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ANTITRUST EXEMPTIONS FOR INTERNATIONAL ENERGY PROGRAM PARTICIPANTS, AND SCHOOLS AND HOSPITALS ENERGY CONSERVATION PROGRAMS

GOVERNMENT

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HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON

INTERSTATE AND FOREIGN COMMERCE

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 4445

A BILL TO AMEND THE ENERGY POLICY AND CONSERVATION ACT TO AUTHORIZE CERTAIN APPROPRIATIONS FOR ENERGY CONSERVATION PROGRAMS FOR SCHOOLS AND HOSPITALS, AND FOR OTHER PURPOSES

JULY 16, 1979

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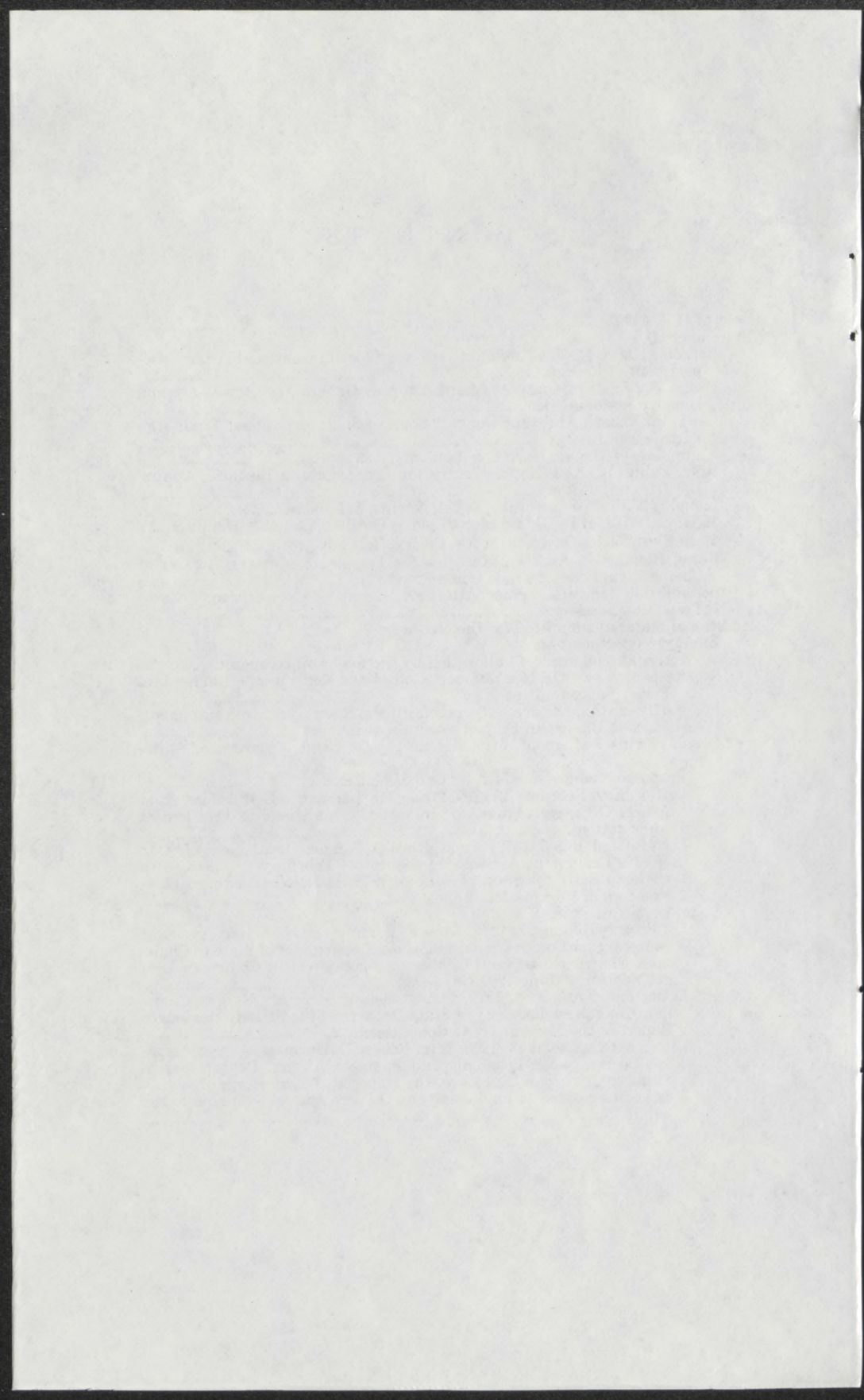
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CONTENTS

	Page
Text of H.R. 4445	3
Statement of—	
Bergold, Harry E., Jr., Assistant Secretary for International Affairs, Department of Energy.....	6
Ewing, Ky P., Jr., Deputy Assistant Attorney General, Antitrust Division, Department of Justice	6, 72
Goodwin, Robert, Assistant General Counsel for International Trade, Department of Energy.....	6
Kamp, Steven, Lobel, Novins, & Lamont	123
Katz, Julius L., Assistant Secretary for Economic and Business Affairs, Department of State	6, 27
Lamont, William J., attorney, Lobel, Novins, & Lamont	123
McGurn, William B. III, associate, Cleary, Gottlieb, Steen, & Hamilton.....	123
Mahaffie, Charles D., Jr., attorney, Cleary, Gottlieb, Steen, & Hamilton ..	123, 145
Rowe, Ronald B., Assistant Director for Petroleum Matters, Bureau of Competition, Federal Trade Commission.....	6, 85
Schildkraut, Marc G., Senior Attorney, Bureau of Competition, Federal Trade Commission	6
Additional material submitted for the record by—	
Energy, Department of:	
International crude oil allocation by the major oil companies	109
Responses by DOE to a number of questions asked by the Energy and Power Subcommittee	10
Federal Trade Commission, attachment to Mr. Rowe's prepared statement, responses to Chairman Dingell's written questions	89
Lobel, Novins & Lamont, attachments to Mr. Lamont's prepared statement:	
Proposed changes in EPCA section 252.....	140
Letter dated February 21, 1978, from Mr. Lamont to DOE Information Access Office re request for information pursuant to Freedom of Information Act	141
Letter dated July 5, 1979, from Gerard O. Forcier, Department of State of Mr. Lamont in response to request of February 21, 1978, with enclosed State telegram of June 6, 1978, re IEA/IAB transcripts—Freedom of Information request	142
State, Department of:	
Letter dated June 27, 1979, from J. Brian Atwood, Acting Assistant Secretary for Congressional Relations, Department of State to Chairman Dingell re response to questions contained in Chairman Dingell's letter of June 19, 1979	29
Letter dated August 3, 1979, from Assistant Secretary Katz to Chairman Dingell re authority of State Department to classify the fourth Report of the Federal Trade Commission	118
Letter dated August 14, 1979, from Robert D. Hormats, Acting Assistant Secretary for Economic and Business Affairs, Department of State, to Chairman Dingell re why transcripts of meetings of advisory bodies created to implement the IEP are not yet available to the public.....	115



ANTITRUST EXEMPTIONS FOR INTERNATIONAL ENERGY PROGRAM PARTICIPANTS, AND SCHOOLS AND HOSPITALS ENERGY CONSER- VATION PROGRAMS

MONDAY, JULY 16, 1979

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, Hon. John D. Dingell, chairman, presiding.

Mr. DINGELL. The subcommittee will come to order.

Today's hearings will examine the activities of the oil companies which have been participating in voluntary agreements to carry out our international energy program. We will also inquire into the conduct of that program by the governmental agencies and appropriate statutes.

Under the provisions of the Energy Policy and Conservation Act, these voluntary agreements must be approved by the Attorney General. The law also requires that meetings of oil companies which participate in these agreements be closely monitored by Federal officials, that transcripts be made of all such meetings, and that all necessary steps are taken to insure that such activities have the minimum possible anticompetitive effects. If all of these procedures are followed, the law provides a limited antitrust immunity for the activities of the oil companies in carrying out these voluntary agreements.

In general, the activities of the oil companies have two major roles in carrying out the international energy program. First, they supply information to the International Energy Agency to aid it in analyzing the world oil supplies. Second, the companies are establishing the mechanisms which would be used by the agency if the oil sharing agreements under the program are triggered.

The antitrust immunity provided in the Energy Policy and Conservation Act would have expired on June 30, 1979, but was extended prior to this expiration date until October 31, 1979.

I believe that it is fair to say that if the immunity is not extended, the participation of the oil companies would most likely cease at the end of October. Therefore, it is our responsibility to determine whether their activities should be continued by extending the immunity, and whether any additional procedural

safeguards should be required to protect against anticompetitive activities.

At least three aspects of the international energy program and the participation of the oil companies are troubling. The first problem is in the area of information. During the month of March the subcommittee learned of the existence of data collected by the International Energy Agency in February which showed an undisclosed increase in oil imports that month. The data indicated that U.S. oil imports were over 1.5 million barrels per day above the levels which were published by the Department of Energy. When the subcommittee questioned Secretary Schlesinger about this data at a March 30, 1979 hearing, he responded that the data were "preliminary; and based mostly on hope." That is a curious way, the Chair observes, to make governmental policy.

In subsequent months the data was revised downward. Nevertheless, this is the data upon which our oil sharing commitments are based, and I am very troubled by the fact that the margin of error in the data was of greater magnitude than the amount of oil which would be shared under the program. This raises the real question in my mind as to how reliable the data collection mechanism is and whether it is in fact a useful policymaking tool.

The second area of concern relates to the secrecy that surrounds the meetings of the oil companies. To date, every meeting of the oil companies participating in the agreements has been closed to the public. Furthermore, transcripts of these meetings have not been made available to the public either. The meetings are, however, attended by Federal officials, and the subcommittee will be interested in their views concerning the openness of the meetings and the classification of the transcripts and the reasons therefor.

The third area of concern relates to the nature of the participation of the oil companies in the oil sharing agreements. Although the oil sharing agreements, which could be triggered in times of serious supply interruptions, were designed so that governments, rather than oil companies, would control the movements of oil during periods of severe shortage, I am concerned that too much of this responsibility has been placed back in the hands of the participating oil companies. I will be interested in the views of our witnesses on these three matters.

I would also note that the bill which we are considering today to extend the antitrust immunities also contains a second provision requested by the administration, one which would extend over a longer period of time the authorized funding amount for the schools and hospitals conservation program. The subcommittee has requested written information on this program, and an official from the Conservation Office of the Energy Department is in attendance should any members have any questions on that program at the conclusion of our hearing on the international energy matters.

The Chair also thanks the gentleman for being with us.

Without objection, the Chair wishes to place at this point in the record, the text of H.R. 4445.

[The text of H.R. 4445 follows:]

96TH CONGRESS
1ST SESSION

H. R. 4445

To amend the Energy Policy and Conservation Act to authorize certain appropriations for energy conservation programs for schools and hospitals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1979

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

A BILL

To amend the Energy Policy and Conservation Act to authorize certain appropriations for energy conservation programs for schools and hospitals, 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 (a) subsection (b) of section 397 of the Energy Policy
4 and Conservation Act, as added by section 302 of the Na-
5 tional Energy Conservation Policy Act, is amended to read
6 as follows:

7 “(b) For the purpose of making energy conservation
8 project grants pursuant to section 396, there is authorized to

1 be appropriated not to exceed \$180,000,000 for the fiscal
 2 year ending September 30, 1978, \$95,000,000 for the fiscal
 3 year ending September 30, 1979, \$300,000,000 for the fiscal
 4 year ending September 30, 1981, and \$300,000,000 for the
 5 fiscal year ending September 30, 1982, such funds to remain
 6 available until expended. Of the amounts appropriated under
 7 this subsection for each of the following fiscal years not more
 8 than the following percentage may be used for purposes of
 9 technical assistance:

"Fiscal year ending:	Percentage
"September 30, 1978.....	30
"September 30, 1979.....	30
"September 30, 1981.....	12.5
"September 30, 1982.....	0."

10 (b) Subsection (c) of section 397 of the Energy Policy
 11 and Conservation Act, as added by section 302 of the Na-
 12 tional Energy Conservation Policy Act, is amended to read
 13 as follows:

14 "(c) For the expenses of the Secretary in administering
 15 the provisions of this part, there are hereby authorized to be
 16 appropriated such sums as may be necessary for each fiscal
 17 year in the six consecutive fiscal year periods ending Septem-
 18 ber 30, 1983, such funds to remain available until
 19 expended."

20 SEC. 2. (a) Subsection (c)(4) of section 252 of the
 21 Energy Policy and Conservation Act is amended by adding
 22 at the end thereof the following: "Such access to any tran-
 23 script that is required to be kept for any meeting shall be

1 provided as soon as practicable (but not later than 14 days)
2 after that meeting.”.

3 (b) Subsection (j) of section 252 of the Energy Policy
4 and Conservation Act is amended by striking out “June 30,
5 1979” and inserting in lieu thereof “January 19, 1986”.

○

Mr. DINGELL. The Chair announces we have this morning for our first panel the Honorable Harry Bergold, Jr., Assistant Secretary for International Affairs, Department of Energy, Forrestal Building, Washington, D.C.; Mr. Ky P. Ewing, Jr., Deputy Assistant Attorney General, Antitrust Division, room 3109, Department of Justice, Washington, D.C.; the Honorable Julius L. Katz, Assistant Secretary for Economic and Business Affairs, Department of State, Washington, D.C., and Mr. Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, Washington, D.C.

We thank you all for being present with us. If you would each identify yourself, starting on your left and my right, we will then recognize you after you have all identified yourself.

Mr. BERGOLD. I am Harry Bergold, Mr. Chairman, Assistant Secretary of Energy. On my left is Robert Goodwin, whom I have asked to come this morning with your permission, who is our Assistant General Counsel for International Trade and an expert in these matters.

Mr. DINGELL. We are happy to have you with us.

Mr. KATZ. Julius Katz of the Department of State.

Mr. DINGELL. Mr. Katz, we thank you for being with us.

Mr. EWING. Ky Ewing, Department of Justice.

Mr. DINGELL. We thank you.

Mr. ROWE. Ronald B. Rowe, Federal Trade Commission. I have with me today Marc Schildkraut, attorney with the Bureau of Competition, who is an expert in international energy matters.

Mr. DINGELL. Gentlemen, we thank you all for being present with us. We will recognize you first, Mr. Bergold.

STATEMENTS OF HARRY E. BERGOLD, JR., ASSISTANT SECRETARY FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF ENERGY, ACCOMPANIED BY ROBERT GOODWIN, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL TRADE, DOE; JULIUS L. KATZ, ASSISTANT SECRETARY FOR ECONOMIC AND BUSINESS AFFAIRS, DEPARTMENT OF STATE; KY P. EWING, JR., DEPUTY ASSISTANT ATTORNEY GENERAL, ANTI-TRUST DIVISION, DEPARTMENT OF JUSTICE; AND RONALD B. ROWE, ASSISTANT DIRECTOR FOR PETROLEUM MATTERS, BUREAU OF COMPETITION, FEDERAL TRADE COMMISSION, ACCOMPANIED BY MARC G. SCHILDKRAUT, SENIOR ATTORNEY, BUREAU OF COMPETITION, FTC

Mr. BERGOLD. Thank you, Mr. Chairman.

I would like to open by thanking you, personally, Mr. Chairman, and all of the members of this subcommittee for everything you did to assure the timely passage of the temporary extension of section 252 of EPCA. As you know, the President signed that temporary extension into law on June 30, thereby avoiding a lapse in the continuity of the emergency activities of the International Energy Agency—IEA. Among other things, this extension allowed us to file on schedule our July submission under the special information system which provides monthly assessments of the IEA-wide oil market situation.

We now need legislation, as you mentioned, Mr. Chairman, to extend section 252 on a more permanent basis. We are requesting

the extension of the authorities contained in section 252 until January 19, 1986, the first date when the international energy program agreement can be terminated by its signatories.

As you know, section 252 provides an antitrust defense for U.S. oil companies without which they would not be able to participate in the activities of the IEA. That defense is contingent upon the oil companies' compliance with procedures developed by the Department of Energy in conjunction with the Department of Justice and the Federal Trade Commission and contained in the voluntary agreement. These procedures include notification of industry meetings convened to advise the IEA, monitoring of industry meetings by U.S. Government representatives, transcription of industry meetings, and securing U.S. Government approval for the submission of confidential company data to the IEA.

U.S. oil company participation is essential to insure the successful operation of the IEA emergency allocation system. Since the IEA was created in November of 1974, these oil companies, through the forum of the industry advisory board, have advised the agency concerning emergency oil sharing questions, including the development of emergency information systems, procedures to implement the allocation of oil supplies in an emergency, and an emergency management organization to assist the IEA in its operation of the emergency allocation system.

To insure that the international emergency allocation system is in readiness at all times, the IEA, with the assistance of the oil companies continually reviews, tests, updates, and improves its emergency procedures.

The advice and participation of the companies is particularly essential to the IEA at this time when the international oil supply system is severely strained. Oil supplies currently available to the IEA member countries are not sufficient to meet unrestrained market demands and provide for the rebuilding of depleted stock levels. Although the recent decision by Saudi Arabia to increase crude oil production should help ease the tight world oil market, we do not know how long Saudi Arabia intends to maintain production at this level, nor can we speculate on the production plans of other OPEC members. For example, Libyan President Qaddafi recently intimated that he might reduce his country's output. Given the potential for further interruption of supplies, we would be foolhardy to discount the need to maintain our preparedness.

To date, supplies in aggregate have not fallen to the triggering level, that is, 7 percent below base period consumption, but one IEA member country experienced a shortfall during the first quarter of this year serious enough to request activation of the IEA selective trigger. Although the IEA Secretariat concluded that, based on available information, there was not sufficient evidence to make a finding under the IEP agreement that a reduction of oil supplies occurred or could reasonably be expected to occur on a sustained basis, the IEA recognizes that the present oil supply situation is a matter of serious concern and is keeping the situation under close observation.

As part of its monitoring activities the IEA has conducted a series of consultations with international and independent oil companies, including U.S. companies, to consider measures to help

improve the supply situation of countries experiencing unusual supply difficulties. U.S. companies have participated in these consultations under the provisions of the voluntary agreement. The IEA has indicated its intention to schedule additional bilateral discussions with these companies throughout the fall and possibly thereafter. We are almost certain that the U.S. companies would not provide proprietary information to the IEA in such bilateral consultations if the antitrust defense provided by the voluntary agreement were not available to them.

In January the IEA implemented its special information system in order both to provide a test of the system and to obtain information vital to its monitoring of the current oil market situation overall and in each member country. Under this system companies provide monthly data on actual and scheduled oil production and inventories in IEA member countries, as well as imports to and exports of crude oil and products from these countries. This is the same information system which would provide data essential to the determination of national allocation rights and obligations if the international oil allocation system were to be triggered. U.S. companies provide this information directly to the IEA pursuant to the provisions of the voluntary agreement, and in reliance on the antitrust defense contained in section 252 of EPCA.

Moreover, since January, the IEA's Standing Group on Emergency Questions and the Standing Group on the Oil Market have met monthly on a joint basis with the Industry Advisory Board to analyze the nature, extent, and effects of the shortfall in world oil supplies. These meetings, I might add, were all attended by U.S. Government delegates from the Departments of Energy and State, as well as attorneys from the Departments of Justice and Energy and from the Federal Trade Commission.

Appraisals emanating from these meetings led to an agreement at the Governing Board that the member countries would contribute to a stabilizing of the present situation by reducing their demand for oil on the world market by around 2 million barrels per day, or about 5 percent of IEA consumption, by the end of 1979. This action helped the IEA member countries to take measures to mitigate significantly the effects of supply dislocations. Without the antitrust defense provided for in section 252, the U.S. oil companies would not participate in these appraisals. Their absence would severely impair the IEA's ability to effectively deal with the present tight world oil market.

In the event the IEA allocation system is activated, the special information system, as noted, would become an integral part of the allocation system. Although the ultimate responsibility for all international emergency allocation activities rests with the IEA, the 34 IEA-designated reporting companies would be called upon to play an essential role in the operational and logistical aspects of the emergency oil allocations.

The broad parameters of international oil allocation have already been determined by member countries in the international energy agreement. The physical redistribution of supplies needed to effect such allocation would be accomplished largely through voluntary actions by the companies, including adjustments in their internal supply schedule, commercial transactions with other com-

panies or through voluntary offers to supply or receive oil, which would be coordinated by the IEA with the assistance of the industry supply advisory group.

Composed of industry oil supply experts chosen from among the reporting companies, the industry supply advisory group would work under the guidance of the IEA allocation coordinator, who is responsible for the overall supervision of the allocation program. This group would provide technical advice on oil supply and logistics to the IEA, channel instructions to the reporting companies to insure efficient operation of the allocation program and assist the allocation coordinator in evaluating and selecting from among the voluntary offers proposed by the reporting companies those which would best meet each member country's supply right.

Of the 18 companies which are members of the industry supply advisory group, 12 are U.S.-based companies currently participating in the voluntary agreement. U.S. companies would not participate in the industry supply advisory group if the antitrust defense were not available.

In summary and conclusion, extension of the antitrust defense contained in section 252 is critical for the continued successful operation of the IEA emergency allocation system. Unless this defense is extended, we can reach no conclusion other than that U.S. oil companies will no longer participate in IEA meetings and consultations. This means not only that those companies would not be available to advise the IEA concerning the current world supply shortage; it also means that any type of triggering of the IEA allocation system would be impractical to the point of being highly ineffective.

Although we have developed an alternative procedure to allow the continuation of the special information system until December 1979, this procedure would involve a considerable sacrifice of timeliness, data reliability, and accuracy.

More importantly, failure of the U.S. Government to provide a means for its companies to participate in the IEA would be viewed by the other IEA member countries as a breach of our commitment to the agreement. It would indicate to them that we are not sincere in supporting mechanisms currently in place which remain the best available way of responding to a severe international oil crisis. Such a signal at this particular time would seriously impair both the agency's cooperative efforts and the leadership position of the United States in future international energy activities.

I solicit your support in extending the antitrust defense and other provisions of section 252 so that unfortunate misunderstandings of international political significance may be avoided.

[Testimony resumes on p. 27.]

[Subcommittee questions and DOE responses attached to Mr. Bergold's prepared statement.]

RESPONSES BY DOE TO A NUMBER OF QUESTIONS ASKED
BY THE ENERGY AND POWER SUBCOMMITTEE

1. Q: Please provide a list of all companies participating in the voluntary agreement and the present membership of the Industry Advisory Board and all subcommittees.

A: The current participants in the Voluntary Agreement are:

Amerada Hess	Murphy Oil
Ashland	Occidental Petroleum
Atlantic Richfield (ARCO)	Phillips Petroleum
Caltex Petroleum	Shell Oil Company-USA
Cities Service	Standard Oil of California
Conoco	(SoCal)
Exxon	Standard Oil Company (Indiana)
Getty Oil	Standard Oil Company of Ohio
Gulf Oil	(Sohio)
Marathon	Sun Oil
Mobil Oil	Texaco
	Union Oil of California

Members of the Industry Advisory Board are:

Arabian Oil (PPAJ)	OeMV
British National Oil	Petro-Canada
Company (BNOC)	Petrofina
British Petroleum (BP)	Petroleum Association of
Cities Service	Japan (PAJ)
Conoco	Shell Int'l
Ente Nazionale	Socal
Indrocarburi (ENI)	Statoil
Exxon	Texaco
Gulf	Veba
Mobil	

Members of Subcommittee A are:

BP	Shell Oil-U.S.A.
ENI	Socal
Exxon	Sohio
Gulf	Sun
Mobil	Texaco
Shell Int'l	Veba

Members of Subcommittee B are:

BP	Mobil
Exxon	Petrofina
Gulf	Shell Int'l
Idemitsu Kosan	Texaco

Members of Subcommittee C are:

Arabian Oil (PPAJ)	Mobil
BP	Shell Int'l
Continental Oil	Shell Oil-U.S.A.
Exxon	Socal
Gulf	Texaco

Members of the Industry Supply Advisory Group are:

Ashland	Petrofina
BP	Phillips
Cities Service	Shell Int'l
Continental Oil	Shell Oil-U.S.A.
ENI	Socal
Exxon	Sohio
Gulf	Standard Oil (Indiana)
Mobil	Sun
PAJ	Texaco
Petro-Canada	Veba

Members of the Industry Working Party are:

Arabian Oil (PPAJ)	PAJ
BP	Petrofina
ENI	Shell Int'l
Exxon	Socal
Gulf	Texaco
Mobil	Veba
OeMV	

Members of the IEA Reporting Company Group are:

AMERADA HESS
 ASHLAND
 ATLANTIC RICHFIELD
 AXEL JOHNSON
 BNOG
 BRITISH PETROLEUM
 CALTEX PETROLEUM
 CITIES SERVICE
 CONOCO
 ENTE NAZIONALE IDROCARBURI (ENI)
 EXXON
 GETTY OIL
 GULF OIL
 HISPANOIL, S.A.
 IDEMITSU KOSAN
 MARATHON
 MARUZEN OIL
 MOBIL OIL
 MURPHY OIL
 OEMV
 OCCIDENTAL PETROLEUM
 PETRO-CANADA
 PETROFINA
 PHILLIPS PETROLEUM
 SHELL INTERNATIONAL
 SHELL OIL COMPANY-USA
 STANDARD OIL COMPANY OF CALIFORNIA
 STANDARD OIL COMPANY (INDIANA)
 STANDARD OIL COMPANY OF OHIO
 STATOIL
 SUN OIL
 TEXACO
 UNION OIL COMPANY OF CALIFORNIA
 VEBE

2. Q: Please provide a brief summary of the work of each subcommittee.

A: The Industry Advisory Board (IAB) has formed three subcommittees comprised of Reporting Company members to study and make recommendations on problems of a specialized nature. The subcommittee recommendations are forwarded to the IAB, which, if it approves the recommendation transmits it to the IEA Standing Group on Emergency Questions (SEQ). The three subcommittees and their respective functions are as follows.

Subcommittee A

Assists the IAB in the design of data and allocation systems tests and in the development of the IEA Emergency Management Manual which describes the detailed procedures for activation and implementation of the international emergency program. It also provides advice on industry emergency organization and demand restraint measures.

Subcommittee B

Provides advice on technical matters in the area of aviation and marine bunkers, emergency reserves and naphtha. This committee is currently inactive.

Subcommittee C

Deals with communication procedures between the IAB and other Reporting Companies in emergency and non-emergency situations, extraordinary cost questions (i.e., costs and expenses over and above those associated with normal commercial and business activities that a company would incur as a result of its compliance with the IEP emergency allocation plan) and the development of a dispute settlement mechanism to resolve disputes which may arise in an emergency.

Subcommittees A and C have joint responsibility for discussing antitrust clearances which industry might seek in connection with IEA-related activities.

3.a.Q: On June 30, 1979, the antitrust immunity for oil companies' participation in the Voluntary Agreements will expire. What activities of the companies would be affected if the immunity expires?

A. The following company activities will be adversely affected if the immunity expires:

- meetings of the Industry Advisory Board (IAB) which advises the IEA Standing Group on Emergency Questions (SEQ) on technical matters related to the operation of the emergency oil allocation system;
- reporting information on the level, source, and distribution of current available oil supplies;
- meetings of the Industry Working Party (IWP) which advises the Standing Group on the Oil Market (SOM) on technical matters related to the design of IEA oil market information systems and on the short-term oil market outlook;
- bilateral consultations between an individual company and the IEA Secretariat on critical market conditions affecting a particular IEA country, e.g., the recent consultations on Sweden;
- meetings of the Industry Supply Advisory Group (ISAG); this is the group which advises the IEA Allocation Coordinator with regard to coordinating implementation of the emergency oil-sharing system by the companies under the direction of governments.
- If the IEA emergency allocation system were triggered, industry participation would be essential to allocate oil through the mechanism of voluntary offers. Actual carrying out of these voluntary offers would necessitate communication between companies as well as coordination by the Industry Supply Advisory Group (ISAG) in Paris. Without the antitrust defense, the companies could not undertake such allocation.

b.Q: What would be the effect of the expiration on the International Energy Program (IEP)?

A: The allocation and information systems of the IEP designed to deal with oil emergencies would, quite literally, be unable to function.

Without industry assistance, the emergency allocation provisions of the IEP cannot be implemented:

- information on available oil supplies reported by companies and governments provides the basis for establishing the supply shortfall and for calculating the allocation rights and obligations under the emergency system;
- participation by the companies, under the direction of the IEA and governments, is the operational basis on which allocations would be managed in a supply emergency.
- Without industry assistance, current monitoring by the IEA of the flow of available oil supplies in today's tight market conditions will be impossible.

Under these circumstances the viability of the IEA as a whole would be called into serious question.

3.c.Q: What steps have been taken by DOE to prepare for the possible expiration of the immunity?

A: DOE is taking all possible steps to prepare for the possible expiration of Section 252, which provides not for antitrust immunity, but rather an antitrust defense. We have made arrangements for the possible use of a stop gap for the Special Information System as noted below. Other forms of antitrust protection may be provided to companies asked to participate in bilateral consultations with the IEA Secretariat. We are investigating these alternatives. We are unable, however, to perceive of any alternative way by which meetings of and communications between company personnel might be continued. Such meetings, monitored of course by USG personnel, constitute the essence of the industry advisory mechanism, including especially emergency operations by the Industry Supply Advisory Group. We must conclude therefore that there must be a strong presumption that if Section 252 is not extended a major segment of the IEA may be rendered ineffective.

3.d.Q: It has been suggested that the expiration may affect the companies' participation in the data collection efforts by the International Energy Agency (IEA). Could DOE collect the same information from the companies and provide it to the IEA?

A: DOE collection of Special Information System data in lieu of IEA collection would involve more than just information relating to U.S. company operations in the United States. It almost certainly would necessitate collection of information relating to these same companies' operations in other IEA countries. Such a change from the established system would necessitate the application of other legal authorities for both the collection of the requested information and for its subsequent transmittal to the IEA. Arrangements need to be resolved relating to the physical facilities required for the receipt, processing and transmittal of massive statistical information within a limited time period. We are working on these problems and believe that they may be solvable, but only at a cost of loss of timeliness and data quality which could prove unacceptable to the operation of the information system.

4. The EPCA provisions require transcripts to be made of all meetings of the companies. The Subcommittee is concerned about the classification of these transcripts and delays in making them available to the Congress and the public.

a) Q: Please provide a list as of June 18, 1979, of all meetings for which no transcript was available at DOE offices for Congressional inspection.

A: All Voluntary Agreement transcripts held by DOE are available for Congressional inspection under appropriate security procedures and safeguards. However, there are transcripts for meetings just recently held which have not been received by DOE from the Transcriber. Meetings of the SEQ and SOM held jointly with the IAB are not transcribed because these are primarily meetings of government delegations, with occasional participation by the IAB. Instead, complete notes are made by U.S. Government delegates or observers at these meetings.

The list below includes all meetings for which no transcripts are available at DOE:

Not yet Received from Transcriber

ISAC	6/5-8/79
IAB	6/25/79
IWP	6/29/79

b) Q: As of the same date, please provide a list of all meetings for which no declassified version of the transcripts was available for public inspection.

A: Of the transcripts held by DOE, the following are not yet in the Public Reading Room available for public inspection:

Sub A

6/30/76	11/9/78	6/27/78
9/9/76	1/23/78	8/16/78
1/12/77	1/24/78	8/16/78
2/9/77	3/10/78	9/12/78
9/19/77	6/8/78	9/13/78
9/20/77	11/8/78	11/9/78
2/14/79	11/8/78 (Joint A+C only)	

Sub C

12/1/76	6/27/78	11/8/78
2/10/77	9/12/78	2/13/79
11/30/77		

IAB

1/26/78	9/14/78	2/15/79
6/28/78	11/10/78	

ISAG

11/9/77	6/7/78	1/17/79
3/2/78	6/26/78	1/18/79
6/6/78	9/28/78	3/21/79

IWP

5/10/76	8/23/77	5/17/78
5/11/76	2/8/78	9/12/78
8/11/76	3/16/78	9/13/78
8/2/77	3/17/78	3/7/79
	5/16/78	3/8/79

Reporting Companies

1/11/77	9/8/77	3/9/78
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c) Q: It is our understanding that transcripts which are not available to the public are made available to certain employees of oil companies who did not attend the meeting. Some of these employees may not even be U.S. citizens and may not have any security clearances. Is this true? If so, please explain the rationale and legal basis for such a classification policy.

A: The procedures for reviewing Voluntary Agreement transcripts established by the Department of State, as revised November 11, 1978, state that each participant in a meeting shall be an authorized reviewer of the transcript of such meeting. In addition, each Reporting Company wishing to have non-participant employees or legal counsel designated as authorized reviewers must submit directly to the Department of State, in the case of U.S. companies and via U.S. embassies in the case of non-U.S. companies, the names of those non-participant individuals the company wishes to be so designated. The companies can only name a minimum number of additional reviewers and they must have a need for access to transcripts in connection with the performance of duties in furtherance of the purposes of IEA. These company designations are subject to review by the Department of State.

Only three companies (Exxon, Shell U.S., SoCal) have submitted names of employees to become authorized reviewers. All of these employees are U.S. citizens. The security status of reviewers is the concern of the Department of State and questions regarding their status should be directed to that Department.

In the exceptional case where a transcript is classified higher than Confidential, only authorized reviewers who attended the meeting for which the transcript was taken may review it. Any such transcript must be reviewed in the presence of a U.S. Government official and may not be left in the custody of the reviewers.

4.d.Q: It is our understanding that all statements made by foreign company executives are classified regardless of the sensitivity of such statements. Under which provision of Section 552(b) of Title 5 of the United States Code is this information classified?

A: Section 552(b) is not a classification authority; 552(b)(4) does provide that under the Freedom of Information Act proprietary and commercially sensitive information should not be disclosed. The Voluntary Agreement transcripts are classified under the authority of Executive Order 12065 and State Department regulations issued thereunder.

Foreign companies participate in the IEA on a voluntary basis. They are not subject to the U.S. antitrust laws and therefore derive no benefit from Section 252 of EPCA and are not participants in the Voluntary Agreement. They have consented to have their remarks transcribed at industry meetings as required by Section 252 and the Voluntary Agreement only on the condition that their remarks not be made available publicly. Inasmuch as participation of both U.S. and foreign companies is essential to the operation of the emergency planning and allocation functions of the IEA, the State Department has determined that it is important to U.S. foreign policy objectives to classify all statements of foreign oil company representatives at industry meetings under the Voluntary Agreement to ensure continued full participation of those companies.

e) Q: Why does the State Department classify the transcripts rather than DOE?

A: The Department of State is authorized to classify these transcripts by Executive Order 11932 (August 4, 1976). The Department of Energy has classification authority pursuant to Executive Order 12065 (June 28, 1978). But DOE has agreed with the State Department that State should continue to classify the transcripts as material sensitive to the foreign relations of the United States.

The Departments of Energy and State share responsibility for U.S. participation in the IEA.

f) Q: For what other programs administered by DOE does the State Department decide upon classification?

A: There are no other DOE programs for which the Department of State decides upon classification.

5. Q: Please describe what immunities or other understandings exist with respect to non-U.S. companies and the European Economic Community.

A: The EEC exercises antitrust jurisdiction over oil companies based in EEC countries (e.g. Shell International, British Petroleum, ENI, etc.) and affiliates of U.S. oil companies operating in EEC countries under Articles 85 and 86 of the Treaty of Rome. This antitrust authority is implemented in the first instance by the European Commission's Directorate General for Competition (also known as DG-IV).

Beginning in June 1976, DG-IV has taken the position that the advisory role of oil companies in the IEA, including participation in tests of the emergency allocation system, and consultation with and provision of information to the IEA was not incompatible with the rules of competition of the Treaty of Rome. DG-IV requested, and was granted, the opportunity to review any changes in the procedures for emergency oil allocation and industry participation in the IEP, as well as the right to attend meetings of the industry groups and other IEA bodies and to receive documents issued in connection with such meetings.

DG-IV further stipulated that if it had any objection to activities or documents, it would express such objection at the meeting or within 30 days thereafter, but would not impose penalties until after it had notified oil companies of objections and then only for acts committed after it had given notice of its objection.

The principal differences in approach between the EEC and U.S. antitrust enforcement are:

- the EEC has issued a general approval, subject to revocation or modification. The U.S. requires specific prior approval of industry meetings and activities.
- the EEC insists on an opportunity to attend meetings and review documents. In practice the DG-IV representatives attend only those industry meetings held in Europe, and not all of these. The U.S. prohibits meetings and other substantive oral communications unless a U.S. government employee is present.
- The EEC has accepted industry committee record notes which tend to be summary as an accurate record of meetings. The U.S. requires a full and complete record--usually a verbatim transcript of all meetings, and these must be prepared by a U.S. official or, in the case of transcripts, a USG contractor.
- U.S. approvals tend to be specific and detailed, imposing stringent conditions. EEC approvals, when needed to supplement the standing general approval, tend to be general and broad.

6. Q: The major portion of the oil companies' participation in the voluntary agreements is the operation of the oil sharing agreement, which is part of the International Energy Agreement. At a March 30, 1979 hearing before this committee, Secretary Schlesinger testified that data submitted by oil companies to the IEA on the 15th of each month on expected imports for such month were "preliminary" and "based mostly on hope". Is this the data upon which the calculation of countries' rights and obligations under the oil sharing agreement is based? If not, what data are used to determine the rights and obligations?

A: Questionnaire A data also provides the basis (together with Questionnaire B, submitted by Member Countries) for calculating IEA countries' allocation rights and obligations in the sharing system. The data reported includes data for the current month, two forward months and two previous months. Allocations would be calculated using the current month data from the QA and QB; data for the other four months provides a useful context for the current month data, and is a means of developing a picture of trends and patterns.

Questionnaire A data as to current month and the two forward months are planning figures and are thus subject to change; for the current month only firmly scheduled cargoes are to be reported. The data are valuable as real time data, and have enabled the IEA and member governments to track the flow of available oil in today's tight market conditions.

By using data for a 5 month period, any inaccuracies in data for the current month will be detected in subsequent months. Questionnaire As and allocations for those months would be adjusted to reflect any changes. Thus, if current month data is overly optimistic, and actual landings were below the projected volumes, this would be apparent next month or the month after next, and the allocation right for that month correspondingly would be increased.

The IEA and DOE have analyzed the pattern emerging from data submissions since January, and the IEA is considering steps to reduce discrepancies. The reporting companies, too, are aware of these factors and have also taken measures to improve the accuracy of current month and future month figures on the Questionnaire A.

7. a) Q: Last year a former staff member of the Subcommittee, William Demarest, was not permitted to attend a meeting of the IEA board. Please explain the reasons he was not permitted to observe the meeting, and the policy regarding attendance at such meetings?

A: Mr. Demarest of your staff requested permission to attend a meeting of the IEA Standing Group on Long-Term Cooperation. The SLT includes among its membership only government representatives from the national administrations of each of the 20 IEA countries. The oil companies do not participate in the activities of the SLT and hence Section 252 does not apply in this case. Section 252 does provide that members and staff of Congressional committees have the right to attend meetings of industry groups.

Mr. Demarest was offered a full briefing on the activities of the SLT and the meeting in question by the SLT Chairman--a USG official. Introductions were also arranged for him with members of the IEA Secretariat.

7. b) Q: We assume that section 252(c)(4) explicitly permits Committee members and Staff to attend meetings of the companies, i.e. the IAB and its subcommittee. Do you agree?

A: Yes. Section 252(c)(1)(A)(i) and Section 252(c)(4) permit attendance.

Mr. DINGELL. Mr. Bergold, the committee thanks you for your very helpful statement. The Chair observes you have appended responses to a number of questions directed by the subcommittee. Without objection those responses will be placed in the record at the appropriate place, as a matter of fact immediately following your statement [see p. 10.]

Our next witness, Mr. Katz.

Mr. Katz, we thank you for being with us.

STATEMENT OF JULIUS L. KATZ

Mr. KATZ. Thank you, Mr. Chairman. I am pleased to appear before the subcommittee.

The Department of State considers the passage of the legislation extending section 252 of the Energy Policy and Conservation Act to be of vital importance in serving our Nation's essential foreign policy objectives as well as preserving the ability of the emergency oil sharing system of the International Energy Agency to function. If we are to successfully manage the present energy situation, we must be able to work closely with other nations, particularly our close friends and allies.

The IEA is the focus for our energy cooperation with the other industrialized nations. It was created, largely through the efforts of the United States, to turn the energy problem into a force that would unite our countries rather than tear us apart. In this way, the IEA was to serve our political and security interests, as well as helping us resolve our common energy problems. The IEA has done a great deal in the past 5 years to carry out this mission, and has taken on even greater importance as a result of the disruption of the oil market following the events in Iran.

One of the major programs of the IEA is the commitment to allocate oil internationally in the event of a severe supply crisis. Participation in the allocation system is the critical test of a nation's commitment to the IEA itself. The extension of the authority contained in section 252 of the EPCA is essential to permit American oil companies to cooperate in carrying out the directives and programs of the IEA. Prompt action is in the interest of the United States because of the possibility that at any time a further disruption in oil supplies could send the oil market into a state of intense crisis. But it is also necessary to demonstrate our continued commitment to the IEA and to our objective of trying to solve the energy problem and other major international problems together with our allies.

There is one additional point. The existence of the oil allocation program acts to deter certain oil-producing nations from using an oil cutoff as a tool to serve political purposes. Also, the overall strength of the IEA and the success of the industrialized nations in meeting their common energy problems affects the attitudes and policies of OPEC nations. It would be an unfortunate signal, particularly at this time, if the United States, because of lack of legal authority, were to undermine the allocation system and the IEA.

Mr. Chairman, we have previously responded to a series of questions by the subcommittee. They are not appended to my statement but I believe the committee already has them.

Mr. DINGELL. You are correct. The committee already has them. We thank you for the submission and they will be inserted following your statement.

[Testimony resumes on p. 72.]

[The questions and answers referred to follow:]



DEPARTMENT OF STATE

Washington, D.C. 20520

RECEIVED

JUN 27 1979

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SUBCOMMITTEE ON ENERGY & POWER

Dear Mr. Chairman:

The Secretary has asked me to respond to the questions contained in your letter of June 19 concerning the hearing to be held on H.R. 4445 by the Subcommittee on Energy and Power.

The answers to the questions are enclosed.

Sincerely,

J. Brian Atwood
Acting Assistant Secretary
for Congressional Relations

Enclosure:

as stated

The Honorable
John D. Dingell,
Chairman, Subcommittee on
Energy and Power.

1. Please describe the basis for the classification of transcripts of meetings under section 252 of EPCA and provide all executive orders and regulations governing such classification.

Answer: The basis for classification of information and material obtained from advisory bodies created to implement the International Energy Program is contained in both Executive Order 12065 on national security information (formerly E.O. 11652) and in Executive Order 11932. Executive Order 11932 deals specifically with "classification of certain information and material obtained from advisory bodies created to implement the international energy program." It was promulgated as a result of a Presidential determination that the Agreement on an International Energy Program "... is a substantial factor in the conduct of our foreign relations and an important element of our foreign relations and an important element of our national security. The effectiveness of the Agreement (on an International Energy Program) depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the International Energy Agency. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to these bodies." The substantive criteria for the classification of portions of transcripts are those contained in E.O. 12065 (formerly E.O. 11652). Copies of the relevant executive orders and regulations are attached.

2. We understand that the statements of all foreign company officials are classified, regardless of their content. Please state whether that is true, and if so please explain the rationale and the legal basis for such classification.

Answer: Virtually all remarks of both the International Energy Agency secretariat and foreign oil company officials have been classified pursuant to the authorities described above. We believe that the confidentiality assured by such classification is necessary for the reasons discussed below, and, because of the importance of the international energy program to our foreign relations and national security, such classification meets the standards set forth in Executive Orders 12065 and 11652.

The emergency sharing system of the IEA is the major response mechanism of the oil consuming countries to deal with major oil supply disruptions. The broad dissemination of the details of the sharing system and the mechanisms devised to enhance its effectiveness would compromise consuming countries' ability to cope with an oil emergency and expose the economies and security of these nations to politically motivated acts. On this basis, the Department has classified portions of transcripts which reveal levels of detail about the system beyond those generally known to the public.

A second concern is based upon the need to assure the free and open discussion necessary if the industry advisory bodies are to accomplish the tasks assigned to

them. Prior to the first meetings of the Industry Advisory Board and Industry Working Party, the IEA Secretariat and foreign companies, who are not participants in the voluntary agreement which provides a defense under the U.S. antitrust laws, gave us permission to transcribe their remarks (as required by EPCA) at otherwise closed IEA advisory body meetings, but only on condition that they could review the transcripts for accuracy and possible legal implications, and that the confidentiality of their remarks would be protected. In order to ensure effective participation at these meetings, and to enable us to obtain transcripts available to the Department of Justice, the FTC and the Congress, the Department agreed to treat information and remarks provided on this basis as confidential.

We have from the beginning requested that foreign companies notify us when they do not feel the need to have their remarks kept confidential and we have in the past sought and obtained permission to release some specific comments by foreign oil company officials.

3. We also understand oil company officials who did not attend these meetings are permitted to review the transcripts. These officials may be non-U.S. citizens, and may have no security classification. Please explain how such officials may receive access to transcripts while maintaining their classified status.

Answer: Both Executive Order 11932 and State Department regulations promulgated pursuant to that Order recognize

the special circumstances in which transcripts and other records of IEA advisory bodies are generated and utilized, and the concomitant need for some flexibility in the procedures for handling International Energy Program related materials.

State Department regulations, a copy of which is attached, provide that material created by or in connection with an advisory body to the IEA and classified "confidential" may be made available for review by participants in the advisory body and certain of their colleagues under special circumstances and subject to strict safeguards. Specifically, appropriate U.S.G. officials must conduct a security check on persons nominated by participants in a meeting to review transcripts and determine that a given individual has a need for access to the particular classified information sought in connection with the performance of duties in furtherance of the purposes of the IEA, including the furnishing of legal advice to such participants. Information and material classified other than "confidential" may be made available only to participants in the meeting in which it was developed or discussed. Finally, I note that the company officials who might have access under these conditions would, almost invariably, have been entitled to attend the meetings in question.

4. Please provide a list of all meetings for which
(a) a transcript is not available for review by Congress;
and (b) a declassified version of the transcript is not
available for public review.

Answer: The answer to this question has been provided
by the Department of Energy.

5. Last year, a report to Congress by the FTC, as required
by EPCA, was classified by the State Department. The
report was slightly altered, and a declassified version
was published several months later. Please explain
the delay.

Answer: Under Section 252(i) of the Energy Policy and
Conservation Act, the FTC is required to submit at least
once every 6 months, a report on the impact on competition
and on small business of actions authorized by Section 252.
The fourth such report covers the second Allocations System
Test which was conducted in April and May of 1978.

The Fourth Report as prepared by the FTC for trans-
mittal to the Congress included a detailed discussion of
the supply disruptions postulated as test scenarios. The
nature of these scenarios, the measures taken by countries
to cope with the disruptions, details of countries' supply
weaknesses and the appraisal of the effectiveness of the
system are considered sensitive information by all countries
concerned. Such information would be of considerable use
to persons devising a politically motivated embargo that
would thwart our attempts to defend our economies and joint
security.

Because of the level of detail in the Fourth FTC Report, it was classified confidential and forwarded to the Congress with the understanding that an unclassified version would be issued.

Because of the press of other matters and since the Congress already had the classified version insufficient priority was given to the preparation of an unclassified version. We will make every effort to avoid such delays in the future.

6. How many employees are involved in work relating to the International Energy Program and what is your budget for FY 1979 for such activities?

Answer: State Department participation in the International Energy Agency is handled primarily in the Bureau of Economic and Business Affairs (EB). Most of the staff work for the IEA is done as part of the responsibilities of 5-6 foreign service officers in the Office of Fuels and Energy. U.S. participation in the IEA is viewed as part of the larger issue of consuming country energy relations.

It would be difficult and, we believe, rather arbitrary to establish a budget figure for these activities as the level of effort will vary as issues arise. At present, in view of the continuing world oil stringency, considerable attention is being devoted in EB to U.S. and IEA emergency preparedness.

presidential documents

[3195-01]

Title 3—The President

Executive Order 12065

June 28, 1978

National Security Information

By the authority vested in me as President by the Constitution and laws of the United States of America, in order to balance the public's interest in access to Government information with the need to protect certain national security information from disclosure, it is hereby ordered as follows:

TABLE OF CONTENTS

	[FR page]
SECTION 1. ORIGINAL CLASSIFICATION:	
1-1 Classification Designation	[28950]
1-2 Classification Authority	[28950]
1-3 Classification Requirements	[28951]
1-4 Duration of Classification	[28952]
1-5 Identification and Markings	[28952]
1-6 Prohibitions	[28953]
SECTION 2. DERIVATIVE CLASSIFICATION:	
2-1 Use of Derivative Classification	[28953]
2-2 Classification Guides	[28953]
2-3 New Material	[28954]
SECTION 3. DECLASSIFICATION AND DOWNGRADING:	
3-1 Declassification Authority	[28954]
3-2 Transferred Information	[28954]
3-3 Declassification Policy	[28955]
3-4 Systematic Review for Declassification	[28955]
3-5 Mandatory Review for Declassification	[28956]
3-6 Downgrading	[28957]
SECTION 4. SAFEGUARDING:	
4-1 General Restrictions	[28957]
4-2 Special Access Programs	[28957]
4-3 Access by Historical Researchers and Former Presidential Appointees	[28958]
4-4 Reproduction Controls	[28958]
SECTION 5. IMPLEMENTATION AND REVIEW:	
5-1 Oversight	[28959]
5-2 Information Security Oversight Office	[28959]
5-3 Interagency Information Security Committee	[28960]
5-4 General Responsibilities	[28960]
5-5 Administrative Sanctions	[28961]
SECTION 6. GENERAL PROVISIONS:	
6-1 Definitions	[28961]
6-2 General	[28961]

SECTION 1. ORIGINAL CLASSIFICATION.

1-1. *Classification Designation.*

1-101. Except as provided in the Atomic Energy Act of 1954, as amended, this Order provides the only basis for classifying information. Information may be classified in one of the three designations listed below. If there is reasonable doubt which designation is appropriate, or whether the information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

1-102. "Top Secret" shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

1-103. "Secret" shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

1-104. "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause identifiable damage to the national security.

1-2. *Classification Authority.*

1-201. *Top Secret.* Authority for original classification of information as Top Secret may be exercised only by the President, by such officials as the President may designate by publication in the FEDERAL REGISTER, by the agency heads listed below, and by officials to whom such authority is delegated in accordance with Section 1-204:

- The Secretary of State
- The Secretary of the Treasury
- The Secretary of Defense
- The Secretary of the Army
- The Secretary of the Navy
- The Secretary of the Air Force
- The Attorney General
- The Secretary of Energy
- The Chairman, Nuclear Regulatory Commission
- The Director, Arms Control and Disarmament Agency
- The Director of Central Intelligence
- The Administrator, National Aeronautics and Space Administration
- The Administrator of General Services (delegable only to the Director, Federal Preparedness Agency and to the Director, Information Security Oversight Office)

1-202. *Secret.* Authority for original classification of information as Secret may be exercised only by such officials as the President may designate by publication in the FEDERAL REGISTER, by the agency heads listed below, by officials who have Top Secret classification authority, and by officials to whom such authority is delegated in accordance with Section 1-204:

- The Secretary of Commerce
- The Secretary of Transportation
- The Administrator, Agency for International Development
- The Director, International Communication Agency

1-203. *Confidential.* Authority for original classification of information as Confidential may be exercised only by such officials as the President may designate by publication in the FEDERAL REGISTER, by the agency heads listed below, by officials who have Top Secret or Secret classification authority, and by officials to whom such authority is delegated in accordance with Section 1-204:

THE PRESIDENT

28951

The President and Chairman, Export-Import Bank of the United States
The President and Chief Executive Officer, Overseas Private Investment Corporation

1-204. *Limitations on Delegation of Classification Authority.*

(a) Authority for original classification of information as Top Secret may be delegated only to principal subordinate officials who have a frequent need to exercise such authority as determined by the President or by agency heads listed in Section 1-201.

(b) Authority for original classification of information as Secret may be delegated only to subordinate officials who have a frequent need to exercise such authority as determined by the President, by agency heads listed in Sections 1-201 and 1-202, and by officials with Top Secret classification authority.

(c) Authority for original classification of information as Confidential may be delegated only to subordinate officials who have a frequent need to exercise such authority as determined by the President, by agency heads listed in Sections 1-201, 1-202, and 1-203, and by officials with Top Secret classification authority.

(d) Delegated original classification authority may not be redelegated.

(e) Each delegation of original classification authority shall be in writing by name or title of position held.

(f) Delegations of original classification authority shall be held to an absolute minimum. Periodic reviews of such delegations shall be made to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

1-205. *Exceptional Cases.* When an employee or contractor of an agency that does not have original classification authority originates information believed to require classification, the information shall be protected in the manner prescribed by this Order and implementing directives. The information shall be transmitted promptly under appropriate safeguards to the agency which has appropriate subject matter interest and classification authority. That agency shall decide within 30 days whether to classify that information. If it is not clear which agency should get the information, it shall be sent to the Director of the Information Security Oversight Office established in Section 5-2 for a determination.

1-3. *Classification Requirements.*

1-301. Information may not be considered for classification unless it concerns:

- (a) military plans, weapons, or operations;
- (b) foreign government information;
- (c) intelligence activities, sources or methods;
- (d) foreign relations or foreign activities of the United States;
- (e) scientific, technological, or economic matters relating to the national security;
- (f) United States Government programs for safeguarding nuclear materials or facilities; or

(g) other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President pursuant to Section 1-201, or by an agency head.

1-302. Even though information is determined to concern one or more of the criteria in Section 1-301, it may not be classified unless an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

THE PRESIDENT

1-303. Unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security.

1-304. Each determination under the criterion of Section 1-301(g) shall be reported promptly to the Director of the Information Security Oversight Office.

1-4. Duration of Classification.

1-401. Except as permitted in Section 1-402, at the time of the original classification each original classification authority shall set a date or event for automatic declassification no more than six years later.

1-402. Only officials with Top Secret classification authority and agency heads listed in Section 1-2 may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be no more than twenty years after original classification, except that for foreign government information the date or event may be up to thirty years after original classification.

1-5. Identification and Markings.

1-501. At the time of original classification, the following shall be shown on the face of paper copies of all classified documents:

- (a) the identity of the original classification authority;
- (b) the office of origin;
- (c) the date or event for declassification or review; and

(d) one of the three classification designations defined in Section 1-1.

1-502. Documents classified for more than six years shall also be marked with the identity of the official who authorized the prolonged classification. Such documents shall be annotated with the reason the classification is expected to remain necessary, under the requirements of Section 1-3, despite the passage of time. The reason for the prolonged classification may be stated by reference to criteria set forth in agency implementing regulations. These criteria shall explain in narrative form the reason the information needs to be protected beyond six years. If the individual who signs or otherwise authenticates a document also is authorized to classify it, no further annotation of identity is required.

1-503. Only the designations prescribed by this Order may be used to identify classified information. Markings such as "For Official Use Only" and "Limited Official Use" may not be used for that purpose. Terms such as "Conference" or "Agency" may not be used in conjunction with the classification designations prescribed by this Order; e.g., "Agency Confidential" or "Conference Confidential."

1-504. In order to facilitate excerpting and other uses, each classified document shall, by marking or other means, indicate clearly which portions are classified, with the applicable classification designation, and which portions are not classified. The Director of the Information Security Oversight Office may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information.

1-505. Foreign government information shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection equivalent to that required by the entity that furnished the information.

1-506. Classified documents that contain or reveal information that is subject to special dissemination and reproduction limitations authorized by

THE PRESIDENT

28953

this Order shall be marked clearly so as to place the user on notice of the restrictions.

1-6. Prohibitions.

1-601. Classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

1-602. Basic scientific research information not clearly related to the national security may not be classified.

1-603. A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Order until and unless the government acquires a proprietary interest in the product. This Order does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181-188).

1-604. References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

1-605. Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this Order or to prevent or delay the public release of such information.

1-606. No document originated on or after the effective date of this Order may be classified after an agency has received a request for the document under the Freedom of Information Act or the Mandatory Review provisions of this Order (Section 3-5), unless such classification is consistent with this Order and is authorized by the agency head or deputy agency head. Documents originated before the effective date of this Order and subject to such a request may not be classified unless such classification is consistent with this Order and is authorized by the senior official designated to oversee the agency information security program or by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally, on a document-by-document basis.

1-607. Classification may not be restored to documents already declassified and released to the public under this Order or prior Orders.

SECTION 2. DERIVATIVE CLASSIFICATION.

2-1. Use of Derivative Classification.

2-101. Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

2-102. Persons who apply such derivative classification markings shall:

- (a) respect original classification decisions;
- (b) verify the information's current level of classification so far as practicable before applying the markings; and
- (c) carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings, in accordance with Sections 2-2 and 2-301 below. A single marking may be used for documents based on multiple sources.

2-2. Classification Guides.

2-201. Classification guides used to direct derivative classification shall specifically identify the information to be classified. Each classification guide shall specifically indicate how the designations, time limits, markings, and other requirements of this Order are to be applied to the information.

2-202. Each such guide shall be approved personally and in writing by an agency head listed in Section 1-2 or by an official with Top Secret classification authority. Such approval constitutes an original classification decision.

2-3. *New Material.*

2-301. New material that derives its classification from information classified on or after the effective date of this Order shall be marked with the declassification date or event, or the date for review, assigned to the source information.

2-302. New material that derives its classification from information classified under prior Orders shall be treated as follows:

(a) If the source material bears a declassification date or event twenty years or less from the date of origin, that date or event shall be carried forward on the new material.

(b) If the source material bears no declassification date or event or is marked for declassification beyond twenty years, the new material shall be marked with a date for review for declassification at twenty years from the date of original classification of the source material.

(c) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification beyond thirty years, the new material shall be marked for review for declassification at thirty years from the date of original classification of the source material.

SECTION 3. DECLASSIFICATION AND DOWNGRADING.

3-1. *Declassification Authority.*

3-101. The authority to declassify or downgrade information classified under this or prior Orders shall be exercised only as specified in Section 3-1.

3-102. Classified information may be declassified or downgraded by the official who authorized the original classification if that official is still serving in the same position, by a successor, or by a supervisory official of either.

3-103. Agency heads named in Section 1-2 shall designate additional officials at the lowest practicable echelons to exercise declassification and downgrading authority.

3-104. If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified until the appeal is decided or until one year from the date of the Director's decision, whichever occurs first.

3-105. The provisions of this Order relating to declassification shall also apply to agencies which, under the terms of this Order, do not have original classification authority but which had such authority under prior Orders.

3-2. *Transferred Information.*

3-201. For classified information transferred in conjunction with a transfer of functions—not merely for storage purposes—the receiving agency shall be deemed to be the originating agency for all purposes under this Order.

3-202. For classified information not transferred in accordance with Section 3-201, but originated in an agency which has ceased to exist, each agency in possession shall be deemed to be the originating agency for all purposes under this Order. Such information may be declassified or downgraded by the agency in possession after consulting with any other agency having an interest in the subject matter.

3-203. Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be declassi-

fied or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Office, and the agency guidelines.

3-204. After the termination of a Presidential administration, the Archivist of the United States shall review and declassify or downgrade all information classified by the President, the White House Staff, committees or commissions appointed by the President, or others acting on the President's behalf. Such declassification shall only be undertaken in accordance with the provisions of Section 3-504.

3-3. *Declassification Policy.*

3-301. Declassification of classified information shall be given emphasis comparable to that accorded classification. Information classified pursuant to this and prior Orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event.

3-302. When information is reviewed for declassification pursuant to this Order or the Freedom of Information Act, it shall be declassified unless the declassification authority established pursuant to Section 3-1 determines that the information continues to meet the classification requirements prescribed in Section 1-3 despite the passage of time.

3-303. It is presumed that information which continues to meet the classification requirements in Section 1-3 requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head, a senior agency official with responsibility for processing Freedom of Information Act requests or Mandatory Review requests under this Order, an official with Top Secret classification authority, or the Archivist of the United States in the case of material covered in Section 3-503. That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

3-4. *Systematic Review for Declassification.*

3-401. Classified information constituting permanently valuable records of the Government, as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes twenty years old. Agency heads listed in Section 1-2 and officials designated by the President pursuant to Section 1-201 of this Order may extend classification beyond twenty years, but only in accordance with Sections 3-3 and 3-402. This authority may not be delegated. When classification is extended beyond twenty years, a date no more than ten years later shall be set for declassification or for the next review. That date shall be marked on the document. Subsequent reviews for declassification shall be set at no more than ten year intervals. The Director of the Information Security Oversight Office may extend the period between subsequent reviews for specific categories of documents or information.

3-402. Within 180 days after the effective date of this Order, the agency heads listed in Section 1-2 and the heads of agencies which had original classification authority under prior orders shall, after consultation with the Archivist of the United States and review by the Information Security Oversight Office, issue and maintain guidelines for systematic review covering twenty-year old classified information under their jurisdiction. These guide-

lines shall state specific, limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond twenty years is needed. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information. All information not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of twenty years from the date of original classification.

3-403. Notwithstanding Sections 3-401 and 3-402, the Secretary of Defense may establish special procedures for systematic review and declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review and declassification of classified information concerning the identities of clandestine human agents. These procedures shall be consistent, so far as practicable, with the objectives of Sections 3-401 and 3-402. Prior to implementation, they shall be reviewed and approved by the Director of the Information Security Oversight Office and, with respect to matters pertaining to intelligence sources and methods, by the Director of Central Intelligence. Disapproval of procedures by the Director of the Information Security Oversight Office may be appealed to the National Security Council. In such cases, the procedures shall not be implemented until the appeal is decided.

3-404. Foreign government information shall be exempt from automatic declassification and twenty year systematic review. Unless declassified earlier, such information shall be reviewed for declassification thirty years from its date of origin. Such review shall be in accordance with the provisions of Section 3-3 and with guidelines developed by agency heads in consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information.

3-405. Transition to systematic review at twenty years shall be implemented as rapidly as practicable and shall be completed no more than ten years from the effective date of this Order.

3-5. *Mandatory Review for Declassification.*

3-501. Agencies shall establish a mandatory review procedure to handle requests by a member of the public, by a government employee, or by an agency, to declassify and release information. This procedure shall apply to information classified under this Order or prior Orders. Except as provided in Section 3-503, upon such a request the information shall be reviewed for possible declassification, provided the request reasonably describes the information. Requests for declassification under this provision shall be acted upon within 60 days. After review, the information or any reasonably segregable portion thereof that no longer requires protection under this Order shall be declassified and released unless withholding is otherwise warranted under applicable law.

3-502. Requests for declassification which are submitted under the provisions of the Freedom of Information Act shall be processed in accordance with the provisions of that Act.

3-503. Information less than ten years old which was originated by the President, by the White House Staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, including such information in the possession and control of the Administrator

of General Services pursuant to 44 U.S.C. 2107 or 2107 note, is exempted from the provisions of Section 3-501. Such information over ten years old shall be subject to mandatory review for declassification. Requests for mandatory review shall be processed in accordance with procedures developed by the Archivist of the United States. These procedures shall provide for consultation with agencies having primary subject matter interest. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council through the process set forth in Section 3-104.

3-504. Requests for declassification of classified documents originated by an agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be referred by the Archivist to the agency of origin for processing in accordance with Section 3-501 and for direct response to the requestor. The Archivist shall inform requestors of such referrals.

3-505. No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act or this Order's Mandatory Review provision, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable under this Order.

3-6. *Downgrading.*

3-601. Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders.

3-602. Classified information that is not marked for automatic downgrading may be assigned a lower classification designation by the originator or by other authorized officials when such downgrading is appropriate. Notice of downgrading shall be provided to holders of the information to the extent practicable.

SECTION 4. SAFEGUARDING.

4-1. *General Restrictions on Access.*

4-101. No person may be given access to classified information unless that person has been determined to be trustworthy and unless access is necessary for the performance of official duties.

4-102. All classified information shall be marked conspicuously to put users on notice of its current classification status and, if appropriate, to show any special distribution or reproduction restrictions authorized by this Order.

4-103. Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

4-104. Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of Chapters 21 and 33 of Title 44 of the United States Code, which governs disposition of Federal records.

4-105. Classified information disseminated outside the Executive branch shall be given protection equivalent to that afforded within the Executive branch.

4-2. *Special Access Programs.*

4-201. Agency heads listed in Section 1-201 may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or prior Orders. Such pro-

grams may be created or continued only by written direction and only by those agency heads and, for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence. Classified information in such programs shall be declassified according to the provisions of Section 3.

4-202. Special access programs may be created or continued only on a specific showing that:

(a) normal management and safeguarding procedures are not sufficient to limit need-to-know or access;

(b) the number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved; and

(c) the special access controls balance the need to protect the information against the full spectrum of needs to use the information.

4-203. All special access programs shall be reviewed regularly and, except those required by treaty or international agreement, shall terminate automatically every five years unless renewed in accordance with the procedures in Section 4-2.

4-204. Within 180 days after the effective date of this Order, agency heads shall review all existing special access programs under their jurisdiction and continue them only in accordance with the procedures in Section 4-2. Each of those agency heads shall also establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office shall have non-delegable access to all such accountings.

4-3. *Access by Historical Researchers and Former Presidential Appointees.*

4-301. The requirement in Section 4-101 that access to classified information may be granted only as is necessary for the performance of official duties may be waived as provided in Section 4-302 for persons who:

(a) are engaged in historical research projects, or

(b) previously have occupied policy-making positions to which they were appointed by the President.

4-302. Waivers under Section 4-301 may be granted only if the agency with jurisdiction over the information:

(a) makes a written determination that access is consistent with the interests of national security;

(b) takes appropriate steps to ensure that access is limited to specific categories of information over which that agency has classification jurisdiction;

(c) limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee.

4-4. *Reproduction Controls.*

4-401. Top Secret documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office.

4-402. Reproduction of Secret and Confidential documents may be restricted by the originating agency.

4-403. Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

4-404. Records shall be maintained by all agencies that reproduce paper copies of classified documents to show the number and distribution of reproduced copies of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and all Confidential documents which are marked with special dissemination and reproduction limitations in accordance with Section 1-506.

4-405. Sections 4-401 and 4-402 shall not restrict the reproduction of documents for the purpose of facilitating review for declassification. However,

of General Services pursuant to 44 U.S.C. 2107 or 2107 note, is exempted from the provisions of Section 3-501. Such information over ten years old shall be subject to mandatory review for declassification. Requests for mandatory review shall be processed in accordance with procedures developed by the Archivist of the United States. These procedures shall provide for consultation with agencies having primary subject matter interest. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council through the process set forth in Section 3-104.

3-504. Requests for declassification of classified documents originated by an agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be referred by the Archivist to the agency of origin for processing in accordance with Section 3-501 and for direct response to the requestor. The Archivist shall inform requestors of such referrals.

3-505. No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act or this Order's Mandatory Review provision, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable under this Order.

3-6. Downgrading.

3-601. Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders.

3-602. Classified information that is not marked for automatic downgrading may be assigned a lower classification designation by the originator or by other authorized officials when such downgrading is appropriate. Notice of downgrading shall be provided to holders of the information to the extent practicable.

SECTION 4. SAFEGUARDING.

4-1. General Restrictions on Access.

4-101. No person may be given access to classified information unless that person has been determined to be trustworthy and unless access is necessary for the performance of official duties.

4-102. All classified information shall be marked conspicuously to put users on notice of its current classification status and, if appropriate, to show any special distribution or reproduction restrictions authorized by this Order.

4-103. Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

4-104. Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of Chapters 21 and 33 of Title 44 of the United States Code, which governs disposition of Federal records.

4-105. Classified information disseminated outside the Executive branch shall be given protection equivalent to that afforded within the Executive branch.

4-2. Special Access Programs.

4-201. Agency heads listed in Section 1-201 may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or prior Orders. Such pro-

such reproduced documents that remain classified after review must be destroyed after they are used.

SECTION 5. IMPLEMENTATION AND REVIEW.

5-1. Oversight.

5-101. The National Security Council may review all matters with respect to the implementation of this Order and shall provide overall policy direction for the information security program.

5-102. The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. This responsibility shall be delegated to an Information Security Oversight Office.

5-2. Information Security Oversight Office.

5-201. The Information Security Oversight Office shall have a full-time Director appointed by the Administrator of General Services subject to approval by the President. The Administrator also shall have authority to appoint a staff for the Office.

5-202. The Director shall:

- (a) oversee agency actions to ensure compliance with this Order and implementing directives;
- (b) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the information security program, including appeals from decisions on declassification requests pursuant to Section 3-503;
- (c) exercise the authority to declassify information provided by Sections 3-104 and 3-503;
- (d) develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order which shall be binding on the agencies;
- (e) report annually to the President through the Administrator of General Services and the National Security Council on the implementation of this Order;
- (f) review all agency implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this Order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation or guideline shall remain in effect until the appeal is decided or until one year from the date of the Director's decision, whichever occurs first.
- (g) exercise case-by-case classification authority in accordance with Section 1-205 and review requests for original classification authority from agencies or officials not granted original classification authority under Section 1-2 of this Order; and
- (h) have the authority to conduct on-site reviews of the information security program of each agency that handles classified information and to require of each agency such reports, information, and other cooperation as necessary to fulfill his responsibilities. If such reports, inspection, or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect until the appeal is decided or until one year from the date of the denial, whichever occurs first.

THE PRESIDENT

5-3. *Interagency Information Security Committee.*

5-301. There is established an Interagency Information Security Committee which shall be chaired by the Director and shall be comprised of representatives of the Secretaries of State, Defense, Treasury, and Energy, the Attorney General, the Director of Central Intelligence, the National Security Council, the Domestic Policy Staff, and the Archivist of the United States.

5-302. Representatives of other agencies may be invited to meet with the Committee on matters of particular interest to those agencies.

5-303. The Committee shall meet at the call of the Chairman or at the request of a member agency and shall advise the Chairman on implementation of this order.

5-4. *General Responsibilities.*

5-401. A copy of any information security regulation and a copy of any guideline for systematic declassification review which has been adopted pursuant to this Order or implementing directives, shall be submitted to the Information Security Oversight Office. To the extent practicable, such regulations and guidelines should be unclassified.

5-402. Unclassified regulations that establish agency information security policy and unclassified guidelines for systematic declassification review shall be published in the FEDERAL REGISTER.

5-403. Agencies with original classification authority shall promulgate guides for security classification that will facilitate the identification and uniform classification of information requiring protection under the provisions of this Order.

5-404. Agencies which originate or handle classified information shall:

(a) designate a senior agency official to conduct an active oversight program to ensure effective implementation of this Order;

(b) designate a senior agency official to chair an agency committee with authority to act on all suggestions and complaints with respect to the agency's administration of the information security program;

(c) establish a process to decide appeals from denials of declassification requests submitted pursuant to Section 3-5;

(d) establish a program to familiarize agency and other personnel who have access to classified information with the provisions of this Order and implementing directives. This program shall impress upon agency personnel their responsibility to exercise vigilance in complying with this Order. The program shall encourage agency personnel to challenge, through Mandatory Review and other appropriate procedures, those classification decisions they believe to be improper;

(e) promulgate guidelines for systematic review in accordance with Section 3-402;

(f) establish procedures to prevent unnecessary access to classified information, including procedures which require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and which ensures that the number of people granted access to classified information is reduced to and maintained at the minimum number that is consistent with operational requirements and needs; and

(g) ensure that practices for safeguarding information are systematically reviewed and that those which are duplicative or unnecessary are eliminated.

5-405. Agencies shall submit to the Information Security Oversight Office such information or reports as the Director of the Office may find necessary to carry out the Office's responsibilities.

5-5. Administrative Sanctions.

5-501. If the Information Security Oversight Office finds that a violation of this Order or any implementing directives may have occurred, it shall make a report to the head of the agency concerned so that corrective steps may be taken.

5-502. Officers and employees of the United States Government shall be subject to appropriate administrative sanctions if they:

(a) knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directives; or

(b) knowingly, willfully and without authorization disclose information properly classified under this Order or prior Orders or compromise properly classified information through negligence; or

(c) knowingly and willfully violate any other provision of this Order or implementing directive.

5-503. Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, or other sanction in accordance with applicable law and agency regulations.

5-504. Agency heads shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5-502 occurs. The Director of the Information Security Oversight Office shall be informed when such violations occur.

5-505. Agency heads shall report to the Attorney General evidence reflected in classified information of possible violations of Federal criminal law by an agency employee and of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

SECTION 6. GENERAL PROVISIONS.

6-1. Definitions.

6-101. "Agency" has the meaning defined in 5 U.S.C. 552(e).

6-102. "Classified information" means information or material, herein collectively termed information, that is owned by, produced for or by, or under the control of, the United States Government, and that has been determined pursuant to this Order or prior Orders to require protection against unauthorized disclosure, and that is so designated.

6-103. "Foreign government information" means information that has been provided to the United States in confidence by, or produced by the United States pursuant to a written joint arrangement requiring confidentiality with, a foreign government or international organization of governments.

6-104. "National security" means the national defense and foreign relations of the United States.

6-105. "Declassification event" means an event which would eliminate the need for continued classification.

6-2. General.

6-201. Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended. "Restricted Data" and information designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto.

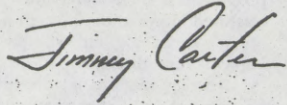
6-202. The Attorney General, upon request by the head of an agency, his duly designated representative, or the Director of the Information Security Oversight Office, shall personally or through authorized representatives of the Department of Justice render an interpretation of this Order with respect to any question arising in the course of its administration.

28962

THE PRESIDENT

6-203. Executive Order No. 11652 of March 8, 1972, as amended by Executive Order No. 11714 of April 24, 1973, and as further amended by Executive Order No. 11862 of June 11, 1975, and the National Security Council Directive of May 17, 1972 (3 CFR 1085 (1971-75 Comp.)) are revoked.

6-204. This Order shall become effective on December 1, 1978, except that the functions of the Information Security Oversight Office specified in Sections 5-202(d) and 5-202(f) shall be effective immediately and shall be performed in the interim by the Interagency Classification Review Committee established pursuant to Executive Order No. 11652.



THE WHITE HOUSE,
June 28, 1978.

[FR Doc. 78-18505 Filed 6-29-78; 4:18 pm]

EDITORIAL NOTE: The President's statement of June 29, 1978, on issuing Executive Order 12065, is printed in the Weekly Compilation of Presidential Documents (vol. 14, No. 26).

PART V



INTERAGENCY
CLASSIFICATION
REVIEW
COMMITTEE



INFORMATION
SECURITY
OVERSIGHT
OFFICE

National Security
Information

For
dissemination
to
the
public

[6520-27]

Title 32—National Defense

CHAPTER XX—INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

[Directive No. 11]

INFORMATION SECURITY OVERSIGHT OFFICE

National Security Information

AGENCY: Interagency Classification Review Committee (ICRC).

ACTION: Implementing directive.

SUMMARY: The Interagency Classification Review Committee is publishing this directive to implement Executive Order 12065, relating to the classification, downgrading, declassification and safeguarding of national security information. This directive was approved by the National Security Council for publication and issuance on September 29, 1978. The Executive order is intended to increase openness in Government by limiting classification and accelerating declassification but at the same time, providing improved protection against unauthorized disclosure for that information that requires such protection in the interest of national security. This directive sets forth guidelines to agencies on original and derivative classification, downgrading, declassification and safeguarding of national security information.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert W. Wells, Executive Director, ICRC, Telephone: 202-724-1578.

SUPPLEMENTARY INFORMATION: This directive is issued pursuant to the provisions of section 6-204 of Executive Order 12065. The purpose of the directive is to assist in the implementation of Executive Order 12065, and users of the directive shall refer concurrently to the Executive order for guidance.

TABLE OF CONTENTS

Section I. Original Classification

- A Definition.
- B Classification Authority.
- C Request for Classification Authority.
- D Record Requirements.
- E Classification Procedure.
- F Foreign Government Information.
- G Standard Identification and Markings.
- H Additional Markings Required.
- I Abbreviations.

Section II. Derivative Classification

- A Definition.
- B Responsibility.

RULES AND REGULATIONS

- C Marking Derivatively Classified Documents.
- D Classification Guides

Section III. Declassification and Downgrading

- A Record Requirements.
- B Declassification Policy.
- C Systematic Review for Declassification.
- D Procedure for Mandatory Declassification Review.

Section IV. Safeguarding

- A General.
- B General Restrictions on Access.
- C Access by Historical Researchers and Former Presidential Appointees.
- D Decommunism.
- E Accountability Procedures.
- F Storage.
- G Transmittal.
- H Loss or Possible Compromise.
- I Destruction.

Section V. Implementation and Review: Challenges to Classification

Section VI. General Provisions

- A Notification.
- B Posted Notice.
- C Downgrading, Declassification, and Upgrading Markings.
- D Combat Operations.
- E Publication and Effective Date.

I. ORIGINAL CLASSIFICATION

A. Definition. "Original classification" as used in the order means an initial determination that information requires protection against unauthorized disclosure in the interest of national security, and a designation of the level of classification (1.1).

B. Classification authority. In the absence of an authorized classifier, anyone designated to act in that person's absence may exercise the classifier's authority (1-204).

C. Request for classification authority. Requests for original classification authority for agencies not listed in section 1-2 of the order shall be submitted to the President through the Information Security Oversight Office. Requests shall include: (1) The designation of the officials for whom or positions for which authority is sought, (2) the level of authority requested, and (3) the justification for such requests, including a description of the type of information that is anticipated to require original classification (1-2).

D. Record requirements. Agencies and officials granted original classification authority pursuant to section 1-2 of the order shall maintain a current listing, by classification designation, of individuals to whom or positions to which original classification authority has been delegated (1-2).

E. Classification procedure. Except as provided in section 1 303 of the order, the fact that the information concerns one or more of the qualifying criteria or categories of information

¹ Parenthetical references are to related sections of Executive Order 12065.

shall not create any presumption as to whether the information meets the damage tests (1 302 and 1 303).

F. Foreign government information.—1. Identification. "Foreign government information" is:

a. Information provided to the United States by a foreign government or international organization of governments in the expectation, express or implied, that the information is to be kept in confidence; or

b. Information produced by the United States pursuant to a written joint arrangement with a foreign government or international organization of governments requiring that either the information or the arrangement, or both, be kept in confidence. Such a written joint arrangement may be evidenced by an exchange of letters, a memorandum of understanding, or other written record (1-303 and 6-103).

2. Duration of classification. Unless the guidelines developed pursuant to section 3-404 of the order or other guidelines prescribe dates or events for declassification or for review for declassification:

a. Foreign government information shall not be assigned a date or event for automatic declassification unless such is specified or agreed to by the foreign government or international organization of governments.

b. Foreign government information classified after the effective date of the order shall be assigned a date for review for declassification up to 30 years from the time the information was classified or acquired. (1-402 and 3-404).

G. Standard identification and markings. At the time of original classification, the following shall be shown on the face of paper copies of all classified documents:

1. Identity of classifier. The identity of the classifier, unless also the signer or approver of the document, shall be shown on a "classified by" line; e.g., "Classified by John Doe" or "Classified by Director, XXX" (1 501(a)).

2. Date of classification and office of origin. The date and office of origin on a document at the time of its origination may be considered the date of classification and identification of the office of origin (1 501(b)).

3. Date or event for declassification or review. The date for automatic declassification or for declassification review shall be shown on a "declassify on" or a "review for declassification on" line; e.g., "Declassify on 1 November 1984," "Declassify on completion of State visit," or "Review for declassification on 1 November 1998" (1 501(c)).

4. Downgrading markings. When it is determined (e.g., in a classification guide) that a classified document should be downgraded automatically

at a certain date or upon a certain event, that date or event shall be recorded on the face of the document; e.g., "Downgraded to Secret on 1 November 1990" or "Downgraded to Confidential on 1 December 1985" (1-5).

5. *Identity of extension authority.* The identity of the official who authorizes a date for declassification or for review for declassification that is more than 5 years beyond the date of the document's classification shall be shown on the document, unless that official also is the classifier, signer, or approver of the document. This marking shall be shown substantially as follows: "Extended by (insert name or title of position of agency head or Top Secret classification authority)" (1-502).

6. *Reason for extension.* When classification is extended beyond 6 years, the reason shall be stated on the document either in narrative form or by reference to an agency regulation that states the reason for extension in narrative form. The reason shall be shown substantially as follows: "Reason for extension: (State reason or applicable reference)" (1-502).

7. *Overall and page marking of documents.* The overall classification of a document shall be marked, stamped, or affixed permanently at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page of a classified document shall be marked or stamped at the top and bottom either according to the highest classification of the content of the page, including the designation "Unclassified" when appropriate, or according to the highest overall classification of the document. In any case, the classification marking of the page shall not supersede the classification marking of portions of the page marked with lower levels of classification (1-501d).

8. *Subject and titles.* Whenever practicable, subjects and titles shall be selected so as not to require classification. When the subject or title is classified, an unclassified identifier may be assigned to facilitate receipting and reference (1-5).

9. *Mandatory portion marking.* Classifiers shall identify the level of classification of each classified portion of a document (including subjects and titles), and those portions that are not classified. Portion marking shall be accomplished by placing a parenthetical designator immediately preceding or following the text that it governs. The symbols "(TS)" for top secret, "(S)" for secret, "(C)" for confidential, and "(U)" for unclassified shall be used for this purpose. If individual portion marking is impracticable, the document shall contain a description suffi-

cient to identify the information that is classified and the level of such classification. A waiver of the portion marking requirement may be granted by the Director of the Information Security Oversight Office. Requests for such waivers shall be made by the head of an agency or designee to the Director and shall include: (a) Identification of the information or classes of documents for which such waiver is sought, (b) a detailed explanation of why the waiver should be granted, (c) the agency's best judgment as to the anticipated dissemination of the information or class of documents for which waiver is sought, and (d) the extent to which the information subject to the waiver may form a basis for classification of other documents (1-504).

10. *Material other than documents.* The classification and associated markings prescribed by this directive of documents shall, where practicable, be affixed to material other than documents by stamping, tagging, or other means. If this is not practicable, recipients shall be made aware of the classification and associated markings by notification or other means as prescribed by the agency (1-5).

11. *Transmittal documents.* A transmittal document shall indicate on its face the highest classification of the information transmitted by it and the classification, if any, of the transmittal document. For example, an unclassified transmittal document should bear a notation substantially as follows: "Unclassified When Classified Enclosure Is Detached" (1-5).

12. *Marking foreign government information.* Except in those cases where such markings would reveal in intelligence information, foreign government information incorporated in United States documents shall, whenever practicable, be identified in such manner as to ensure that the foreign government information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. Documents classified by a foreign government or an international organization of governments shall, if the foreign classification is not in English, be marked with the equivalent U.S. classification. Foreign government information not classified by a foreign government or an international organization of governments but provided to the United States in confidence by a foreign government or by an international organization of governments shall be classified at an appropriate level and shall be marked with the U.S. classification accordingly (1-5).

H. *Additional markings required.* In addition to the marking requirements in paragraph G, the following markings shall, as appropriate, be displayed

prominently on classified information. When display of these additional markings is not practicable, their applicability to the information shall be included in the written notification of the assigned classification (1-5).

1. *Restricted data or formerly restricted data.* For classified information containing restricted data or formerly restricted data as defined in the Atomic Energy Act of 1954, as amended, such markings as may be prescribed by the Department of Energy in regulations issued pursuant to the act shall be applied.

2. *Intelligence sources and methods information.* For classified information involving intelligence sources or methods, "Warning Notice—Intelligence Sources and Methods Involved".

3. *Dissemination and reproduction notice.* For classified information that the originator has determined, pursuant to section 1-506 of the order, should be subject to special dissemination or reproduction limitations, or both, a statement placing the user on notice of the restrictions shall be included in the text of the document or on its cover sheet; e.g., "Reproduction requires approval of originator," or "Further dissemination only as directed by (insert appropriate office or official)" (1-506).

I. *Abbreviations.* Classified documents that are transmitted electrically may be marked with abbreviations or codes in a single line to satisfy the requirements of each subsection of paragraphs G and H in a manner consistent with economic and efficient use of electrical transmission systems, provided that the full text represented by each such abbreviation or code and its relation to each subsection of paragraphs G and H is readily available to each expert user of the classified documents affected.

II. DERIVATIVE CLASSIFICATION

A. *Definition.* "Derivative classification" as used in the order means a determination that information is in substance the same as information that is currently classified, and a designation of the level of classification (2-1).

B. *Responsibility.* Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form information that is already classified, and of those who apply markings in accordance with instructions from an authorized classifier or in accordance with an authorized classification guide. Persons who apply derivative classification markings should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed the basis for classification. Where checks with originators or other appropriate inquiries show that

no classification or a lower classification than originally assigned is appropriate, the derivative document shall be issued as unclassified or shall be marked appropriately (2-101 and 2-102).

C. Marking derivatively classified documents. Paper copies of derivatively classified documents shall be marked at the time of origination as follows:

1. The classification authority shall be shown on a "classified by" line; e.g., "Classified by (Insert identity of classification guide)" or "Classified by (Insert source of original classification)." If the classification is derived from more than one source, the single phrase "multiple sources" may be shown, provided that identification of each such source is maintained with the file or record copy of the document (2-102(c)).

2. The identity of the office originating the derivatively classified document shall be shown on the face of the document (2-102);

3. Dates or events for declassification or review shall be carried forward from the source material or classification guide and shown on a "declassify on" or "review for declassification on" line. If the classification is derived from more than one source, the latest date for declassification or review applicable to the various source materials shall be applied to the new information (2-102(c)).

4. The classification marking provisions of sections I.G. 7 through 9 and I.G. 12 are also applicable to derivatively classified documents (2-102(c)).

5. Any additional marking under section I.II. of this directive appearing on the source material shall be carried forward to the new material when appropriate (2-102(c)); and

6. Any abbreviation or code permitted under section I. I. of this directive may be applied to derivatively classified documents.

D. Classification guides.—1. Requirements. Classification guides issued pursuant to section 2-2 of the order shall:

a. Identify the information to be protected, using categorization to the extent necessary to insure that the information involved can be identified readily and uniformly (2-201);

b. State which of the classification designations (i.e., top secret, secret, or confidential) applies to the information (2-201);

c. State the duration of classification in terms of a period of time or future event. When such duration is to exceed 5 years, the reason for such extension shall be provided in the guide. However, if the inclusion of classified reasons would result in a level of classification for a guide that would inhibit its desirable and required dissemination,

those reasons need be recorded only on or with the record copy of the guide (2-201); and

d. Indicate how the designations, time limits, markings, and other requirements of the order and this directive are to be applied, or make specific reference to agency regulations that provide for such application (2-201).

2. Review and record requirements. Each classification guide shall be kept current and shall be reviewed at least once every 2 years. Each agency shall maintain a list of all its classification guides in current use (2-2).

III. DECLASSIFICATION AND DOWNGRADING

A. Record requirements. Agencies and officials granted original classification authority pursuant to section 1-2 of the order shall maintain a record of individuals or positions designated as declassification authorities pursuant to section 3-103 of the order (3-103).

B. Declassification policy. In making determinations under section 3-303 of the order, officials shall respect the intent of the order to protect foreign government information and confidential foreign sources (3-303).

C. Systematic Review for Declassification.—1. Systematic review guidelines.

a. **U.S. originated information.** Systematic review guidelines shall be kept current through review at least every 2 years, unless earlier review for revision is requested by the Archivist of the United States (3-402).

b. **Foreign government information.** Within 1 year after the effective date of the order, heads of affected agencies shall, in consultation with the Archivist and in accordance with the provisions of section 3-404 of the order, develop systematic review guidelines for 30-year-old foreign government information. These guidelines shall be kept current through review by agency heads at least once every 2 years, unless earlier review for revision is requested by the Archivist of the United States. A copy of these guidelines and any revisions thereto shall be furnished to the Information Security Oversight Office. Upon request, the Department of State shall provide advice and such assistance as is necessary to effect foreign government coordination of the guidelines (3-404).

2. Systematic review procedures.—a. Scheduling for systematic review. Classified nonpermanent records that are scheduled to be retained for more than 20 years need not be systematically reviewed but shall be reviewed for declassification upon request. Within 60 days of the effective date of the order, heads of agencies and officials designated by the President pursuant to section 1-2 of the order shall

direct that all classified records 2 years old or older, whether held in storage areas by the agency or in Federal records centers, be surveyed to identify those that require scheduling for future disposition. Such scheduling shall be accomplished within 2 years of the effective date of the order (3-401).

b. **Extending classification after review.—(1) Foreign government information.** Agency heads listed in section 1-2 and officials designated by the President pursuant to section 1-201 of the order may extend the classification of foreign government information beyond 30 years, but only in accordance with sections 3-3 and 3-404. This authority may not be delegated. When classification is extended beyond 30 years, a date no more than 10 years later shall be set for declassification or for the next review. Subsequent reviews for declassification shall be set at no more than 10-year intervals (3-404).

(2) **Waivers of further review.** Heads of agencies listed in section 1-2 and officials designated by the President pursuant to section 1-201 of the order may request from the Director of the Oversight Office a waiver of the 10-year review requirement for both U.S.-originated and foreign government information. Such requests shall include a personal certification by the agency head that the classified information for which the waiver is sought has been systematically reviewed as required, and that a definitive date for declassification could not be determined. Waivers should not be requested unless the results of the review have established an identifiable need to continue classification for a period in excess of 20 additional years. Each request shall include a recommended date or event for subsequent review or automatic declassification (3-401).

C. Assistance to the Archivist.—(1) The head of each agency shall designate experienced personnel to assist the Archivist of the United States in the systematic review of 20-year-old U.S.-originated information and 30-year-old foreign government information accessioned into the National Archives of the United States. Such personnel shall:

(a) Provide guidance and assistance to National Archives employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(b) Submit to the head of the agency recommendations for continued classification that identify documents or specific categories of information so separated.

(2) The head of the agency shall then make the determinations personally and in writing required under section

RULES AND REGULATIONS

46283

tion 3-401 of the order as to which documents or categories of information require continued protection. The agency shall inform the Archivist of the United States of this determination (3-4).

d. *Special procedures.* Special procedures for systematic review and declassification of classified cryptologic information and classified information concerning the identities of clandestine human agents promulgated in accordance with the provisions of section 3-403 of the order shall be binding on all agencies (3-403).

e. *Foreign relations series.* In order to permit the editors of foreign relations of the United States to meet their mandated goal of publishing 20 years after the event, heads of departments and agencies are requested to assist the editors in the Department of State by facilitating access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for publication (3-4).

D. *Procedures for mandatory declassification review.*

1. *U.S.-originated information.—a. Action on an initial request.* Each Agency shall designate, in its implementing regulations published in the FEDERAL REGISTER, offices to which requests for mandatory review for declassification may be directed. Upon request for declassification pursuant to section 3-5 of the order, agencies shall apply the following procedures:

(1) The designated offices shall acknowledge receipt of the request.

(2) Whenever a request does not reasonably describe the information sought, the requestor shall be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken (3-501).

b. *Information in the custody of and under the exclusive declassification authority of an agency.* The designated office shall determine whether, under the declassification provisions of section 3-3 of the order, the requested information may be declassified and, if so, shall make such information available to the requestor, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requestor shall be given a brief statement as to the reasons for denial, a notice of the right to appeal the determination to a designated agency appellate authority (including name, title, and address of such authority), and a notice that such an appeal must be filed with the agency within 60 days in order to be considered (3-501).

c. *Information classified by agencies other than the custodial agency.* When an agency receives a request for infor-

mation in its custody that was classified by another agency, it shall forward the request to the appropriate agency, for review, together with a copy of the document containing the information requested where practicable, and with its recommendation to withhold any of the information where appropriate. Unless the agency that classified the information objects on grounds that its association with the information requires protection, the agency that received the request shall also notify the requestor of the referral. After the agency that classified the information completes its review (in coordination with other agencies that a direct interest in the subject matter), a response shall be sent to the requestor in accordance with the procedures described above. If requested, the agency shall also communicate its determination to the referring agency (3-501).

d. *Action on appeal.* The head of an agency or a designee shall establish procedures to act within 30 days upon all appeals of denials of requests for declassification. These procedures shall provide for meaningful appellate consideration, shall be forwarded to the Oversight Office for review, and shall be published in the FEDERAL REGISTER. In accordance with these procedures, agencies shall determine whether continued classification is required in whole or in part, notify the requestor of the determination, and make available any information that is declassified and otherwise releasable. If continued classification is required under the provisions of section 3-3 of the order, the requestor shall be notified of the reasons therefor. If requested, the agency shall also communicate the appeal determination to any referring agency (3-5 and 5-404(c)).

e. *Fees.* If the request requires the rendering of services for which fair and equitable fees may be charged pursuant to title 5 of the Independent Offices Appropriation Act, 65 Stat. 290, 31 U.S.C. 483a (1976), such fees may be imposed at the discretion of the agency rendering the services. Schedules of such fees shall be published in the FEDERAL REGISTER (3-501).

2. *Foreign government information.* Except as provided hereinafter, requests for mandatory review for the declassification of classified documents that contain foreign government information shall be processed and acted upon in accordance with the provisions of section D.1 above. If the agency receiving the request is also the agency that initially received or classified the foreign government information, it shall determine whether the foreign government information in the document may be declassified and

released in accordance with agency policy or guidelines, after consulting with other agencies that have subject matter interest as necessary. If the agency receiving the request is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency, which shall take action as described above, including its recommendation to withhold any of the information where appropriate. In those cases where agency policy or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request (3-5).

IV. SAFEGUARDING

A. *General.* Information classified pursuant to Executive Order 12065 or prior orders shall be afforded a level of protection against unauthorized disclosure commensurate with its level of classification (4-1).

B. *General restrictions on access.*

1. *Determination of need-to-know.* Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as established in section 4-3 of the order, that access is essential to the accomplishment of official Government duties or contractual obligations (4-101).

2. *Determination of trustworthiness.*

A person is eligible for access to classified information only after a showing of trustworthiness as determined by agency heads based upon appropriate investigations in accordance with applicable standards and criteria (4-101).

C. *Access by historical researchers and former Presidential appointees.* Agencies shall obtain: (1) Written agreements, from requestors to safeguard the information to which they are given access as permitted by the order and this directive; and (2) written consent to the agency's review of their notes, and manuscripts for the purpose of determining that no classified information is contained therein. A determination of trustworthiness is a precondition to a requestor's access. If the access requested by historical researchers and former Presidential appointees requires the rendering of services for which fair and equitable fees may be charged pursuant to title 5 of the Independent Offices Appropriations Act, 65 Stat. 290, 31 U.S.C. 483a (1976), the requestor shall be so notified and the fees may be imposed (4-3).

D. *Dissemination.* Except as otherwise provided by section 102 of the National Security Act of 1947, 61 Stat. 495, 50 U.S.C. 403 (1970 and Supp. V 1975), classified information originating in one agency may not be disseminated outside any other agency to

RULES AND REGULATIONS

46284

which it has been made available without the consent of the originating agency (4-103).

E. Accountability procedures.—1. Top secret. Top secret control officers shall be designated to receive, transmit, and maintain current access and accountability records for top secret information. An inventory of top secret documents shall be made at least annually; however, heads of agencies may authorize the annual inventory of top secret documents in repositories, libraries, or activities that store large volumes of such information to be limited to documents to which access has been afforded within the past 12 months. The Director of the Oversight Office may grant a waiver with respect to the requirement of an annual inventory for storage systems involving large volumes of information if security measures with respect to such storage systems are adequate to prevent access by unauthorized persons (4-103).

2. Secret and confidential. Secret and confidential classified information shall be subject to such controls and current accountability records as the head of the agency may prescribe (4-103).

F. Storage. Classified information shall be stored only in facilities or under conditions adequate to prevent unauthorized persons from gaining access to it (4-103).

11. Top secret. Top secret information shall be stored in a GSA-approved, safe-type, steel file cabinet having a built-in, three-position, dial-type combination lock or within an approved vault, or vault-type room, or in other storage facility that meets the standards for top secret established under the provisions of subsection 3 below. In addition, heads of agencies shall prescribe such additional, supplementary controls as are deemed appropriate to restrict unauthorized access to areas where such information is stored (4-103).

2. Secret and confidential. Secret and confidential information shall be stored in a manner and under the conditions prescribed for top secret information, or in a container or vault that meets the standards for secret or confidential, established pursuant to the provisions of subsections 3 or 4 below (4-103).

3. Standards for security equipment. The General Services Administration shall, in coordination with agencies originating classified information, establish and publish uniform standards, specifications, and supply schedules for containers, vaults, alarm systems, and associated security devices suitable for the storage and protection of all categories of classified information. Any agency may establish more stringent standards for its own use. When-

ever new security equipment is procured, it shall be in conformance with the standards and specifications referred to above and shall, to the maximum extent practicable, be of the type designated by the Federal Supply Schedule, General Services Administration (4-103).

4. Exception to standards for security equipment.—a. Secret and confidential information may also be stored in a steel filing cabinet having a built-in, three-position, dial type, changeable combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a three position, changeable, combination padlock approved by GSA for the purpose. The storage of secret information in the steel filing cabinets described above requires the use of such supplementary controls as the head of the agency deems necessary to achieve the degree of protection warranted by the sensitivity of the information involved (4-103).

b. For protection of bulky secret and confidential material (for example, weaponry containing classified components) in magazines, strong rooms, or closed areas, access openings may be secured by changeable combination or key-operated, high-security padlocks approved by GSA. When key-operated padlocks are used, keys shall be controlled in accordance with subsection 6 below (4-103).

5. Combinations.—a. Equipment in service. Combinations to dial-type locks shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination no longer requires access to the combination, whenever a combination has been subjected to possible compromise, whenever the equipment is taken out of service, and at least once every year. Knowledge of combinations protecting classified information shall be limited to the minimum number of persons necessary for operating purposes. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned (4-103).

B. Equipment out of service. When security equipment having a built-in combination lock is taken out of service, the lock shall be reset to the standard combination 50 25 50. Combination padlocks shall be reset to the standard combination 10 20 30 (4-103).

6. Keys. Heads of agencies shall establish administrative procedures for the control and accountability of keys and locks whenever key-operated, high-security padlocks are utilized. The level of protection provided such keys shall be equivalent to that afford-

ed the classified information being protected. Under no circumstances may keys be removed from the premises. They shall be stored in a secure container (4-103).

7. Responsibilities of custodians. Persons entrusted with classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in approved security equipment whenever it is not in use of under direct supervision of authorized persons. Custodians shall follow procedures that insure unauthorized persons do not gain access to classified information (4-103).

8. Inspections. Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. Agency security officers shall insure that periodic inspections are made to determine whether procedural safeguards prescribed by agency regulations are in effect at all times (4-103).

G. Transmittal.—1. Preparation and receipting. Classified information shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover shall be sealed and addressed with no identification of the classification of its contents. A receipt shall be attached to or enclosed in the inner cover, except that confidential information shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be immediately signed by the recipient and returned to the sender. Any of these wrapping and receipting requirements may be waived by agency heads under conditions that will provide adequate protection and prevent access by unauthorized persons (4-103).

2. Transmittal of top secret. The transmittal of top secret information shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system specially created for that purpose, or over authorized secure communications circuits (4-103).

3. Transmittal of secret. The transmittal of secret material shall be effected in the following manner:

a. The 50 States, District of Columbia, and Puerto Rico. Secret information may be transmitted within and between the 50 States, District of Columbia, and Puerto Rico by one of the means authorized for top secret infor-

RULES AND REGULATIONS

46285

mation, by the U.S. Postal Service registered mail, or by protective services provided by U.S. air or surface commercial carriers under such conditions as may be prescribed by the head of the agency concerned (4-103).

b. *Canadian Government Installations.* Secret information may be transmitted to and between United States Government and Canadian Government Installations in the 50 States, the District of Columbia, and Canada by United States and Canadian registered mail with registered mail receipt (4-103).

c. *Other areas.* Secret information may be transmitted from, to, or within areas other than those specified in subsections a or b above by one of the means established for top secret information, or by U.S. registered mail through Army, Navy, or Air Force Postal Service facilities provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system. Transmittal outside such areas may also be accomplished under escort of appropriately cleared personnel aboard U.S. Government and U.S. Government contract vehicles or aircraft, ships of the United States Navy, civil service manned U.S. Naval ships, and ships of U.S. Registry. Operators of vehicles, captains or masters of vessels, and pilots of aircraft who are U.S. citizens and who are appropriately cleared may be designated as escorts (4-103).

4. *Transmittal of confidential information.* Confidential information shall be transmitted within and between the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories or possessions by one of the means established for higher classifications, or by U.S. Postal Service certified, first class, or express mail service when prescribed by an agency head. Outside these areas, confidential information shall be transmitted only as is authorized for higher classifications (4-103).

H. *Loss or possible compromise.* Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to an official designated by the agency or organization. In turn, the originating agency shall be notified about the loss or compromise in order that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of such a compromise. An immediate inquiry shall be initiated by the agency under whose cognizance the loss or compromise occurred, for the purpose of taking corrective measures and appropriate administrative, disciplinary, or legal action (4-103).

I. *Destruction.* Nonrecord classified information that has served its intended purpose shall be destroyed in accordance with procedures and methods approved by the head of the agency. The method of destruction selected must preclude recognition or reconstruction of the classified information or material (4-103).

V. IMPLEMENTATION AND REVIEW

Challenges to classification. Agency programs established to implement the order shall encourage holders of classified information to challenge classification in cases where there is reasonable cause to believe that information is classified unnecessarily, improperly, or for an inappropriate period of time. These programs shall provide for action on such challenges or appeals relating thereto within 30 days of receipt and for notification to the challenger of the results. When requested, anonymity of the challenger shall be preserved (5 404(d)).

VI. GENERAL PROVISIONS

A. *Notification.* Notification of unscheduled changes in classification or changes in duration of classification may be by general rather than specific notice (4-102).

B. *Posted notice.* If prompt remark-

ing of large quantities of information would be unduly burdensome, the custodian may attach a change of classification notice to the storage unit in lieu of the marking action otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, and the storage units to which it applies. Items permanently withdrawn from such storage units shall be marked promptly in accordance with the marking provisions herein. However, when information subject to a posted downgrading, upgrading, or declassification notice is withdrawn from one storage unit solely for transfer to another, or a storage unit containing such information is transferred from one place to another, the transfer may be made without marking if the notice is attached to or remains with each shipment (4-102).

C. *Downgrading, declassification, and upgrading markings.* Whenever a change is made in the original classification or in the dates of downgrading or declassification of any classified information, it shall be promptly and conspicuously marked to indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. Earlier classification markings shall be cancelled when practicable (4-102).

D. *Combat operations.* The provisions of the order and this Directive with regard to dissemination, transmittal, or safeguarding of classified information may be so modified in connection with combat or combat-related operations as the Secretary of Defense may by regulations prescribe (4-103).

E. *Publication and effective date.* This directive shall be published in the FEDERAL REGISTER. It shall become effective December 1, 1978 (6-204).

JAMES D. RHODES,
Acting Chairman, Interagency
Classification Review Com-
mittee.

OCTOBER 2, 1978.

(FTR Doc. 78 28101 Filed 10 4 78; 8 45 am)

THE PRESIDENT

Title 3—The President

EXECUTIVE ORDER 11652

Classification and Declassification of National Security Information and Material

The interests of the United States and its citizens are best served by making information regarding the affairs of Government readily available to the public. This concept of an informed citizenry is reflected in the Freedom of Information Act and in the current public information policies of the executive branch.

Within the Federal Government there is some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both an overt and covert nature, it is essential that such official information and material be given only limited dissemination.

This official information or material, referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

To ensure that such information and material is protected, but only to the extent and for such period as is necessary, this order identifies the information to be protected, prescribes classification, downgrading, declassification and safeguarding procedures to be followed, and establishes a monitoring system to ensure its effectiveness.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, it is hereby ordered:

SECTION 1. Security Classification Categories. Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (hereinafter collectively termed "national security") shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute. These classification categories are defined as follows:

(A) "Top Secret." "Top Secret" refers to that national security information or material which requires the highest degree of protection. The test for assigning "Top Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the

THE PRESIDENT

national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

(B) "Secret." "Secret" refers to that national security information or material which requires a substantial degree of protection. The test for assigning "Secret" classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security. The classification "Secret" shall be sparingly used.

(C) "Confidential." "Confidential" refers to that national security information or material which requires protection. The test for assigning "Confidential" classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

SEC. 2. *Authority to Classify.* The authority to originally classify information or material under this order shall be restricted solely to those offices within the executive branch which are concerned with matters of national security, and shall be limited to the minimum number absolutely required for efficient administration. Except as the context may otherwise indicate, the term "Department" as used in this order shall include agency or other governmental unit.

(A) The authority to originally classify information or material under this order as "Top Secret" shall be exercised only by such officials as the President may designate in writing and by:

- (1) The heads of the Departments listed below;
- (2) Such of their senior principal deputies and assistants as the heads of such Departments may designate in writing; and
- (3) Such heads and senior principal deputies and assistants of major elements of such Departments, as the heads of such Departments may designate in writing.

Such offices in the Executive Office of the President as the President may designate in writing

Central Intelligence Agency

Atomic Energy Commission

Department of State

Department of the Treasury

Department of Defense

Department of the Army

Department of the Navy

Department of the Air Force

United States Arms Control and Disarmament Agency

Department of Justice
National Aeronautics and Space Administration
Agency for International Development

(B) The authority to originally classify information or material under this order as "Secret" shall be exercised only by:

- (1) Officials who have "Top Secret" classification authority;
- (2) Such subordinates as officials with "Top Secret" classification authority under (A) (1) and (2) above may designate in writing; and
- (3) The heads of the following named Departments and such senior principal deputies or assistants as they may designate in writing.

Department of Transportation
Federal Communications Commission
Export-Import Bank of the United States
Department of Commerce
United States Civil Service Commission
United States Information Agency
General Services Administration
Department of Health, Education, and Welfare
Civil Aeronautics Board
Federal Maritime Commission
Federal Power Commission
National Science Foundation
Overseas Private Investment Corporation

(C) The authority to originally classify information or material under this order as "Confidential" may be exercised by officials who have "Top Secret" or "Secret" classification authority and such officials as they may designate in writing.

(D) Any Department not referred to herein and any Department or unit established hereafter shall not have authority to originally classify information or material under this order, unless specifically authorized hereafter by an Executive order.

SEC. 3. Authority to Downgrade and Declassify. The authority to downgrade and declassify national security information or material shall be exercised as follows:

(A) Information or material may be downgraded or declassified by the official authorizing the original classification, by a successor in capacity or by a supervisory official of either.

(B) Downgrading and declassification authority may also be exercised by an official specifically authorized under regulations issued by the head of the Department listed in Sections 2(A) or (B) hereof.

(C) In the case of classified information or material officially transferred by or pursuant to statute or Executive order in conjunction with a transfer of function and not merely for storage purposes, the receiving Department shall be deemed to be the originating Department for all purposes under this order including downgrading and declassification.

THE PRESIDENT

(D) In the case of classified information or material not officially transferred within (C) above, but originated in a Department which has since ceased to exist, each Department in possession shall be deemed to be the originating Department for all purposes under this order. Such information or material may be downgraded and declassified by the Department in possession after consulting with any other Departments having an interest in the subject matter.

(E) Classified information or material transferred to the General Services Administration for accession into the Archives of the United States shall be downgraded and declassified by the Archivist of the United States in accordance with this order, directives of the President issued through the National Security Council and pertinent regulations of the Departments.

(F) Classified information or material with special markings, as described in Section 8, shall be downgraded and declassified as required by law and governing regulations.

SEC. 4. *Classification.* Each person possessing classifying authority shall be held accountable for the propriety of the classifications attributed to him. Both unnecessary classification and over-classification shall be avoided. Classification shall be solely on the basis of national security considerations. In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or Department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security. The following rules shall apply to classification of information under this order:

(A) *Documents in General.* Each classified document shall show on its face its classification and whether it is subject to or exempt from the General Declassification Schedule. It shall also show the office of origin, the date of preparation and classification and, to the extent practicable, be so marked as to indicate which portions are classified, at what level, and which portions are not classified in order to facilitate excerpting and other use. Material containing references to classified materials, which references do not reveal classified information, shall not be classified.

(B) *Identification of Classifying Authority.* Unless the Department involved shall have provided some other method of identifying the individual at the highest level that authorized classification in each case, material classified under this order shall indicate on its face the identity of the highest authority authorizing the classification. Where the individual who signs or otherwise authenticates a document or item has also authorized the classification, no further annotation as to his identity is required.

(C) *Information or Material Furnished by a Foreign Government or International Organization.* Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned a United States classification. In either case, the classification shall assure a degree of protection equivalent to that required by the government or international organization which furnished the information or material.

THE PRESIDENT

(1) *Classification Responsibilities.* A holder of classified information or material shall observe and respect the classification assigned by the originator. If a holder believes that there is unnecessary classification, that the assigned classification is improper, or that the document is subject to declassification under this order, he shall so inform the originator who shall thereupon re-examine the classification.

SEC. 5. *Declassification and Downgrading.* Classified information and material, unless declassified earlier by the original classifying authority, shall be declassified and downgraded in accordance with the following rules:

(A) *General Declassification Schedule.* (1) "Top Secret." Information or material originally classified "Top Secret" shall become automatically downgraded to "Secret" at the end of the second full calendar year following the year in which it was originated, downgraded to "Confidential" at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the tenth full calendar year following the year in which it was originated.

(2) "Secret." Information and material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(3) "Confidential." Information and material originally classified "Confidential" shall become automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

(B) *Exemptions from General Declassification Schedule.* Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the General Declassification Schedule. An official authorized to originally classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be restricted to the following categories:

(1) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(2) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.

(3) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.

(4) Classified information or material the disclosure of which would place a person in immediate jeopardy.

(C) Mandatory Review of Exempted Material. All classified information and material originated after the effective date of this order which is exempted under (B) above from the General Declassification Schedule shall be subject to a classification review by the originating Department at any time after the expiration of ten years from the date of origin provided:

- (1) A Department or member of the public requests a review;
- (2) The request describes the record with sufficient particularity to enable the Department to identify it; and
- (3) The record can be obtained with only a reasonable amount of effort.

Information or material which no longer qualifies for exemption under (B) above shall be declassified. Information or material continuing to qualify under (B) shall be so marked and, unless impossible, a date for automatic declassification shall be set.

(D) Applicability of the General Declassification Schedule to Previously Classified Material. Information or material classified before the effective date of this order and which is assigned to Group 4 under Executive Order No. 10501, as amended by Executive Order No. 10964, shall be subject to the General Declassification Schedule. All other information or material classified before the effective date of this order, whether or not assigned to Groups 1, 2, or 3 of Executive Order No. 10501, as amended, shall be excluded from the General Declassification Schedule. However, at any time after the expiration of ten years from the date of origin it shall be subject to a mandatory classification review and disposition under the same conditions and criteria that apply to classified information and material created after the effective date of this order as set forth in (B) and (C) above.

(E) Declassification of Classified Information or Material After Thirty Years. All classified information or material which is thirty years old or more, whether originating before or after the effective date of this order, shall be declassified under the following conditions:

(1) All information and material classified after the effective date of this order shall, whether or not declassification has been requested, become automatically declassified at the end of thirty full calendar years after the date of its original classification except for such specifically identified information or material which the head of the originating Department personally determines in writing at that time to require continued protection because such continued protection is essential to the national security or disclosure would place a person in immediate jeopardy. In such case, the head of the Department shall also specify the period of continued classification.

(2) All information and material classified before the effective date of this order and more than thirty years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the thirtieth full calendar year following the year in which it was

THE PRESIDENT

originated. In his review, the Archivist will separate and keep protected only such information or material as is specifically identified by the head of the Department in accordance with (E)(1) above. In such case, the head of the Department shall also specify the period of continued classification.

(F) *Departments Which Do Not Have Authority For Original Classification.* The provisions of this section relating to the declassification of national security information or material shall apply to Departments which, under the terms of this order, do not have current authority to originally classify information or material, but which formerly had such authority under previous Executive orders.

SEC. 6. *Policy Directives on Access, Marking, Safekeeping, Accountability, Transmission, Disposition and Destruction of Classified Information and Material.* The President acting through the National Security Council shall issue directives which shall be binding on all Departments to protect classified information from loss or compromise. Such directives shall conform to the following policies:

(A) No person shall be given access to classified information or material unless such person has been determined to be trustworthy and unless access to such information is necessary for the performance of his duties.

(B) All classified information and material shall be appropriately and conspicuously marked to put all persons on clear notice of its classified contents.

(C) Classified information and material shall be used, possessed, and stored only under conditions which will prevent access by unauthorized persons or dissemination to unauthorized persons.

(D) All classified information and material disseminated outside the executive branch under Executive Order No. 10865 or otherwise shall be properly protected.

(E) Appropriate accountability records for classified information shall be established and maintained and such information and material shall be protected adequately during all transmissions.

(F) Classified information and material no longer needed in current working files or for reference or record purposes shall be destroyed or disposed of in accordance with the records disposal provisions contained in Chapter 33 of Title 44 of the United States Code and other applicable statutes.

(G) Classified information or material shall be reviewed on a systematic basis for the purpose of accomplishing downgrading, declassification, transfer, retirement and destruction at the earliest practicable date.

SEC. 7. *Implementation and Review Responsibilities.* (A) The National Security Council shall monitor the implementation of this order. To assist the National Security Council, an Interagency Classification Review Committee shall be established, composed of representatives of the Departments of State, Defense and Justice, the Atomic Energy Commission, the Central Intelligence Agency and the National

THE PRESIDENT

Security Council Staff and a Chairman designated by the President. Representatives of other Departments in the executive branch may be invited to meet with the Committee on matters of particular interest to those Departments. This Committee shall meet regularly and on a continuing basis shall review and take action to ensure compliance with this order, and in particular:

(1) The Committee shall oversee Department actions to ensure compliance with the provisions of this order and implementing directives issued by the President through the National Security Council.

(2) The Committee shall, subject to procedures to be established by it, receive, consider and take action on suggestions and complaints from persons within or without the government with respect to the administration of this order, and in consultation with the affected Department or Departments assure that appropriate action is taken on such suggestions and complaints.

(3) Upon request of the Committee Chairman, any Department shall furnish to the Committee any particular information or material needed by the Committee in carrying out its functions.

(B) To promote the basic purposes of this order, the head of each Department originating or handling classified information or material shall:

(1) Prior to the effective date of this order submit to the Interagency Classification Review Committee for approval a copy of the regulations it proposes to adopt pursuant to this order.

(2) Designate a senior member of his staff who shall ensure effective compliance with and implementation of this order and shall also chair a Departmental committee which shall have authority to act on all suggestions and complaints with respect to the Department's administration of this order.

(3) Undertake an initial program to familiarize the employees of his Department with the provisions of this order. He shall also establish and maintain active training and orientation programs for employees concerned with classified information or material. Such programs shall include, as a minimum, the briefing of new employees and periodic reorientation during employment to impress upon each individual his responsibility for exercising vigilance and care in complying with the provisions of this order. Additionally, upon termination of employment or contemplated temporary separation for a sixty-day period or more, employees shall be debriefed and each reminded of the provisions of the Criminal Code and other applicable provisions of law relating to penalties for unauthorized disclosure.

(C) The Attorney General, upon request of the head of a Department, his duly designated representative, or the Chairman of the above described Committee, shall personally or through authorized representatives of the Department of Justice render an interpretation of this order with respect to any question arising in the course of its administration.

SEC. 8. *Material Covered by the Atomic Energy Act.* Nothing in this order shall supersede any requirements made by or under the Atomic Energy Act of August 30, 1954, as amended. "Restricted Data," and material designated as "Formerly Restricted Data," shall be handled, protected, classified, downgraded and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and the regulations of the Atomic Energy Commission.

SEC. 9. *Special Departmental Arrangements.* The originating Department or other appropriate authority may impose, in conformity with the provisions of this order, special requirements with respect to access, distribution and protection of classified information and material, including those which presently relate to communications intelligence, intelligence sources and methods and cryptography.

SEC. 10. *Exceptional Cases.* In an exceptional case when a person or Department not authorized to classify information originates information which is believed to require classification, such person or Department shall protect that information in the manner prescribed by this order. Such persons or Department shall transmit the information forthwith, under appropriate safeguards, to the Department having primary interest in the subject matter with a request that a determination be made as to classification.

SEC. 11. *Declassification of Presidential Papers.* The Archivist of the United States shall have authority to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential Library. Such declassification shall only be undertaken in accord with: (i) the terms of the donor's deed of gift, (ii) consultations with the Departments having a primary subject-matter interest, and (iii) the provisions of Section 5.

SEC. 12. *Historical Research and Access by Former Government Officials.* The requirement in Section 6(A) that access to classified information or material be granted only as is necessary for the performance of one's duties shall not apply to persons outside the executive branch who are engaged in historical research projects or who have previously occupied policy-making positions to which they were appointed by the President; *Provided*, however, that in each case the head of the originating Department shall:

- (i) determine that access is clearly consistent with the interests of national security; and
- (ii) take appropriate steps to assure that classified information or material is not published or otherwise compromised.

Access granted a person by reason of his having previously occupied a policy-making position shall be limited to those papers which the former official originated, reviewed, signed or received while in public office.

SEC. 13. *Administrative and Judicial Action.* (A) Any officer or employee of the United States who unnecessarily classifies or over-

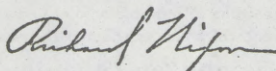
THE PRESIDENT

classifies information or material shall be notified that his actions are in violation of the terms of this order or of a directive of the President issued through the National Security Council. Repeated abuse of the classification process shall be grounds for an administrative reprimand. In any case where the Departmental committee or the Interagency Classification Review Committee finds that unnecessary classification or overclassification has occurred, it shall make a report to the head of the Department concerned in order that corrective steps may be taken.

(B) The head of each Department is directed to take prompt and stringent administrative action against any officer or employee of the United States, at any level of employment, determined to have been responsible for any release or disclosure of national security information or material in a manner not authorized by or under this order or a directive of the President issued through the National Security Council. Where a violation of criminal statutes may be involved, Departments will refer any such case promptly to the Department of Justice.

SEC. 14. *Revocation of Executive Order No. 10501.* Executive Order No. 10501 of November 5, 1953, as amended by Executive Orders No. 10816 of May 8, 1959, No. 10901 of January 11, 1961, No. 10964 of September 20, 1961, No. 10985 of January 15, 1962, No. 11097 of March 6, 1963 and by Section 1 (a) of No. 11382 of November 28, 1967, is superseded as of the effective date of this order.

SEC. 15. *Effective date.* This order shall become effective on June 1, 1972.



THE WHITE HOUSE,
March 8, 1972.

[FR Doc. 72-3782 Filed 3-9-72; 11:01 am]

THE PRESIDENT

Executive Order 11932

August 4, 1976

Classification of Certain Information and Material Obtained From Advisory Bodies Created To Implement the International Energy Program

The United States has entered into the Agreement on an International Energy Program of November 18, 1974, which created the International Energy Agency. This program is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the International Energy Agency. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies. I have consulted with the Secretary of State, the Attorney General and the Administrator of the Federal Energy Administration concerning the handling and safeguarding of information and material in the possession of the United States which has been obtained pursuant to the program, and I find that some of such information and material requires protection as provided in Executive Order No. 11652 of March 8, 1972, as amended.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, and as President of the United States, it is hereby ordered as follows:

SECTION 1. Information and material obtained pursuant to the International Energy Program and which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States shall be classified pursuant to Executive Order No. 11652 of March 8, 1972, as amended. The Secretary of State shall have the responsibility for the classification, declassification and safeguarding of information and material in the possession of the United States Government which has been obtained pursuant to:

(a) Section 252(c) (3), (d) (2) or (e) (3) of the Energy Policy and Conservation Act (89 Stat. 871; 42 U.S.C. 6272(c) (3), (d) (2), (e) (3)), or

(b) The Voluntary Agreement and Program relating to the International Energy Program (40 F.R. 16041, April 8, 1975), or

(c) Any similar Voluntary Agreement and Program entered into under the Energy Policy and Conservation Act after the date of this Order.

SEC. 2. Information or material classified pursuant to Section 1 of this Order may be exempted from the General Declassification Schedule established by Section 5 of Executive Order No. 11652 if it was obtained by the United States on the understanding that it be kept in confidence, or if it might otherwise be exempted under Section 5(B) of such Order.

THE PRESIDENT

SEC. 3. (a) Within 60 days of the date of this Order, the Secretary of State shall promulgate regulations which implement his responsibilities under this Order.

[(b) The directives issued under Section 6 of Executive Order No. 11652 shall not apply to information and material classified under this Order. However, the regulations promulgated by the Secretary of State shall:

(1) conform, to the extent practicable, to the policies set forth in Section 6 of Executive Order No. 11652; and

(2) provide that he may take such measures as he deems necessary and appropriate to ensure the confidentiality of any information and material classified under this Order that may remain in the custody or control of any person outside the United States Government.

Gerald R. Ford

THE WHITE HOUSE,
August 4, 1976.

[FR Doc.76-23043 Filed 8-4-76;10:57 am]

Title 22—Foreign Relations
 CHAPTER I—DEPARTMENT OF STATE
 [Dept. Reg. 108.745]

PART 9A—CLASSIFICATION OF CERTAIN
 INFORMATION AND MATERIAL OB-
 TAINED FROM ADVISORY BODIES
 CREATED TO IMPLEMENT THE INTER-
 NATIONAL ENERGY PROGRAM

Security Information Regulations Appli-
 cable to Certain International Energy
 Program, Related Material

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule establishes regu-
 lations for the classification and safe-
 guarding of certain information and
 material obtained from advisory bodies
 created to implement the International
 Energy Program (TIAS 8278). EO 11932
 directs the Department of State to pro-
 mulgate such regulations which will
 provide for the protection of classified
 information taking into account the
 special circumstances under which such
 information is generated and utilized
 and will reflect the character of certain
 records which may be in the possession
 of the United States Government.

EFFECTIVE DATE: September 16, 1977.

FOR FURTHER INFORMATION CON-
 TACT:

Gerald A. Rosen, Director, Office of
 Fuels and Energy, Bureau of Economic
 and Business Affairs, Department of
 State, Washington, D.C. 20520.

SUPPLEMENTARY INFORMATION:
 A notice of proposed rulemaking was
 published in the FEDERAL REGISTER (42
 FR 17142, March 31, 1977) inviting in-
 terested persons to submit comments re-
 garding the proposed regulation. Rele-
 vant comments have been considered
 and in order to clarify the regulations,
 a new § 9a.1 is added and the remaining
 section headings are renumbered.

Accordingly, Part 9a is adopted as set
 forth below.

Dated: September 6, 1977.

BEN H. READ,
*Deputy Under Secretary
 for Management.*

Sec.

9a.1 Security of certain information and
 material related to the International
 Energy Agency.

9a.2 General policy.

9a.3 Scope.

9a.4 Classification

9a.5 Declassification and downgrading.

9a.6 Marking.

9a.7 Access.

9a.8 Physical protection.

AUTHORITY: E. O. 11932 (41 FR 32691),
 E. O. 11652 (37 FR 5209), National Security
 Council Directive of May 17, 1972 (37 FR
 10053).

§ 9a.1 Security of certain information and material related to the International Energy Program.

These regulations implement Executive Order 11932 dated August 4, 1976 (41 FR 32691, August 5, 1976) entitled "Classification of Certain Information, and Material Obtained from Advisory Bodies Created to Implement the International Energy Program."

§ 9a.2 General policy.

(a) The United States has entered into the Agreement on an International Energy Program of November 18, 1974, which created the International Energy Agency (IEA). This program is a substantial factor in the conduct of our foreign relations and an important element of our national security. The effectiveness of the Agreement depends significantly upon the provision and exchange of information and material by participants in advisory bodies created by the IEA. Confidentiality is essential to assure the free and open discussion necessary to accomplish the tasks assigned to those bodies.

(b) These regulations establish procedures for the classification, declassification, storage, access, and dissemination of certain information related to the International Energy Program.

§ 9a.3 Scope.

These regulations apply to all information and material classified by the United States under the provisions of E.O. 11932, dated August 4, 1976 entitled "Classification of Certain Information and Material Obtained From Advisory Bodies Created To Implement The International Energy Program."

§ 9a.4 Classification.

(a) Section 1 of E.O. 11932, August 4, 1976 directs that information and material obtained pursuant to the International Energy Program and which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States shall be classified pursuant to Executive Order 11652.

(b) Information and material, including transcripts, records, and communications, in the possession of the United States Government which has been obtained pursuant to (1) Section 252(c) (3), (d) (2) or (e) (3) of the Energy Policy and Conservation Act (89 Stat. 871, 42 U.S.C. 6272(c) (3), (d) (2), (e) (3)), or (2) The Voluntary Agreement and Program Relating to the International Energy Program (40 FR 16041, April 8, 1975), or (3) the Voluntary Agreement and Plan of Action to Implement the International Energy Program (41 FR 13993, April 1, 1976), or (4) Any similar Voluntary Agreement and Program entered into under the Energy Policy and Conservation Act shall be reviewed by an officer of the Department of State with classifying authority for the purpose of determining whether such information or material should be classified pursuant to E.O. 11652. If the officer determines that the information or material warrants classification, he shall assign it the appropriate classification. Such information or material may be exempted from the General Declassification Schedule established by Section 5 of Executive Order No. 11652 if it was obtained by the United States on the understanding that it be kept in confidence, or if it might otherwise be exempted under Section 5 (B) of such Order.

(c) In classifying such information or material, officers of the Department of State shall follow the standards in E.O. 11652 and the provisions of 22 CFR 9.5-9.8.

§ 9a.5 Declassification and downgrading.

The provisions of E.O. 11652, 22 CFR 9.9-9.15, and 9a.4(b) shall govern declassification and downgrading of such information or material.

§ 9a.6 Marking.

(a) The provisions of 22 CFR 9.15-9.19 shall govern the marking of information or material classified under the provisions of these regulations, except that the following stamp shall be used as appropriate:

(Top Secret, Secret or Confidential)

Classified by:-----

Under Executive Order 11932

Exempt from General Declassification Schedule of E.O. 11652 Exemption Category 5B

(2), (3), or (4); or E.O. 11932

Automatically Declassified on-----

(effective date or event if any)

Exemption category "E.O. 11932" shall be used for information and material obtained by the United States on the understanding that it be kept in confidence and classified under E.O. 11932.

(b) If the information or material does not qualify for exemption from the General Declassification Schedule, ordinary stamps and marking may be used.

§ 9a.7 Access.

(a) Except as set forth in this section, access to information or material classified under the provisions of these regulations shall be governed by the provisions of 22 CFR 9.20-9.25.

(b) Classified information and material which was created by or in connection with an advisory body to the IEA may be made available to participants in such advisory body and their colleagues in accordance with the following subsections.

(c) Such information and material classified "Confidential" may be made available for review to participants in the meeting of the advisory body in which it was developed or discussed. Where participants are acting as representatives of companies or of the IEA Secretariat, such information and material may be made available for review to employees or other representatives of, or counsel for, such companies or Secretariat: *Provided*, That such person is determined by an appropriate officer of the Department to be trustworthy and to have a need for access to the particular classified information sought in connection with the performance of duties in furtherance of the purposes of the IEA, including the furnishing of legal advice to such participants.

(d) Such information and material classified "Confidential" may be left in the custody of such participants or other persons who may review it for reasonable periods of time: *Provided*, That an appropriate officer of the Department determines that it will be protected from unauthorized disclosure by adequate security safeguards. Such information or material may not be reproduced by those permitted to review it pursuant to this section without the written consent of an officer of the Department with classifying authority.

(e) Such information and material classified other than "Confidential" under E.O. 11652 may be made available for review only to participants in the meeting in which it was developed or discussed; it must be reviewed in the presence of an official of the United States Government with an appropriate security clearance granted by the Department, and may not be left in the custody of such participants.

§ 9a.8 Physical protection.

Except as provided in § 9a.7, the physical protection of information or material classified under this regulation shall be governed by the appropriate provisions of 22 CFR 9.45-9.49.

[FR Doc. 77-27057 Filed 9-15-77; 8:45 am]

Mr. DINGELL. We thank you for your assistance to us.
Our next witness is Mr. Ewing.

STATEMENT OF KY P. EWING, JR.

Mr. EWING. Thank you.

On behalf of the Department of Justice, I am delighted to join with the Departments of Energy and State in expressing the administration's support for the extension of section 252 of the Energy Policy and Conservation Act.

We previously supplied to the committee, Mr. Chairman, an 11-page statement which answers most of the questions raised by the committee. With your permission I would like to ask the Chair to simply print that in the record, if you would, without my reading it.

Mr. DINGELL. Fine. Without objection it is so ordered.

You may summarize to such degree as you deem appropriate.

Mr. EWING. I would like to add the answers to about three of your other questions.

First, the Antitrust Division has approximately three attorneys involved in the monitoring activities on IEA.

Second, we have not made any recommendations to the Congress concerning changes in procedures because we believe the existing antitrust safeguards embodied in section 252 and the regulations are adequate.

Finally, we have no recommendations to make concerning congressional changes, such as the issue of transcripts as to which we defer to our sister agencies.

Mr. Chairman, I would be delighted to answer any other questions the committee may have.

[Testimony resumes on p. 85.]

[Mr. Ewing's prepared statement follows:]



Department of Justice

STATEMENT BY

KY P. EWING, JR.
DEPUTY ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER
HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

CONCERNING

EXTENSION OF THE ANTITRUST DEFENSE ASSOCIATED
WITH OIL COMPANY ASSISTANCE TO THE
INTERNATIONAL ENERGY AGENCY

ON

JULY 16, 1979

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you today to express, on behalf of the Department of Justice, the Administration's support for H.R. 4445. The proposed legislation would extend the antitrust defense accorded by section 252(f) of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6272(f), to U.S. oil company participation in voluntary agreements to assist in the carrying out of the Agreement on an International Energy Program (IEP).

As you know from Assistant Attorney General Shenefield's letter of June 18, 1979, to Chairman Dingell, the Department supports this legislation. I would like to take this opportunity to describe in greater detail our activities in relation to the IEP and also to respond to the questions included in Chairman Dingell's letter of June 19, 1979, to Mr. Shenefield.

The IEP grew out of talks among a number of oil consuming nations initiated by the Secretary of State in February, 1974. These talks were aimed at devising a mechanism for sharing oil supplies in the event of future curtailments. After lengthy negotiations, the United States and 15 other countries entered into the IEP Agreement in Paris on November 18, 1974. Since that time, the total number of participating nations has increased to 20. I do not intend to

describe the IEP in detail, but some familiarity with its terms is necessary to understand the role played by U.S. oil companies.

One element of the IEP Agreement was the establishment of an International Energy Agency (IEA), which was made an autonomous arm of the Organization for Economic Cooperation and Development (OECD) and was located in the OECD's Paris headquarters. The IEP Agreement provides for a Governing Board and four Standing Groups within the IEA organization. The most important of these groups for the Antitrust Division's monitoring responsibilities is the Standing Group on Emergency Questions (SEQ), which carries out functions related to the emergency preparedness of member nations. These functions include: establishment of emergency reserves; development of demand restraint measures; development of an organization and procedures for allocating supplies; activation of an emergency allocation system; and institution of the Special Section of the Information System required for efficient operation of the Emergency Allocation Plan. A second group, the Standing Group on the Oil Market (SOM), carries out functions related to the General Section of the Information System, which is intended to enhance the IEA member governments' understanding of the international oil market. The SOM also consults individually with oil companies on various aspects of the oil industry.

The IEP Agreement also provides for a Standing Group on Long-Term Cooperation and a Standing Group on Relations with Producers and Other Consumer Countries, which carry out the functions indicated by their titles. However, the activities of these two latter groups are limited strictly to inter-governmental activities and bear no relation to the monitoring responsibilities of the Department of Justice. Along with these four standing groups, the IEA also has a Secretariat housed in the OECD offices. The Secretariat, the SEQ, and the SOM have been the focal points for oil industry advice and consultation with the IEA.

While final details of the IEP Agreement were being negotiated by the participating governments, representatives of those governments sought to meet with a number of international oil companies in late 1974. The purpose of this consultation was to discuss ways in which the IEA could enlist the cooperation and consultation of petroleum companies to assist in implementing the IEP. Because participation by U.S. companies in such a meeting raised antitrust issues, the Deputy Legal Advisor of the State Department wrote to the Assistant Attorney General in charge of the Antitrust Division to seek our views on the legality of such participation. After reviewing the facts and the agenda for

the proposed meeting, then Assistant Attorney General Kauper replied on October 18, 1974, that under the particular circumstances of the proposed meeting as described to the Department, participation by the invited U.S. oil companies would not violate the antitrust laws.

Thereafter, a meeting was held in London on October 23-24, 1974, between governmental representatives and representatives of a number of oil companies. The discussion envisioned creation of two industry working parties, one to begin providing advice related to the emergency allocation provisions of the IEP, and the other to develop initial advice on implementing the General Section of the IEP's Information System.

These plans were submitted by the State Department for review by the Antitrust Division. The Antitrust Division took the position that continuing approval of U.S. company participation in IEA activities under such a quasi-business review clearance was not appropriate and that if oil company assistance to the IEA was essential, the U.S. companies should form a voluntary agreement under section 708 of the Defense Production Act, so that appropriate antitrust safeguards could be provided and maintained. However, because

the State Department believed that a need for the emergency machinery might arise very soon, it urged that these industry groups be permitted to commence their work immediately, before a voluntary agreement could be established, and before the IEA Secretariat could be organized. Accordingly, based on the information furnished to us, Assistant Attorney General Kauper gave a limited concurrence to initial meetings of the industry groups in late 1974. While these meetings went forward, with representatives of the State Department in attendance, the State Department and the Federal Energy Administration (FEA, now DOE) were developing a preliminary draft voluntary agreement which was then discussed with other U.S. government agencies, potential industry participants and the public.

Representatives of the Department of Justice participated in meetings in which the draft agreement was discussed in order to ensure the incorporation of adequate antitrust safeguards. On March 28, 1975, the Voluntary Agreement pursuant to section 708 of the Defense Production Act was officially approved, and formal requests for participation of oil companies were issued. 1/

1/ Details of the Voluntary Agreement and the particular antitrust safeguards incorporated in it have been included in prior reports of the Attorney General to Congress.

When the Voluntary Agreement was activated, the IEA created three main industry groups for advice and assistance. The two working parties which had previously met were reorganized as the Industry Advisory Board (IAB) and the Industry Working Party (IWP). The IAB and its subcommittee were created to provide advice to the IEA concerning the emergency allocation provisions of the IEP, while the IWP was to assist in establishing the general information system. A third industry group -- the Reporting Company Group -- was also formed. This group includes all 34 companies participating in the IEP and is responsible for 80 to 90 percent of the international trade in free world oil. Members of this group were called upon to provide international oil supply data to the IEA and to assist it in any actual allocation of oil by the IEA in an emergency.

On March 21, 1976, section 252 of the EPCA became effective and the Voluntary Agreement under the Defense Production Act was terminated. By that time, regulations to govern voluntary agreements under EPCA had been drafted and promulgated and a replacement voluntary agreement -- the one presently in effect -- had been developed, approved by the Attorney General, and submitted to proposed oil company

participants for their acceptance. Operations under its authority commenced in April 1976, and have been reviewed in Reports of the Attorney General, as required pursuant to section 252(i) of EPCA.

Since April of 1976, the Department has submitted six reports to Congress on the activities of U.S. oil companies undertaken in relation to the IEP: the first pursuant to section 708(e) of the Defense Production Act of 1950, as amended; the next five pursuant to section 252 of EPCA. Each of these reports was based upon our surveillance of all industry activities permissible under the Voluntary Agreement. We have consistently found that the antitrust safeguards incorporated into section 252 of EPCA, the regulations promulgated thereunder and the voluntary agreement itself have been adequate to prevent any possible adverse impact on competition that might result from oil company participation in IEA activities. We have discerned no such impact to date.

The Second Allocation Systems Test (AST-2) held by the IEA last spring provides an illustration of the extent of our monitoring activity, as well as an indication of what our role would be should the IEA's allocation system be triggered. During the seven weeks of AST-2, we had at least one attorney, and frequently two attorneys, on the test site

at all times. Three attorneys from our Energy Section rotated in three-week shifts, with nearly a week of overlap between each shift in order to assure that each monitor was fully familiar with test activities before his predecessor departed. Moreover, in carrying out our specific on-site monitoring functions, we coordinated with the Federal Trade Commission staff which also monitored the test. Our activity would be at least this extensive in the event of an actual emergency.

We continue to have a staff of three attorneys assigned to IEA matters -- including one from the Energy Section who has been involved with these activities since the earliest days of the Voluntary Agreement.

What I have previously indicated about our IEA staffing in the event of an actual emergency presupposes, of course, that the present provisions of section 252 of EPCA are extended. In the absence of such an extension, with its attendant antitrust defense, it appears to be unlikely that U.S. companies would continue to assist the IEA, presumably because the companies would be unwilling to risk antitrust liability.

It must be understood that in assessing the possible consequences of participating in IEA activities without the protections of section 252 of EPCA, a company must be

concerned not only with possible prosecution by the Department of Justice or the Federal Trade Commission, but also with possible suits brought by private parties. A private treble damage action can, of course, be very costly to a defendant, and even a business review clearance by the Department, pursuant to 28 C.F.R. § 50.6, would offer no insurance against private suits.

In the absence of the statutory defense provided by section 252 of EPCA, a number of activities which the companies have undertaken or could undertake in assisting the IEA could raise at least the possibility of antitrust liability. For example, agreements among two or more firms with respect to supply or price in general constitute per se violations of the antitrust laws, and possible liability of private parties for such actions would not necessarily be mitigated by the fact that government officials participated in such agreements. As a result, in the absence of the statutory defense, it is difficult to imagine oil company participation in an agreement to allocate available supplies among IEA member countries -- the sort of agreement which lies at the heart of the IEA's emergency system -- which would not raise serious

antitrust issues. Similarly, companies may be reluctant to provide competitively sensitive information to the IEA since, in the absence of appropriate safeguards, it has been held that such activity could facilitate collusion. Although we have no reason to believe that the current IEA safeguards for such information are inadequate, it is possible that a company seeking to avoid even the appearance of an illegal information exchange would be reluctant to provide sensitive information to the IEA without an antitrust defense. Such information is essential if the IEA's emergency allocation process is to function properly. In short, the company activities most essential to the effective functioning of the IEA would likely be halted if the EPCA defense is not extended. Even though companies might conclude that such activities do not violate the antitrust laws, they are unlikely to risk learning "the hard way" that they were mistaken.

This is not to say, of course, that no oil company activity in connection with the IEP could occur if the statutory defense were not extended. For example, the submission to the IEA of distorted or "masked" data, such as that used in AST-2, would presumably not violate the antitrust laws. However, if companies knew that because of legal concerns they would not participate in IEA allocation

during an actual emergency with "live" data, they would have no incentive to devote the time and resources necessary to prepare for a test.

For all of these reasons, the Department supports the extension of the provisions of section 252 of EPCA. Particularly in light of current conditions on the international oil market, we believe that the continued availability of the statutory antitrust defense, coupled, of course, with continued antitrust safeguards, is in the national interest.

This concludes my prepared statement of the Department's views on H.R. 4445. I would be happy to answer any questions the Subcommittee may have, or to elaborate on any specific point I have discussed today.

Mr. DINGELL. Thank you very much, Mr. Ewing.
Mr. Rowe.

STATEMENT OF RONALD B. ROWE

Mr. ROWE. Mr. Chairman, thank you for this opportunity to present the views of the Federal Trade Commission on H.R. 4445, which would extend the antitrust defense for the participation of oil companies in carrying out the purposes of the international energy program.

As Assistant Director for Petroleum Matters in the Bureau of Competition, I am responsible for supervising the Bureau's activities relating to the IEP. With your permission, Mr. Chairman, I will present the Federal Trade Commission's statement for the record.

You have our responses to the questions which were asked by the subcommittee and we will be pleased to answer any questions that you have.

Mr. DINGELL. Very fine. Without objection then, your statement and the responses to the questions will appear in the record.

Do you have any summary you would like to give us at this particular time?

Mr. ROWE. In the FTC's sixth report to the Congress concerning this program, issued March 21, 1979, we evaluated the IEP's risks and benefits to competition. The report concluded that risks were minimized by the procedural safeguards provided by section 252 and the voluntary agreement.

Of greater importance, the report emphasized that, in an emergency, oil companies would take part in supply allocation under the supervision of an international agency and under the watchful eyes of antitrust monitors. Government observers from the Department of Energy, Department of Justice, and Federal Trade Commission would have the opportunity to detect and halt any competitive manipulations relating to the allocation system.

The Commission believes that in an emergency the present arrangement is superior to the situation that occurred during the 1973-74 oil supply shortage. Then major oil companies reallocated supplies without the benefits of international direction or Government scrutiny. Since the international energy program seems preferable and since extension of section 252 essential to assure oil company participation in the program, the Federal Trade Commission supports the extension.

I thank you, Mr. Chairman, and members of the subcommittee.

Mr. Marc Schildkraut, whom I earlier identified, and I would be pleased to answer any questions the subcommittee may have.

[Testimony resumes on p. 94.]

[Mr. Rowe's prepared statement and responses to written questions follow:]

STATEMENT OF

Ronald B. Rowe
Assistant Director
Bureau of Competition
Federal Trade Commission

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to present the views of the Federal Trade Commission on H.R. 4445, which would extend the antitrust defense for the participation of oil companies in carrying out the purposes of the International Energy Program ("IEP"). As the Assistant Director for petroleum matters in the Bureau of Competition, I am responsible for supervising the Bureau's activities relating to the IEP. With me today is Marc G. Schildkraut, Senior Attorney on my staff directly responsible for policy recommendations in this program. We will both be pleased to answer any questions that you may have at the conclusion of this statement.

Presently, participating petroleum companies are afforded an antitrust defense by Section 252 of the Energy Policy and Conservation Act ("EPCA") for activities taken to develop or carry out what are called "voluntary agreements" and "plans of action" in furtherance of IEP objectives. These objectives include collection of international energy data and an emergency oil sharing system among the twenty participating countries in case of a severe shortage or imbalance in oil supplies. Under Section 252 of the EPCA the Federal Trade Commission must monitor oil company participation in the International Energy Program. In addition, we must report twice yearly to Congress on oil industry activities relating to the program. Finally, the Commission must be consulted in the development of

voluntary agreements and plans of action to carry out the purposes of the IEP.

A "voluntary agreement" is a set of regulations, subscribed to by participating oil companies, which specify procedures to be followed by the companies if they wish to receive an antitrust defense for IEP-related activities. These activities may include, for instance, discussion among oil company representatives leading to recommendations on the type of data which should be collected by the International Energy Agency.

A "plan of action" refers to actions that would be taken in the event the International Energy Agency ("IEA") declares that an oil supply emergency exists. The IEA in Paris would then reallocate oil among member nations in order to equalize remaining oil supplies. In such an emergency, following a declaration by the President, Section 252 would provide a defense from antitrust liability for oil company actions which facilitate the reallocation process.

There is presently a single set of regulations known as the "Voluntary Agreement and Plan of Action to Implement the International Energy Program." */ This regulation limits the antitrust defense to oil company actions which fully comply with its provisions. The Agreement requires

*/ 10 C.F.R. Part 209.

that actions taken be in furtherance of IEP goals and not undertaken for the purpose of injuring competition. The agreement also sets out numerous antitrust safeguards which minimize the risks to competition. These safeguards include both monitoring of meetings by federal employees and the keeping of a complete transcript.

In the FTC's Sixth Report to the Congress and the President concerning this program, issued March 21, 1979, we evaluated the IEP's risks and benefits to competition. The report concluded that risks were minimized by the procedural safeguards provided by Section 252 and the Voluntary Agreement. Of greater importance, the report emphasized that in an emergency, oil companies would take part in supply allocation under the supervision of an international agency and under the watchful eyes of antitrust monitors. Government observers from the Department of Energy, Department of Justice and Federal Trade Commission would have the opportunity to detect and halt anticompetitive manipulations relating to the allocation system. The Commission believes that in an emergency, the present arrangement is superior to the situation that occurred during the 1973-74 oil supply shortage. Then, major oil companies reallocated supplies without the benefit of international direction or government scrutiny. Since the International Energy Program seems preferable and since extension of Section 252 is essential to assure oil industry participation in the program, the Federal Trade Commission supports the extension.

Thank you. Mr. Schildkraut and I will answer any questions the Chairman and members of the Subcommittee may have.

Appendix to Testimony of
 Ronald B. Rowe */

Responses to Chairman Dingell's Questions

1. What present activities of the companies would possibly constitute an antitrust violation in the absence of the immunity granted by statute?

In the event of an international supply emergency, the IEA, with the assistance of the oil companies, would allocate crude oil supplies among participating countries. The system works by having companies offer to divert supplies from the original destination to some other country, either specified by the offering company or left to the discretion of the IEA. The IEA would accept some of these offers to divert supply and would match the supply offer with the offer of a company or companies making an offer to receive supplies at the new destination. These supply diversion agreements are somewhat analogous to market division agreements which have been held by the courts to be violative of the antitrust laws. See Timken Roller Bearing Co. v. United States, 341 U.S. 593 (1951).

At the present time, of course, the IEA has not declared a supply emergency. The principal oil company activities currently consist of meetings to review various aspects of the emergency allocation procedures. The IEA's Industry Advisory Board ("IAB"), subcommittees of the IAB, and the Industry Supply Advisory Group ("ISAG") (the group that would advise on the allocations in Paris during an

*/ The views expressed in this appendix are those of the Bureau of Competition and may not necessarily reflect the views of the FTC or of any individual Commissioner.

emergency) each meet on an ongoing basis, averaging three or four times a year. Since the meetings might be considered an act in furtherance of an agreement in violation of the antitrust laws, they would also violate the law, but for the antitrust defense.

Certain other current activities of the oil companies would not be so clearly illegal, but nevertheless would present substantial risks to the companies if continued without an antitrust defense. From time to time, various IEA governmental bodies have requested members of the IAB to discuss the industry's assessment of current dislocations in the international oil market. At these meetings opinions are offered by the representative of one company in the presence of representatives of other companies. If the information discussed would enable the companies to adjust their supply or pricing decisions to reflect those of other companies, thus raising their collective revenues, then such information exchanges could facilitate violations of the antitrust laws. The legitimacy of the discussions would depend upon the nature of the information disclosed and the purpose and effects of disclosing it. While such consultations may or may not actually lend themselves to illegality, it is possible that the oil companies may not wish to risk participation. Thus, oil company consultations with IEA member governments on developments in world oil

markets might cease altogether in the absence of renewal.

A third activity that bears some antitrust risk in the absence of renewal, are meetings of the Industry Working Party ("IWP"). The IWP advises the IEA about technical details of the IEA's system for collecting data on the prices paid for oil by each country. The IEA has become concerned that differences in price between differing grades of crude oil are no longer reflected accurately. Accordingly, it has asked the IWP to study whether modifications should be made in the reporting system. Again, the legality of such discussions will depend upon the sensitivity of the information discussed by the companies and the purpose or effects of its disclosure. In this context as in others, the oil companies might decide that meetings of questionable legality are unacceptable and withdraw from participation.

2. What activities could continue even if immunity is not extended?

Certain oil company activities related to the IEP could probably continue in the absence of legislative extension of the antitrust immunity. The oil companies currently submit, each month, confidential supply data to the IEA headquarters in Paris and to the member IEA governments. Since this data is not disclosed to other companies in company-specific form, its submission appears to have no anticompetitive effects and could continue.

Should an IEA emergency occur, however, submission of the supply data would become more problematical since it would facilitate operation of what could be, absent antitrust immunity, an unlawful market division system.

In addition, representatives of the oil companies periodically consult with the IEA Secretariat on developments in the world oil supply situation. In contrast to the meetings with IEA governmental bodies, these consultations involve only one company at a time, and the IEA Secretariat does not disclose one company's data to other companies. So long as these conditions continue to apply, these so-called "bilateral" consultations appear to have no effect upon competition and could continue in the absence of antitrust immunity.

3. Have all recommendations by your agency contained in your semiannual reports to Congress been adopted? If not, please explain which recommendations have not been adopted and the reasons therefor.

The FTC's Fifth Report, issued September 21, 1978, made two recommendations concerning the data that should be used in any future tests of the IEA's allocation system. The next test is scheduled to be held in mid-1980. Since planning for the test has not yet begun, these recommendations have not yet been acted upon.

The FTC's Sixth Report, issued March 21, 1979, did not make any formal recommendations. However, its discussion of DOE's standby regulations for domestic sharing of oil

an emergency noted certain problems and, in one case, suggested improving the procedures. To date, DOE has not revised its procedures.

4. How many employees are devoted to carrying out your responsibilities for this program and what is your budget in FY 1979 for such work?

Three attorneys and one research analyst have ongoing responsibilities for this program, among other assignments. In addition, an Assistant Director of the Bureau of Competition has supervisory responsibility for the work of this staff.

The budget does not distinguish between IEP matters and the large volume of other petroleum-related matters handled by the Bureau. Based on man-hours expended through the first half of fiscal year 1979, we project that during this year approximately one professional man-year will be devoted to IEP responsibilities.

5. The introduced bill includes a provision to require timely access to transcripts for Congress. Do you suggest any additional procedural requirements for meetings of the companies?

As noted in the testimony, Section 252 of the EPCA already contains procedural safeguards, which have also been incorporated into the voluntary agreement governing oil company participation in IEP affairs. As the FTC Sixth Report to Congress recounted, these safeguards appear

adequate to expose competitive concerns to government monitors. Therefore, we do not recommend any additional procedural requirements for oil company meetings. However, during the Second Allocation Systems Test (AST-2) the U.S. government experimented with the use of a verbatim transcript during test meetings. Based on this experience we recommend that a verbatim transcript be maintained, to the extent practicable, during both any future tests and any emergency allocations. We believe these recommendations are best implemented through regulations and need not be written into law.

Mr. DINGELL. Gentlemen, the committee thanks you all.

The committee will recognize counsel at this point for questions

Mr. SCHOOLER. Mr. Bergold, I would like to move first to the issue of data collection which the chairman raised in his opening statement.

I believe you are familiar with the data issue which was raised by the chairman, is that correct?

Mr. BERGOLD. Yes; I am.

Mr. SCHOOLER. As you will recall, the subcommittee had testimony that the data provided by the oil companies to the International Energy Agency showed imports in February far higher, about 1.5 million barrels higher, than the same data that was provided to the Department of Energy, that was during the month of February that data was later revised downward.

Is that your understanding of what occurred?

Mr. BERGOLD. The data was revised downward, that is correct.

The February data, Mr. Schooler, was the most error ridden of all of the months that we have had since the IEA initiated the system in January 1979.

Mr. SCHOOLER. Since that period of time, has the Department attempted to study the causes of that data error and do you have any conclusions on exactly where that 1.5 million barrels went?

Mr. BERGOLD. Well, we have studied it both independently and in connection with the IEA itself.

The Secretariat has been concerned about trying to reduce the error in overstatement. It is running between 4 and 9 percent and we are trying to find ways to narrow the gap. There are certain things that happen that could account for this overstatement.

For example, if a tanker reaches a small country like New Zealand, let us say, a couple of days later than the oil companies thought it would reach that target, that import falls into the next month, resulting in a very gross distortion for that country. We are trying to work out ways to rectify this problem and we are, I think, having some success.

As I said, there is nothing comparable to what happened in February. We can provide you a chart, for example, that I think will show the degree of error in each month since the system has

been in effect. You will find that the February import number is really an aberration and we are trying to make it better.

Mr. DINGELL. You said that February was the most error ridden of all the months. What were the causes of the errors which occurred in February?

Mr. BERGOLD. It was, of course, the most unstable month in this very unstable market, Mr. Chairman. It was, in addition to the Iranian situation and the spot market prices going up at a very rapid rate, a more difficult month to make a prediction about than probably any month since. We think it was just that situation which caused the February data anomaly.

Mr. DINGELL. Well, are you telling us that essentially the international energy agreements information is based largely on predictions? Is it based on really hard information as opposed to prophecy?

Mr. BERGOLD. It is based on both. Since it is a rolling system, 2 months back, the current month, and 2 months forward, the 2 months forward are obviously predictions; the current month is half prediction and half fact. The 2 months back are all fact.

Were the allocation system to be activated, Mr. Chairman, there would of course be an opportunity to correct an allocation factor that had been misplaced by erroneous data. You could correct it the next month and that is exactly what would happen.

Mr. DINGELL. Except for the fact that it is not only a mechanism for the allocation of petroleum among the members, but it also is a policymaking tool used to determine, for example, whether or not the agreement is triggered, as well as what steps or actions should be taken by the different agencies of the different countries in order to meet their responsibilities established in the agreements.

It troubles me that the information is not really more reliable.

Mr. BERGOLD. I think one thing that will help, Mr. Chairman, over time, is the agreement that was made at the Tokyo summit, to get into a great deal more study and understanding of the international oil market, to register transactions more completely than they have been to date. This will take time, but I think it shows that we are determined to make this data better than it is. We are learning all the time.

Mr. DINGELL. Are there studies being made on this matter?

Mr. BERGOLD. Yes; indeed. We are working on it. The IEA is too.

For example, in February, we discovered double counting by a single large company resulted in most of the error.

Mr. DINGELL. The error, for example, in February was greater than the potential allocation amounts.

Mr. BERGOLD. That is right. It was a serious error and all I can say is that it has not been repeated.

Mr. DINGELL. The amount which triggers the agreement is 7 percent, in the case of either a single country or the membership at large.

Mr. BERGOLD. Yes.

Mr. DINGELL. If you have a 49-percent error, it means the agreement could be triggered without there being a factual basis, is that not so?

Mr. BERGOLD. We have had a case, as you know Mr. Chairman, in the last couple of months of one country which did in fact ask

that the IEA allocation system be triggered and, working with the Secretariat and the oil companies that supply that given country, the data was refined, misunderstandings were clarified, and the decision was made not to trigger the allocation system.

I think that would happen under any circumstances where you had either the individual trigger being pulled by one country or collectively, I do not think it would ever be done on the basis of data people did not regard as reliable.

Mr. DINGELL. The Chair recognizes counsel again.

Mr. SCHOOLER. Just to clarify the question about the February data, has the Department conducted a study concerning the causes of the problems with the February data and, if so, did it result in a report and how was that study conducted?

Mr. BERGOLD. I would have to find out if there were any report. There was a study—

Mr. DINGELL. The gentleman behind you nods affirmatively.

Mr. BERGOLD. OK.

I am informed there was a written report made of our study and it has been made available to the staff of this subcommittee. If it has not been—I am sure it has been; if it has not been it will be.

Mr. DINGELL. Also, I would like to direct questions over to the Justice Department and FTC officials.

Are you both aware, also, of this data problem with the International Energy Agency's data collection system? And State as well, are you aware of any particular activities which are going on to rectify this situation?

Mr. KATZ. Yes. My understanding is, as Mr. Bergold said, that the error largely resulted from the reports of one company; it was based on a misinterpretation of the instruction. That has now been corrected. And that was why that one month of February stood out in such a glaring way.

Mr. SCHOOLER. Gentlemen?

Mr. ROWE. Speaking for the Federal Trade Commission, we were aware from the May meetings, which our representative attended that there was a heightened discussion concerning the discrepancy problem. It is of great concern to us, as it is to the committee, because of the 7-percent "trigger" for the sharing agreements. The discussions at the meeting unfortunately did not have any resolution, although there appeared to be, from our observations, quite an open and frank discussion of the problems, many of which are discussed here today.

It is hopeful that through this exchange of views that the Secretariat will be able to implement procedures designed to get better figures.

Another suggestion which was made, but I do not know how well it has been picked up on, was the suggestion that macroeconomic analysis for the triggering be used rather than specific industry data which can be viewed as being subject to the same type of fluctuation, given uncertainties which may arise in an international emergency. Therefore, maybe a more stable form of analysis should be used rather than figures from companies which may be interrupted.

Mr. EWING. For the Justice Department, I would only add that we understand the IEA Secretariat is itself working on the problem of refining data.

I would also note that there have been bilateral discussions between the IEA Secretariat and individual companies pursuant to clearances that we have issued.

Mr. DINGELL. Could I ask a question?

Are there any particular companies or particular countries in terms of the loadings of tankers or the offloadings of tankers that are problems in this area of data? Can you tell us, Mr. Bergold?

Mr. BERGOLD. I certainly could not think of any company that is particularly a problem, Mr. Chairman.

Mr. DINGELL. Has there been any analysis to find out where the problem is or whether somebody may be either through carelessness or lack of talent or perhaps deliberate action submitting information which is either not current or is inaccurate?

Mr. BERGOLD. We did review that, Mr. Chairman, and it is part of the report that I referred to earlier, which has been made available to the staff. Other than the double counting issue, there is no evidence that any company is a problem or that there is a problem at all, and I certainly do not have any knowledge that any country is a problem.

Mr. DINGELL. Has the Department of Justice and Federal Trade Commission analyzed these data to arrive at some judgment on the point raised by the Chair?

Mr. ROWE. The difficulties that we noticed appeared to be in the nonreporting companies.

Mr. DINGELL. Nonreporting companies?

Mr. ROWE. Nonreporting companies who appeared to report their information indirectly, rather than to the Secretariat. The major large companies, 34, who reported to the International Energy Agency appeared to be providing the best figures for analysis.

Mr. DINGELL. When you say nonreporting companies, those are the smaller companies?

Mr. ROWE. Yes, that is correct, Mr. Chairman.

Mr. DINGELL. All right. Have you communicated these thoughts to the Department of Energy?

Mr. ROWE. The Department of Energy is aware of that problem.

Mr. DINGELL. Mr. Bergold, do you have any comments on the particular point just raised?

Mr. BERGOLD. The nonreporting companies represent about a third of U.S. imports. As a class their data is less satisfactory than the larger reporting companies.

Mr. DINGELL. Do you have any sanctions that you can level on them to produce more accurate data?

Mr. BERGOLD. Yes, we certainly are trying. Many of the nonreporting companies do not have the facilities that the larger companies have.

Mr. DINGELL. They do know what they receive and what they do not receive and they know when they receive it.

Mr. BERGOLD. We are back on the projection issue, Mr. Chairman. That is always going to carry an error with it of some dimension.

All I am saying is that the IEA reporting companies have less of an error factor than the nonreporting companies.

Mr. DINGELL. Mr. Ewing, do you have any comment as to where the error seems to lie in this area?

Mr. EWING. No, sir, I have nothing to add to what has already been said.

Mr. DINGELL. Mr. Katz, do you have any comment on this?

Mr. KATZ. Only to say, Mr. Chairman, that your point on the importance of the data is certainly valid, but I think it should be noted also that, before there were any triggering of the allocation formula, the Secretariat would make a careful qualitative review of the data and some estimation of likely developments. So that there is an analysis and judgment that goes into the final decision and it is not just a mathematical examination of the figures.

That is precisely what happened with respect to the one country that did request the triggering of the selective system, and it was found that, particularly given the size of the country, the impact of 1 month's figures and one large tanker arrival, could have skewed it; there was an ultimate conclusion that triggering was not warranted in that case.

But your point on the need to improve the collection system is certainly valid.

Mr. DINGELL. Do we not also have the problem, gentlemen, of reconciling data on imports? For example, we have IEA data, DOE data, Customs data; then we have the data received from the independent gaugers or "gougers," however you want to pronounce it. I tend to be somewhat suspicious that the second pronunciation might be the more desirable.

Who is analyzing the disparity that exists as between the data from these different sources?

Mr. BERGOLD. The EIA would do that in the Department of Energy, Mr. Chairman, and it is spending a good deal of time working out these disparities which, as you properly point out, do exist.

We have, and I think this is also becoming clear in the wake of the Tokyo summit, speaking just in terms of the international agencies which I know a little something about, we have to arrive at a more general understanding of what the data base is.

For example, some international agencies, when looking at the United States, count the Virgin Islands, Guam; others do not. Some figures include the bunkering of ships and airplanes in international trade and some do not, and that can be a very large discrepancy.

Mr. DINGELL. Ought we not commence by speaking at least a common language on these data? For example, what is included, what are the bounds of a country?

Mr. BERGOLD. This is what I am referring to. I think we must do that. We have made that proposal in the International Energy Agency

On the issue of bunkering, I think we will come to a conclusion very quickly.

Mr. DINGELL. How about the portions of the world included within the boundaries of different countries for statistical purposes?

Mr. BERGOLD. That basically is an American problem. It must be resolved, that is all there is to it.

Mr. DINGELL. It is a problem for everybody?

Mr. BERGOLD. Yes.

Mr. DINGELL. For example, if some countries count the Virgin Islands and Puerto Rico as part of the United States and some do not; we are not the only country that has possessions, dominions, overseas dependencies of one kind or another which may or may not be included?

Mr. BERGOLD. That is correct.

Mr. DINGELL. I am aware some Caribbean and South Pacific dependencies of different countries may not use enough oil to be of any significance, but they may very well. The cumulative error might be very large.

Mr. Katz, what is being done in that area? Is anything being done?

Mr. KATZ. I think, as Mr. Bergold said, it is a matter for definition. This problem has not arisen with respect to other countries generally. The possessions are not included in the country import figures. The Virgin Islands I think has presented some problem because of our own—the question of whether or not it is in the Customs area. It is not a question that has arisen with respect to the possessions of other countries. Generally, they are excluded.

Mr. DINGELL. How long will it take to get this matter straightened out? It does not appear to be of any great significance.

Mr. KATZ. I do not think it would take very long at all.

Mr. DINGELL. Is it not necessary that we revise our data system to facilitate reconciliation of the disparities that exist as between the different systems?

Mr. KATZ. Yes, it is.

My understanding is that it is being done on a current basis. I do not think there is a substantial problem in this area. It is a matter of going one way or the other.

Mr. DINGELL. We even have—when we refer to the common language, we even have the U.S. system receiving barrels per day. IEA gets it in metric tons. I do not know what the difference on conversion is, but it could be significant.

Mr. KATZ. I think there is a standard conversion factor. I don't think that is a problem.

Mr. DINGELL. If you have a different gravity of oil, don't you have a difference in your conversion factor?

Mr. KATZ. I would have to get some expert views on that.

Mr. BERGOLD. There would be in that case a difference, Mr. Chairman, but we agreed last week in Paris, in the wake of the Tokyo summit which set national import quotas, that we must come to a system that reconciles all of these differences, and the IEA secretariat is now at work, as Mr. Katz suggested, to do this very thing. You put your finger on an important problem, and it is being resolved.

Mr. DINGELL. With heavy gravity oil you get one metric ton; take another gravity oil, and you get a different metric ton. It strikes me that we have a rather large deficiency here in terms of your ability.

Mr. BERGOLD. We have previously on that one, Mr. Chairman, used factors, mathematical factors, to convert the metric tons to barrels; that took into account the differences in gravities.

Mr. DINGELL. Is this done by different people in different places at different times or in a fairly standard fashion by the same folks so that you get fairly uniform presentation of what the facts might be as regards oil movements?

Mr. BERGOLD. On the factors, I think it is done in a fairly uniform way.

Mr. DINGELL. Identical factors applied differently by two people can lead to fairly wide disparities.

Mr. KATZ. For crude, I understand it is done on the basis of an average. There is a standard figure. All other countries report on the basis of tons. We are the only one that reports on the basis of barrels a day, and that conversion is made on the basis of a standard conversion factor. It is different for different products but on the basis of crude there is just average.

Mr. DINGELL. So we use one measuring system, and the rest of the world uses a different one. Why do we have such difficulty in not using both or at least settling on one?

Mr. KATZ. We have settled on one.

Mr. DINGELL. Which one?

Mr. KATZ. The metric system.

Mr. DINGELL. The United States is not metric.

Mr. KATZ. All other countries use the metric system.

Mr. DINGELL. Let's convert heavy gravity California oil and light gravity Texas. There is a striking difference in terms of barrels per ton in each instance, is there not?

Mr. KATZ. Yes, but the practice is to use standard conversion numbers by product, or for crude there is a single number factor used for crude.

Mr. DINGELL. Gentlemen, do you folks at FTC have some comment on this? I am getting the feeling we are dealing in apples and oranges.

Mr. ROWE. The weight versus volume problem is a real one. Although it did not result in major discrepancies in the reporting error that was mentioned before, it is a difficult problem, and a good deal of thought needs to be given to it, especially on the side of conversion for the specific gravities of different types of crude oil.

Mr. EWING. I would like to add one thought, Mr. Chairman. In this entire discussion, I have been struck by one piece of knowledge that is not yet on the record. This is that when the IEA secretariat receives the information from different countries, it, in turn, prepares various worksheets and, in fact, uses computer assisted worksheets that pull things together. Mr. Katz has mentioned his conversion factors. These are taken into account, as I understand it, in producing that secondary set of papers which people use. They were used in the test, for example.

Second, I would like to emphasize that I understand the IEA secretariat and the various working parties have been going into great detail, for example, on how to get North Sea crude properly into the flow of the data at a very, very detailed level. So I, at least, have the impression that the basic issue to which you are

addressing your questions is, in fact, being quite actively addressed within the IEA framework.

Mr. DINGELL. Gentlemen, I would like to direct a question to the Department of Justice witnesses and to the Federal Trade Commission witnesses, Mr. Ewing and Mr. Rowe. Are you satisfied that there are no antitrust questions stemming from the IEA agreements and the activities of the U.S. companies and other companies under those agreements?

Mr. EWING. Speaking for the Department of Justice, we are satisfied that the activities of the companies are within the ambit of the antitrust exemption. We have no evidence of any untoward activities outside that limited exemption, and we are satisfied that the procedural safeguards built into this system by the statute, the regulations and our monitoring efforts are adequate to the task.

Mr. DINGELL. Mr. Rowe?

Mr. ROWE. There are potential difficulties. I believe the responses that we provided in the list of answers to the questions that the subcommittee raised indicates the instances in which, hypothetically, antitrust considerations would arise. However, the purpose, of course, of the act, is the limited antitrust exemption, and it is the Federal Trade Commission's belief, that given the fact of constant supervision and monitoring by the antitrust agencies, the Department of State and Department of Energy officials, this system is highly preferable to the system in which the companies would be left to their own devices as happened in 1973 and 1974.

Mr. DINGELL. In response to the questions by FTC to the committee, I read this language, "FTC Sixth Report," and skipping a little, "did not make any formal recommendations. However, its discussion of DOE standby regulations of domestic sharing of oil and emergency noted certain problems and in one case suggested improving the procedures. To date, DOE has not revised its procedures."

Can you advise us what those suggestions were, and then can DOE comment on why they have not been abided?

Mr. ROWE. Mr. Schildkraut, who has been primarily responsible for the Bureau of Competition's policy in this matter, would be pleased to answer that question.

Mr. DINGELL. Mr. Schildkraut?

Mr. SCHILDKRAUT. We were slightly concerned with the method used for fair-sharing in the United States. Fair-sharing is a mechanism which supplements the international allocation system. Fair-sharing must take place once there is an international allocation to assure that all oil companies in the United States get the appropriate amount of supply. This, in fact, is the incentive and part of the motivation for companies to volunteer to redirect oil supplies outside the United States.

We had two small problems with the system as it was devised. One was the fact that the system in the United States did not take inventories into account, so it was possible that a company would attempt to hold crude oil in its inventories instead of making it part of the fair-sharing system. At that point they would be able to get a larger supply of oil since the fair-sharing system would only be based on projection of runs-to-still for the month in question, and that is left primarily up to the company.

Second, one small additional problem was the fact that the price of oil for smaller companies was going to be based on an average price system as opposed to a spot price system, and this could mean that an oil company could go out into the spot price market, buy very high-priced oil and have to allocate it to a smaller company based on lower average contract price. That could be some disincentive in the system for purchasing oil out on the market at some given point in time.

Mr. GORE. Would you run through the first part of that again?

Mr. SCHILDKRAUT. The inventory mechanism?

Mr. GORE. Yes, and the relationship to the fair-sharing system.

Mr. SCHILDKRAUT. The fair-sharing system is based on the companies' projected runs-to-still in the months in question. So if company x decides to keep a very large inventory and low runs-to-still for that month in question, only the projection of runs-to-still would be counted in the fair-sharing mechanism. What that means is a company may decide to increase its inventory and lower its run-to-still in order to attempt to attain additional oil supplies through the fair-sharing system. The Department of Energy can make exceptions to the rule if it sees something like that going on, but that will be something which may be difficult during the middle of a crisis.

Mr. GORE. So the agreement as it now is functioning, if a crisis is on the horizon, would have incentives built into it to encourage companies to build up their inventories and cut down their runs-to-stills.

Mr. SCHILDKRAUT. Possibly; yes.

Mr. DINGELL. And also purchases on the spot market.

Mr. SCHILDKRAUT. Yes, because of the price problem.

Mr. GORE. Are you saying it would discourage purchases on the spot market?

Mr. SCHILDKRAUT. The price problem may discourage some purchases on the spot market in some instances.

Mr. DINGELL. Mr. Bergold, what did you do with regard to recommendations of the Federal Trade Commission on these matters?

Mr. BERGOLD. Mr. Goodwin is prepared, Mr. Chairman.

Mr. GOODWIN. I might initially point out, Mr. Chairman, what we are talking about is the Department's standby allocation system which would go in effect with or without international oil-sharing system. It is a totally discrete system, and Mr. Bardin is really the one who can answer to the details. We received in the particular proposal that is being discussed, hundreds of comments and adjusted the proposal in many respects to take account of some of the FTC comments.

I personally am not an expert on it. I might note, however, that the inventory question could possibly be accounted for by the fact that keeping inventories is a very expensive proposition, and that companies are not usually inclined to keep inventories beyond what they need for operation of their own system.

But as I say, ERA might be more able to answer the specifics as to why our allocation system, itself, is based only on a runs-to-still basis. That would appear to me to be the more logical way to do it.

On the disincentive question, that is always a problem in any allocation system. Any system where you require one company to

give up oil in order to provide it to another company creates a question as to whether or not you are creating a disincentive for the company who has the sell-obligation to go out and find oil. What you have to do is balance the needs of the small and independent refiners who have no access to world oil against the needs to provide incentives to import. Although once again I can't speak for ERA, I suspect that the reason we ended up with an average price was our concerns that the small and independent companies have access to oil at prices which would enable them to be competitive in the domestic marketplace rather than at the spot market price which would create serious problems. We are balancing the international concerns with the concerns under the Emergency Petroleum Allocation Act for taking into account the need of the small and independent refiners. If you desire, we can ask Mr. Bardin or his staff at ERA to develop further information for the record on this point.

Mr. DINGELL. If there is anything you think would be of use to the committee in this matter, it would be appreciated, but I am not suggesting any massive undertakings.

The Chair recognizes his friend and colleague, Mr. Gore.

Mr. GORE. Thank you, Mr. Chairman.

Are all of the witnesses on this panel in agreement, and I would address it first to Secretary Bergold, in agreement that the decision by the producers' board to shift the allocation formula and make it on the basis of consumption rather than imports was a good thing?

Mr. BERGOLD. I think from our point of view over the long run it was a good thing, Mr. Gore.

Mr. GORE. Even though it doubled the shortfall allocated to the United States?

Mr. BERGOLD. Well, it didn't, of course——

Mr. GORE. It did, didn't it?

Mr. BERGOLD. It didn't quite make that.

Mr. GORE. Well, if the formula is based on imports and you shift the formula from imports to consumption, and we produce half of what we use, then the shortfall amount allocated to the United States is doubled. In fact, that decision was made by the companies within the confines of the producers board back in April, I believe, or something like that, and the news accounts at least, indicated that that resulted in doubling the amount of the shortfall allocated to the United States.

Mr. BERGOLD. I think one of the reasons I said in the long run, Mr. Gore, is that I think the system in terms of a serious cutoff, something like the embargo of 1973-74, would be more advantageous to the United States, so, over time, I think that this is probably a good thing from our point of view, both because of the short-run effects and the long-run effects.

Mr. GORE. I am willing to be convinced that it is a good thing internationally, but I guess I don't quite understand why it is a good thing if you look at it just from the narrow point of view of the United States. If you don't assume that we are all gas hogs, then maybe it doesn't make sense from the narrow point of view of the United States if it doubles the amount of shortfall.

Mr. KATZ. Mr. Gore, I don't know about the incident that you are referring to. I don't think there has been any shift. The IEA, itself,

or the emergency program, is a mix system, itself. The trigger is based on imports; the actual allocation is based on consumption.

Mr. GORE. You are correct. There was not a formal IEA decision. This was a company decision.

Mr. KATZ. I was not aware of that.

Mr. GORE. It may have been made by companies individually, but the one that got the most attention was Exxon in announcing that it was adopting the IEA formula. Even though the IEA formula was not triggered, it was adopted by the companies as a means of allocating their systemwide supplies; is that not correct?

Mr. KATZ. I think that is right, Mr. Gore, but I think that was one company based on its own internal allocation system, having nothing to do with the IEA.

Mr. GORE. Let me ask the FTC if they have a comment on that.

Mr. DINGELL. Before you do that, could I just raise this question? Doesn't this raise questions? Here we have given the companies broad antitrust exemptions to permit them to participate. Now the question of how your petroleum is allocated, whether it is on a supply basis, on an import basis, is a matter of rather substantial concern. It is a judgment that should be governmentally made and not by some company. Am I correct?

Mr. KATZ. Yes, that is right, Mr. Chairman, but I think the situation, as I recall it, was that this was well below the trigger point of the IEA.

Mr. DINGELL. It doesn't make a lick of difference to me whether it is above or below. The philosophical problem I have here is that you have companies which are essentially participating in the making of broad governmental judgments. In other words, what will be the basis on which the trigger is set off?

Mr. KATZ. I understand your points, and I think it does point up the desirability of the IEA scheme because in 1973—

Mr. DINGELL. But the IEA scheme here, and I agree it is desirable, in fact I helped carry the original proposal, but I detect the IEA scheme here, although it presupposes governmental action, in point of fact it tolerates company action on a very important question like this.

Mr. KATZ. Well, Mr. Chairman, I think the problem is that until the allocation scheme is formally triggered or put into operation, an individual company facing a shortage of supplies to service its markets has to make some decisions. One company, and so far as I know it was only one company, made the decision to proceed on that particular basis, and they got a lot of criticism in Canada, where this came to light.

Now, the point that you make, Mr. Chairman, I don't dispute that it is a matter of governmental concern in the United States and in other countries where a multinational company will operate, but I don't think that is by design. That is not a role that the IEA plays or was intended to play.

Mr. DINGELL. The IEA should lay down the criteria, should it not?

Mr. KATZ. By design, it only dealt with the crisis, and the crisis was defined in certain percentage terms. There is an option, of course, on the part of the member countries to act in advance of

the reaching of that statistical position. But it was not designed that way.

Mr. DINGELL. The Government is supposed to lay out the policy, not the companies. You give antitrust exemptions for the companies to engage in other activity of the IEA, but not to engage in governmental activities. As a matter of policy, I find it offensive if they are engaged in what I regard as clearly a function of the Government.

Mr. KATZ. I don't think that was a matter of multicompany situation.

Mr. GORE. Are you saying only one company did that, or are you saying that it has only come to light that one company did that?

Mr. KATZ. I have no information, Mr. Gore—

Mr. GORE. About any other company?

Mr. KATZ. About other companies. It was one—

Mr. GORE. You are saying—not definitively—only one company did it.

Mr. KATZ. I can only speak of that I know.

Mr. GORE. They all could have done it?

Mr. KATZ. They could have, but if they did, it did not come to light. It certainly did not come to my attention.

Mr. GORE. Did it come to light that all but one didn't do it?

Mr. KATZ. No, sir. I don't know.

Mr. GORE. OK. Could I ask the FTC to comment?

Mr. ROWE. I would like to preface a response to your question by stating that the Federal Trade Commission doesn't have any views on this particular subject. However, speaking for the Bureau of Competition, the only information that we are privy to in the item that you are mentioning is possibly a New York Times article which I believe mentioned Exxon Corp. and perhaps one or two other companies that may have done this.

It would seem obvious that an import basis for decision would be favorable to the United States. Beyond that, I don't believe we have any further comments.

Mr. GORE. I think that the point in terms of the hearing today—and let me say again that I am willing to be convinced and willing to believe that a consumption base formula is fair. I am not thoroughly convinced, and from a nationalistic point of view, I am not convinced particularly, but I am willing to be convinced on that.

But for purposes of this hearing, I think the central point is that a minimal requirement for our Government is that we know whether that is happening or not. And I find it incredible that we don't know whether the companies have gone to an import-based formula or a consumption-based formula, and we have to rely on the New York Times to find that out. If we are monitoring the activities of the companies in these meetings, if we are monitoring their decision, which I am told was a conscious decision to mimic the IEA formula, which is consumption-based up until the first 7 percent, then it is a mix of consumption and imports from 7 to 10, and then over 10, it reverts back, or it goes completely to import.

If they made a conscious decision to mimic that formula, we should know about it. I think we should know about it, and if we don't, it seems to me we are not getting enough information to

justify the continued exemption. Maybe we are; maybe we just haven't looked for it.

Mr. BERGOLD. Mr. Gore, I may say we have endeavored, following the New York Times article, to see if any other company did shift explicitly to a consumption basis. We have not been able to discover that any of them have.

Mr. DINGELL. Don't you discover that by simple inquiry and sending auditors out and looking at books and records?

Mr. BERGOLD. That is what we have done, and what I am saying is that we cannot prove or show by that investigation that any other company has made some——

Mr. DINGELL. Have you used the resources of the Department of Justice on this?

Mr. BERGOLD. Not to my knowledge.

Mr. DINGELL. Has the Department of Justice interested itself in this matter?

Mr. EWING. Mr. Chairman, I would like to address two parts of your question here. First, we are talking here about individual companies' decisions.

Mr. DINGELL. These individual companies are functioning under an antitrust exemption?

Mr. EWING. Yes, sir, in a general sense there is the IEA antitrust exemption, but we are faced with a situation here outside the IEA regime where an individual company does not have as much supply as it would like to put to various uses. It has to make an individual decision. So long as that is an individual decision, and not a collusive decision made with other companies, we are not in the area of violation of the antitrust law.

Mr. DINGELL. No, but you are in the area where they function under an antitrust exemption. You have to consider, then, whether the antitrust exemption should persist, do you not?

Mr. EWING. Then the question, Mr. Chairman, is one of whether they are using an antitrust-exempted regime as some means of facilitating further collusive activity among different companies. To the best of my personal knowledge, this morning we have no evidence that they have so used the IEA mechanism.

Mr. DINGELL. If you are talking about an individual company, there is probably no exemption for such a decision because that decision is outside the voluntary agreement. Isn't that right? But if it is gradually being substituted for the mechanisms of the voluntary agreement, either by that one company or by a group of companies, doesn't that raise some antitrust companies and other questions as to whether or not Government policies are then being made by private individuals or private corporations?

Mr. BERGOLD. Mr. Chairman, it seems to me that the point is valid, but it doesn't have much to do with the IEA, that this decision, the one that we know about, was an individual company decision made completely outside the framework of the IEA machinery, so far as we can tell, and I think that is the point.

Mr. GORE. But the decision was to mimic the IEA formula; correct?

Mr. BERGOLD. To mimic part of it. To go to consumption for a given point. I am not sure a decision was made to mimic it all the way through.

Mr. GORE. If it got up to seven, they would no longer have a choice to do it on their own, presumably.

Mr. DINGELL. Would the gentleman yield for just one question?

Mr. GORE. Yes.

Mr. DINGELL. Did anybody investigate the company involved to see if it used the exemption to reach the company decision?

Mr. KATZ. Clearly they did not use the exemption, because the exemption only pertains to meetings of companies together in the IEA and in the IEA context and, to the best of our knowledge, this was an individual company decision; it was not under the voluntary agreement; it had nothing to do with the IEA, except as Mr. Gore says, it was apparently an attempt by them to mimic the IEA formula, but, in fact, they did not follow it precisely.

Mr. DINGELL. Is this the only company that is doing this?

Mr. KATZ. To the best of my knowledge, Mr. Chairman, they are the only company that did it.

Mr. DINGELL. If a group of companies start doing it, doesn't that then raise questions of the compliance of the companies with our national policies and probably certainly to the provisions of the statute and the IEA agreements?

Mr. KATZ. It might, but any company faced with a situation of having to allocate among various customers and various markets must make some determination as to how to do that. And apparently different companies decided to do it in different ways. But I think this was really outside of the IEA except that they attempted to track the system although they didn't do it precisely.

Mr. DINGELL. Thank you. The Chair thanks the gentleman.

Mr. GORE. Let me ask a couple other questions. Maybe this has been covered adequately, and I apologize for missing the first part of this. What steps have you taken to reconcile the data discrepancies between the IEA and API system.

Mr. BERGOLD. We mentioned before you came in, Mr. Gore, specifically in the wake of the Tokyo summit, it will be necessary to move even more quickly with such reconciliation, not only between the IEA and the API, but between various international organizations which count in different ways. The decision was made last week in Paris at the IEA governing board meeting to move very swiftly into a reconciliation of these data counting systems.

Mr. GORE. What is that going to involve? What are you doing to reconcile it?

Mr. BERGOLD. The Standing Group on the Oil Market is doing an analysis of how best to make these systems exactly parallel in track. We have been doing it, of course, up to now with a system of weighted factors which we discussed a moment ago, but it has to be better, and they will have to analyze how it gets better, and then we will look at their recommendations.

Mr. GORE. Would it help to collect data both in barrels per day and in metric tons?

Mr. BERGOLD. Well, we may have to move to that; that becomes the issue in this country of the metric system. Everybody else uses the metric system. It is only we who use barrels. We have a formula, a set of factors for making the conversion. It may become necessary to count in metric tons for the United States.

Mr. GORE. Briefly tying up this other point, your studies have shown you, convinced you, that Exxon was the only company that shifted to consumption, and you are convinced that the others are still allocating on the basis of imports?

Mr. BERGOLD. Let me say our study has yielded no evidence that any other company has explicitly gone to a consumption base.

Mr. GORE. It is your personal feeling that all of the other companies are allocating on the basis of imports?

Mr. BERGOLD. I am just not sure of that. I would think that probably different ones are using different formulas, including some mixes.

Mr. GORE. Shouldn't we know what that is?

Mr. BERGOLD. As I say, we have tried to find out.

Mr. GORE. With no success?

Mr. BERGOLD. That no company has made an explicit decision except for Exxon.

Mr. GORE. But you don't know what the other companies are doing for sure?

Mr. BERGOLD. I cannot testify to what they are doing for sure.

Mr. GORE. Shouldn't we know that?

Mr. BERGOLD. I will try to supply for the record what we do know, Mr. Gore, about what they are doing.

Mr. GORE. I would like to know what you do know. Shouldn't we know what the other companies are doing?

Mr. BERGOLD. We think we do, and we think they have not shifted to a consumption base.

Mr. GORE. But you don't know. Shouldn't we know?

Mr. BERGOLD. We should be able to find out, and I will submit for the record to you what it is we do know precisely about what the companies have done.

Mr. GORE. You say now—OK, I will look forward to seeing that for the record, and if you want to elaborate on your response, we will certainly give you the opportunity to do so.

Mr. BERGOLD. I would have nothing more to say.

Mr. GORE. I will be waiting for that with bated breath, because I am interested in it.

[The following information was received for the record:]

International Crude Oil Allocation
by the Major Oil Companies

Background

All the majors have been allocating their crude oil supply since at least the first quarter of 1979. Some are gradually phasing out of third party sales; others are implementing reductions in supply to third parties and their own affiliates equally. Their allocation systems also vary in line with the variety of sources from which they draw their supply and the extent to which they have historically been crude-long or crude-short.

Types of Allocation Systems

A. BP

BP has historically been crude-long, and was the largest crude seller (1.45 MMBD in 1978 excluding Alaskan oil) into the third party market consisting of American independents, Japanese companies, and European and Asian national oil companies. BP served notice of force majeure to its third party customers as early as last fall, and allocated a 25 percent reduction in contract volumes; the reduction increased to 45 percent in the first quarter of 1979. By the Spring of this year, BP had renegotiated contracts with these customers to reflect an average 50 percent reduction in 1979 of previously anticipated deliveries for this year. The cut applies to North Sea, Persian Gulf, and African crudes (all of which is delivered outside the U.S.), but not to Alaskan oil. The new contracts provide for a sharing of available supply to third party crude oil customers in excess of BP's affiliates' needs. Allocations to affiliates vary with supply needs, but affiliates have a priority call on available supply.

B. Shell

Shell reduced contract supplies to affiliates and third parties by 10 percent in first and second quarters. It is reducing third-party sales by 50 percent for the third quarter.

C. EXXON

EXXON was forced majeure by BP on Iranian and North Sea crudes. Last fall, EXXON informed its Japanese customers that contracts would be phased-out as they came up for renewal in 1979-80; it also allocated a 10 percent reduction in pre-contract volumes of affiliates and third-party customers in the first quarter of 1979. Exxon is unique in managing its allocations system on an historic product demand basis: 1978 product demand as reflected by regional sales. The lowering of Aramco offtake by Saudi Arabia during first and second quarters 1979 was a major factor in Exxon further reducing previously contracted volumes by 15 percent in second quarter with an additional 2.5 percent reduction retroactively applied to the first quarter. It has reduced supplies by 20 percent in third quarter.

D. Other ARAMCO Partners/Gulf Oil

The other Aramco partners and Gulf have allocated supplies to affiliates on the basis of their refinery requirements rather than on the product demand basis used by EXXON. Socal reduced contract supplies by 16 percent in the second and third quarters as compared to 11 percent in the first quarter. Texaco's reductions ranged from 8-10 percent in the first quarter and 16-17 percent in the second quarter depending on the quality of Arabian crudes. Socal and Texaco have been historic sellers to the third party market, and to date have applied allocations equally to third party customers and affiliates. Mobil increased an initial 9 percent reduction to 12 percent in the first quarter and again to 17 percent in second and third quarters. Gulf has reduced contract volumes to affiliates and third parties 20 percent in the first and second quarters, 30 percent in third quarter.

Change in Oil Market Structure

The reduction in third party sales by the majors signifies a structural change in the oil market. The national oil companies of producer countries are withholding volumes formerly sold by the majors for the third party market and increasing direct sales. This means that buyers in that market now have many possible suppliers who do not have individually the range of crudes the majors have. The majors can provide a variety of crude for changing requirements. A certain rigidity now characterizes market structure.

Mr. GORE. Back to your study of how to reconcile the data, it seems to me back when you had the February figures and the discrepancy was more than the total amount of the shortfall allocated to the United States that they would be reconciled several months later. How comprehensive is this study going to be, and how long do you expect it to take?

Mr. BERGOLD. On the February data, of course we have revised those, and, as I mentioned earlier, February was the most erroneous month of all. Nothing like February has occurred subsequently in the system. Although we are still not satisfied—

Mr. GORE. Let me say, you revised it, you had the IEA figure here and the API figure here, and you revised it by bringing the IEA figure down to match the API figure, but then if you follow the same reporting rules, then that brought the IEA figure for prior months down to a ridiculously low point that still threw the whole reporting system off.

It seems to me the system wasn't reconciled. The month was by bringing the IEA data down, and I believe you relied on the customs checks, and so forth, but then if you look back there at the 2 months prior to that, then the API system is way too high. Perhaps I am mistaken on that.

Mr. BERGOLD. I don't think because there was a mistake in February that one can infer that the same gap would have existed 2 months earlier or 1 month later. But quite clearly there is a problem. It is a smaller problem than we had in February. The secretariat continues to be dissatisfied with the accuracy of the out-months of the predictions, the 2 months out. They are still running between 4 and 9 percent error, but that is nothing like it was in February.

February was, of course, the most disorderly month probably in the market, and people were making some projections that turned out to be wrong, and there was indeed some double-counting and some misunderstanding about how to fill out the forms. Much of that has been taken care of, but more needs to be done, and that is what the secretariat is doing.

Mr. GORE. How long do you think this study will take again?

Mr. BERGOLD. I think it will take a couple of months on the other issue of how to count together. We have a reconciling formula now; it isn't that we don't have reconciling formulas, but what we can do to be counting—all of us counting the same things, including geographic areas, but I think within a month or so that probably a report will be ready for us to make a judgment on.

Mr. DINGELL. If the gentleman will yield, we have the problem of the disparity in the figures as between the two agencies, but we also have the difference, more awkward problem, that on the basis of at least the February history, we may very well be using inaccurate data and information for making not only policy of this country, but making policies among the signatory nations of IEA.

How do we protect ourselves against inaccurate data that are triggering some consequences that might be rather unfortunate from the viewpoint of many?

Mr. BERGOLD. I guess the first point I would make, Mr. Chairman, is that it is the best data we have—that it isn't as good as we

would like it to be, I think we can all admit, and we have to make it better. But it is the best data base we have.

The second point is that this data does not automatically trigger anything. Nobody goes off and does something solely on the basis of the data without evaluation of it.

Mr. DINGELL. It does trigger people starting to talk and moving toward some other consequences in terms of official actions or IEA actions which would then take place, based on the consideration of this data if it is in fact the only data we have, or if, in fact, it is unweighted. But even considering that there is a subsequent evaluation, there is the possibility for incorrect data in this framework because there is no more data on hand to correct. So you have a very serious problem.

Mr. BERGOLD. This spring we got into a situation where the one-country data did show a triggering level. However, an evaluation of the data and a discussion with the suppliers of that country, with refiners, et cetera, revealed that the data was, in fact, misleading. It was decided not to activate the IEA allocation system. I would suggest that kind of analysis will resolve most of the kinds of problems you point to.

Mr. DINGELL. Let me read your comments on the data system we are referring to. You say, "This is the same information system which would provide data essential to the determination of national allocation rights and obligations if the international oil allocation system were to be triggered."

Mr. BERGOLD. That is correct, and I suggested, in response to an earlier question, Mr. Chairman, that I think there would be mistakes on a monthly basis if the allocation system were triggered. There would be errors that would need to be compensated for in the following month.

Mr. DINGELL. Well, it troubles me greatly to see this potential here for data triggering controversy or U.S. actions or international actions, or actions of other countries, or controversy between countries on the basis of what is agreed to be inaccurate data.

The Chair thanks the gentleman for yielding.

Mr. GORE. Let me touch one other area, and that is the area of secrecy and how necessary all of the secrecy is. Again, I am willing to be convinced. I am not willing to be convinced until 1986, but I think maybe you have a good argument, but let me just point out one example of this secrecy procedure where we allow a company to classify something as national security for all intents and purposes, where in one of the transcripts of the meeting, the chairman of the producers board says, "What time is lunch?" The response is classified, and for 6 months a law firm attempted to declassify, out of some sense of mischief, I am sure, but also out of curiosity, attempted to get a declassification of the response to the question, "What time is lunch?" And after 6 months and a lot of difficulty, we finally get the response, "One to one-fifteen. So perhaps we should wind up at 12:45."

So, you know, that seems a bit excessive, doesn't it?

Mr. KATZ. Well, Mr. Gore, I think the issue there did not involve the answer to that one question but involved the declassification of that whole transcript. And I think—

Mr. GORE. No; I think they were just mischievous enough to ask——

Mr. KATZ. I think the problem was obviously not in declassifying that one answer, but the problem was to review the whole transcript.

Mr. DINGELL. When that transcript had been declassified and was finally released it was found that only the most modest changes were made, but it took a substantial period to get that done.

Mr. KATZ. That is right, Mr. Chairman, and I would have to agree that the process does require speeding up and it has been speeded up.

Mr. DINGELL. I hope you are right.

Mr. KATZ. In fact, there are changes that have been made in the procedure to get the transcripts into the reading rooms much more quickly.

Now, it is also correct that the amount of classification that is required is relatively modest and we will exercise particular care to insure that only those portions which are essential either for the obvious reason of the security of the deliberations, the sensitive part of the deliberations, and that which comes from other governments where we are just under an obligation to them to keep confidential that which they ask us to.

Mr. GORE. What is the obligation?

Mr. KATZ. Where other countries ask us to keep their remarks secret.

Mr. GORE. What is our obligation?

Mr. KATZ. We have an obligation to respect that.

Mr. GORE. What is the nature of that obligation?

Mr. KATZ. The nature of it is comity; if the discussions are going to be carried out and be effective we have to respect their wishes.

Mr. GORE. These are companies. There have been discussions of comity with companies but they make the headlines in the Star.

Mr. KATZ. Where there are foreign companies I think we have to do that. We have made the point to them as we stated in our response to the letter——

Mr. GORE. Why do we have an obligation to those companies? I am willing to be convinced.

Mr. KATZ. Again, it is in terms of the effectiveness of the arrangement. There is obviously a mutual effort in the arrangements but I think there are some differences in views on this in other countries as compared to the United States.

Mr. GORE. But you don't even have a specific request from the countries. The countries are allowed to classify and claim national security for what they want to have deleted. If a company representative says don't you dare print anything that I say, then we have an obligation to the representatives——

Mr. KATZ. The foreign companies.

Mr. GORE [continuing]. Of that country?

Mr. KATZ. Yes, sir.

Mr. GORE. Like Shell?

Mr. KATZ. The foreign Shell, yes, sir. But as a practical matter, Mr. Gore, I don't think we should exaggerate that, because as a practical matter those portions which are kept confidential are

very limited and in fact we do exercise control over this and we have urged them to give on this point.

We have pointed out the importance in terms of the credibility of the arrangement and the need for maximum openness and I have no indication that there won't be cooperation in this regard.

Mr. GORE. Is it true or not true that you classify every single statement of the foreign company representatives?

Mr. KATZ. Initially, yes. Initially, the whole transcript is classified.

Mr. GORE. OK; here is one. Here is a discussion in which every single statement of the foreign company representatives were classified as national security and prevented from public view. That discussion took place on June 30, 1976, over 3 years ago.

That is an initial classification, but it seems like a permanent classification.

Do you have a comment on that, and let me say I don't want to exaggerate it but I think it is unethical to the principles of EPCA and I think it should be reviewed carefully if we are asked to extend an exemption here.

Let me also add that on that June 30, 1976, transcript, no one's statement, even our company's statements haven't been declassified on that transcript and there are over a dozen more in the same category.

Mr. DINGELL. Would the gentleman yield?

Mr. GORE. Let me get a response first and then I will.

Mr. KATZ. Mr. Gore, it is a fact that the foreign companies do take the position that they want their statements kept confidential. We have, as we responded to the committee, from the beginning requested the foreign companies to notify us when they do not feel the need to have remarks kept confidential and we have in the past sought and obtained permission to release some comments by foreign company officials.

I cannot elaborate those examples at the moment. But your point is well taken.

On the other hand, we are dealing with other countries and foreign companies where they do have different standards of openness than we have in this country.

Mr. GORE. OK. Let me move on.

I don't want to exaggerate that. I think it is contrary to the principles that we should stand up for in this country, but I am concerned about it.

I am also concerned about the delay in declassifying anything.

Mr. KATZ. That is a fair point, Mr. Gore.

Mr. GORE. What about this June 30 transcript? Why do you continue to keep secret this June 30, 1976, transcript?

Mr. KATZ. I can't answer that offhand, but I will be glad to look into that.

Mr. GORE. OK, and I assume it would be impossible for you to give a response to each of them?

Mr. KATZ. I am just not familiar with them, Mr. Gore, but I would be glad to review that and provide an answer.

Mr. GORE. I think it would be very helpful if you could give to the subcommittee an explanation of why each one of these is still classified.

Mr. KATZ. I would be glad to do that, Mr. Gore.

[The following letter was received for the record:]



DEPARTMENT OF STATE

Washington, D.C. 20520

14 AUG 1979

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Dear Mr. Chairman:

SUBCOMMITTEE ON ENERGY & POWER

At the recent hearings held by your Committee on extension of Section 252 of the Energy Policy and Conservation Act, Assistant Secretary Katz was requested to explain why certain of the transcripts of meetings of advisory bodies created to implement the International Energy Program are not yet available to the public.

After consulting with the Department of Energy to determine the status of the outstanding transcripts, I can report to the Committee the following:

88 transcripts from meetings of IEA advisory bodies are now available in the Public Reading Room for public inspection;

30 transcripts are at one stage or another of the review process and the bulk of these are from meetings held this year.

Of the outstanding transcripts, several are in the final stage of review and will be made available to the public in the next few weeks. The Departments of State and Energy are taking steps to introduce a more expeditious review procedure in order to provide the transcripts for public inspection sooner while at the same time maintaining a high degree of accuracy to ensure that they correctly reflect what was said at the meetings in question.

Sincerely,

Robert D. Hormats
Acting Assistant Secretary for
Economic and Business Affairs

The Honorable

John D. Dingell,
Chairman, Subcommittee on
Energy and Power.

Mr. GORE. That is all, Mr. Chairman.

Thank you very much.

Mr. DINGELL. The Chair thanks you.

Let me give you an example of a thing that troubles me with regard to the point that Mr. Gore has been addressing.

Here you have a situation where the foreign company triggers the confidentiality as opposed to the foreign government.

How do you justify that?

Mr. KATZ. It is a matter of cooperation. It is voluntary and if that is the basis on which they are prepared to participate I think we have to recognize that.

I think we can try to overcome it as best we can but fundamentally they participate on a voluntary basis.

Mr. DINGELL. Let's go to another area.

Under section 252(i) of the Energy Policy and Conservation Act, FTC is required by statute to submit at least once every 6 months a report on the impact of competition on small businesses of actions authorized by section 252.

The fourth report covers the second allocation system test which was conducted in April and May of 1978. This report which was to be submitted to the Congress by FTC was classified by the State Department.

Under what authority do you folks classify that? That is a document which FTC was to submit by law to the Congress.

Mr. KATZ. The authority is the basic authority to classify and I believe we responded to that question, Mr. Chairman.

Mr. DINGELL. You did respond. But I want you to cite the specific authority for that as opposed to the reasons. You gave us the reasons. I am not sure you gave us the citation.

Mr. KATZ. I thought we had also provided the citation which is the—

Mr. DINGELL. You gave us the Presidential document, title III of the President's national security form, but I don't think you ever set out precisely the basis on which your agency classified the document submitted by Congress in conformity with law by a sister agency.

Mr. KATZ. It is under the Executive order, Mr. Chairman, and I think here again it was a matter of delay which I think was unfortunate and we will, as we stated, make every effort to avoid such delays in the future.

Mr. DINGELL. The document was submitted on September 21, 1978. It was revised in January of 1979 and I guess at that point was released.

Now, I am not sure, what was the goal of the State Department in connection with this? I guess you weren't trying to keep that from Congress, because classified documents are available to the Congress.

Mr. KATZ. In fact, the classified version was provided to the Congress so it was not a matter of trying to withhold. It was a matter of classification and it was because it was felt that it would be harmful, that it contained sensitive information, the divulging of which would be harmful from a security point of view.

Mr. DINGELL. I really want a specific statement as to the precise sections of the Presidential Executive order under which you classified a document which was submitted to the Congress by FTC.

I don't think you want to give that to me at this particular time, but when you get back downtown I think you better reflect soberly on that, because I am not aware of any authority the President has to classify documents which are mandated by the Congress from independent agencies.

Mr. KATZ. Well, I would like to review that.

Mr. DINGELL. I think in fairness you should do that.

Doesn't that impinge directly on the ability of the Congress to use that document? In other words, how is the Congress to get the comments of persons in small business communities or persons within Government or persons who might be affected by supply shifts or something of this kind if they can't make the document available to them because it has been classified?

Mr. KATZ. Well, I think that deals with the nature of the material. I think it was felt that the unclassified version would meet that requirement.

Mr. DINGELL. The unclassified version was not made available until I figure about 3½ months or thereabouts after the report was submitted, which means the events had an opportunity to age nicely between the time of the submission by the Federal Trade Commission and the release of the document, which was not your document, after all, it was a Federal Trade Commission document.

Mr. KATZ. Yes; and I can't justify that delay, Mr. Chairman. That certainly should be avoided and will be avoided in the future.

Mr. DINGELL. It does trouble me. I don't intend to castigate you, but I am curious as to your authority and whether or not your agency had awareness of the consequences of this.

[The following letter was received for the record:]



DEPARTMENT OF STATE

Washington, D.C. 20520

RECEIVED

AUG 9 1979

8 AUG 1979

SUBCOMMITTEE ON ENERGY & POWER

Dear Mr. Chairman:

The following information is in response to the question asked at the hearings before your Subcommittee on July 16, 1979 with regard to the authority of the State Department to classify the Fourth Report of the Federal Trade Commission to Congress pursuant to Section 252(i) of the Energy Policy and Conservation Act (EPCA).

The Fourth Report as prepared by the FTC for transmittal to the Congress included a detailed discussion of the supply disruption scenarios postulated during the International Energy Agency's (IEA) April/May 1978 test of its emergency oil allocation system. The precise nature of these scenarios, the measures taken by companies to meet each country's supply right, details of the countries' supply weaknesses, and the appraisal of the effectiveness of the system are considered sensitive information by the IEA and all countries concerned. Such information in the wrong hands could be used in the future to hamper the efforts of the IEA to deal with a politically motivated oil embargo of one or more of its members.

Because of the level of detail, Department officials determined that disclosure of these portions of the report reasonably could be expected to cause identifiable damage to the national security. In addition, some of the material upon which the FTC based its report was drawn from documents classified by the IEA.

In order to ensure timely transmission of the Fourth Report to the Congress, the entire report was classified by the Department. Subsequently, an unclassified version including the great bulk of the original report was made available.

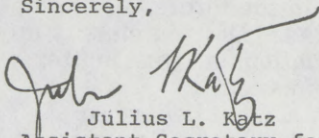
The Honorable

John D. Dingell,
Chairman, Subcommittee on
Energy and Power.

The information in the FTC report which led to its classification as "confidential" was obtained by the FTC in connection with its antitrust monitoring function, shared with Justice and the Department of Energy, under section 252 of EPCA, section 5(b)(2) of the Voluntary Agreement and Program relating to the International Energy Program, and the letter of approval issued by the Department of Energy pursuant to the Voluntary Agreement which enabled U.S. companies to participate in the second allocation system test of the IEA. Executive Order 11932 gives the responsibility for the classification of such information to the Secretary of State. The standards to be applied are contained in E.O. 12065 on national security information (superceding E.O. 11652).

E.O. 12065 provides in part that "confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause identifiable damage to the national security. E.O. 12065 also provides that information made available to the United States in confidence by an international organization of governments shall either retain its original classification or designation that shall ensure a degree of protection equivalent to that required by the entity that furnished the information. It was, and is, our considered opinion that portions of the classified version of the Fourth Report meet these standards for classification.

Sincerely,

A handwritten signature in dark ink, appearing to read "Julius Katz", is written over the typed name.

Julius L. Katz
Assistant Secretary for
Economic and Business Affairs

Mr. DINGELL. Mr. Rowe, do you have any comments?

Mr. ROWE. I really have no comments on this particular document, just an item of clarification. If this is the September 1978 report, I believe it is the fifth report rather than the fourth report.

Mr. DINGELL. It is September of 1978.

I have real trouble with you folks classifying documents that don't belong to you. Just because you have a stamp marked "secret" doesn't mean you have to stamp a document that belongs to another agency or done by mandate of congressional statute, and under the circumstances where not inconceivably it could delay or hinder the Congress.

It is a happy thing I was occupied with other matters or I would have convened a hearing to discuss the release of this document and made faces red at the State Department, because I think that is wrong.

Mr. KATZ. I think the delay was certainly inexcusable, Mr. Chairman, but I suspect it resulted from the fact that there was a classified version with the committee, there were as you say, other preoccupations at the time, and it slipped away.

What the precise authority was, I would, as you suggest, like to have that reflected on in a careful response to the committee. The basic information, of course, on which the report was based, did come from the IEA and it was that information that was being protected.

But the delay is certainly unfortunate and inexcusable and will be avoided in the future.

Mr. DINGELL. Did you classify any information and see to it that any information on this matter was withheld from the Federal Trade Commission?

Mr. KATZ. I don't believe so.

The Federal Trade Commission had a participant at those sessions.

Mr. DINGELL. Mr. Rowe, can you give us a comment on that?

Mr. ROWE. I am not aware of any information, Mr. Chairman, that is being kept from the Federal Trade Commission representatives.

Mr. DINGELL. Does the Federal Trade Commission have its documents classified?

Mr. ROWE. In this instance, we must defer to the State Department for classification.

Mr. DINGELL. Did FTC classify the document?

Mr. ROWE. The answer is no, Mr. Chairman.

Mr. DINGELL. Do you have authority to classify documents at FTC?

Mr. ROWE. No; we do not.

Mr. DINGELL. Were you consulted with regard to the classification of this particular document?

Mr. ROWE. Consultation, I believe, Mr. Chairman, consisted of the Department of Justice advising us what portions would be classified.

Mr. DINGELL. The Department of Justice advised you?

Mr. ROWE. The Department of State; I am sorry.

Mr. DINGELL. They didn't say can we, they said we are going to classify these; is that right?

Mr. ROWE. That is essentially correct.

Mr. GORE. I might say as an example of this secrecy mania, I was initially refused access to IEA figures on the basis of national security classification, and I then, after some teeth pulling and pounding on the table, et cetera, was graciously given a copy of it, but I would like to, for the record, Secretary Bergold, get your understanding that Members of Congress have complete access to IEA materials that the Department has classified.

Mr. BERGOLD. There is no question at all about that, Mr. Gore, and if anything like that happens again, I hope you will call me or have somebody on your staff call me.

Mr. GORE. It worked out the day that I came down to your office there eventually, but I wanted to make sure that others won't have to go through that.

Mr. DINGELL. The Chair would like to advise the gentleman that the Chair stands ready to assist the gentleman in using the powers of the committee to get any information that might otherwise be withheld.

Mr. GORE. I don't want to make a point of it, only in that it reflects the automatic preference or secrecy.

Mr. KATZ. Could I comment on that, Mr. Gore?

I don't think this is a matter of somebody running amuck with a secret stamp. The information dealt with in the report, I am reading from our response to the committee:

It included a detailed discussion of the supply disruptions postulated as test scenarios. The nature of these scenarios, the measure taken by countries to cope with the disruptions, details of a country's supply weaknesses and the appraisal of the effectiveness of the system are considered sensitive information by all the countries concerned.

Such information would be of considerable use to persons devising a politically motivated embargo that would thwart our attempts to defend our economies and joint securities.

The Joint Chiefs of Staff do not make their contingency plans public, and indeed they should not. I think we accept first of all, without reservation, the right of the Congress to know.

Mr. GORE. Yes.

Mr. KATZ. Second, we accept the need for maximum openness, just as a matter of general principle and as a matter of providing confidence in the workings of the system. We did not declassify the portions of this report that should have been declassified as promptly as we should. That was an error on our part. We are going to try to avoid that in the future, but it is not a matter of people running around just classifying for the sake of classifying.

Mr. GORE. It sounds good, but it was interpreted to keep secret lunch time.

Mr. KATZ. No, we are talking about a different document, Mr. Gore. We are talking about the FTC report. We are not talking about the transcript now. We are talking about an evaluation of simulations of the system and a report by the FTC.

Mr. GORE. I was talking about the secrecy atmosphere surrounding everything associated with the IEA and their meetings.

Mr. KATZ. As I said, Mr. Gore, we are going to try to avoid that.

Mr. GORE. Finally, I do not want to make any big deal about it. That is fine. I initially came to this subject with a great deal of apprehension. I still have some apprehension. Some of the people

here have been kind enough to meet with me privately and go through the details of this, and I would like to express my thanks to them.

I am now convinced that even though it goes against my instinct, it would probably be irresponsible to immediately eliminate the exemption. By the same token, I think it would be equally irresponsible to extend it for 6 or 7 years into the future without knowing more than we do now because this system was set up as an effort to give us control and a little more information, little more control on the international oil system, and it seems like we have less than before. We certainly have as little control and as little information as we did before.

Maybe that is overstating the case but we certainly do not have the kind of grasp on this matter that we should and the kind of grasp that I think we ought to have in order to justify a continued antitrust exemption. But I have come to the conclusion that an immediate revocation is probably not in our national interest.

Mr. DINGELL. The Chair has great reservations about the period of extension, if the gentleman will permit. We will look at that with a great deal of care before anything of that sort is afforded.

The Chair would like to recognize counsel at this time for purposes of asking questions.

Mr. SCHOOLER. On this issue of the period of time, could you explain the administration's view concerning the length of time which you would want this immunity to be extended and why it is necessary that it be extended for that period of time?

Mr. BERGOLD. Well, we would like it extended until the time that the withdrawal from the International Energy Agreement would be possible on the part of any of the members. This is our position, Mr. Schooler. I think we would be very pleased to work with the committee. If you would prefer a shorter date or shorter length of time it is not our position, but we would certainly be very happy to work with you on some other concepts.

Mr. DINGELL. Mr. Bergold, I think we should commence that process. I really am troubled about the length of the period. We had a great deal of difficulty just crafting the original proposal. The data base problem, the troublesome problems of secrecy, the need that we feel for continued supervision indicates to us that the practices of the committee in affording not more than a 3-year extension to any program is probably desirable, and if you could work with our staff on this I think it would be mutually helpful.

Mr. BERGOLD. Be happy to.

Mr. DINGELL. Keeping in mind not only international commitments, the agency's concern, but also considering the schedules of Congress which oftentimes make enactment of legislation during certain times of the year enormously difficult.

Mr. SCHOOLER. Are the companies presently reporting information to the IEA under the information system? Are they continuing to report to IEA at this time?

Mr. BERGOLD. Indeed they are, directly.

Mr. SCHOOLER. Is your Department continuing to look at that data in an attempt to reconcile it with the Customs and DOE data?

Mr. BERGOLD. Yes; as you know, questionnaire A is the report that goes directly to the IEA and B is the aggregated analysis done by the Department of Energy on the basis of those submissions.

Mr. SCHOOLER. What was most troublesome to our subcommittee was the fact that back last March we had the impression that very little was done by the Department to determine whether or not there were discrepancies between your data and IEA data, nor were there attempts to resolve it. Could you provide to this subcommittee on a regular basis the data and what discrepancies there are so we will not be in a position once again of having to go on down and be surprised to find the outcome.

Mr. BERGOLD. We have instituted a monthly briefing, as you know, for staff members. In addition to that, we would be very happy to supply any written information that you may want.

Mr. SCHOOLER. Thank you very much.

Mr. DINGELL. The committee thanks you all for your assistance and patience and we excuse you at this time with the thanks of the committee.

Our next panel is a panel composed of William J. Lamont of Lobel, Novins & Lamont, 1523 L Street, Northwest, Washington, D.C., and Mr. Charles D. Mahaffie, Jr., of Cleary, Gottlieb, Steen, & Hamilton, 1250 Connecticut Avenue, Northwest, Washington, D.C.

We are pleased to welcome you to the committee. If you will come forward and take your places, we will recognize first Mr. Lamont and then Mr. Mahaffie.

The Chair observes while we are getting ourselves seated here that Mr. Mahaffie, you have been gracious enough to come here essentially as an expert witness. You do not appear on behalf of any particular oil company or anybody in particular. We are appreciative of your presence and will balance your statement against that particular appearance and policy. Is that accurate?

Mr. MAHAFFIE. That is correct. Thank you, sir.

Mr. DINGELL. Mr. Mahaffie, you have identified yourself for the record already. The gentleman to your left is?

Mr. MAHAFFIE. Mr. William B. McGurn, my associate.

Mr. DINGELL. We are pleased to meet you.

Mr. Lamont, you have also an associate with you?

Mr. LAMONT. Yes; a clerk, Mr. Steven Kamp, whose purpose is to find things I cannot find when I need them.

Mr. DINGELL. Mr. Lamont, we will start with you and then we will recognize Mr. Mahaffie, and if your associates desire any comment we will be more than pleased to receive them.

STATEMENTS OF WILLIAM J. LAMONT, ATTORNEY, LOBEL, NOVINS, & LAMONT, ACCOMPANIED BY STEVEN KAMP; AND CHARLES D. MAHAFFIE, JR., ATTORNEY, CLEARY, GOTTLIEB, STEEN, & HAMILTON, ACCOMPANIED BY WILLIAM B. MCGURN III, ASSOCIATE

Mr. LAMONT. Thank you, Mr. Chairman, for this opportunity to appear on this legislation because I think it is singularly important. The President on television last night promised to take the problems of energy within his own hands and with your cooperation to solve them.

This legislation, if enacted, simply means that neither the President nor any elected representative of the Congress of the people, will, for something like 7 years or more, have any significant control over energy policy. For you are considering extension of the voluntary immunity provisions of section 252 of the EPCA for 7 years. That is a decision whether and what form, for how long you want to continue the almost unbounded antitrust immunity that is given the international oil companies for their transactions that fall within or can be said to fall within the ambit of the secret international agency plans and operations. Your extension necessarily involves an evaluation of that International Energy Agency's own actions.

With your permission I would like to submit my statement as written [see p. 132] and simply highlight some of the points. Lest there be any possible mistake, understand that I urge that there be no extension for any length of time; but that certainly there be no extension for more than 1 year. Extension effectively repeals the antitrust laws in a very wide domain that is of great importance to the United States.

I think that in a long time I have not been quite as thoroughly shocked as when Mr. Ewing, supposedly the representative of the procompetitive policies of the Antitrust Division, was delighted to join in recommending enactment of a proposal which would remove so large a share of the international petroleum trade totally from their effective supervision as an antitrust enforcement agency.

Extension of this immunity without any further qualification, moreover, would continue the present situation under which these International Energy Agency operations are not and really cannot be effectively policed by the antitrust agencies of the United States.

Moreover, and this is the part I think that is most significant to me, all of these operations have been so thoroughly cloaked in secrecy that no injured independents or consumers have any real opportunity to help themselves.

One of the basic premises on which the antitrust laws operate is that you have to have a right to help yourself if you are injured in your property or business by the action of a restraining group. In sum, should we continue the machinery which was so signally successful in dealing with the crude oil shortages occasioned by the revolution in Iran?

Local motorists do not regard that performance as a real success but that is only because they are narrow and selfish in their point of view. Certainly the multinational companies who are to be our agents in meeting shortages will find it very, very hard to improve on a performance which so efficiently cut down competition, raised prices, triggered recession, and dumped the blame on someone else. What was plentiful 60-cent gasoline in December became scarce 95-cent gasoline by July, and all because of OPEC. When you examine the first and second quarter financial results of the activity of Exxon and its partners in world oil distribution, you will understand what real success is.

This was, however, not quite the kind of success that Secretary Katz predicted in his 1974 testimony for the use of this International Energy Agency device.

Let me turn quickly to the abuse of the immunity provisions. That was to have been a narrowly circumscribed plan, but it has been subverted to virtually unlimited use. The clear intention of the fact was that only a narrow immunity would be carefully granted for action clearly required to meet the needs of a publicized plan.

The rights of outsiders to redress for antitrust damage were to be sacrificed, but only where they stood directly in the way of essential emergency action required by affected consumer governments. The outsiders could protect themselves, for this statute insured they would have a host of safeguards, a maximum of publicity, a right to participate in the planning process, either directly or through representatives and, most importantly, a right to know what action had actually been taken under the statutory cloak of immunity.

Of the considerable number of special safeguards that were incorporated in the 1975 statute, I am in rueful admiration reporting that not a single one of those safeguards remains without total evasion. Never in history has so much careful statutory language been so wholly evaded so blithely to the individual profit of so many companies.

The new International Energy Agency agreement that was drafted after this new statute put new safeguards was exactly the agreement that had existed before. No consumers or real independents have ever been permitted to participate in any part of the planning process. The requirement that there be representatives of independents was ingeniously met: Denominate companies like Standard Oil Co. of Indiana as independents and that qualifies.

Even in such a basic procedural matter as publication of the agenda, there has been hardly a single instance in which the agenda publication of a meeting of the IEA committees has not been prefaced by a finding by the Department of Energy that this particular meeting was so hastily called that the 7-day period for notice simply could not be met.

Equally incredibly for an agency which is so zealous in its protection of competition, some 4 years after enactment of EPCA, there are no traces of any Department of Justice regulation specifying which company records of immunized action are to be kept and how they are to be made available.

This has meant, ineffect, that a very limited immunity has been translated into a very broad one. No consumer, independent can sue with respect to that which he does not know happened. This, as was discussed quite at length with the previous panel, has involved a quite clear misuse of national security classification authority.

I must object a little bit for the record to Mr. Gore's characterization of our request for the transcript of the August 31, 1976, meeting of the ISAG, or whichever board it was. That was not mischief, that was concern to find out just by what procedure and to what extent matters would be classified.

If our opponent happened to have delivered into our hands a perfectly ridiculous instance of classification, that, sir, was only an accident. The response that we got 6 months later does give a very clear delineation of the process by which this material is classified and declassified.

And I submit that if you read the telegram from the Department of State, which I attached to the copies of the testimony submitted to the subcommittee, the June 1978 telegram from Secretary of State to the Embassy in London, Paris, Bonn, Rome, and Vienna, transmitted to us on July 5, 1978, 6 months after we had requested what time the board broke for lunch, you will see that it gives a rather interesting story of how this material is classified and declassified.

As you queried the previous panel, also, it extended to cover even the Federal Trade Commission's own report, its fifth report of September 21, 1978. I might say that we sued on that one, as a result of which we got a copy not of the report as revised in January 1979, but as originally written, but with the confidential-areas blotted out. So that it is possible to evaluate the context of information that was confidential.

On page—I am sorry, the page is blotted out, the number is apparently also confidential, on paragraph B(1)(b). There is a whole series of the type of information that occasions discussion among the reporting countries that are set out. Let me read one of them:

"Mobil showed a relatively small volume of imports to blank, from blank, blank blank, and blank and from blank to blank. [Planning footnote.] Ashland showed an estimate from a category headed 'Blank,' to the blank in September but no similar movements in August or October. Socal showed blank crude shipped to blank when blank was an embargoed crude blank.

Now this is not information that would seem to be so much inextricably interwoven in the international dialog process that it could not be disclosed without offending a foreign government. We are talking about Mobil, Ashland, Socal; these are American companies. And their material is classified, and presumably would be declassified if they ask it.

With your permission, Mr. Chairman, I would like to submit this copy of the scrubbed report so that you may see what highly confidential deletions were made in the FTC report.

Incidentally, this secrecy, so far maintained extends even to the tentative plan of action, although the statute contemplates this will be publicized. For something over 4 years now the IEA and its committees have been developing a so-called emergency management manual which will be the international allocation procedure during the period when there is a shutdown. This has never been published for comment, never been exposed even in confidence to any independent companies or their representatives for their view. Yet when there is a 7-percent shortfall in consumption, this is the plan which, with full immunity for all of its details of operations by the companies, will be given total antitrust immunity.

Incidentally, I would like to signify that two things Secretary Katz mentioned are worthy of note. One is, he said that after all, the Joint Chiefs of Staff do not expose their contingency plans to the enemy.

Well, I think that is probably true. I hope it is true. But by the same token, the IEA is not only exposing its contingency plans to the enemy or the agents of the enemy, but is indeed compiling those plans with their assistance. Remember, it is the multinational companies and the American multinational companies in large part who are the agents of Saudi Arabia in the operation of the oil

fields, in the determination of the production levels within overall ceilings set by the Government. They are the ones who buy and resell, who have initially the handle on the transactions in an overwhelming share of the world's movement of oil.

These people also have a very substantial investment in oil production outside of OPEC. And it is a little bit beyond belief that they are on our side, to be trusted with governmental powers as they are to determine what we should have, when we should have it, and how we should get it. That, to me, is admitting the enemy into the councils of the Joint Chiefs of Staff.

If anyone doubts that any of the OPEC nations who have a very considerable control over these companies cannot get full access to any of the proceedings of the IEA they wish to, I think perhaps they had better reexamine very carefully the relationship of these companies to the OPEC nations.

At any rate, the statute goes on a little bit further in providing protections. It talks about the Attorney General shall report at least once every 6 months. The Attorney General has yet to be reasonably prompt about issuing any of these reports. His fifth report issued this month, as of March 21, 1979, follows by only 3 months the fourth report filed on March 9, 1979 as of September 21, 1978, which just happens also to cover the activities between September 1977 and September 21, 1978.

Additionally, none of the reports of the Department of Justice or the Federal Trade Commission have yet complied with the exact terms of the mandate of the reporting requirement of the statute. They were asked to state for the advice of the Congress the competitive impact. All that they have stated is that whatever competitive impact there has been minimized, but they have not undertaken for any kind of congressional distribution or for public distribution an analysis of what are the competitive problems which this organization under the IEA, affects. What are they?

We are sort of in the position like the old countryman who went to his doctor, who was not really all that skilled and who said: "Well, Jake, you remember we didn't know what you had last year; well, you got it again and it is just a little bit worse."

Quite possibly the Federal Trade Commission, the Department of Justice, have omitted this discussion of the competitive impact, quite honestly because they cannot effectively analyze it on the basis of their present surveillance. Neither Justice nor the Commission has ever undertaken any real investigation of the individual company actions given immunity or of the context in which they fit.

The statute was rather careful in considering this point and it authorized both Justice and the Federal Trade Commission to use their full investigative powers in aid of that review responsibility.

I will be perfectly willing to bet a rather considerable sum that the Department of Justice has yet to issue a single civil investigative demand in this area and that the Federal Trade Commission has not yet issued a section 6 order to try to bring out the underlying competitive situation in which this international organization operates, and to examine more deeply the competitive impact of particular action either discussed or taken at a meeting or as a consequence of a meeting of one of the IEA groups.

One of the reasons I have felt so strongly about this is because once upon a time in my not too dim past I was one of the Department of Justice surveillance staff with respect to the foreign petroleum supply agreement in the 1967 6-day war. This was the point in time at which Cleary-Gottlieb first became the representatives of the companies who participate in such a voluntary agreement or program, not as representatives of the individual companies but as representatives of the companies as a group.

I have, I think, a fair experience of what the close and careful monitoring is of which the Justice Department so blithely speaks. It is really nothing more than sitting in a meeting room while reams of papers and reams of figures are being flashed by in industry jargon and trying to figure out just what in God's name they are really talking about. It is not and cannot be followed up by any significant investigative action because, quite simply, there is no staff available to assign here.

If they would in fact assign just the staff that is available for a minor merger case to this operation, covering the petroleum trade and commerce of the whole world, we could feel a little bit more comfortable. Yet they extol the fact that they have assigned in the Federal Trade Commission three attorneys and one economist and in Justice three attorneys.

Now this is sort of like the old one-man, one-riot philosophy of the Texas Rangers, but there is not a riot in a cowtown and these people are not rangers.

Even with staff and sufficient time to conduct a real investigation, it is highly unlikely that either of these agencies, both of them together, even supplemented by further personnel, could perform the kind of superhuman job that would be required to regulate competition on the basis which this contemplates.

In other words, they are licensing noncompetitive action. They are supposed to be making a continual judgment as the competitive system itself would if it fully functioned.

To be sure, Assistant Attorney General Shenefield has promised that the granting of clearances to companies to aid the IEA in no way lessens the Department's vigilance in seeking to guard against anticompetitive conduct in the international petroleum market. Unfortunately, that statement is as exactly accurate as it is discomforting, for if there is one thing that is absolutely clear, it is that the Department of Justice cannot effectively lessen its vigilance against anticompetitive abuses in petroleum markets.

Consider its abysmal track record on oil over the last 10 years. There has been a fourfold increase in the price of crude oil over that time, an increase which everyone knows was partly aided by the companies who are involved in OPEC production areas. Equally unquestioned is the remarkable growth in oil production and pipeline joint ventures among the largest companies in the industry. There has been no action taken as yet to challenge any of this.

Now this kind of vigilance we do not need. But certainly it is impossible to lessen it.

Finally, I would like to urge that you very, very carefully consider whether you wish to continue the work of the international energy agency itself in its present basis.

First, Congress has never reviewed the operations of this agency in any detail at all. In the 1975 act it explicitly refused for that reason to give any advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such program. There has been no careful investigation since.

Neither the IEA budget nor its pay and personnel selection practices have ever been presented for congressional or public review, even though IEA exists in large part on U.S.-appropriated funds and some of its personnel were selected from U.S. candidates. Yet we are asked to trust this group, this second level Department of Energy and State bureaucracy, to supervise the committees of the giant oil companies as they evolve solutions to our energy problems.

Remember, the IEA now operates and intends to continue to operate almost exclusively through these multinational company groups. Of course its reports are subject to the inaccuracies inherent in voluntary data submissions by interested companies of what they want the Government to know or what it wants to be told.

I think a good deal of the difficulty that was adverted to in the February errors, which were somewhat gross, was quite simply because the companies were reporting what they wanted to to different agencies. They gave one set of reports to the U.S. Customs, another set of reports to the DOE, another set of reports to the IEA, and even now in July there is no satisfactory explanation of where they were lying and why.

What has been done to reconcile the figures was that, after some advice by the Department of Energy, the companies undertook to clean up their act a little bit by at least reconciling the figures to a common average. But there have been no steps taken to insure that the same kind of lying with statistics will not continue in the future.

Moreover, it is absolutely inexplicable to me that we should entrust this much of our energy future to the tender mercies of companies who have already dominated the whole of the world trade in petroleum to such deep sorrow for those of us in the United States. Asking Exxon to help us guard against the possibility of an OPEC-triggered shortfall is very much like asking the fox to guard the henhouse and the wolf to watch the sheep.

Do any of you really honestly believe that Exxon, with its vast interests in foreign and domestic oil production, is really going to ration crude supplies so carefully among the nations of the world that it will insure that no uncomfortable shortfall should suddenly skyrocket prices and accidentally make such remarkably fine returns to themselves?

It isn't just the present record that disturbs me. Every other one of these emergency planning groups but one has resulted in somewhat similar conduct.

The conversion of 60-cent gasoline in December to 95-cent gasoline in July has ample precedent. The 1948 Small Business and Reconversion Act voluntary agreements were drawn up to provide heating oil to the east coast. They coincided with a rather substantial series of products and crude oil price increases. The next one came during the heat of the operations of the voluntary agreement to boycott Iran in 1953. An added set of crude oil price increases

came with the Suez war crisis of 1956-57, although the companies involved were subsequently acquitted by a Tulsa Federal Court of antitrust violations charged in a 1957 indictment brought by a runaway grand jury without the official approval of the Department of Justice. However, this declaration of innocence was slightly besmirched when the judge in question subsequently resigned his lifetime appointment on the Federal bench to become general counsel of Gulf, one of the principal defendants.

Finally, remember that the sharp crude oil price increases of 1971 occurred while these multinational companies sat, with Justice Department approval, to negotiate price with the Persian Gulf producers. Similarly, the four-fold increase which occurred in 1973-74 occurred while this group sat as the foreign petroleum supply committee.

There is one instance in which no significant crude price increase occurred. That was the 1967 6-day war, and, in that instance, a courageous if somewhat politically inept Attorney General had the courage to tell the companies that no antitrust approval would be given to scheduled action until after we had a chance to look at the schedule. This was a bluff; we didn't have the staff to do it with. But, nonetheless, since Mr. Clark had taken such a remarkably strong position, the companies declined to schedule any action; therefore, no immunity occurred, and, therefore, I suggest, there was no occasion for any price increase.

At the present moment, a very substantial majority of the American people believe that the shortages and price increases of the past few months resulted from the actions of the multinational oil companies. I don't think they are wrong. Whether they are wrong or not, it will be very difficult to give an atmosphere of credibility to any energy program which gives these companies the authority and immunity here proposed as they plan the movement of international oil through the whole world. To give them immunity from a criminal statute while they exercise that power and authority for their own gain, as this clearly permits, risks total public disbelief as to the reasonableness of any sacrifices which they must make. Therefore, I urge that there be no further extension of the immunity provisions beyond the current 4 months.

I can understand the reluctance to take such apparently radical action without a thorough understanding of what is to be done. Particularly, the President has just announced a new program, among other things, which will affect the quotaization of crude oil imports. Whether that quotaization incidentally, will proceed on the basis of the old mandatory import oil system or if it will be based upon tariffs as the 1970 Schultz committee strongly recommended; or if quotas are to be used; or whether or not they will be auctioned in a competitive manner; in all of these possible variations, it is very clear that we will be very much concerned with the manner in which the crude oil imports permitted under the limitations will be distributed within the competitive structure of the industry.

Therefore, I urge that at the very most you give only a very limited extension. And while you do that, couldn't there be some basis worked out whereby, even if these proceedings must be kept

secret, that they at least be exposed to the view of representatives of those groups who may be harmed by them.

It would be possible with a very slight amendment of the basic statute to insist that these meetings could be closed if the President wished, or if the International Energy Agency wished, to all interested persons who didn't qualify for at least the same degree of security clearance as those people who participate and who could be bound by the same rules of nondisclosure if such rules do, in fact, exist.

With this, then, the outsiders of the world, the independents and the consumers of America, would at least have an insider view of what is going on at these remarkable meetings.

I have submitted with my testimony a proposed amendment which I think would accomplish that purpose.

Thank you, Mr. Chairman.

Mr. DINGELL. Without objection, those submissions will be included in the record as a part of your statement. You have given the committee a very helpful statement, and we thank you.

[Testimony resumes on p. 145.]

[Mr. Lamont's prepared statement and attachments follow:]

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Before
Energy and Power Subcommittee
House Committee on Interstate and Foreign Commerce

Statement
Of
William J. Lamont
On
Antitrust Immunity for
International Energy Agency Operations
July 16, 1979

Thank you for this opportunity to appear on this singularly important energy legislation.

You are considering extension of the "Voluntary Agreement" immunity provisions of Section 252 of the Energy Policy and Conservation Act for seven years. You have before you decision whether, in what form and for how long to continue the complete antitrust immunity enjoyed by the American multinational oil companies for their oil transactions within the ambit of the secret International Energy Agency plans and operations. And this necessarily entails an evaluation of that international agency's own actions.

I urge that the immunity not be extended, certainly not for more than one year. For extension effectively repeals the antitrust laws to the extent that they would otherwise apply to domestic and foreign transactions in foreign oil by the participants. The IEA operations have not been and will not be effectively policed by the United States antitrust agencies. And these operations are cloaked in such secrecy as to preclude any effective policing action even by injured independents or consumers.

In sum, you are here deciding whether to continue the machinery which was so signally successful in dealing with the crude oil shortages occasioned by the revolution in Iran. Of course, local motorists will not regard this performance as a success, but that is only from their narrow point of view. Certainly the multinational companies who are our agents in meeting shortages will find it hard to

improve on a performance which so effectively cut down competition, raised prices, triggered recession and dumped the blame on someone else. What was plentiful 60 cent gasoline in December became scarce 95 cent gasoline by July, and all because of OPEC. When you examine the first and second quarter financial results of the activity of Exxon and its partners in world oil distribution, you will understand what real success is.

The narrowly-circumscribed grant of antitrust immunity in the 1975 statute has been subverted into a virtually unlimited grant. The clear intention of EPCA (the Energy Policy and Conservation Act, P.L. 94-163, Dec. 22, 1975) was that only a narrow immunity would be carefully granted for action clearly required to meet the needs of a publicized plan. The rights of persons outside the plan who suffered antitrust damage were to be sacrificed only to the extent they stood in the way of essential emergency actions directed by the affected consumer governments. But the outsiders were not left without power to protect themselves. Indeed, the statute insured that they were to be protected by a host of new safeguards, including a maximum of publicity, a right to participate in the planning process either directly or through representatives, and, most importantly, a right to know what action had actually been taken under the statutory cloak of immunity. EPCA, §252. And see House Report 94-340.

Therefore, the 1975 statute incorporated a number of safeguards not included in the previous statute under which similar immunities had been granted: Defense Production Act of 1950, as amended; 50 U.S.C.App. §2158. New voluntary agreements and plans were to be formulated under a new set of standards. EPCA, §252. When IEA agreements and plans were formulated, the groups were to be representative, including not only independent sectors of the industry, but also public and private consumers. EPCA, §252(c)(1)(A)(i). Any emergency plan contemplating the involvement of United States companies in emergency IEA allocation had to be duly published for public comment and amendment before it could become effective. EPCA, §252(d)(1). Proceedings, pursuant to published agendas, were to be open to interested persons, even if they were not formally participants. EPCA, §252(c)(1)(A)(i). Finally, the problem of publicity regarding the extent of immunity was addressed: the records of action taken pursuant to the immunity grant were to be carefully kept by the companies pursuant to detailed regulations to be issued by the Department of Justice. EPCA §252(c)(1)(B)(3).

It is with rueful admiration that I must note an almost perfect record. Not one of these safeguards has not been successfully evaded. The "new" International Energy Agency Agreement was simply a redraft of the earlier 1974 Agreement under the statute without the new competitive safeguards. The redraft was published, but there was absolutely no participation by outsiders in the drafting process.

Indeed, no consumers have ever been permitted to participate in any part of the planning process, though consumer participation was clearly intended by the statute. EPCA, §252(c)(1)(A)(i). Moreover, the requirement that representatives of the "independent" sector of the industry be present at IEA meetings was evaded by denominating companies such as Standard Oil of Indiana as "independents." Hardly a single IEA agenda that has been so far published has failed to note that circumstances had conspired to make that particular meeting so hasty that the seven-day statutory period for notice could not be met. Equally incredibly, some four years after enactment of EPCA, there are no traces of Department of Justice regulations specifying which company records of immunized action are to be kept and how they are to be made available.

The only reason all of this evasion could occur, it should be noted, is because in four pages of tight statutory direction on these points, there was one casually drawn subsection which noted that "meetings of bodies created by the International Energy Agency...need not be open to interested persons..." EPCA, §252(c)(1)(A)(ii) and (iii); (emphasis supplied). As of this date, there have been no open meetings.

The limited immunity intended has thus been widely extended by a cloak of secrecy, against any independent or consumer. This has involved a quite clear misuse of national security classification authority. Such has been the anti-outsider paranoia that it covers not only the proceedings of the IEA, but even a report of the Federal Trade Commission concerning some anticompetitive shortcomings of IEA action. For example, the Commission's Fifth Report, September 21, 1978, included some substantive references to matters discussed by the multinational company groups. These references supported recommendations for tighter control of information exchanges between multinational company participants. This Report was thereupon given a national security classification by the Department of State, so that no independent or consumer might know whether his ox had been gored.

The security classification process is not one objectively performed by the State Department or any U.S. agency on the basis of evaluation of the security relevance of the information. That judgment is made by the multinational company from which the information originated. In other words, if IEA participant Exxon Corporation wants its part of the proceedings kept confidential, the State Department will give it a "national security" classification. If Exxon wants it more broadly disseminated, the classification will be removed.

A rather clear example of this can be seen in the State Department response to a 1978 request by my firm relating to "What time is lunch?". There, we formally requested disclosure of the response given to the Exxon representative's request as to the time of the lunch break in a meeting of one of the company groups in the summer of 1976. After some six months' delay, we were given a copy of the State Department cablegram which achieved clearance of this vital and sensitive information. It is highly informative as to the purpose and methods of national security classification of IEA proceedings, and the means of its release. I submit a copy for this Subcommittee.

In short, the United States Government has effectively delegated national security classification power to private companies, few of whom have had any security clearance in this context. However unusual this might be, it makes it extremely difficult for any private antitrust suit to challenge conduct involved in any way in the IEA operations. Since those operations effectively touch all international oil movement in some part, a narrow, carefully circumscribed grant of immunity has been transmuted into a wholesale private repeal of the American antitrust laws covering multinational company handling of foreign crude oil either abroad or in the U.S.

The resultant wholesale immunity has been further enhanced by the rather interesting record of Attorney General "compliance" with the directives of EPCA §252. The statute intends that the Attorney General should be a champion of open competition. It therefore directs the Attorney General to propose alternatives to the IEA emergency cartel arrangement. EPCA §252(d)(1). There is, however, no record of the consideration or recommendation of any such proposal by the Attorney General.

Again, the statute undertook to insure that the self-help activity of injured bystanders could not be thwarted by records destruction. It directed that the Attorney General

promulgate regulations concerning participant maintenance of such records. EPCA, §252(e)(2). To date, no such regulations have been issued.

Finally, the statute requires that the "...Attorney General...shall submit to the Congress and to the President, at least once every six months, a report on the impact on competition and on small business of actions authorized by this section." EPCA §252(i). Yet the Attorney General has yet to be reasonably prompt about issuing these required reports. Thus, the Attorney General's Fifth Report, just issued this month, "as of March 21, 1979" follows by only three months the Fourth Report, filed on March 9, 1979 "as of September 21, 1978," which, in turn covered activities between September, 1977 and September 21, 1978.

Additionally, none of the reports of the Department of Justice or of the Federal Trade Commission (which have been more prompt and thorough than those issued by Justice) have yet complied with the mandate of §252 that the "competitive impact" of IEA activities be analyzed. Each report has conclusorily stated that the potential anticompetitive impacts of IEA activities have been minimized, but no report has indicated what that competitive impact might have been.

It is quite possible that both the Department of Justice and the Federal Trade Commission have omitted this discussion of competitive impact largely because they can not effectively analyze it on the basis of their limited "surveillance". While careful evasion by the multinational oil company participants has eliminated all of the antitrust self-help safeguards, it is fairly clear that neither Justice nor the Commission has ever undertaken any real investigation of individual company actions given immunity. Rather, they have been limited to observing such actions as disclosed or discussed in the course of a meeting.

Moreover, what "close and careful monitoring" that takes place is really nothing more than careful observation by one or two individuals sitting in a meeting where reams of figures covering two-thirds of the world's petroleum production, and petroleum shipments spanning the entire globe, are discussed in oil industry jargon. I can tell you from some personal experience as Justice Department monitor for the Foreign Petroleum Supply Agreement during the 1967 Six-Day War, determining on the spot what are the competitive effects of activities so discussed at one of these meetings is like trying to count the feathers on a flock of geese as they fly by.

Without an in-depth investigation on at least a sampling of the transactions and relationships at issue, it is impossible to make any genuine determination whether any injury to competition actually took place. The authors of EPCA realized this would be the case, since they carefully authorized both Justice and the FTC to use their full investigative powers in aid of their review responsibility. EPCA §252(e)(4). I am willing to wager that Justice has not yet issued any Civil Investigative Demands in this area, just as the FTC has not yet issued a Section Six order. My experience in 1967 is illustrative. Then -- as now -- there was simply no provision made by either the Justice Department or the FTC for the kind of staff which would have made possible an in-depth investigation of the competitive impact of the Foreign Petroleum Supply Agreement. Without staff at least equivalent in size to that assigned a small and uncomplicated merger case, it is simply idle dreaming to believe that the broad operations here involved had no competitive impact.

Indeed, even with a staff, and sufficient time to conduct a real investigation, it is highly unlikely that either of these agencies could perform the kind of superhuman job which would be required to regulate competition on a world wide basis. To be sure, Assistant Attorney General Shenefield has promised that:

...the granting of clearances to companies to aid the IEA in no way lessens the Department's vigilance in seeking to guard against anti-competitive conduct in the international petroleum market. (Fifth Report of the Attorney General, p. 40)

Unfortunately, that statement is as accurate as it is discomfoting. For if one thing is absolutely clear, it is that the Department of Justice cannot effectively lessen its "vigilance" against anticompetitive abuses in petroleum markets, a vigilance displayed in its abysmal track record on oil cases. None in the past ten years have challenged major companies in these markets, despite a four-fold increase in the price of crude oil over that time. Equally unquestioned has been the remarkable growth in oil production and pipeline joint ventures among the largest companies in this industry. Indeed, note the slower than glacial pace of litigation to implement the long-delayed recognition that joint pipeline ventures among oil giants just might have some anticompetitive effects.

Finally, I would urge that you carefully consider whether you wish to continue the work of the International Energy Agency on its present basis. Congress has never reviewed its operations. Indeed, in the 1975 Act, it explicitly refused to give any "...advice and consent, ratification, endorsement, or other form of congressional approval of the specific terms of such [IEA] program." EPCA, §255. Neither the IEA budget nor its pay and personnel selection practices have ever been presented for congressional or public review, even though IEA exists in large part on U.S. appropriated funds and some of its personnel were selected from U.S. candidates. Yet we are asked to trust this group to supervise the committees of giant companies as they evolve solutions to our energy problems.

Such doubts are strongly reinforced when one realizes that IEA intends to act almost exclusively through these multinational company groups. It is absolutely inexplicable that we should entrust so much of our energy future to the tender mercies of companies who already dominate the whole of the world trade in petroleum. Asking Exxon and its partners to help us guard against the possibility of an OPEC-triggered shortfall is very much like asking the fox to watch the henhouse and the wolf to guard the sheep. It is Exxon and its multinational partners who are the well-paid agents of the OPEC nations in producing and marketing OPEC oil, as well as their own supplies in other areas. Do any of you believe that Exxon, with its vast interests in foreign and domestic oil production, is really going to ration crude supplies so carefully among the nations of the world as to insure that no uncomfortable shortfall would suddenly skyrocket prices?

The present record during the Iranian crisis, as with these emergency private company planning groups in other times, certainly does not give one a great deal of comfort. The conversion of 60 cent gasoline in December to 95 cent gasoline in July is not a singular instance. The 1948 Small Business and Reconversion Act voluntary agreement to provide home heating oil to the East Coast coincided with a very substantial series of product and crude oil price increases. The next large-scale domestic crude oil price increases came during the height of the voluntary agreement to boycott Iran in 1953. An added set of crude oil price increases came with the Suez War crises of 1956-1957, although the companies involved were acquitted by a Tulsa Federal Court of antitrust violations charged in the 1957 indictment by a "runaway" grand jury. Note, however, that this declaration of innocence was slightly besmirched when the District Judge in question

subsequently resigned his lifetime appointment on the Federal bench to become General Counsel of Gulf, one of the principal defendants.

Finally, remember that the sharp crude oil price increases of 1971 occurred while these multinational companies sat, with Justice Department approval, to negotiate price with the Persian Gulf producers. Similarly, the four-fold increase which occurred in 1973-74 occurred while this group sat as the Foreign Petroleum Supply Committee.

At the present moment, a very substantial majority of the American people believe that the shortages and price increases of the past few months resulted from the actions of the multinational oil companies. I certainly do not believe they are wrong. But, whether they are wrong or not, it will be difficult indeed to give an atmosphere of credibility to any energy program which places on those companies the power, authority and immunity here proposed, as they plan for the international oil movements we must have. Particularly, to provide them with immunity from a criminal statute for exercising that power and authority for personal gain, as this clearly permits, risks total public incredulity as to the reasonableness of any sacrifices the public must make.

I therefore urge that there be no further extension of the immunity provisions beyond the current four months. But if you believe that these charges require further deliberation, limit any extension to not more than one year, to give a chance to review fully the IEA operations. And during that year, give independents and outsiders a chance to view these proceedings from inside, where they can qualify for the same degree of security clearance accorded participants. I attach proposed amendments for this purpose.

Attachment

Proposed changes in EPCA §252:

1. Amend §252(c)(1)(A)(ii) to read as follows:

"Meetings of bodies created by the International Energy Agency established by the international energy program need not be open to interested persons other than participants or others who qualify for the degree of security clearance accorded the participants, and need not be initiated and chaired by a regular full-time Federal employee." (Proposed amendatory language underscored.)

2. Amend §252(c)(1)(A)(iii) to read as follows:

"The President, in consultation with the Secretary, the Secretary of State, or the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons other than participants or others who qualify for the degree of security clearance accorded the participants, or that attendance by other interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States." (Proposed amendatory language underscored.)

3. Amend §252(j) to read as follows:

"The authority granted by this section shall terminate June 30, 1980." (Proposed amendatory language underscored.)

MARTIN LOBEL
ALAN S. NOVINS
WILLIAM JOHN LAMONT
ALAN S. MARK
LINDA LAZARUS
JONATHAN R. MOOK

LAW OFFICES OF
LOBEL, NOVINS & LAMONT
1625 L STREET, N. W.
WASHINGTON, D. C. 20006
(202) 628-0066

February 21, 1978

Corrected Request

Information Access Office
Department of Energy
Washington, D.C. 20461

Dear Sir:

Pursuant to 5 U.S.C. Section 552 (The Freedom of Information Act) and 10 C.F.R. Section 203.3, on behalf of Energy Action Educational Foundation, we hereby request the deleted answers to the following questions found on page 2 of the August 31, 1976 meeting of Subcommittee A of the Industry Advisory Board of the International Energy Agency which is in the public reading room of the Department of Energy.

1. "THE CHAIRMAN: What time is lunch?"
(Answer deleted)
2. "THE CHAIRMAN: I would like to introduce a few people. From BP we have Mr. John Doust. I do not know whether anybody here knows John."
(Answer deleted)
3. "THE CHAIRMAN: There is one other item. Some of us would like to take an opportunity during this session to go through the IA facilities. Has anyone else any remarks to make as far as the agenda is concerned?"
(Answer deleted)

If you determine that some or all of the answers are exempt from release, I would appreciate you advising me as to which exemption(s) you believe covers the material which you are not releasing.

We look forward to receiving your answers within the ten day period prescribed by the Act. If you have any questions, please call me. We hereby certify pursuant to 10 C.F.R., Section 209 that we are authorized to represent Energy Action Educational Foundation before the Department of Energy. We will have other requests as we review the transcripts.

Sincerely,

William J. Lamont
William J. Lamont



DEPARTMENT OF STATE

Washington, D.C. 20520

July 5, 1978

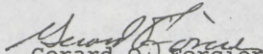
Mr. William J. Lamont
Nobel, Novins, and Lamont
1525 L Street, N.W.
Washington, D.C. 20006

Dear Mr. Lamont:

Reference: #820306

In response to your Freedom of Information Act request of February 21, 1978 to the Department of Energy enclosed herewith is State telegram 142055 of June 6, 1978.

Sincerely,


Gerard O. Forcier

Freedom of Information Staff
Bureau of Public Affairs

Enclosure:

as stated

DECLASSIFIED

June, 1978

FM Sec. State Wash. D.C.
TO Am Embassy London
Am Embassy Paris
INFO Am Embassy Bonn
Am Embassy Rome
Am Embassy Vienna

CONFIDENTIAL STATE 142055

E.O. 11652: GDS

TAGS: ENRG

SUBJECT: IEA/IAB TRANSCRIPTS - FREEDOM OF INFORMATION REQUEST

1. Department has received a request under the Freedom of Information Act for the release of certain classified portions of the transcript of a meeting of Subcommittee A of the Industry Advisory Board of the IEA held on August 31, 1976.

2. As posts are aware, foreign oil companies and the IEA secretariat have the option of requesting that some or all comments of their representatives at meetings of IEA Advisory Bodies be kept confidential. All foreign oil companies and the secretariat have requested that all their remarks be treated as "Confidential" unless specifically cited by them as unclassified, and we have accordingly been classifying their comments as "Confidential". At each review of a transcript, the instructions request that participants indicate any comments they are prepared to have appear in the unclassified portion of the transcript.

3. Reproduced at para four is the entire page in question with deletions noted. The deleted portions are denoted by double parentheses and the requested portions by a double X.

4. The Chairman: Let me start with a few comments. The meeting tomorrow, if we need one, will start at 9:30 instead of 9:00. Our prime objective today and tomorrow is to go over the technical aspects of the allocation systems test and, if the group wishes at this stage, to start work on some of the details of the reporting company meeting. We could take that opportunity this week or defer it and work on the reporting company meeting preparation in New York, but in any event we will defer that question until we have gone through some of the technical aspects of the test. Before going to the agenda which is being passed around, I think the IEA has a few remarks.

((Mr. Kemperman: Welcome to Paris for a peaceful session. When most of us meet here for the next session we will all be in battledress, so hopefully, this will be a relaxed meeting.

The session that we start tomorrow at 9:30 is a good one because services begin at 9:00 before we are all in gear. I hope everybody has equipped himself with one of these little passports with a blue stripe through it which will grant access to the building for the duration of the meeting.

We have made arrangements with three restaurants in the neighborhood with tables for eight at each. I think most of you know them. I suggest that the Chairman before we go to lunch forms little groups and somebody from the secretariat is in each of the groups and guides it to the appropriate restaurant.))

The Chairman: What time is lunch?

XX((Mr. Kemperman: 1:00 to 1:15, so perhaps we should wind up at 12:45.))

The Chairman: I would like to introduce a few people. From BP we have Mr. John Doust. I do not know whether anybody here know John.

XX((Mr. Doust: I am delighted to be here, of course.))

XX((Mr. Pettiford: To clarify the position, John has taken over my IA responsibilities and will be attending the whole test. I will be attending the second phase from 16th October.))

The Chairman: We also have a gentleman from the FTC.

Mr. McDiarmid: My name is John McDiarmid.

The Chairman: Will you be attending these meetings?

Mr. McDiarmid: Yes, in place of Mr. Harry Garfield.

The Chairman: There is one other item. Some of us would like to take an opportunity during this session to go through the IA facilities. Has anybody else any remarks to make as far as the agenda is concerned?

XX((Mr. Allen: I have an opening remark to make about the verbatim transcript. I did contact the State Department to ensure that the temporary arrangements for verbatim transcript review would continue for this meeting, and until such time as more permanent guidelines are laid down, it has been confirmed that this meeting will be held under the so-called temporary arrangements as regards the review of verbatim transcripts. Those are the arrangements under which we have worked from meeting to meeting since April.))

5. Posts are requested to contact the oil company, or the IEA secretariat whose representative made the deleted comments, and urge them to agree to the release of these portions of the transcript. Messrs. Doust and Pettiford are employees of British Petroleum, Mr. Allen is an employee of Shell International and for Mr. Kemperman of the IEA secretariat, who has since left the IEA please contact Mr. Wallace Hopkins.

6. You may assure them that agreement to declassification of these remarks will not compromise their right to insist on retaining the classification of other comments they consider to be sensitive. Please advise us of their decision as soon as possible. Vance.

Mr. DINGELL. Mr. Mahaffie?

STATEMENT OF CHARLES D. MAHAFFIE, JR.

Mr. MAHAFFIE. Mr. Chairman, I have no statement. I would be pleased to try to answer any questions the subcommittee has.

Mr. DINGELL. Mr. Mahaffie, we observe that you have sat most patiently during the presentation of Mr. Lamont. Do you have some comments you would like to make at this time as regards to the points he has addressed.

Mr. MAHAFFIE. I think Mr. Lamont was principally taking issue with actions of the executive agencies and the Federal Trade Commission. I might respond on a couple of points that I noted down here.

Mr. Lamont suggested that the antitrust agencies either cannot or are not effectively policing or monitoring this activity. I don't think that is true at all. The only activities that have gone on in the way of joint company activities have been at meetings. The statute requires that; the voluntary agreement requires that; and the Congress has written into the statute that U.S. Government employees must be present at a meeting. That, in practice, has meant in most cases that a representative of either one or both of the antitrust enforcement agencies has been present. And I think the reports that those agencies have made to the Congress demonstrate pretty clearly that in fact they do understand what is going on; they have a very good grasp of it. Those reports are darn good.

I think that has been a very effective monitoring. I think it is probably the most valuable of the antitrust safeguards that the Congress put into the statute. I think the public does indeed require some assurance of what is going on in this activity, and I think that monitoring activity and those reports, those very comprehensive reports give the public that assurance. So I do take issue with Mr. Lamont on that one.

Mr. Lamont mentioned the plan of action. That is a term of art. I am not sure, Mr. Chairman, that you fully appreciate what that is. A plan of action as contemplated by the statute and the voluntary agreement will, as Mr. Lamont said, be the detailed plan under which the IEA allocation will work if, in fact, there is an emergency. The companies have for several years been urging that the U.S. Government put such a plan of action into effect. I now understand that that is about to happen. When that does happen, I am advised by DOE that that plan of action will be a public document and will be the subject of public hearings to be sponsored by DOE.

I think those are the only specifics of Mr. Lamont's statement that I would like to respond to right now, Mr. Chairman.

Mr. DINGELL. The committee thanks you both, gentlemen. The Chair recognizes counsel at this time.

Mr. SCHOOLER. Mr. Lamont, you had a comment concerning the plan of action.

Mr. LAMONT. I had two comments concerning what Mr. Mahaffie said. One is perhaps they do contemplate public hearings on a plan of action for the American companies to key into the International Energy Agency operations, but if anyone is dreamy enough to believe that is going to depart in any significant way from this very laboriously compiled energy management manual, I think perhaps they may need psychiatric care.

On the question of whether or not the Department of Justice surveillance by sitting in meetings is an effective policing in these committees, the companies are allowed to exchange a substantial amount of information which relates to particular petroleum transactions in particular parts of the world. If a company, knowing this information, should go out and do something so that it would significantly affect competition, it would be rather difficult for the person who was harmed to sue on the basis of that harm. The information exchange which really was the heart of the offense, was one which was apparently immunized. If you try to go into a court to explain the need for redress for an action which so clearly was within or should have been within the contemplated consequences of this kind of interchange, you would understand that this is an effective immunity far beyond that of just the meeting. And the Department of Justice should be required, and the Federal Trade Commission, also, to undertake some kind of sampling investigation to follow up these meetings and see what the companies did about the information afterward.

Mr. SCHOOLER. Mr. Mahaffie?

Mr. MAHAFFIE. I would like to respond to that one, Mr. Schooler. I am familiar, I think, with everything that has happened at these meetings that have taken place, and I think I can say to the best of my recollection, and I think it is a good recollection, that there has never been an exchange of information between companies as to commercial transactions at any of those meetings. It simply hasn't happened. If it had happened, the Department of Justice and the Federal Trade Commission would know about it and would have reported it to the Congress, and they have not done so.

Mr. SCHOOLER. Perhaps the crux of this issue, though, is Mr. Lamont's contention that the Justice Department and FTC alone may not be the only protectors of public and private interests, and, as I understand Mr. Lamont's testimony, he is looking for more openness and access to transcripts, and perhaps attendance at meetings.

As a person who has participated in these meetings, can you see any way out of this box we walked into where all the meetings have been closed, transcripts are classified for over 4 years, all the statements of foreign companies are classified unless the company chooses to let that statement be declassified? Is there some way we can walk closer toward access, and, if so, how could we do that?

Mr. MAHAFFIE. Let me make one suggestion, Mr. Schooler, along those lines. Every one of these meetings in the notices that have been given by the industry of the meetings have been declared to be open to representatives of committees of Congress. I would respectfully suggest that committees of the Congress take the companies up on that invitation and come to some of the meetings.

Mr. SCHOOLER. Unfortunately, I think the problem will remain. Just as Mr. Lamont has mentioned about the kind of staff time available at the FTC and Justice, I think the problems are probably magnified when you start talking in terms of congressional staff and their ability to completely monitor the meetings. I think we do have ability here and there to review the transcripts, but getting back to this, do you see any way that members of the public in any way can have better access to information concerning the meetings of the IEA?

What about those transcripts? Could they be declassified in a fashion that would permit people like Mr. Lamont to see what is going on and better judge the nature of that work, and, if so, is there anything perhaps statutorily that could be done to permit that, and would that be wise?

Mr. MAHAFFIE. Speaking again—as you know, I am not purporting to represent the views of any individual companies—I don't see why those transcripts can't be more fully and more promptly declassified.

Now, having said that, it is the State Department's responsibility, and the State Department is charged with protecting the foreign policy interests of this country, and I assume that they are doing that classification under the Executive order with that in mind. I really have no expertise on that. I suspect that most of what goes on in these meetings has not very much foreign policy implications but obviously some do.

Mr. SCHOOLER. Isn't part of the problem one of delay as well? We have seen the State Department declassify certain transcripts, but others have remained classified since 1976, and it is unclear that the reason is the sensitivity of the information as much as perhaps just delay on the part of the State Department.

Mr. MAHAFFIE. I have no idea why they have remained classified that long, Mr. Schooler. I have no idea. I don't know why they should.

Mr. SCHOOLER. Is it your view that most of the comments made at these meetings should be made open and available to members of the public? Is there much in the way of national security interests as far as the statements at those meetings?

Mr. MAHAFFIE. I believe almost everything that is said at those meetings could be said in a public forum but obviously there are some things, and this is what the State Department has to watch out for, that could not be.

Mr. SCHOOLER. Can you more fully explain the position of foreign oil companies that none of their statements should be made public without their consent?

Mr. MAHAFFIE. I think the view of the foreign oil companies—and I have not talked to them about this—but I think their view is that this whole transcription process is an American invention. No foreign government, or the EEC, has ever thought of requiring

anything like that. And I think their view is that if we have to have our remarks transcribed because of some American law that doesn't affect us, and that we really have not much to do with, we would at least like as a condition of that, that the American Government agree that it will not make public what we say.

I don't think that is a wholly unreasonable position.

Mr. SCHOOLER. Mr. Lamont?

Mr. LAMONT. Several things: One, do you really think that the foreign companies would decline to be present as participating in such a marvelous operation if they knew that their remarks which had no real security relevance would not be classified?

Also, Mr. Mahaffie said there was no commercial information discussed at these operations. Well, the last Department of Justice report filed in July—as of March 31, 1979—refers to quite a number of bilateral discussions between the IEA, and the individual companies, which the companies, noted, and which Mr. Bergold noted, could not take place without the antitrust immunity. Were they talking about peanuts?

Also, in this report of the Federal Trade Commission, the material that was censored by State on the grounds of its national security relevance, Mobil showed a relatively small volume of imports to blank, from blank, blank, and blank, and from blank to blank.

Was that my imagination or was that really a discussion of imports of harmonicas from China, or did it involve an oil industry commercial transaction? The whole of this IEA business involves a set of commercial transactions, the structure and operation of an international petroleum industry which does not in any significant fashion resemble a competitive model.

Mr. SCHOOLER. Any further comments?

Mr. MAHAFFIE. Well, I guess so. Mr. Lamont referred to commercial discussions in bilateral sessions. Bilateral means that is a session between one company and the secretariat. It is not a joint session of oil companies, and the Government has taken the position that at least some of those sessions are not covered by the antitrust defense at all on the grounds that since they are not joint sessions, no antitrust defense is required.

Mr. SCHOOLER. I am not quite sure I follow that line.

Mr. MAHAFFIE. A bilateral discussion in the context of the IEA is a discussion between a single oil company and the IEA, and in those discussions, I am informed, although I have never attended one, commercial transactions may be discussed.

Mr. SCHOOLER. But you are stating, to your knowledge there are no meetings between two or more oil companies where such transactions are discussed? Let me get back to Mr. Lamont's point. What is it that we are talking about that does require an antitrust immunity?

Mr. MAHAFFIE. First of all, I should maybe correct my statement. The two tests of the system that have been run technically are meetings; they are meetings that go on over a long period of time, but technically they are meetings, and commercial transactions obviously have been discussed in those tests although in a hypothetical way and on the basis of distorted data. They are completely hypothetical, but they are, in fact, commercial unreal transactions, but nevertheless transactions.

Mr. DINGELL. You say no oil moves, nothing actually takes place, but it is conducted in precisely the same way that a regular commercial transaction would move; is that right?

Mr. MAHAFFIE. That is correct, sir. There is a scenario developed. What if Saudi Arabia cut production by 40 percent, and somebody else was embargoed? What would happen? It is all hypothetical.

Mr. SCHOOLER. The second half of the question raised by Mr. Lamont is what exactly do you see as the activities which require an antitrust immunity?

Mr. MAHAFFIE. Companies basically have done two things. One, they have assisted the IEA in setting up its emergency sharing system. That is a joint collective activity to establish, albeit a governmental system, it still is a collective activity.

Second, the companies have been and are submitting data to the IEA. If there is an emergency the companies will actually reallocate supplies, and that reallocation, to some extent—to the extent of what are described as type 2 activities—will be arguably pursuant to an agreement between the companies which the FTC has told us is akin to a market-sharing agreement which may be per se illegal under the Sherman Act.

Essentially what you have is a collective activity to reallocate supplies in an emergency. In the course of that activity by definition, if you reallocate supplies and put a cargo into one place, you are taking it away from another place. The guy you take it away from is going to be hurt. Arguably he would have a good Sherman Act theory on the basis of the collective activity that results in that cargo being diverted from him.

I think it is uniformly agreed that the companies could not participate in that activity without some form of antitrust immunity.

Mr. SCHOOLER. Mr. Lamont, do you have any comments on that?

Mr. LAMONT. Two; one that Mr. Bergold was very clear.

We are almost certain that the United States companies would not provide proprietary information to the IEA in such bilateral consultation if the antitrust consultation defense provided by the voluntary agreement were not available to them.

Also, in the Justice Department report it is very clear that it was not just bilateral discussion but there were also group discussions that they cleared, see pages 30 and 31 of the fifth report of the Attorney General as of March 31, where they speak of it. In October 1978 at a previously scheduled meeting of the industry advisory board a representative of the secretariat advised that clearance letters would be sought from both the U.S. Government and the EEC to enable the secretariat to receive industry aid in appraising the situation.

"Such aid involved the submission and exchange of confidential and proprietary data by the oil companies."

Now, I can't obviously testify of my own knowledge to challenge what Mr. Mahaffie has said about the hypothetical nature of this kind of information, but at least in this instance perhaps I can rely upon the integrity of the Justice Department surveillance staff which he so highly extols.

Mr. SCHOOLER. Let me pursue just one other line of questioning.

This gets back to Mr. Gore's discussions with Assistant Secretary Bergold concerning the oil companies methods of allocating during the recent shortage and Exxon's position to allocate along the lines of the IEA agreement.

What wasn't asked or what was left in our minds was to what degree does the International Energy Agreement become a model for collective activities by oil companies in this regard outside the area of the actual formal triggering of the oil sharing agreement? Are there any problems raised if, for example, there are informal signals to companies to go on an allocation comparable to the IEA formulae but no formal triggering?

Would that, for example, raise some new antitrust problems? Would those be covered under the immunity which is contained in the Energy Policy and Conservation Act?

I am a little confused on the matter and I hope both of you can comment on that issue.

Mr. MAHAFFIE. I have no knowledge other than newspaper reports of any decision by any oil company to go to a consumption based single firm internal allocation system as opposed to an import based.

I have read, I guess, the same newspaper reports that Mr. Gore had read to the effect that Exxon had gone on that system. That is absolutely as much as I know about that.

If, in fact Exxon went to that system and modeled it after the IEA system, I frankly can see no problem in that. It is an individual company activity.

It has really nothing to do with this legislation because it would not be within any antitrust defense.

Mr. SCHOOLER. I was referring more to a scenario whereby we would start seeing all of the participating companies moving in that direction. Perhaps the reasons included subtle hints by governments that a trigger was about to be reached, so the companies went ahead in that regard to avoid a formal action.

Is that a real possibility and is that a problem if it is?

Mr. MAHAFFIE. I am not sure that it is a real possibility because I think the companies would be pretty sensitive to the antitrust implications of taking any decision that could be called a joint decision. Now, if they could themselves determine and be sure that their decision was in fact an individual decision, maybe in the case of a U.S. company based on some jawboning by the Department of Energy or not, that is perfectly proper.

If they could be assured that they could establish that it was an individual decision, I think they would do it. If they were concerned that someone might be able to show it was a joint decision, they wouldn't do it without being sure it was under a recognized IEA procedure and you wouldn't have that unless you reached the 7-percent shortfall.

Mr. SCHOOLER. Mr. Lamont?

Mr. LAMONT. The problem of the companies doing on their own what they anticipate IEA asking them to do, really falls into two parts.

One is did the IEA operations strongly encourage these companies to do so?

Was this in fact an action which if not mandated by the agreement, mandated by the Secretariat, was strongly encouraged by them?

Did they tell these companies, look, don't do this jointly but individually. Each of you should try to adopt this kind of procedure.

The effect of joint arrangement would be easily achieved, and it would be virtually impossible to challenge in court such a decision as a violation of the antitrust laws, if not because it was fully immunized, because it would at least have enough of an appearance of immunity as to make it virtually impossible to convince a judge that these people were not doing what they ought to do.

The second thing is that individual decision may be a violation of the antitrust laws if, in fact, the exchange of information which related to the individual decision was done under circumstances where closed confidential proprietary competitive data was exchanged.

In other words, where everyone has a complete discussion as to what the situation is and then they go ahead individually to do something about it. They have not agreed that they will take any particular action, but each company can take whatever action it pleases without fear of the competitive consequences because it knows who is doing what to whom and where.

This, incidentally, relates back to this AST 1, AST 2, et cetera, where these are purely hypothetical exercises. Yes, the disaster which was being gamed was hypothetical, but the basic information as to what oil came from where, at what rate of production; what type it was; what kind of refinery could use it; what kind of tankers existed to handle it; where it normally went; all of this was part of the gaming operation. And I really don't think that these companies need to know the exact amounts that are involved as long as they know where things come from and go to.

In other words, when there is a simulated downfall in Gabon, its supplies are suddenly terminated, then it becomes a matter of interest that Gulf immediately becomes terribly active but nobody else is.

Well, a wink is as good as a nod. You know who is getting what from where. I am trying to say simply that if you are trying to operate a competitive free enterprise system, this kind of an operation is an anathema.

Mr. SCHOOLER. Thank you for the comments.

Mr. MAHAFFIE. I have no further comment.

Mr. DINGELL. The Chair recognizes minority counsel.

Mr. WHITENTON. Thank you for the opportunity to clarify one for the record on the FIC monitoring of the meetings.

Mr. Lamont implied in his testimony that there is a real potential for antitrust violations during these meetings among these companies because of the vast shuffling of the large numbers of documents.

The Federal Government attended these meetings.

Mr. Mahaffie, in your opinion, do the seven professionals at the FTC and DOJ that are permanently assigned this have an adequate opportunity to review these documents as well as a transcript of these hearings?

Are we receiving proper monitoring of these meetings, both in depth by these professionals?

Mr. MAHAFFIE. Definitely. Maybe I can amplify that a little bit.

There are not that great a volume of documents floating around.

The longest meeting I think I can remember is, say, a 2-day meeting. There might be 20 documents circulated in the course of a meeting like that, many of which the monitors will have seen before.

I don't mean to pretend that international petroleum logistics is an easy subject. It's not, but it's like a lot of things that are complex and difficult. It can be mastered and in my experience the people from FTC and Justice that have attended a number of meetings and followed these proceedings have mastered it.

I don't mean they know as much as somebody who has been in an oil company supply department for 20 years. They don't have the instinctive feel for where refineries are located in the world, what the depth of harbors is, but you don't need that instinctive feel to understand what is going on in one of these meetings.

It's my experience these people do understand, and they are working hard at it and doing what they are getting paid for.

Mr. WHITENTON. Mr. Lamont, do you care to respond?

Mr. LAMONT. I am really quite encouraged by that. I didn't mean to imply that these were not very hard-working people, but transport yourself in your mind to a meeting in which a number of people who know from A to Z every aspect of what is involved in an international petroleum transaction, whose companies are a very large share of it.

They are talking about what will be done here, there, somewhere else.

The documents that they submit are not always that easy to read.

Some of them indicate, for example, movements in metric tons; some of them in barrels per day.

I have been a long time in investigating the oil industry, and occasionally I swear they even mask their figures in acre-feet per fortnight.

That is a favorite and ancient style by which the industry can mask the importance of a great deal of what it does.

You are sitting there and you are giving consent on the spot to what they do without full assurance that, after all, this really doesn't involve anything that is so anticompetitive I should stop it; for you do not know the roots of the transaction to which they are referring. You do not know the relationship of one company to another. What are its joint venture relations? What in fact is the basic competitive pattern of the world petroleum trade which this discussion is affecting or concerning?

Mr. WHITENTON. Thank you, Mr. Chairman.

Mr. DINGELL. Gentlemen, you have been here all morning.

The committee is grateful to you both. You have assisted the committee a great deal, and the Chair expresses on behalf of the committee our thanks to each of you for your assistance.

It may well be that we will require further assistance or guidance, and if we do so we will feel free to communicate with you.

The committee will stand adjourned.

[Whereupon, at 1:05 p.m. the Subcommittee on Energy and Power adjourned.]

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