements are, in fact, correct insofar as this region is concerned.

It should be noted that the above information merely describes the history and function of this region's Compliance personnel relative to administrative and civil inquiries. In November 1974, the Region IV Compliance Director created an organizational element known as the "Special Investigations Branch," within the regional headquarters. This element, staffed by a professionally trained criminal investigator (GS-1811 series), was and is responsible for control and disposition of all cases involving possible willful violations of FEA regulations. This decision was prompted by recurring instances of incorrect and unsatisfactory handling of such cases by our auditors and "investigators," due primarily to the absence of experience and training in fact-finding, interviewing, interrogation, the system of jurisprudence, the unalterable requirements for documented evidence, flexibility, ingenuity, etc. In these cases, our auditors and "investigators" were unable to provide reports which could survive the scrutiny of Regional Counsel, General Counsel, Department of Justice, etc., in assessing the legal soundness of agency actions being considered.

Generally, the Special Investigations Branch receives referrals from the field Compliance offices (or from regional Operations Division, private citizens, Congressional sources, etc.) of cases which appear to involve deliberate, or willful, violations. The Branch assumes total responsibility for the entire case, directs the efforts of professional auditors (who are required in almost every instance), obtains interview and sworn affidavits from witnesses and suspects. It determines when no further investigation is necessary to dispose of the matter, and it compiles complete investigative reports which include as an integral component any audit information gathered during the course of the audit or investigation.

During the 2½ years of existence of our Special Investigations Branch, ten investigative products have been submitted to the NFEA—plus one "personal" investigative report. Of the total, four were referred to and accepted for prose-

cution by the DOJ; one was referred to and accepted by a state (Mississippi); three disclosed civil violations; and in four instances, the facts disclosed no violation. In none of these cases was it necessary for the NFEA or DOJ to return them for additional work, correction, etc.

CIVIL SERVICE CLASSIFICATION STANDARDS

The foregoing describes the background of how we happened to end up with "investigators," who for the most part have been performing "audit trainee" functions. It appears that our situation in this regard is not unique, in that on March 11, 1977, Mr. Eugene H. Beach, Deputy Associate Administrator for Personnel Management, issued a memorandum (attached as Exhibit A) to all regions indicating that the Civil Service Commission (CSC) "found that a significant proportion of the audit work being performed in the . . . Boston Regional Office was of poor quality, because non-Auditors were conducting audits." This memorandum indicates that these "non-Auditors" were classified as GS-1810 "Investigators," and pointed out that the CSC determined that the investigators were misclassified since they were not performing "investigator-type work."

In addition, in response to initiation of the agency's new "special investigative" procedures, on November 1, 1976, we advised the Director of Compliance Operations in the NFEA of our intention to recruit two qualified criminal investigators. On November 16, 1976, the Deputy Assistant Administrator for Compliance issued a memo (Exhibit B) overruling this decision and stating that, "It was never the intent of the NFEA to hire criminal investigators for 'special investigator' positions." This memo further stated that "special investigator" was simply an organizational title and, we assume, did not necessarily relate to an ability to conduct "special investigations."

At this point, it appears that reference to pertinent CSC classification standards for Auditors (GS-510), Investigators (GS-1810) and Criminal Investigators (GS-1811) may provide a further understanding of what seems to be a widely misunderstood, yet basically simple, issue.

Attached as Exhibit C is a copy of pertinent portions of the CSC classification standards for GS-510 Auditor positions. Specifically excluded by these CSC classifications standards are "Positions the duties of which require some knowledge of accounting but which have a different subject matter field as the paramount qualification requirement because the positions have a primary function which is other than the maintenance or examination of accounting systems. . . . Such positions are classifiable to a wide variety of series including the Criminal Investigating Series, GS-1811. . . ." (emphasis added). Thus, according to the CSC, GS-510 auditors are not to be used in the GS-1811 type investigations.

Additionally, the standards for GS-510 state, "When the duties and responsibilities of a position require the application of the professional knowledge of accounting, as is required to perform the work of this series, in addition to some knowledges required to perform management analysis work in the development of accounting systems, the design of accounting forms, the flow of accounting documents, and the preparation of accounting procedural manuals, the position is properly classifiable in the Accounting Series, GS-510."

A comparison of the actual duties and qualifications of this region's GS-510 Auditor personnel with the CSC classification standards, indicates that such personnel are properly classified.

With regard to CSC classification standards for the GS-1810 Investigator and the GS-1811 Criminal Investigator, there appears to be a widely held view that substantial distinctions exist between the duties of the GS-1810 Investigator and those of the GS-1811 Criminal Investigator. Attached as Exhibit D are selected portions of the CSC classification standards for both series. These standards are identical, and, in fact, only one set of standards is provided for both classifications. The sole distinction between the classifications is quoted below:

General Investigating Series, GS-1810

This series includes all classes of positions the duties of which are to administer, coordinate, supervise, or perform (a) working involving primarily (emphasis supplied) investigations which are noncriminal in nature, or (b) work involving investigations which are not specifically included in positions in other series in this group.

Criminal Investigating Series, GS-1811

This series includes all classes of position the duties of which are to administer, coordinate, supervise, or perform work involving primarily (emphasis supplied) investigations of alleged or suspected violations of criminal statutes of the United States (emphasis added).

These classification definitions raise certain fundamental questions concerning the accomplishment of "Special Investigation" cases as defined by FEA's Compliance Manual.

First, "Is the Compliance Division charged with the responsibility of investigating alleged or suspected violations of criminal statutes of the United States?" Obviously, since willful violations of our regulations are punishable by specific criminal penalties, and since the Compliance Manual requires that specifically identified "special investigators" are charged with the responsibility for these exact types of suspected violations, it is assumed that the answer to this question is in the affirmative.

Second, "Are the duties of these "special investigators" primarily related to investigations which are noncriminal in nature?" The duties assigned by the Compliance Manual to special investigators are specifically related and confined to "alleged or suspected violations of criminal statutes of the United States." Therefore, there seems to be no question that the second question can be answered in the negative. By inductive reasoning, it would thus appear that any employee whose duties are related primarily to FEA's "special investigation" area can be classified properly in the GS-1811 series, and in no other series. Conversely, if the agency follows the Compliance Manual's instructions to utilize employees in the GS-1810 and GS-510 series as "special investigators" in the conduct of "special investigations," there appears to be little doubt that such personnel are not qualified to perform such assignments, and that such assignments necessarily involve personnel misclassification insofar as these assignments are concerned.

At this point, it may be useful to refer specifically to the *exclusions* specified in the CSC standards for GS-1810/1811 positions. The following is quoted directly from pertinent portions of these standards:

Excluded from (the 1810 and 1811 series) are:

Positions the paramount duties of which are the performance of professional or scientific work but which also include incidentally or as a duty of secondary importance, investigative work, are classified in the appropriate professional series (e.g., accounting, law, pharmacy).

(It is necessary to distinguish between positions which are primarily investigative in nature and those which are primarily professional in nature. The latter positions must necessarily be filled by employees who possess professional qualifications which are appropriate for the profession involved, and such positions are classified in the pertinent professional series.)

(Positions which are primarily investigative in nature are sometimes filled, by preference, with employees whose basic training has been in a professional field such as law or accounting. In such cases the professional knowledges and skills per se are not essential requirements; rather such backgrounds are preferred because persons with such training have been found to possess the type of personality, work and intellectual habits, and similar qualifications which are conducive to successful performance of investigative work. Typically, such positions are filled by persons who received basic training in either of two or more professional fields, or who have had investigative experience or training. Such positions are classified in either the General Investigating Series, GS-1810-0, or the Criminal Investigating Series, GS-1811-0, as appropriate for the type of investigative work done.)

The "Characteristics of Investigations" are contained in *Exhibit E*. A close review of both Exhibits D and E is essential in recognizing a classification problem.

A comparison of the previously described actual duties and qualifications of Region IV's "investigators" (GS-1810 series) with the CSC classification standards, demonstrates that *all* these employees have been, and are, misclassified. Similarly, a comparison of the previously described duties and qualifications of this region's "special investigator" with the same CSC classification standards, indicates that proper and accurate classification action has been taken.

Thus, from our regional perspective, we see ourselves in "a catch-22" situation. We believe the agency recognizes that it must conduct investigations of

suspected criminal violations of its regulations and the Compliance Manual tells us to do so. We are advised that the agency must perform such investigations—that the DOJ will only prosecute violators of FEA regulations and not investigate such violators. Further, it is clear that the assignment of GS-510 personnel to conduct investigations is contrary to and prohibited by CSC standards. Finally, we have been advised that we should eventually eliminate GS-1810 personnel from our personnel roles, and we have been instructed not to hire GS-1811 personnel.

CURRENT REGION IV WORKLOAD OF SPECIAL INVESTIGATIVE CASES

Attached as Exhibit F is a listing of cases which we have recently addressed as possible "Special Investigation" cases and their current status. Nine cases have been approved as Category A cases; eight cases have been submitted to NFEA but are not yet approved as Category A cases; two cases which were previously proposed as Category A cases have instead been approved as Category cases; and in one instance, a new Category A investigation must be conducted.

All Category A cases require the application of audit expertise, under the direction of the Special Investigations Branch, together with investigative interviews of varying numbers of witnesses and subjects of investigation. The scope of the cases ranges from apparently simply cases of possible fraudulent record keeping at retail gasoline outlets, to possible conspiracies involving many large firms (including refiners, resellers, producers, retailers, etc.) and possible illegal overcharges in amounts of several millions of dollars. Due to the absence of sufficient numbers of trained investigators, certain of the cases have been largely inactive for up to two years.

It should be noted that all of these cases were referred to this office by individual field auditors, regional Operations Division, Congressional sources, industry officials, private citizens, industry employees, competitors, the FBI, etc. We have never attempted or had the resources to seek out or to make an active effort to disclose and identify cases involving possible criminal violations. It would appear, therefore, that it is likely additional cases are in existence, but not yet identified.

As previously noted, this region currently has one functioning Criminal Investigator, GS-1811, charged with the overall investigative responsibility for all special investigations. Inasmuch as the Compliance Division has a relatively large number of qualified GS-510 Auditors, we have the resources to conduct the audit work associated with these cases.

Attached as Exhibit G is a memo listing the GS-1810 "Investigators" currently on board within Region IV. This memo, prepared by the Regional Personnel Officer, also lists the qualifications of these eight employees. The memo indicates that none has functioned in an investigative role; that four individuals are currently performing in a satisfactory manner the duties of Auditor, GS-510, and should complete requirements for reclassification to GS-510 series by the end of the third quarter of this year; and that the remaining four have indicated their desire to work toward qualifying in the GS-510 series. Although all of these employees are qualified for assignment to Applications Examiner positions in our Operations Division, should we reclassify them at this time, there are no vacant positions available in that Division. Thus, in the absence of RIF or return to former agency procedures, we feel obligated to retain these personnel in the GS-1810 series at this time, especially the four personnel who are so close to completing work to become a GS-510 auditor.

Attached as Exhibit H is a memo dated March 23, 1977, in which the Director of Compliance requested applications from any current Compliance Division employee wishing temporary or permanent assignment to work on Special Investigation cases. This memo repeated and formalized oral requests made on many occasions over the past two years for such applications. To date, only one Compliance Division employee has requested such assignment, but following a period of assignment to duties in this area, he requested and received reassignment to an administrative position. Similarly, in a meeting with all Region IV GS-1810 "Investigators" on March 28, 1977, all expressed a desire to continue in audit related work (while working toward attaining necessary qualifications for formal reclassification to GS-510 series).

All the foregoing demonstrates (1) to assign GS-510 or GS-1810 personnel to "special investigations" violates CSC requirements; (2) the region has been prohibited from recruiting GS-1811 personnel; (3) there are no on-board employees in the GS-510 or 1810 series qualified to conduct "special investigations;" (4) current instructions from National Personnel Officials indicate that recruitment of qualified 1810 series personnel is unwise and not desired; (5) the agency has issued instructions that "special investigations" represent the "highest priority" of Compliance Division cases; (6) Region IV has a heavy backlog of alleged or suspected willful violation cases, some as much as two years old, and (7) Region IV has one qualified criminal investigator to assign to these cases.

PLANNED ACTIONS AND RECOMMENDATIONS

Based on the information included in this memo, I propose to take the following actions:

1. Four GS-1810 "Investigators" who are expected to soon complete requirements for reclassification to the GS-510 series are being formally detailed to the GS-510 classification. They will be reclassified at such time as circumstances permit. I understand CSC regulations permit such details for periods not to exceed 120 days.

2. Since, in our judgment, the remaining four GS-1810 "Investigators" are neither qualified nor capable of being quickly trained to conduct investigations and since they are not close to completing work for the GS-510 series, they will be considered for eventual reclassification and reassignment to Operations Division positions for which they currently qualify. Such reassignment would be contingent upon availability of position vacancies, which we do not now have, and would be carried out with the stipulation that the employees will be considered for GS-510 reclassification at such time as they may qualify for that series. Even though we recognize that these employees will likely not be fully productive in the investigative field, and that misclassification may be a problem, during the immediate future, they will be assigned to assist qualified GS-510 Auditors, on special investigative audit assignments. These series GS-510 personnel have agreed to work on Special Investigation cases and will be detailed to work under the immediate supervision of the Special Investigations Branch Chief.

In addition to aforementioned actions on my part, the following recommendations are offered with regard to our responsibility to take strenuous efforts to resolve these regional special investigation cases in an efficient and expeditious manner:

1. Request authority to immediately recruit two qualified Criminal Investigators, GS-1811-13 (in addition to the one currently on board) to supervise the efforts on special investigation cases, and to conduct the technical investigative effort required in such cases. In this regard, during the past 2½ years, this region has frequently sought permission to recruit qualified special investigators, but to no avail. Several qualified criminal investigators have applied either formally or informally for positions in this regional office. The most recent application was received on March 29, 1977, from a GS-1811-12 Special Agent with the Intelligence Division of the Internal Revenue Service. After an interview and review of his qualifications are conducted, and should he be qualified and acceptable, I would immediately bring him on board to fill one of the two requested positions.

2. The NFEA should take the steps necessary to clarify and resolve the problems which have or may arise with regard to accurate personnel classifications and our authorities to utilize personnel properly qualified and classified in the work that needs to be accomplished.

Enclosures.

EXHIBITS

- A. Memo, Eugene H. Beach, dated March 11, 1977.
- B. Memo, DAA for Compliance, dated November 16, 1976.
- C. Excerpts, CSC Standards, GS-510 Auditor.
- D. Excerpts, CSC Standards, GS-1810 and 1811 Investigators.
- E. Excerpts, CSC Standards, Characteristics of Investigations.
- F. Listing, Region IV Special Investigation Cases.
- G. Memo, Region IV, GS-1810 Personnel.
- H. Memo, Region IV, Applications for Assignment to Work on Special Investigations.

EXHIBIT A

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., March 11, 1977.

Memorandum: for Gorman C. Smith, Regional Administrators.

From: Eugene H. Leach.

Subject: Promotions of employees occupying positions of investigator, GS-1810-0, in FEA regional compliance organizational elements.

The U.S. Civil Service Commission (CSC) found that a significant proportion of the audit work being performed in the Federal Energy Administration's (FEA) Boston Regional Office was of poor quality, because non-Auditors were conducting audits. As a result of this finding, a survey was conducted of Compliance positions in FEA Regional Offices.

It was found that a significant proportion of the Compliance audit work was being performed by personnel occupying positions classified as Investigator, GS-1810-0. The vast majority of the work of FEA Regional Compliance organizations is characteristic of Accounting and relating occupations.

Further survey efforts disclosed that there is no need for more than two to four positions that can properly be classified as Investigator, GS-1810-0. The majority of FEA Regional Office Investigators are currently misassigned because they do not actually perform Investigator-type work.

Effective immediately, promotions of personnel occupying Investigator positions will be restricted to those actually performing Investigator (GS-1810-0) work. All positions certified by management as truly investigative in nature will be desk audited before any proposed promotion action is effected. Those few employees who are found to be actually performing investigative work may be promoted within the GS-1810 Series.

EXHIBIT B

FEDERAL ENERGY ADMINISTRATION,
Washington, D. C. November 16, 1976.

Memorandum for Donald E. Allen, Regional Administrator, Region IV.

From: James R. Newman, Deputy Assistant Administrator for Compliance, Regulatory Programs.

Subject: Staffing for special Investigations.

In reference to your memorandum of November 1, 1976, subject: Hiring to Compliance Staffing Authorization, Compliance is not authorized to fill GS-1811 Criminal Investigator positions. Compliance Policy Memorandum No. 9 states: "4. Each Regional Administrator will select a minimum of two Special Investigators for their regions, or any number justifiable above two."

It was never the intent of the National Office to hire criminal investigators for these positions. A Special Investigator is an organizational title to be filled within the Compliance authorization, preferably by an onboard employee.

EXHIBIT C

This series includes all classes of positions the duties of which are to advise on, administer, supervise, or perform professional accounting work relating to the transactions of governmental, quasi-governmental, or private business organizations. The work ordinarily is concerned with the design, development, installation, operation, or inspection of accounting systems; the prescription of accounting requirements; the audit or similar examination of accounts and records of transactions; the examination, analysis, and interpretation of accounting data or reports; or providing accounting advice and assistance to management.

These standards supersede the standards for the Accounting Series, GS-510-0 published in June 1952 with the exception of the grade level material for the Auditor positions which commenced on page 33 in Part II of those standards. Pages 33 through 140 of June 1952 should be interfiled with this new standard as pages 33 through 140. These standards also supersede in their entirety the former standards for the Business Accounting Series CAF-924-0 published in March 1949.

EXCLUSIONS

1. Positions the duties of which consist of work requiring familiarity with certain accounting procedures and techniques or a knowledge of governmental fiscal procedures, or both, but not requiring a professional knowledge and application of accounting principles and procedures, are classified in appropriate series

in the Accounting and Budget Group, GS-500-0 (a.g., the Accounting Clerical Series, GS-520-0; the Cash Accounting Series, GS-530-0; the Fiscal Auditing (GAO) Series, GS-541-0; the Payroll Series, GS-543-0; the Accounting Technician Series, GS-525-0; and the Financial Institution Examining Series, GS-570-0).

2. Positions the duties of which require some knowledge of accounting but which have a different subject-matter field as the paramount qualification requirement because the positions have a primary function which is other than the maintenance or examination of accounting systems or other than the performance of other work typical of this series. Such positions are classifiable to a wide variety of series including the Criminal Investigating Series, GS-1811-0; General Clerical and Administrative Series, GS-301-0; the General Finance Series, GS-1160-0; the Loan Examination Series, GS-1165-0; and others, depending on the specific nature of each such position.

3. Positions the principal duties of which involve the determination of liability for taxes and which require, in addition to a knowledge of professional accounting, a knowledge of tax laws, regulations, procedures, and related matters. Such positions are classifiable to the Internal Revenue Agent Series, GS-512-0.

4. Positions the duties of which are to examine or study work processes, and to devise methods, procedures, organizational arrangements, and related matters for the purpose of improving the effectiveness and economy of work programs or organizations. Such positions, while similar in methodology to some systems or other accounting positions, have a different primary purpose from the latter, do not require knowledge of professional accounting, and are classifiable to the Management Analysis Series, GS-343-0 or in some instances, to other specific subject-matter series.

(Among the distinctions to be made between positions falling within this series and those falling within other closely related series is that between accountants' jobs involving "procedures work" and jobs of management analysts involving work bearing the same name.)

Typically, accounting units are responsible for the appraisal of their accounting programs, procedures, methods, forms, and internal organization; and for the development and installation of necessary improvements. In large organizations there are frequently found planning staffs specializing in this type of work; in small organizations one or two employees may be charged with this kind of planning responsibility, either on a part-time or on a full-time basis. In many (but not all) cases, employees performing these planning activities are recruited primarily on the basis of their knowledge of accounting, rather than on their knowledge of the principles of management analysis.

When the duties and responsibilities of a position require the application of a professional knowledge of accounting, as is required to perform the work of this series, in addition to some knowledges required to perform management analysis work in the development of accounting systems, the design of accounting forms, the flow of accounting documents, and the preparation of accounting procedural manuals, the position is properly classifiable in the Accounting Series, GS-510.

5. Positions the duties of which require, in addition to some knowledge of accounting, capability in other aspects of financial management or management in general. Such positions are classified to the GS-505, Financial Management Series.

GENERAL NOTES

This standard is intended to achieve the reasonable evaluation of positions. It bases grade levels on the basic professional nature of each position. It tries to minimize the likelihood that positions will be improperly graded because of some superficial resemblance to a specific set of tasks which might have been catalogued at a particular grade. The standard tries to foster the intelligent evaluation of positions in terms which reflect their true values. It avoids, as much as possible, reliance on statistical and quantitative data.

POSITION CLASSIFICATION STANDARDS

GS-510-0.—Part I—Nonspecialized

Qualifications required:

Following are the knowledge and abilities required for positions covered by Part I of this standard. These are not repeated at the individual grade levels.

1. *Knowledge required of:*
 - a. Well-established principles, theories, techniques, and methodology of accounting.
2. *Ability required to:*
 - a. Acquire, expand, and apply a knowledge of the organization for which the assigned accounting service is rendered;
 - b. Acquire, expand, and apply a knowledge of the structure, policies, and operating details of the accounting system or segment to which assigned;
 - c. Apply the established principles, theories, techniques, and methodology of accounting to the assigned work;
 - d. Make oral and written reports;
 - e. Gain cooperation of and cooperate with others;
 - f. Understand and follow directions.

GS-510-5, Part I—Nonspecialized.—Accountant GS-5.

Nature and variety of work.—This grade represents the beginning level of professional accounting work. A typical position in this class consists of a variety of consecutive assignments designed to provide experience in the practical application of accounting principles, procedures, and techniques; and to develop familiarity with the practices, rules, regulations, decisions, and other requirements under which the incumbent is required to operate. *An accounting position is not classifiable in this class unless it represents a step in training for positions properly classified in higher levels in this series.*

In some cases, an Accountant GS-5 serves as an assistant in carrying out audit assignments.

EXHIBIT D

GS-1810-0, GS-1811-0.—Grade-Level Guides for Classifying Investigator Positions¹

General Investigating Series, GS-1810-0

This series includes all classes of positions the duties of which are to administer, coordinate, supervise, or perform (a) work involving primarily investigations which are noncriminal in nature, or (b) work involving investigations which are not specifically included in positions in other series in this group.

Criminal Investigating Series, GS-1811-0

This series includes all classes of positions the duties of which are to administer, coordinate, supervise, or perform work involving primarily investigations of alleged or suspected violations of criminal statutes of the United States.

These standards are presented in the form of broad general guides in recognition of (1) the desirability of building standards on as broad an occupational basis as possible, (2) the long-range importance of having standards which in their general treatment of evaluation elements do not require the frequent revision that is characteristic of more specific standards, and (3) the expectation, based upon a recommendation of the Standards Committee of the Inter-Agency Advisory Group, that agencies which are the major users of the standards will, within the framework of these general guides, develop more specific standards for their own positions. General standards eliminate the necessity for providing voluminous details concerning many specific investigator situations which would have to be read and interpreted by classifiers in all agencies. General standards permit the using agency to develop a guide which is very specific to its investigating program, thus providing a much more useful tool. Agency standards may be in the conventional standards format, "benchmark" position descriptions, or standard position descriptions for basic types of positions. While no format is prescribed, such agency standards must reflect a progression of levels which is consistent with the general guide, and, upon approval by the Standards Division

¹ These guides supersede and are to be substituted for the position-classification standards for the General Investigating Series, GS-1810-0 issued in July 1945 under the code of GAF-1030-0, and amended in June 1952 and March 1954, and those for the Criminal Investigating Series, GS-1811-0, issued in October 1945 under the code of GAF-1020-0.

of the Civil Service Commission, will be the basis for classification of investigator positions in the respective agencies.

Included within the scope of this guide are:

1. Positions of nonsupervisory investigators.

Excluded from the scope of this guide are:

1. (a) Supervisory investigator positions;

(b) Full-time or substantially full-time positions of reviewers, evaluators, liaison officers, instructors, inspectors, or other types of positions which are not those of operating investigators, or which are based essentially upon responsibilities normally associated with staff or supervisory positions;

(c) Full-time or substantially full-time positions of group heads and similar positions which are in the supervisory chain, are responsible for carrying out proportionate shares of the workload on a formal or informal organization basis, and have *continuing* responsibilities characteristic of supervisory positions.

(Supervisory and staff-type positions classifiable in the series but excluded from the scope of this guide will be evaluated in accordance with other guides to be issued by the Civil Service Commission at a later date.)

Excluded from both series are:

Positions the paramount duties of which are the performance of professional or scientific work but which also include incidentally or as a duty of secondary importance, investigative work, are classified in the appropriate professional series (e.g., accounting, law, pharmacy).

(It is necessary to distinguish between positions which are primarily investigative in nature and those which are primarily professional in nature. The latter positions must necessarily be filled by employees who possess professional qualifications which are appropriate for the professional involved, and such positions are classified in the pertinent professional series.)

(Positions which are primarily investigative in nature are sometimes filled, by preference, with employees whose basic training has been in a professional field such as law or accounting. In such cases the professional knowledges and skills per se are not essential requirements; rather such backgrounds are preferred because persons with such training have been found to possess the type of personality, work and intellectual habits, and similar qualifications which are conducive to successful performance of investigative work. Typically, such positions are filled by persons who received basic training in either of two or more professional fields, or who have had investigative experience or training. Such positions are classified in either the General Investigating Series, GS-1810-0, or the Criminal Investigating Series, GS-1811-0, as appropriate for the type of investigative work done.)

CLASS TITLES

1. The basic official class title for positions covered by these guides and classifiable in the General Investigating Series, GS-1810-0, is "Investigator."

2. The basic official class title for positions covered by these guides and classifiable in the Criminal Investigating Series, GS-1811-0, is "Criminal Investigator."

3. The title "General Investigator" will be used to denote positions involving combinations of both criminal and noncriminal investigations where neither type is clearly predominant (as defined in the series definitions). Positions of this kind will be classified in the General Investigating Series, GS-1810-0.

4. The official class title for supervisory positions is the appropriate basic title with the prefix "Supervisory."

(The official title structure does not prevent the use for public relations or similar purposes of such working titles as are considered desirable in addition to the official title (e.g., Special Agent, Narcotics Agent, etc.).)

CHARACTERISTICS OF INVESTIGATIONS

The essential functions of an investigator are factfinding and reporting. An investigation is a planned, systematic, and thorough search for facts. It requires painstaking inquiry into circumstances causing, affecting, surrounding, or growing out of an act or a series of acts, with particular attention to details and relationships of events.

In brief, and without elaborating on the full scope and importance of the work which varies to some degree from one type of investigation to another, an investigation involves an appraisal of the original request, complaint, and/or alle-

gation in order to formulate the specific issues concerned and to determine the projected nature, scope, timing, and direction of the investigation and its separate phases; the development of an outline for a plan of inquiry that is designed to obtain essential facts; the conduct of factfinding through such methods as interviews, observation, interrogations, or analysis of records to establish facts and/or the existence or nonexistence of essential elements of proof; the securing of objective and physical evidence; the verification and corroboration of all information obtained to establish accuracy and authenticity of facts and/or evidence; the critical determination as to when an investigation is completed, which may take the form of an arrest, search, or seizure, evaluate recommendation for final action, and/or decision that further inquiry will be unproductive; and the presentation of findings and results in clear, logical, impartial, and properly documented formal reports. Findings must establish proof of facts and/or evidence to the satisfaction of officials in the legislative, executive, and/or judicial branches of the Government.

GRADE-LEVEL DISTINCTIONS

The principal distinctions between grade levels are: nature and variety of work, in terms of the mutually dependent elements of scope and complexity of investigations; applicability of guidelines; originality required; person-to-person work relationships; and knowledges, abilities, and skills required; and nature and extent of supervisory control exercised over the position, in terms of the required degree of independence as well as the relative freedom with which the investigator works, and the nature and scope of decisions and the degree of authority the investigator has to take or recommend action.

All grade levels in these standards are based upon the performance of work of the complexity and importance described of equivalent complexity and responsibility. In classifying positions which do not reasonably conform to the principal characteristics of a given grade level, judgment must be applied in determining the total effect of these differences upon the evaluation of the position. Not all differences are important from the standpoint of one or more full grade levels. Minor variations from the principal grade-level characteristics described in these guides will be considered as variations within the range of the grade level; major variations will result in evaluation at a higher or lower grade level.

In general the actual responsibility of investigators varies according to the kinds of cases assigned and the kind of supervision received.

For employee development purposes, in emergencies, or in manpower shortage situations, operating investigators may be assigned investigations of greater or lesser scope, complexity, and importance than those considered as characteristic of the grade level. Although the scope, complexity, importance, and consequences of cases cannot always be foreseen, the basic assumption in these guides is that investigations of greater scope, complexity, and importance are conducted most of the time by the more experienced and skilled investigators in higher-graded positions, and those of lesser scope, complexity, and importance are conducted most of the time by the less experienced and skilled investigators in lower-graded positions.

Basic Knowledges required of investigators: Knowledge of basic principles and techniques of investigating; law of evidence; responsibility and authority of their positions; sources of information and investigative references; legal requirements pertaining to inspecting, securing, issuing, and using files, records, and forms; rules governing safeguarding of identity of confidential informants; functions and jurisdiction of other investigative agencies.

Specialized Knowledges, as Required by the Type of Assignments received: Knowledge of the scope, application, and interpretation of the specific laws and regulations relating to the investigative jurisdiction of the agency; laws and decisions relating to search, seizure, and arrest; criminal methods of operation; laws, regulations, and decisions relating to the national security; subversive organizations and their methods of operation; current internal security problems; specialized industrial, commercial, or agency accounting practices; corporate organization, operations, or practices; specialized trade or industrial processes; operation and scope of laws of foreign governments as they relate to cases within the agency's jurisdiction; specialized investigative devices and equipment; resources of technical laboratories.

Basic Abilities required of investigators: To plan, organize, and conduct investigations; to adapt investigative methods, techniques, and procedures to specific situations; to accurately observe and record facts about persons, objects, and events; to make thorough and complete investigations; to distinguish between conclusions and fact; to estimate reliability and credibility of statements of witnesses; to report facts accurately in a concise, logical, and objective manner; to deal effectively with others and to gain their confidence and cooperation; to make quick positive decisions; to testify in legal, quasi-legal, and/or administrative proceedings.

Specialized Abilities, as Required by the Type of Assignments Received: To understand and analyze business, commercial, or industrial records; to discover and recognize evidence of crimes or violations; to make detailed examinations of fiscal accounts and records and to trace financial or other transactions; to anticipate violent actions or reactions; to analyze, interpret, and evaluate information obtained and to make sound recommendations for action; to function effectively in stress situations.

Basic Skills required of investigators: Skill in conducting interviews and interrogations; in development and follow-through on significant leads or avenues of inquiry; in report writing; in detecting discrepancies in information; in distinguishing between relevant and irrelevant information and/or evidence.

Specialized Skills, as Required by the Type of Assignments Received: In the development and use of specialized investigative techniques, devices, and procedures; in the techniques of self-defense; in the use of firearms; in undercover surveillance work; in dealing with emergency situations.

Personal Qualities required for investigators: Unquestionable loyalty to the United States and to its democratic institutions; integrity; impartiality; emotional and mental stability; sound judgment; physical stamina; initiative; resourcefulness; discretion; alertness; incisive thinking; adaptability; thoroughness; good memory; good morals, personal habits, and associations; physical and moral courage; capacity for effective public relations. (Knowledge, abilities, and skills required are of increasing breadth and/or intensity at progressively higher grade levels.)

GS-1810-5—Investigator GS-5

GS-1811-5—Criminal Investigator GS-5

As a trainee, receives instruction in laws, regulations, and decisions governing the authority, scope, and jurisdiction of the investigative activities of the agency; and in the work methods, procedures, and techniques appropriate to investigations arising within the agency's jurisdiction. Selected work assignments are carried out under close supervision. Accompanies experienced investigators as an observer. Requires potential for development in, and aptitude for progressing to, more difficult and responsible work in the investigative field for which he is being trained.

GS-1810-7—Investigator GS-7

GS-1811-7—Criminal Investigator GS-7

Performs investigative assignments constituting less than a complete investigation, involving the application of previously learned techniques, under general supervisory control; or conducts complete investigations of the scope, complexity, and importance described at the GS-9 level under substantially closer supervisory control than that described at that level; or conducts complete investigations of lesser scope, complexity, and importance than those described at the GS-9 level under the same supervisory control described at that level.

EXHIBIT E

CHARACTERISTICS OF INVESTIGATIONS

The essential functions of an investigator are factfinding and reporting. An investigation is a planned, systematic, and thorough search for facts. It requires painstaking inquiry into circumstances causing, affecting, surrounding, or growing out of an act or a series of acts, with particular attention to details and relationships of events.

In brief, and without elaborating on the full scope and importance of the work which varies to some degree from one type of investigation to another, an investi-

gation involves an appraisal of the original request, complaint, and/or allegation in order to formulate the specific issues concerned and to determine the projected nature, scope, timing, and direction of the investigation and its separate phases; the development of an outline for a plan of inquiry that is designed to obtain essential facts; the conduct of fact-finding through such methods as interviews, observations, interrogations, or analysis of records to establish facts and/or the existence or nonexistence of essential elements of proof; the securing of objective and physical evidence; the verification and corroboration of all information obtained to establish accuracy and authenticity of facts and/or evidence; the critical determination as to when an investigation is completed, which may take the form of an arrest, search, or seizure, evaluative recommendation for final action, and/or decision that further inquiry will be unproductive; and the presentation of findings and results in clear, logical, impartial, and properly documented formal reports. Findings must establish proof of facts and/or evidence to the satisfaction of officials in the legislative, executive, and/or judicial branches of the Government.

Basic Knowledges required of investigators: Knowledge of basic principles and techniques of investigating; law of evidence; responsibility and authority of their positions; sources of information and investigative references; legal requirements pertaining to inspecting, securing, issuing, and using files, records, and forms, rules governing safeguarding of identity of confidential informants; functions and jurisdiction of other investigative agencies.

Specialized Knowledges, as Required by the Type of Assignments received: Knowledge of the scope, application, and interpretation of the specific laws and regulations relating to the investigative jurisdiction of the agency; laws and decisions relating to search, seizure, and arrest; criminal methods of operation; laws, regulations, and decisions relating to the national security; subversive organizations and their methods of operation; current internal security problems; specialized industrial, commercial, or agency accounting practices; corporate organization, operations, or practices; specialized trade or industrial processes; operation and scope of laws of foreign governments as they relate to cases within the agency's jurisdiction; specialized investigative devices and equipment; resources of technical laboratories.

Basic Abilities required of investigators: To plan, organize, and conduct investigations; to adapt investigative methods, techniques, and procedures to specific situations; to accurately observe and record facts about persons, objects, and events; to make thorough and complete investigations; to distinguish between investigations; to distinguish between conclusions and fact; to estimate reliability and credibility of statements of witnesses; to report facts accurately in a concise, logical, and objective manner; to deal effectively with others and to gain their confidence and cooperation; to make quick positive decision; to testify in legal, quasi-legal, and/or administrative proceedings.

Specialized Abilities, as Required by the Type of Assignments Received: To understand and analyze business, commercial, or industrial records; to discover and recognize evidence of crimes or violations; to make detailed examinations of fiscal accounts and records and to trace financial or other transactions; to anticipate violent actions or reactions; to analyze, interpret, and evaluate information obtained and to make sound recommendations for action; to function effectively in stress situations.

Basic Skills required of investigators: Skill in conducting interviews and interrogations; in development and follow-through on significant leads or avenues of inquiry; in report writing; in detecting discrepancies in information; in distinguishing between relevant and irrelevant information and/or evidence.

Specialized Skills, as Required by the Type of Assignments Received: In the development and use of specialized investigative techniques, devices, and procedures; in the techniques of self-defense; in the use of firearms; in undercover and surveillance work; in dealing with emergency situations.

Personal Qualities required for investigators: Unquestionable loyalty to the United States and to its democratic institutions; integrity; impartiality; emotional and mental stability; sound judgment; physical stamina; initiative; resourcefulness; discretion; alertness; incisive thinking; adaptability; thoroughness; good memory; good morals, personal habits and associations; physical and moral courage; capacity for effective public relations. (Knowledge, abilities, and skills required are of increasing breadth and/or intensity at progressively higher grade levels.)

EXHIBIT F

INCOMPLETE CASES INVOLVING ALLEGED OR SUSPECTED WILLFUL VIOLATIONS OF FEA REGULATIONS—
REGION IV, FEA

SUBMITTED AND APPROVED—CATEGORY A

Date received	Date requested	Date approval received	Subject	Suspected violations	Assigned to
Dec. 2, 1975	(¹)	(¹)	Russell Oil Co., Atlanta, Ga.	Possible conspiracy to commit fraudulent use of State set-aside product to circumvent FEA price and allocation regulations. No available estimate of possible dollar violations. Apparent State set-aside volume abuse several million gallons of product. Referred by officer of Standard Oil Co.	H. Bennett, J. Grimes, W. Todd.
May 5, 1975	Mar. 15, 1977	Mar. 25, 1977	Citronelle-Mobile, Mobile, Ala.	Possible conspiracy to represent domestic sale of crude oil as exports exempt from price and allocation control. Possible dollar violation estimate—\$9,000,000. Referred by newspaper reporter, and national FEA.	J. Grimes, T. Hawk.
Feb. 9, 1977	Mar. 11, 1977	(²)	Elias Oil Co., West Palm Beach, Fla.	Possible fraudulent allocation application; possible illegal export of products obtained through FEA allocation for domestic sales. Questioned fuel amounts estimate—several million gallons annually. Referred by Department of Commerce investigator.	T. Hawk, B. McNeil
Apr. 23, 1974	(¹)	(¹)	Interair Services, St. Petersburg, Fla.	Alleged destruction of company records to conceal illegal selling prices. Possible dollar violation estimate—\$50,000. Referred by field auditors on complaint of former company employee.	E. Hallman, L. Goodrich.
Do.-----	(¹)	(¹)	St. Pete Air World, St. Petersburg, Fla.	Alleged destruction of company records to conceal illegal selling prices. No estimate of dollar violations. Referred by former company employee.	Do.
Apr. 14, 1975	Mar. 14, 1977	Mar. 25, 1977	Fones Standard Station, Ocala, Fla.	Possible fraudulent records to conceal illegal selling prices. No estimate of dollar violation. Referred by Standard Oil Co., sales representative.	J. Grimes.
Aug. 26, 1974	Mar. 15, 1977		McDuff Exxon, Jacksonville, Fla.	Possible fraudulent records to conceal illegal selling prices. No estimate of dollar violation. Case (incomplete) in DOJ in inactive state, until July 8, 1976, when DOJ asked for additional investigation. Referred by field auditors.	Do.
June 4, 1975	-----do-----	-----do-----	Jordan Hess Station, Tampa, Fla.	Possible fraudulent submission of false records to FEA auditor, to conceal illegal selling prices. Minimum estimate of dollar violation—\$13,000. Referred by attorney for Amerada Hess Corp.	Do.

¹ Informal approval.² Telephone approval.

EXHIBIT F—Continued

INCOMPLETE CASES INVOLVING ALLEGED OR SUSPECTED WILLFUL VIOLATIONS OF FEA REGULATIONS—
REGION IV, FEA—Continued

SUBMITTED AND APPROVED—CATEGORY A—Continued

Date received	Date requested	Date approval received	Subject	Suspected violations	Assigned to
June 12, 1974	Mar. 15, 1977	Mar. 25, 1977	Milford Stevens 66, Jackson, Miss.	Possible fraudulent records to conceal illegal selling prices. No estimate of dollar violations. Case apparently inactive in DOJ until Aug. 28, 1975, when it was determined that additional investigation required. Referred by field auditors.	J. Grimes.

SUBMITTED NOT YET APPROVED—CATEGORY A

Date received	Date requested	Date approval received	Subject	Suspected violations
May 4, 1975	Mar. 23, 1977	-----	Ashland Oil Co., Ashland, Ky.	Possible misrepresentation regarding first sale in U.S. commerce. Indicated possible dollar violation \$1,000,000. Referred by area manager, FEA, Nashville, Tenn.
Apr. 5, 1976	Mar. 22, 1977	-----	Charter Oil Co., Jacksonville, Fla.	Possible misrepresentation of intercompany transaction as arms-length transaction to conceal illegal cost pass through. Questioned amount—\$500,000. Referred by regional counsel.
June 23, 1976	Mar. 21, 1977	-----	Cumberland Lake Shell, Somerset, Ky.	Possible fraudulent sworn affidavits to conceal illegal selling prices. Estimate of possible dollar violation \$191,000. Referred by area manager, FEA, Nashville, Tenn.
June 10, 1976	Mar. 23, 1977	-----	Himmel's Downtown Gulf, Louisville, Ky.	Possible fraudulent recordkeeping to conceal illegal selling prices. No estimate of dollar violation. Submitted by area manager, FEA, Nashville, Tenn.
June 9, 1976	Mar. 22, 1977	-----	Metro. Petroleum Co. Miami, Fla.	Possible fraudulent allocation application, misrepresenting operation of 3 retail outlets, involving questioned 1,500,000 gal annual gasoline allocation. Referred by regional operations division.
Mar. 22, 1977	Mar. 23, 1977	-----	Miles Oil Co., Plant City, Fla.	Possible circumvention of FEA allocation and price regulations. No estimate of possible dollar violation available. Referred by former employee of subject firm.
Mar. 17, 1976	Mar. 22, 1977	-----	Mr. (FNU) Moon, Union Oil Distribution, Alma, Ga.	Possible fraudulent records to conceal conspiracy to circumvent FEA price and allocation regulations. No estimate of violation available. Referred by Energy Research and Development Administration.
Oct. 30, 1975	Mar. 23, 1977	-----	SOS Standard Station, Vicksburg, Miss.	Possible fraudulent submission of price records to FEA auditors. Indicated possible dollar violation \$14,000. Referred by field auditors.

SUBMITTED APPROVED AS CATEGORY "B" RATHER THAN "A"

Apr. 4, 1975	Mar. 15, 1977	Mar. 25, 1977	Cowley's Standard Station, Ocala, Fla.	Possible fraudulent records to conceal illegal selling prices. No estimate of dollar violations. Referred by Standard Oil Co. sales representative.
Mar. 10, 1975	-----do-----do-----	-----do-----	Clinkscales Oil Co., Athens, Ga.	Possible preparation of fraudulent company records to conceal illegal selling prices and violations of allocation regulations. No dollar estimate of violation available. Referred by former company employee.

EXHIBIT F—Continued

INCOMPLETE CASES INVOLVING ALLEGED OR SUSPECTED WILLFUL VIOLATIONS OF FEA REGULATIONS—
REGION IV, FEA—Continued

SUBMITTED NOT YET APPROVED—CATEGORY A—Continued

IN DOJ AND CLOSED ON CASE TRACKING—NEW CATEGORY "A" INVESTIGATION MUST BE CONDUCTED

Date received	Date requested	Date approval received	Subject	Suspected violations
Oct. 14, 1977	-----		Palm Coast Oil Co., West Palm Beach, Fla.	Possible fraudulent allocation application. Several million gallons of product, on annual basis, in question. Case investigated and referred to DOJ, after which it was determined that related firm, Elias Oil Co., (described above) may have illegally exported product. New investigation will be required on these matters at Palm Coast, per AUSA. Referred by regional operations division.

EXHIBIT G

FEDERAL ENERGY ADMINISTRATION,
Atlanta, Ga., March 30, 1977.

Memorandum for James C. Easterday, Director of Compliance.
From : Gary Stahler, Personnel Officer.
Subject : Qualifications of employees.

Susan Fox—Investigator, GS-1810-09

Ms. Fox was appointed under Civil Service Authority 02-01-74 as an Investigator, GS-1810-05 in the Federal Energy Office. While she has been subsequently promoted to GS-7 and GS-9, the duties performed were not relative to investigative work. Her performance in assigned duties is considered excellent. She holds a BS Degree from Georgia State University in Urban Administration. She is working toward qualifications for Auditor, GS-510-0. In this latter regard she has gained on-the-job experience during the past two years as well as continuing the required academic instruction. At the present pace she will qualify for reassignment to Auditor on or about the beginning of FY 78.

Audrey Griffith—Investigator, GS-1810-09

Ms. Griffith was selected from announcement number 75-61 that was designed as an Upward Mobility vehicle. An on the job training plan was developed and is being followed, however the plan is geared to Auditor, GS-510-0 experience. She intends to pursue the academic through LaSalle Extension University and is being followed, however the plan is geared to Auditor, GS-510-0 experience, predominately in fiscal operations and of a technical nature and includes over five years as a Supervisor. She would qualify for Application Examiner, GS-963-09 if a position were vacant.

Edward Griffin—Investigator, GS-1810-09

Mr. Griffin was appointed from a Civil Service Register as Investigator, GS-1810-07 on April 8, 1974. He had previously gained three years experience in personnel security investigation work. His other experience includes sales, store management and repairman. As he has only approximately two years of college with five quarter hours of accounting, he does not qualify for an Auditor position. His three years experience in FEA could qualify him for Applications Examiner, GS-963-09. Duties performed in FEA are not directly applicable to GS-1810 Investigative work.

Parker Haley—Investigator, GS-1810-09

Mr. Haley was reinstated to the Federal Service as Investigator, GS-1810-09 on April 19, 1974. His previous service at the GS-09 level was as Flight Operations Specialist and Compliance Technician. His non-government experience was predominately in the air transportation industry. His three years experience in FEA could qualify him for Applications Examiner, GS-963-09.

Raymond Hembree—Investigator, GS-1810-11

Mr. Hembree entered the Federal Service as a General Accounting Office Management Auditor, GS-343-09 and transferred to FEA as Investigator, GS-

1810-09 on October 12, 1975. He holds a MBA from Jacksonville State University, Jacksonville, Alabama. He will complete the necessary accounting courses and will be converted to Auditor, GS-510-11 on or about June 15, 1977.

Robert Knight—Investigator, GS-1810-07

Mr. Knight will be leaving Federal Service on April 23, 1977. Consequently no qualification review is made for this report.

Jack Milford—Investigator, GS-1810-11

Mr. Milford transferred on April 14, 1974 as Investigator, GS-1810-07 from Bureau of Alcohol, Tobacco and Firearms where he had held the position of A.T.F. Inspector, GS-1854-09. He holds a BA in Business Administration from Furman University. He would be qualified for Applications Examiner, GS-963-09 if a vacancy existed.

James Nanney—Investigator, GS-1810-11

Mr. Nanney transferred to FEA as a GS-9 Investigator on October 12, 1975, from the General Accounting Office where he held the position of Management Auditor, GS-343-09. He holds a BS degree in Business Management from Mississippi State University and lacks only one accounting course to qualify for Auditor, GS-510-11. He will be converted to Auditor during this fiscal year.

Grace Parkman—Investigator, GS-1810-11

Miss Parkman transferred to FEA as a GS-9 Investigator on October 12, 1975, from the Government Accounting Office where she was a Management Auditor, GS-343-09. She holds a BS degree from the University of Alabama in Business Management and will complete the additional course work to be converted to Auditor, GS-510-11 by the end of the fiscal year.

NOTE.—In the four cases above where it is indicated that the employees would qualify as a GS-963 Applications Examiner, they would need an intense training program to familiarize them with the appropriate guidelines and procedures before they could perform at their grade level. The training should not take more than two weeks.

EXHIBIT H

FEDERAL ENERGY ADMINISTRATION,
Atlanta, Ga., March 23, 1977.

Memorandum for all Compliance Division employees.

From : Director of Compliance James E. Easterly.

Subject : Personnel requirements for special investigations assignments.

Currently, the Regional Office has a heavy backlog of cases categorized as "special investigations," or cases which involve possible willful violations of FEA regulations. Occupational specialties required to conduct investigations of these sensitive cases include Civil Service classifications 510, 1810, and 1811. Any employee desiring to be considered or willing to accept permanent or temporary assignment to special investigations should contact Jim Grimes, Program Manager, Special Investigations, at FTS 257-2661 not later than April 1, 1977. Additional details concerning these assignments will be provided during interview of applicants.

Mr. EASTERDAY. If I could comment further on this, I think a little background, if I could make it brief, would be helpful to the committee. When FEA started, when I now took over the job I now hold, they hired a number—they, being IRS, for FEO, hired a number of people who were classified as 1810 investigators.

Those people were classified on the basis of holding a college degree in something. Some of them were religion majors. Some of them in Sino-Soviet affairs. I think none were in accounting. But this was the basis on which they qualified as 1810's.

At the time I took this job, I had approximately 75 of those people. I had approximately 30 people including myself classified as 510's. In the last 2 years, I reduced that number to eight. I have replaced them with 510's. The action has taken place. We still do have the eight.

The problem is that those people are neither 510's nor 1810's or really anything else. They are not qualified to do investigative work. I do not care what number we put on it. Most of them are, in fact, closer to being accountants than they are to being investigators.

When I started this program I advised them all in writing several times that the smartest thing they could do would be to become 510 qualifying. Most of them have done that. The remaining few who are willing to do it at all will complete it this summer.

The problem is that we have had to go from 70 percent of our people being unqualified as investigators or auditors to try to develop an audit-qualified staff. As we have done this, we have naturally found, as Mr. Beach's memo indicated in region I, I believe, the audits that these people did were totally unsatisfactory. They were not audits at all.

Now, I get a case that is completely a "bomb" and I have to redo it before I can attempt to get a civil action or a criminal action. The firm simply will not settle. That is what you will find, a very large portion of those 500 a day old cases to be, at least, in region 4.

I think Mr. White probably had similar experiences. I think the Director of Compliance will tell you the same thing. Those people were neither.

Mr. FINNEGAN. Mr. White?

Mr. WHITE. Our 1810's were from all types of backgrounds. Most of the 1810's that actually had criminal investigation experience who used to handle crimes against persons rather than white-collar crime, which I guess, if we have to approximate what we are talking about, when we are talking about willful violations. That is what we are talking about.

Most of these folks do not like this type of work. They do not like the paperwork, for one thing, and did not have a gun. Anyway, most of those left. Most of those who were having trouble making the transition from theology from FEA regulations left.

What we have left, as far as 1810's, are also becoming accountants. I, unlike Mr. Grimes, do not feel that the people above me were incapable of recognizing a willful violation. I felt the opposite. With Mr. Newman, I felt that I, probably, had more experience in willful violations represented right there in that one man than anyone else at this table. Therefore, I felt very comfortable there. I felt like we were getting a fair shake.

Mr. FINNEGAN. In the *Larcon-Matrix* case, was there a problem or a lack of having adequate personnel to do the job?

Mr. WHITE. That was one of the problems, yes. I agree with Mr. Easterday that an awful lot of these early cases, we probably made a call too soon and now have been trying to build something useful and salvage something out of the cases. It has taken a long time and a lot of rework.

Mr. SMITH. Mr. Finnegan, while we are on this issue of what type of things we need, I think Mr. Newman's experience might be helpful. Mr. Newman spent a number of years in the Kansas City Police Department associated with it and was, for 3 years, a Regional Administrator in region 7 in Kansas City before coming to this program. I do not want to consume—

Mr. FINNEGAN. There are a couple of things I think we need to cover. Maybe you could submit those for the record.

Mr. SMITH. If we could submit them for the record it would be helpful, perhaps, at this point.

[The following material was received for the record:]

JAMES R. NEWMAN BACKGROUND AND POSITION PAPER

First, let me explain my background briefly so the Committee may understand my reasons for some positions I will take on the issue of alleged criminal conduct in the Federal Energy Administration (FEA) cases.

I was a career police officer in the Kansas City, Mo., Police Department from 1946 to 1972, completing 27 years of service starting as a Probationary Patrolman in Recruit School and retiring after serving as the Assistant and Acting Chief of Police for the final 6 years of my tenure. For the first 13 years of my career, I conducted investigations and tried in court more than 3,000 misdemeanors, felonies, and civil cases. For the following 14 years, I supervised and managed such activities in a police organization of about 1,300 officers and 400 civilians.

After my retirement from the Kansas City Police Department, I went to work as Regional Administrator for the FEO in the Kansas City Region and worked in that capacity for 2 years. Region VII of the FEA, Kansas City, Mo., was recognized during my tenure as having the leading Compliance and Enforcement Program.

In September 1975, Mr. Gorman C. Smith asked me to come to Washington and to accept the position as Deputy Assistant Administrator for Compliance and to assist him in developing and managing an aggressive Compliance posture for the Nation. I agreed to do so and on November 1, 1975, I reported for duty in Washington, D.C. On November 3, 1975, Mr. Smith met with me and basically instructed that I develop and manage the best possible enforcement program that could be obtained with the limited staff and resources available. He emphasized that some internal conflicts existed and that as a result of the concentration on utility audits, some cases were beginning to appear that indicated there were known and willful multiple transactions being conducted to increase the price of products to the end users. These cases were extremely complex and some would transcend Region boundaries. Our experience has shown that the complexities of the cases were grossly underestimated and our Compliance strategy needed to be reevaluated frequently to reassure ourselves that we were using the right approach or to change our tactics in individual cases to bring them to some state of resolution within the foreseeable future. At every such reevaluation, to my knowledge, Mr. Smith has insisted that we apply whatever priority necessary to develop a quality resolution to all alleged criminal activity. During my tenure in this position, we have made three distinct efforts to upgrade our capability in alleged criminal cases.

1. Have Region where activity is concentrated develop and handle investigation.
2. Develop a Special Investigations strategy that would provide a quality investigation in the shortest possible period.
3. Categorize Special Investigations to have the highest agency priority of all things to be done in the Compliance Program.

Everyone of the above efforts has been vigorously supported by Mr. Smith. Let me now turn to Mr. Smith's request that I be allowed to express my recommendation as to what needs to be done in regards to alleged criminal activity cases in the future. I support Mr. John O'Leary's testimony this morning regarding the upgrading of our Compliance operation and I feel that the outside consultants that studied and wrote the report on Compliance problems did an excellent job of identifying our difficulties and providing broad outlines for their solutions. Our present Special Investigations program has several basic problems. In my opinion, they are:

1. The agency's inability to work with and seek advice directly from the local Department of Justice representatives (U.S. Attorney) where a violation occurs.
2. The auditors'/investigators' frustration of making many attempts to satisfy agency and Department of Justice (National level) divergent views of what is necessary to constitute a submittable case.
3. The legal authority vested in the local U.S. Attorney to look at the preliminary information of an allegation and to decide even if the allegation was true the case does not deserve pursuance.

4. Willful or deliberate violation of FEA regs are in most cases complex cases. Intent must ultimately be proven. False statements and conspiracy are the type of cases that final judgment to prosecute can only be made after all of the information about each transaction has been evaluated. The expectation that these cases can be concluded rapidly is erroneous. From inception to final adjudication of a complex case will average about 5 years in time.

5. A change in philosophy that the agency is going to have continuous regs for the foreseeable future changes my prospective about developing criminal investigations. If the agency position is that long range regs are inevitable, then develop long range investigative plans. It is advantageous to have strategically located criminal investigators who can react with dispatch to a given situation without a complete orientation relating to geographics, introduction to new personnel and regional administrative practices.

6. The length of time from allegation to prosecution must in every criminal case be substantially decreased. The FEA reputation as a responsible investigative agency cannot be sustained until we immediately notify the responsible Department of Justice representative (U.S. Attorney) of the revelation of such an offense and let him or his representative participate in the development of the case. The FEA has the capability now to make creditable investigations with one exception, Region IV. We should move immediately to resolve the problems cited to me by Region IV on April 5, 1977, by Region Administrator Donald Allen, which is to authorize the hiring of two criminal investigators.

Mr. DINGELL. I think it would be helpful. I am troubled about your ability to enforce the law here. Then, again, let me move onto another point.

Mr. Allen, I understand that you have, back in June 1976, sent a letter to the Governor of Georgia concerning what is referred to as a satisfied problem involving that State, in which you set forth a number of matters of concern to the Governor, and subsequent to that, I believe, the Governor replied indicating that he was satisfied that FEA was handling the case and that he would refer to FEA in the handling of that particular investigation. Is that pretty much the correct summary?

Mr. ALLEN. Pretty much, except I did not send the letter to the Governor. My predecessor did. His reply was to me, however. I was on the job at that time.

Mr. FINNEGAN. One thing that bothers me, though, is that we have a note in the file that on November 19, 1976, a handwritten note, I believe it is by Mr. Ewing, if that is correct?

Mr. ALLEN. Yes.

Mr. FINNEGAN. He indicated that you had instructed him to hold his file without further action, without action until further notice. Can you tell me why you did that?

Mr. ALLEN. Mr. Finnegan, the investigation by the FEA of the administration of certain of its regulations whether it is the Georgia State Energy Office, is limited to the period 1974 and 1975. It is currently underway. It is not complete.

The alleged irregularities, as I mentioned, had to do with the administration of our regulations. The notice that I ordered something locked up or the file locked up is a case of mixing apples and oranges. What it did—

Mr. FINNEGAN. Let me just say what it said, and there will not be any dispute. It says, "November 19, 1976. Yesterday, November 18, 1976, Mr. Don Allen, R.A., instructed me to hold this file until further notice. He stated that it was counsel's opinion that this be done. To avoid the possibility of the file being finalized inadvertently, I am

placing it in a locked cabinet in the file room." Signed, Mr. Ewing, Acting Director, OPS, whatever that stands for.

Mr. ALLEN. Yes; I told him not to take action. He saw fit to lock it up himself.

Mr. FINNEGAN. I do not raise the question of where it was put. I just raise the question of no action.

Mr. ALLEN. The file had to do with an allocation request which was received subsequent to the initiation of the Georgia State set-aside investigation. Certain of the parties in the allocation requests are also parties to the Georgia State Senate Office of Investigations.

And since the investigation was not done, I deemed it inappropriate to act on that particular allocation request which is something separate from the State set-aside situation.

Mr. FINNEGAN. So you are saying that the allocation thing was what they wanted held up and not the investigation?

Mr. ALLEN. That is correct. It is one file, what we call a three-party agreement.

Mr. FINNEGAN. I see.

Mr. ALLEN. It has to do with the agreement of one service station, and three parties are involved. One or more of those parties are also parties to the Georgia State set-aside administration.

Mr. DINGELL. Might I infer from this that this particular file, then, remains active insofar as criminal prosecution portions, but insofar as other questions, the questions to do with allocations, is at least, pending the conclusion of the criminal question enacted; is that right?

Mr. SMITH. That is exactly right.

Mr. ALLEN. That is correct. It has been deferred. Action has simply been deferred on that particular case, and the parties involved have been so notified.

Mr. FINNEGAN. When did this particular investigation on the criminal side begin?

Mr. ALLEN. When did it begin. Let me refer to Mr. Grimes.

Mr. GRIMES. The investigation, the overall investigation relative to the Georgia set-aside program, was prompted by a complaint that we received on December 2, 1975.

Mr. FINNEGAN. Now this is 1977. Why has it taken this long a period of time? Is this part of the problem of having a lack of adequate personnel?

Mr. GRIMES. That is partly responsible for the time period involved. Also partly responsible is the fact that in the context of this investigation we have been required to examine a number of major recipients of State set-aside allocations during this period.

We have had to conduct a great deal of exhaustive review and evaluation of both the allocations and the reasons for the allocations. I also think that, insofar as region 4 personnel are concerned, we have been interrupted on that case in order to handle cases that are ordained by the national office to have a little higher priority.

The delay has been due to, perhaps, four individuals as to circumstances.

Mr. FINNEGAN. Mr. O'Leary, in his response to our staff memorandum, indicated that the procedures for developing special investigations are not actually time consuming but, in fact, you mentioned that the national review was taken in only 2 days, or he did in his response.

I appreciated that that was stated, that the national office did this in 2 days. If you look at the compliance policy No. 9 which we are referring to, I believe, as being the one that is directed telling you how to initiate these investigations.

There are a number of procedures that must be followed in order to initiate an investigation and to call it a so-called special investigation. Would you agree, for example, when a civil case is opened in an area office by an auditor or an investigator and there is evidence to warrant a special investigation, do you audit in conformance with the area manager, shall notify the regional special investigator.

The regional special investigator in conjunction with regional counsel and compliance director will review the case and recommend action within 5 days. Then, there is another 5-day period within which the regional administrator can act.

Then, if the decision of the regional administrator to recommend to proceed, the matter then goes to, he shall notify and write the Office of Compliance Operations Special Investigation Unit within 5 days after that, and the national office shall act, again, within the specified time.

Would you agree that there is a multiplicity of time involved here? In fact, it has to then go to a meeting which involves both the regional and national people? Your response was that handling it in 2 days was not really totally responsive to the issue of the amount of the time that is developed.

Mr. SMITH. I think I understand the point, Mr. Finnegan. All I can do is comment that you cannot have it both ways. If you let every auditor-investigator throughout the system open a separate category A investigation, as frankly, was once the case before the adoption of these procedures, then one has a proliferation of cases that are so-called criminal or potential criminal cases.

Mr. FINNEGAN. Is it not also true of criminal cases?

Mr. SMITH. The majority of which will not, on review, turn out to amount to anything. If you then give those potential criminal cases first priority and first claim on your resources, then pretty soon all of the resources that you have are going to be eaten up chasing unfounded allegations or unsupported allegations or imaginations or suspicions that do not prove out and we will not be getting any compliance work done.

Mr. FINNEGAN. Have you really any evidence that that has actually happened?

Mr. SMITH. Yes, I have evidence that that has actually happened in terms of the number of hours that have been spent on criminal investigation cases that have not amounted to anything, Mr. Finnegan. There was simply no proof available.

Mr. FINNEGAN. Are you saying that if you have an allegation of a criminal prosecution that you should not investigate it, that if you have an allegation of a criminal violation that you should not investigate it?

Mr. SMITH. I am simply saying, Mr. Finnegan, that as with any agency responsible for pursuing criminal investigations from the FBI to the IRS, or anywhere else, there ought to be some management judgment exerted in terms of the expenditure of resources on pursuing such allegations: that in this case, there ought to be enough of a sub-

stance behind that allegation or suspicion to make a determination that the agency's resources should be committed to it.

At the same time, also, because of the interest in pursuing these expeditiously once they are started, that the plan for assignment of personnel and the time schedule for that investigation, as near as you can tell, certainly, an estimate of it ought to be made and that everybody who is going to have to be involved in the review of it ought to be involved on the front end so they can see that it is done right and it will come up the chain, perhaps, with some minor revisions on review, and get it done quickly.

I am much more interested in the end result and the successful outcome of a potential investigation of this sort than I am in the area of starting it. I would rather take another 10, 15, or 20 days on the front end and cut off 3 to 6 months on the back end, as a consequence. In my judgment, that will be the intent of the effect of these procedures.

Mr. FINNEGAN. You have one region for whose entire process and vision by these steps would endeavor to take many weeks and much correspondence before a decision could be made. The cases that you cited that you have taken 2 days on, would you provide for the record a step-by-step procedure on how long it actually did take from the time it started until the time a decision was made on the willful?

Mr. SMITH. The response, Mr. Finnegan, on the 2 days was the time required in the national office, was not intended to—

Mr. FINNEGAN. I am interested in how much time is actually expended in the national offices as well as the regional offices. That is the point.

Mr. SMITH. I will provide that.

[The following information was received for the record:]

The procedures set forth in the Compliance Manual at paragraph 3.905.00 currently provide for two levels of review at the regional level leading to a decision that a recommendation be made to pursue the case as a Special Investigation. At each review level a maximum of 5 days are permitted to reach a decision as to the continuation of the case as an administrative matter or as a Special Investigation.

Following these reviews, the Regional Administrator has an additional 5 days to forward his recommendations to the National Office. Then, the National Office is permitted another 10 days to review the situation and either approve or disapprove the recommendations.

Please note that during this review procedure the decision has centered on whether or not to pursue the case as a Special Investigation. A decision on willfulness would be premature at this point.

Let me add that we are reviewing these procedures once again with a view towards shortening the time period in the regions and in the National Office. Further, we have already demonstrated in the National Office review that it can be accomplished in 2 days. The cases involving Columbus Oil, Connecticut Refinery, and Parrish Oil (recent aspects) are examples of the 2-day review.

Mr. FINNEGAN. When you say, "national office", does that include the General Counsel's office, too?

Mr. SMITH. It does. I will provide that for the record.

Mr. FINNEGAN. As you know, we asked for the number of open cases which have not recorded a change in status as of March 22, 1977. In the regions, region 3, we noted that there were 154 cases that were more than 90 days where there was no change in status.

In region 4, there was 204. In region 6, there was 547. Of those, there was a total of 184 cases in those three areas and the national

office initiated in the national office, that exceeded 500 days in which there had been no recorded change in action.

Can you give us any explanation as to why this sort of situation has existed in something like 2,100 cases, total, in that publication that you gave us for the whole country for all of FEA?

Mr. SMITH. 2,100 cases?

Mr. FINNEGAN. For which there has been no change of status for more than 90 days?

Mr. SMITH. Yes, I can give you that. There are several explanations. One explanation I can give is one case may be in the audit stage for more than 90 days. In fact, most of them will be in the audit stage for more than 90 days if the case is of any size or complexity at all, because of the requirement for the auditor to determine the material that he needs.

As Mr. Canfield pointed out in his statement, in order to respond to that request, the committee has to reorder its records and present the data in the form requested by the auditor.

Then, when the auditor reviews some of that, he will request supporting documentation and the committee will have to amass that. Therefore, the physical process of conducting an audit can easily consume more than 90 days and does on most of the larger complex cases.

Second, we have a substantial number of cases that are suspended pending the resolution of some of the regulatory issues to which Mr. Canfield referred; that is, we have pursued the audit as far as we can and we have to find out what the regulations mean.

Let me just say for the record that there are very few such cases listed in that 90-day publication that we have identified. In fact, we have identified a number of cases by a checkmark which I raised questions about and I would ask—

Mr. FINNEGAN. I would ask the question that we return that document to you and that you provide us the status of those particular cases on a regional basis.

Mr. SMITH. I would be glad to.

Mr. DINGELL. Without objection, the document and the response will be inserted in the record at the proper place.

Item.—Explanation of why certain open cases have had no status code change in over 90 days.

Response.—Messrs. Porter and Archer of the Compliance staff have been in contact with the subcommittee staff (Mr. D. Schooler) regarding this item. We understand that this request is being reconsidered in light of testimony provided. We stand ready to respond as necessary.

Mr. SMITH. May I just make one point, Mr. Finnegan?

Mr. FINNEGAN. All right.

Mr. SMITH. The other reason there are a lot of cases that have not changed status in 90 days is that we do not have enough people to be working the cases that we should be working. We never have had.

And I will not comment, but for the support of this committee, our chances of ever getting them would be a lot less than they would be with the support of this committee.

Mr. DINGELL. Now we are getting right down to the point that concerns us; that is, the inadequacy of the personnel available to you to care for the responsibilities that burden you.

Mr. SMITH. The bottom line on that, Mr. Chairman, is that your view and mine of the extent to which we should discharge these responsibilities is different from the view decided by the preceding administration, the current administration and by the Congress. There is the appropriations process.

Mr. DINGELL. Unfortunately, I think you are right on that point.

Mr. FINNEGAN. You also agree that there could be some material changes that might accelerate some of these cases, too?

Mr. SMITH. Yes; the management of the program could be better. I must request time to say that I will welcome a comparison of the management of this program today and what it was in October 1974 when I assumed responsibility for it.

Mr. FINNEGAN. I am sure there have been some changes. We would all hope so.

Mr. SMITH. I will refer to the list of problems cited by Mr. Canfield in his testimony today that have plagued the program. Two of them referred to management problems; one of which was the opening of a lot of special programs such as propane and fuel oil supplier audits which took auditors away from other bureau programs, a process which has been stopped with the implementation of the compliance work plan concept in October 1975.

Mr. FINNEGAN. You were part of that process, too, were you not?

Mr. SMITH. I was. In fact, I was the one who directed the implementation of it. I began trying to improve and improving the management of this program with a compliance improvement plan developed and promulgated in January of 1975 3 months after I took over these responsibilities.

We then had an update of that as an outgrowth of Senator Kennedy's hearings. That resulted in the establishment of specific work plans and assignments, the establishment of the Compliance Manual that codified for the first time all the specific items from the national office, the increase of the staff, not as far as I would like to see it but larger than it has ever been and accommodated with the categorization of cases in terms of priorities established late in 1976, and finally, the management structure of these criminal cases that we have been reviewing in these hearings.

Mr. FINNEGAN. The issue in priority cases, I noticed that in the A, B, C, D system there is no discussion of the statute of limitations as being a consideration in the case or for the regions to consider. Have you considered that as a problem?

Mr. SMITH. Yes; but that is incorporated, Mr. Finnegan, because all special investigation cases that are open automatically go into category A. The direction is that those cases get whatever attention that is available to the region that can be applied to them so that they will be worked as fast as they can.

Mr. FINNEGAN. But there were cases that were, as a result of the A, B, C, D system that were relooked at. Some of them were, in fact, reclassified from A to something else?

Mr. SMITH. That is correct.

Mr. FINNEGAN. Some of those are purportedly willful violations cases which may or may not ever surface again. The question is, when they considered that classification, is your statute of limitation—I

note, was considered. I know there is no directive to any regional office that they consider that?

Mr. SMITH. That is correct, Mr. Finnegan, but no case was reclassified that, in the judgment of the people involved in that process, there was credible evidence of a particular violation.

In other words, they did not reclassify anything that had met the test of opening the case under the new procedures.

Mr. FINNEGAN. But critical evidence is a term that, maybe, requires some investigation in order to determine whether, in fact, there is credible evidence. That is a term that I am sure every regional office has come up with a different definition of what that means?

Mr. SMITH. Which is another reason for the establishment of the preview procedures we have gone over earlier.

Mr. FINNEGAN. If the matter is involving a statute of limitations, and if you are faced with that, the fact that there is an alleged violation and the fact that you have not really established what you call "credible" evidence should not really affect your decision.

If you had to resolve it on the basis of the statute of limitation, maybe that should take precedence?

Mr. SMITH. If I understand you correctly, Mr. Finnegan, you are suggesting that if we find a case of potential criminal violation that is fairly old so that the statute of limitations is getting close that we ought to put that ahead of the list, I agree.

Mr. FINNEGAN. But there is no such instruction to the regional office on that point, on any of the documents we have seen?

Mr. SMITH. Not yet but there will be, very soon, because I think your point is a good one.

Mr. FINNEGAN. I just wanted to point out to you in these documents that we have received where there are cases that are more than 90 days old, you have one with Shell Oil Co. that was initiated in July 1974. The last action was in June of 1976.

It went back to the area manager. There were a number of actions in between that. That went back and forth to the agencies. Another one which is Murphy Oil Co., which is July of 1974 and the last action is February of 1976 which was to the national compliance office. I think the question is, what has happened after that?

Mr. SMITH. I think I would have to look at the record. And, there is a whole inventory of cases out there, Mr. Finnegan, that should be resolved. There are no good reasons. There are some reasons I cannot do anything about for resolving them. There are some reasons where the Agency cannot do anything about in terms of its resource level.

Mr. FINNEGAN. The thing that we are trying to bring out is, is there someone who is taking a look at these and getting these put out and finding out what is actually happening in this trying system?

Mr. SMITH. There are, Mr. Finnegan, and you will find that as a result of the existence of the case-tracking system which is something else that I built after I had gotten there, or had built, that as a result of that, at least we know now where these are and the number of those has been reduced since we initially got into following them.

We have cleaned up a lot of the old ones. There is still a tremendous amount of work out there to be done to catch up with our history.

Mr. FINNEGAN. One final question, Mr. Allen, would you give us any idea as to when you expect the investigation in the Georgia case to be completed?

Mr. ALLEN. I am not a trained investigator myself, Mr. Finnegan, but I do know that trying to put a date on these things is rather difficult. We have completed, and Mr. Grimes can correct me if I am wrong, we have completed all of the audit work on the recipients of the State set-aside except for one and that is almost done.

The interview process has not yet started. We never know where the interview process is going to lead us. It is a difficult thing.

Mr. FINNEGAN. You are talking about several more months time?

Mr. ALLEN. Very possibly.

Mr. FINNEGAN. No further questions, Mr. Chairman.

Mr. DINGELL. Gentlemen, we have kept you long. We thank you for your assistance to the committee. The committee will stand adjourned until the call of the Chair.

Mr. SMITH. Excuse me, Mr. Chairman, may I make my statement.

Mr. DINGELL. Surely.

Mr. SMITH. That is, Mr. O'Leary has already expressed his views. I would like to express my views that I appreciate the support and interest of this committee in this program. I do not come here with completely clean hands because, during my stewardship of this program, I have made some mistakes, both of omission and commission.

I think the committee has also given me a reasonable opportunity to lay out what has been accomplished as well as what has not been accomplished. I just want the record to reflect my personal appreciation as well as that of my opposition as Assistant Administrator for Regulatory Programs, for you, Mr. Chairman, and for the staff support and interest in this program.

It is not fun to come up here and argue what we have not done. But in my judgment, it is useful in calling attention to what we need so that we can do it in the future. We appreciate your interest and that of the staff. We would like to thank you for being interested enough in this program to find what is wrong with it and to try to help us make it better.

Mr. DINGELL. Thank you, Mr. Smith. We appreciate your comments and we thank you for your kindness and assistance to this committee.

The subcommittee will stand in recess until the call of the Chair.

[Whereupon, at 4:17 p.m., the hearing was adjourned.]



