MOTOR GASOLINE ISSUES

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

AND THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

THE QUESTION OF OVERCHARGES ON GASOLINE AND THE ABILITY OF THE DEPARTMENT OF ENERGY TO DEAL WITH SUCH OVERCHARGES

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MOTOR GASOLINE ISSUES

FRIDAY, MAY 18, 1979

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON ENERGY AND POWER, AND SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,

Washington, D.C.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2123, Rayburn House Office Building, Hon. John D. Dingell, chairman, Subcommittee on Energy and Power, presiding. (Hon. Bob Eckhardt, chairman, Subcommittee on Oversight and Investigations.)

Mr. DINGELL. The subcommittee will come to order.

Today we are holding a joint hearing, and I am very pleased that my good friend and colleague, Hon. Bob Eckhardt, the chairman of the Subcommittee on Oversight and Investigations, and the distinguished members of that committee will be joining with members of the Subcommittee on Energy and Power, and the present occupant of the Chair, to hold a joint hearing.

I want to thank my good friend and colleague for not only his assistance and cooperation but also for the very valuable assistance of the very fine staff of that subcommittee and to rejoice that we work together on a matter which is of very common and very large concern.

With those remarks, I will yield to my good friend and colleague for any statement and comments that he wishes.

Mr. ECKHARDT. I have none at this time.

I am glad to be with my colleague.

You may proceed.

Mr. DINGELL. I thank the gentleman.

The joint hearing we are holding today will address the Nation's gasoline situation, which is not a bright picture. Serious shortages have appeared in several States, and the potential for problems for other parts of the country continues. At the same time gasoline prices have been rising rapidly throughout the country at rates which exceed the rate of crude oil price increases, which suggests the possibility of substantial illegalities, possibly at the retail level.

Chairman Eckhardt and I are anxious to develop new approaches to these problems, but, first, we want to understand what the situation is, and we want to assure ourselves that present laws are being executed as diligently as possible. The Congress has granted the Department of Energy broad authorities to allocate supplies, regulate prices, gather the necessary information to carry out its responsibilities.

Our fact finding hearing today will help us understand both the nature of the gasoline problems and the adequacy of the Department's response.

The Chair notes that the testimony of the Department was not available for review until today. We do understand that there is a substantial workload that has faced the Department lately. It is hoped, however, though, that the two subcommittees would have testimony provided by the department in accordance with committee rules.

Our first witness today is Hon. David Bardin.

Mr. Bardin is the Administrator of the Economic Regulatory Administration of the Department of Energy.

Mr. Bardin, we are happy to welcome you and such of your associates as you wish to have sit at the committee table.

If you would identify yourself fully for purposes of the record, the Chair will recognize you for such statement as you choose to give.

STATEMENT OF HON. DAVID J. BARDIN, ADMINISTRATOR ECONOMIC REGULATORY ADMINISTRATION, DEPARTMENT OF ENERGY, ACCOMPANIED BY CARL CORRALLO, SOLICITOR TO THE SPECIAL COUNSEL FOR COMPLIANCE; BART ISENBERG, ASSISTANT ADMINISTRATOR FOR ENFORCEMENT; AND WENDELL BUTLER, DIRECTOR, OFFICE OF INDUSTRY AND REGIONAL OPERATIONS

Mr. Bardin. Thank you, Chairman Dingell, Chairman Eckhardt members.

I am David J. Bardin, the Administrator of the Economic Regulatory Administration of the Department of Energy.

At my right sits Mr. Bart Isenberg, the Assistant Administrator for Enforcement; to my left, Mr. Carl Corrallo, the Solicitor of the Office of the Special Counsel for Compliance; and at his left, Mr. Wendell Butler, the Director of the Office of Industry and Regional Operations within the Office of Fuels Regulation.

At your request, I am here to testify on the question of overcharges on gasoline and the ability of DOE to detect and deal with such overcharges as may exist. We realize that the American public is concerned about gasoline shortages and the availability of supply as well as about the rising price of gasoline.

As your letter notes, we have been directing the principal portion of our enforcement resources to the audit of producers of crude oil, refiners of gasoline and other petroleum products, and wholesalers of the various petroleum products, all in contrast to retailers of gasoline. There are over 187,000 retail gasoline stations in the United States, of which over 16,000 are convenience stores. Independent dealers own or operate over 90 percent of these stations, purchasing their gasoline from refiners or jobbers.

These dealers are typically small and moderate size businessmen who are buying their product from much larger firms, in some cases from some of the largest corporations in the world.

The Department of Energy does not generally require independent dealers to report their operations, volumes or prices. We don't require that on an across-the-board comprehensive general basis. Because the maximum legal price is based, among other things, upon historic cost data and actual nonproduct costs—such as labor—that may vary from station to station, or region to region, there is no quick and easy way to determine if an individual station is in compliance with these maximum price regulations.

Furthermore, our enforcement staff frequently have difficulty in getting the necessary cost information because records are inaccurate or have not been kept at all. We are now studying possible regulatory changes to alleviate these problems.

Mr. MARKS. Mr. Bardin, is there any reason why that wasn't done before?

Mr. BARDIN. The guiding principle for some years has been that we would deregulate motor gasoline some time ago, before this fiscal year, before the previous fiscal year, and if so, it did not seem a useful expenditure of our resources to reform or tinker with the regulations. At the moment there is no such plan, so it seems more important to look at the regulations.

Moreover, and perhaps even more critical, Congressman Marks, after the immediate impact of the embargo, for most of the period since 1974 the price regulations did not really constrain the small businessmen who sell gasoline at retail. We had a highly competitive situation in which market forces were keeping the price in virtually every case at levels below and often well below the maximum allowed price levels. These price regulations had only a theoretical bite on the operations of the dealer, and only a theoretical significance to the motoring public, to the consuming public. Of course, in a time of supply stringency, that changes.

Let me turn first to our compliance efforts.

The Office of Special Counsel is responsible, as you know, for the enforcement of these regulations with respect to the 34 largest refiners in the country. That office has initiated contemporaneous audits at most of the largest refiners to determine whether refiners are in compliance with current allocation and pricing regulations.

We have shifted resources which were previously dedicated exclusively to past history to look also at the situation today in 1979. These audit efforts were initiated in April and early May to review compliance during the early months of 1979. They will continue for the rest of the year if supplies remain tight, as I expect they will, and if prices continue to increase.

The objectives of the allocation audits are to determine, first, whether refiners are correctly determining and declaring their allocation fractions; second, that they are meeting their allocation obligations without discrimination; and, third, that surplus products, if any, are disposed of in compliance with the allocation regulations.

The objectives of the pricing audits are to determine that cost increases are accurately determined, properly allocated to controlled products, and that the cost increases are passed through to customers of the refiners in compliance with the regulations.

With knowledge gained by the Office of Special Counsel during in-depth audits of the early 1973–76 period, the current audit programs are designed for timely identification of problem areas and prompt communication of preliminary findings to the senior level officials of the Department.

At other levels of commerce, in February of this year, we established a toll-free hotline so that motorists could report instances in which they feel that prices charged for gasoline are unusually high. Based upon information received from this hotline, over 7,000 letters have gone out to the individual filling stations.

Over 2,000 retailers charging unusually high prices are targeted for onsite investigations—847 station owners not in compliance with the law have been cited. Alleged violations have been as high as 24 cents per gallon. That is an extreme, and I emphasize an unusual situation, but we have encountered that high a deviation from what our staff feels is the appropriate maximum price level.

Mr. Marks. Were any of those station owners operating in Pennsylvania?

Mr. Isenberg. There have been violations in Pennsylvania.

Mr. Dingell. We would like to have the witness finish his statement prior to the time that we do recognize my colleagues for purposes of asking questions.

Mr. Marks. Would you mind if he answered that question?

Were there any of those violations in Pennsylvania?

Mr. Dingell. The chair will advise very gently that he will be recognized in his proper time.

The witness will proceed with his testimony.

Mr. Bardin. Thank you, Mr. Chairman.

Over 60 percent of the stations alleged to be in violation immediately rolled back prices. Additional personnel have been sent to geographic areas where there is the greatest concentration of potential violations, and in this respect the hotline and the calls by the consuming public, have been a major tool in guiding our people to one particular area, one particular market or another.

Our efforts are extending beyond the retail level. We are examining wholesale and spot market transactions. We have invited retail dealers and jobbers, the businessmen who purchase product for resale, to phone directly to the Department any indications they have of their suppliers charging unusually high prices. We are enlisting the small businessman, the gasoline dealer who needs to buy gasoline, to help pinpoint possible violations or trouble areas. Information from other sources is also being gathered. Those companies that appear to be charging unusually high prices are targeted for further investigation.

Our toll-free number for calls originating outside the Washington, D.C. area is 800–424–9246. The number for calls originating in the District of Columbia and the surrounding Maryland and Virginia suburbs is 254–5474.

In addition, we have offered the States a delegation of the authority to enforce the price regulations at the retail level. To date, three of the States have accepted our offer of concurrent enforcement jurisdiction.

Now let me turn briefly to other matters.

With regard to the regulatory changes mentioned in your letter, Mr. Chairman, on May 14 we issued a notice of intent to reexamine the mandatory petroleum price regulations to consider what changes in the regulations would be appropriate. In addition, we will consider whether alternatives to the present price regulations would be easier to enforce and thus would enable the Government to provide the public with better protection against unlawful overcharges.

Your suggestions will be kept in mind in drafting the details of this proceeding which will be announced in a subsequent notice very shortly.

That, Messrs. Chairmen, concludes my formal statement.

I will be happy to try to answer any questions you may have.

Mr. DINGELL. Mr. Bardin, the committee thanks you.

The Chair will recognize my cochairman and friend and colleague, Mr. Eckhardt.

Mr. ECKHARDT. Thank you, Mr. Chairman.

I note, Mr. Bardin, in your statement you say that DOE does not generally require independent dealers to report their operations, volumes, and prices.

Do you require the other 10 percent of the stations, that is, the stations which are those directly operated by the integrated companies, to report?

Mr. BARDIN. Yes; indeed, we do. The major refiners must report regularly and comprehensively on all of their operations, including the retail operations.

In the case of the independent dealers, there is a sampling on which we collect information, but it applies to only a small fraction of the total number of stations.

Mr. ECKHARDT. What is that fraction? What fraction?

Mr. BARDIN. As I recall, it was on the order of 8,000 stations a month reporting. We can double check the exact number, but a very small percentage carefully selected by the Energy Information Administration in accordance with statistical principles to give us a layered cross section.

In the case of the refiners, however, we require accounting for every gallon and every dollar. It is a comprehensive reporting all the way down to their retail level.

Mr. ECKHARDT. Approximately how much gasoline per day is sold totally in the United States?

Mr. BARDIN. It will vary from winter to summer, but it will be on the order of 7 million barrels a day, rising up to a little more than 8 million barrels a day in the peak season.

Mr. ECKHARDT. And all but about 200,000 barrels per day would be refined in the United States, around 200,000 on the average per day is refined elsewhere and imported; is that right?

Mr. BARDIN. That would be the order of magnitude. The imports have been running a little lower recently, but imports of gasoline are very small in relationship to the total. We refine almost all of our gasoline here in this country.

Mr. ECKHARDT. However, there has been at least an appreciable amount of gasoline imported as I note. In 1975, 2,210,000 barrels; in 1976, 1,568,000; 1977 apparently the highest of all, 2,608,000 barrels; 1978, 2,347,000 barrels; and up to now imports at a rate, as you have indicated, which would be down somewhat, 1,836,000 barrels.

Presumably that would be down because of the great increase in the price of foreign oil from which that gasoline is being refined; is that correct?

Mr. BARDIN. I wouldn't be prepared to jump to that conclusion. There is certainly a factor of the price elsewhere, but the investigations that we have made to date indicate that most of the importing of gasoline into our country reflects a continuation of historical patterns by American-owned refineries in the Caribbean. One of the factors that bears on how much is imported in any given week is the crude oil availability in a given refinery.

I am more concerned at the moment with the impact of price on the possible shipment of distillate or gasoil from these near offshore refineries to Europe. The current indications are that the very high European prices might lead to a good deal of that.

Mr. ECKHARDT. I want to correct my figures there.

What I was really giving is the total of the average per month. Of course the amount imported would be much greater than that, but it would give a comparison of the changes from year to year.

Mr. BARDIN. Mr. Chairman, I have a table here, the motor gasoline imports on an average daily basis from 1973 through February of 1979, and I would be happy to furnish that. It indicates a good deal of variation.

For example, in 1978, which is a fairly normal supply period, if I read the monthly figures for you, they run from January, 211,000 barrels per day, this is the average daily——

Mr. ECKHARDT. That is what I used, and I simply added those figures for each month, so the total I gave a few minutes ago would actually be the total of the averages for each month. That, of course, would be much less than the amount of gasoline that would be received. But if that were divided by 12, it would give the average amount per month in that particular month.

What seems to be apparent is that there was approximately the same amount with the slight decrease in 1976 over the periods 1975, 1976, 1977, and 1978, the figure in 1977 being in fact the highest.

Of course I would ask unanimous consent that the record be left open for the table, also for a calculation of the average per day during a given year, if there is no objection. It will be received at the proper time.

[The following table was received for the record:]

Petroleum

Motor Gasoline

		Domestic Demand						
		Total	Unleaded	Unleaded Percent of Total	Production[1]	Imports	Exports	Stocks[1]
		Thousands of barrels per day						Thousands of barrels
1973	**AVERAGE**	**6,674**	**NA**	**NA**	**6,527**	**134**	**4**	**‡209,395**
1974	**AVERAGE**	**6,537**	**NA**	**NA**	**6,358**	**204**	**2**	**‡218,346**
1975	**AVERAGE**	**6,675**	**NA**	**NA**	**6,518**	**184**	**2**	**‡234,925**
1976	**AVERAGE**	**6,978**	**1,508**	**21.6**	**6,838**	**131**	**3**	**‡231,387**
1977	January	6,472	1,549	23.9	6,932	231	8	252,608
	February	6,900	1,773	25.7	6,815	188	2	255,519
	March	6,908	1,657	24.0	6,862	257	0	262,118
	April	7,345	1,863	25.4	6,966	269	1	258,835
	May	7,029	1,803	25.7	6,945	202	2	262,504
	June	7,593	2,142	28.2	7,144	246	1	256,446
	July	7,439	2,146	28.8	7,247	248	1	258,185
	August	7,420	2,096	28.2	7,188	190	1	256,904
	September	7,316	2,081	28.4	7,059	222	1	255,859
	October	7,130	2,135	29.9	6,930	179	1	255,194
	November	7,191	2,060	28.6	7,123	179	2	258,537
	December	7,375	2,400	32.5	7,146	197	1	257,578
	AVERAGE	**7,177**	**1,976**	**27.5**	**7,031**	**217**	**2**	
1978	January	6,670	2,097	31.4	6,932	211	1	272,287
	February	6,884	2,162	31.4	6,630	210	1	271,077
	March	7,256	2,425	33.4	6,750	142	1	259,801
	April	7,206	2,391	33.2	6,668	180	1	249,079
	May	7,732	2,343	30.3	7,059	174	2	233,612
	June	7,917	2,697	34.1	7,213	238	1	219,660
	July	7,579	2,629	34.7	7,264	212	2	216,488
	August	7,872	2,834	36.0	7,453	183	1	209,194
	September	7,406	2,607	35.2	7,399	257	2	216,682
	October	7,461	2,576	34.5	7,176	188	2	213,665
	November	R7,518	2,713	36.1	R7,583	161	1	R220,516
	December	7,486	2,751	36.7	7,830	181	NA	237,221
	AVERAGE	**7,419**	**2,521**	**33.9**	**7,167**	**194**	**1**	
1979	January	7,201	R2,609	R36.2	7,301	170	NA	245,644
	February	R6,938	2,715	39.1	R6,951	R159	NA	R251,049
	March	7,369	NA	NA	6,709	157	NA	240,653
	AVERAGE (3 months)	**7,177**	**2,659**	**37.7**	**6,988**	**164**	**NA**	

[1]See Definitions.
‡Total as of December 31.
R=Revised data.
NA=Not available.
Note: Bureau of Mines' stock coverage was expanded at the end of 1974 to include an additional 100 bulk terminal operators; the new coverage begins here with 1975.
Sources: Data other than unleaded—1973 through 1976: Bureau of Mines *Mineral Industry Surveys*, "Petroleum Statement, Annual;" 1977: Energy Information Administration (EIA) *Energy Data Reports*, "Petroleum Statement, Annual;" January 1978 through November 1978: EIA *Energy Data Reports*, "Petroleum Statement, Monthly;" December 1978 through February 1979: EIA, "Monthly Petroleum Statistics Report;" March 1979 data are EIA estimates based on data from the American Petroleum Institute, "Weekly Statistical Bulletin." Unleaded data—EIA Petroleum Reporting System.

Mr. ECKHARDT. The point I am getting at, Mr. Bardin, is that this gasoline is produced from oil which has ranged from about \$13½ a barrel to approximately \$14½; isn't that correct?

Mr. BARDIN. In the previous period, until the increases that began at the end of last year, yes.

Mr. ECKHARDT. That is right.

Now the gasoline that is produced in the United States is produced from oil which averages, considering imports and domestic, what figure?

Mr. BARDIN. It has been around \$12 a barrel.

Mr. ECKHARDT. Thank you

Thank you, Mr. Chairman.

Mr. DINGELL. The time of the gentleman has expired.

Mr. BARDIN. I would caution you, Chairman Eckhardt, as to these data, because they treat for various historical reasons one major refinery that is located within the territorial jurisdiction of the United States, and for many regulatory purposes within the United States, as an offshore refinery, so that those shipments count as imports. One really has to use these numbers with a great deal of caution for that reason amongst others.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes the gentleman from Nevada, Mr. Santini, for 5 minutes.

Mr. SANTINI. Thank you, Mr. Chairman.

Mr. Bardin, at the inception I want to compliment Mr. House and Mr. Judge who have worked in an effort to relieve and investigate our Nevada-California problem. They have done their best in a very bad situation. That is the good news.

I think that one of our basic problems is here. Despite all your conscientious labors, Mr. Bardin, that the Department of Energy as the regulatory entity that is supposed to address problems of complex magnitudes such as the problem in California and Nevada today is dealing with the deficient information base. If the information that you are relying on as a basis for your regulatory response and judgments is erroneous or nonexistent, then any corrective action that you contemplate or implement will be compounded by that deficiency of information.

Do you perceive today, or do you know today, Mr. Bardin, how many gas stations in the State of California are shut down in the previous week, not in operation?

Mr. BARDIN. As I have said before, Mr. Santini, we do not collect comprehensive information on the individual gasoline stations in the country. We do have some information coming indirectly from trade sources as to shutdowns that gives us some impression, but it is not a statistical, universal type of collection of data.

Mr. SANTINI. Given the circumstance that seems to be most acutely strained in the States of Nevada and California, it would seem appropriate that those two States deserve perhaps a focus and a function at this point in order that we might anticipate problem solving in the other States of the Union as well.

Mr. BARDIN. We agree with you on two scores, one, on the importance of useful, timely, accurate data. At the same time we do not want to inundate the system with either irrelevant or marginally useful numbers which can only confuse and distract us.

Second, we have attached great importance to the particular situation in this western region which is experiencing long lines. President Carter has dispatched a special representative, Charles Warren, the outgoing Chairman of the CEQ, who is now in California and in touch with my people.

I talked with Chairman Warren yesterday and with Secretary Schlesinger's regional representative in the region. We are setting up an office in which he will be working with people like Mr. Judge and Mr. House here in Washington, to make sure that we have the proper focus. We want to take advantage not only of statistical data systems but all of the real time, on-the-ground information we can get through the dealer associations, the State agencies, the counties and the municipal governments in California and in Nevada.

Mr. SANTINI. My concern is that without that happening now, the problem continues to aggrevate, and aggrevate considerably.

Do you believe as a matter of personal judgment today that there are any more service stations closed in Nevada or California than there are in the national scheme?

Mr. BARDIN. I think we have had a situation which meant fewer hours of service, which is the way I would measure it, Mr. Santini, rather than numbers of stations closed, or a greater reduction in the hours of service, which I think is the critical component. In order to maintain this distribution system, it must be open and available a reasonable number of hours.

We have people with 7-day-a-week job responsibilities. We have people working on second shifts and third shifts. There is no question in my mind but that when you have the kind of runout that took place, this tremendous drain on the stocks in the filling stations, leading filling stations to close at 3 in the afternoon and what-have-you, you have a very severe curtailment in hours.

Now we are getting some curtailments in hours all over the country, but, by and large, we just have not seen the same kind of extremes elsewhere that we have in these western States.

Mr. SANTINI. Do you know what percentage of gasoline stations in the State of California are shut down or operating on limited hours, Mr. Bardin?

Mr. BARDIN. We don't have a number, but my information, for example, from talking to the chairman of the county supervisors in Los Angeles County and the mayor's office in Los Angeles, it is a very high proportion. Most of the stations have curtailed hours significantly.

I must tell you that from talking to some of the refiners nationwide, that I have had the impression for some weeks now that, for example, thinking of one refiner, there has been a curtailment in average daily hours by their outlets from 16 hours a day to 12 hours a day, so it is not unique to California——

Mr. SANTINI. My last question, Mr. Chairman.

Mr. BARDIN [continuing]. But the industry information we have on California would suggest the following: That only 2 percent of the stations in California now are open 24 hours a day, 5 percent are closed after 8 p.m. Mondays through Fridays, 20 percent are closed after 6 p.m. Saturday.

I am sorry, am I misreading this?

Let me ask Mr. Butler to read this to you with the correct interpretation.

Mr. BUTLER. Mr. Chairman, the data available to us from industry sources indicate that 2 percent of the retail outlets in California are still open 24 hours a day, 5 percent are still open after 8 p.m. on Monday through Friday, 20 percent are open after 6 p.m. on Saturday, 28 percent are still open on Sundays, and 5 percent are limiting the amount of purchases.

Mr. SANTINI. Thank you, but that response is indicative of the basic issue that we have, the problem that we have here on data supplied by industry sources. I would suggest that that data is woefully deficient based on the presence of your investigator in Nevada last Friday. Eighty percent of the stations at 4:30 on a Friday afternoon were shut down, were simply not in operation, or our spotcheck yesterday in Las Vegas, Nev. when of the the 15 stations called at 10:30 in the morning, between 10:30 and 12 in the morning, 12 of those were closed down.

I don't think you are getting the facts.

Mr. BARDIN. Mr. Butler is reading you data for California, not for Nevada.

Mr. SANTINI. Do you have Nevada data?

Mr. DINGELL. The time of the gentleman has expired.

Mr. BUTLER. I do not, at the present time, sir.

Mr. DINGELL. The Chair recognizes now the gentleman from California, Mr. Moorhead, for 5 minutes.

Mr. MOORHEAD. I would like to reiterate some of the things that Mr. Santini has said. I know that in southern California, I know of absolutely no service station that is open on a 24-hour basis, and very few of them are open more than 2 hours a day. They open up at 7 in the morning. People are in line from 4:30 or 5 in the morning, and if you get in line any later, you don't get any gas because they close down at 9 o'clock. They may serve 50 or 60 customers, and that is all the gasoline they have, and they are closed for the rest of the day. A few others will open for a little while in the afternoon, but it is a very serious situation.

As far as the price problem, many of the stations have raised their prices both in California and right here in Virginia, to keep the customers away. They don't want them to come in, because they can't take care of their needs, and if they are the lowest-priced station in the area, they get all the customers and they can't handle them, and so it creates tremendous problems.

I think that the Department of Energy is getting late information, and in many instances wrong information. One of our problems in California is that we have a tremendous agricultural industry that has to be taken care of.

We have a lot more military and defense operations than most parts of the country, and when all of these groups are getting 100 percent of their allocation, it makes the service station get 55, 60, 65, or 70 percent of their allocation, and that doesn't even begin to take care of the needs of our people. The point I am trying to make is that the other day when our California delegation met with President Carter, he told us that he was really going to work to solve that California problem, and that the allocations would be adjusted.

Mr. SANTINI. California-Nevada problem.

Mr. MOORHEAD. That is right. They would be adjusted to the later period 1978. There would be adjustments made for stations that had closed, over half of the stations that have closed in the Nation since 1972 have been in our area.

But this morning on the NBC network, Dr. Schlesinger made the flat statement that he wasn't going to make changes in allocations for California, and now we are getting calls by the hundreds, people wondering who they can believe.

Mr. BARDIN. Let me address your question, Congressman Moorhead.

This administration has put into place a number of changes which ought to benefit the motoring public and the American economy generally, in as fair a way as we can devise, given the basic fact that we have today a very tight gasoline supply situation and, as far as we can see, we are going to continue to have a very tight gasoline supply situation.

We have changed the allocation formula, nationwide, to update the base period from 1972 to 1978. Thereby, for example, wiping out all of the problems of the filling stations that closed between 1972 and 1978 which you have accurately pinpointed.

Until we changed that regulation, there was a question as to whether there would be an unfair allocation, that could be State-by-State or corner-by-corner, because of the closed filling stations. We have practically got that up to date.

Next, on the Defense Department use, President Carter has ordered that the Defense Department no longer have an across-the-board 100 percent of requirements, but their nonessential nonnational security use be subject to an allocation fraction like the rest. That is going to help everywhere in the country.

It is true that California has a substantial number of military bases, and to that extent, of course, it will have an impact on the immediate gasoline supply in California.

Mr. MOORHEAD. Shouldn't that be considered when California and Nevada receives their allocations?

Mr. BARDIN. Yes, it is considered. It is built into the allocation formula. Let me emphasize we do not allocate gasoline by Federal Government fiat to the State of California or to San Diego County or to Nevada or to Pennsylvania or to a State.

We rather have a formula by which each refiner allocates its available supply to its historic customers, middlemen allocate supply downstream to the filling stations and to the military bases and the rest.

Now, when a refiner, say Chevron, to just pick a name—if Chevron has been supplying an Army base or the Marines at Camp Pendleton—I have no idea whether Chevron is their supplier but say they were—when we change that so that instead of 100 percent of requirements, they are on an allocation fraction, more gasoline will be available in the total pool for allocation to the filling stations.

Third, President Carter offered the State of California—and the same offer stands for other States—an increase in the State's set-aside from 3 percent to 5 percent.

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The idea there is not to shift gasoline from some other State into California, but rather, it is to give the State a tool by which it can help to ameliorate the differences within a very, very large State which consumes about 11 percent of all gasoline used in the country.

Mr. MOORHEAD. Almost 11 percent of the population.

Mr. BARDIN. Yes, but a very large State with great variations within the State. If the State wishes to it can use the set-aside, under a liberalization of the regulations that we have adopted, to steer the gasoline to the particular trouble areas within the State.

Now, as to agriculture, we have not taken away, but rather, we have preserved, and we think rightly, the high priority for agriculture.

What we have to keep in mind is that agriculture is sensitive to season and to weather. You can plow now. If as in some parts of the country, a late onslaught of rains delays the plowing season, you simply have to have the fuel there when the time comes to plow, or we severely impinge the capability——

Mr. MOORHEAD. I agree with you. I agree with you on that. Shouldn't we have a separate allocation for agriculture over and above the automobile use, because the heavy concentrated agricultural States have a different problem than the others. They do have to put their crops in and they do have to market at a certain time, but it has no connection with the need for their automobiles for other purposes and it should be a separate allocation——

Mr. BARDIN. That is in effect what we have, Congressman Moorhead. The principle is that the industry must first plan to meet 100 percent of the requirements of agriculture, and what is left, after doing that and after meeting certain other needs such as the State set-aside, is available for allocating to all the ordinary motoring and transportation purposes.

Mr. MOORHEAD. You know what, one thing I think has been forgotten in all of this, I honestly don't believe the people in the Department of Energy or in the rest of the country, for that matter, realize the economic loss that has come to the State of California as a result of being under a state of seige almost for over 30 days. It really is a desperate situation.

The way of life has changed when people have to get up in the middle of the night and go and wait for gasoline just to get back and forth to work. And you know, when we have crises in other places, of various kinds, we all go together and try to help them. We give them emergency allocations, we give them money, we do what we can to help them.

I guess we as Californians are pleading with you and with the President and with other people in the country that we be allowed to get over this difficult situation, that we be given what is necessary to avoid the economic disaster that is closing some of our businesses, that is causing tremendous hardship to thousands and thousands of people.

We don't want any more than anyone else has but we can't understand why we have this situation and it isn't present elsewhere in the country.

Mr. BARDIN. We are acutely sensitive to the suffering of the California motorist. We are trying to work to the limits of Federal responsibility to help. We have suggested to the State a number of areas in which it could exercise, and might properly wish to exercise, its responsibilities.

We have suggested temporary waivers of some of the air quality restrictions which California has had which are more stringent than the national ones.

I believe the Air Resources Board has that before them this morning. I don't have the details of their action on that score. We have discussed with the State energy commission the request the commission made in the use of the State's set-aside—that the companies hold back that gasoline until Memorial Day weekend—whether that other use of that State's set-aside might not be helpful and appropriate in the present circumstances.

We are going to continue to work with State, municipal, and county authorities to try to work through this immediate crisis of the very long lines. When we get through that, we will go on to the real problem, which will remain with California and the rest of the country, of a very tight supply situation for gasoline.

There is going to be more gasoline in July than in April but, of course, the demand would normally be higher. We are going to continue in a very tight supply situation.

I understand what is happening to life styles. One of the most dramatic pieces of evidence is the report I got from the chairman of the Board of Supervisors of Los Angeles County, Mr. Jim Hayes, the largest mass transit system, the RTD bus system, had experienced as of a week ago a rise in daily boarding from 600,000 a day to over 1 million a day, over a period of something like 4 weeks. Now, that is really dramatic.

The RTD, which is a county responsibility in California, is working to pick up more buses and make them available to those people who can commute to work by bus, thereby not only solving their own personal gasoline problem but making more gasoline available for the remaining citizens who don't have that option.

This administration has made a grant for bus purchases, for the largest mass transit system of its kind in California and that is going to be one of the tools that helps in that regard.

There is no question that we have to pitch in and make buses and other resources——

Mr. ECKHARDT [presiding]. Time has expired. Mr. Gore.

Mr. GORE. Mr. Bardin, you and I had an opportunity to talk about these issues many times over the last couple of years, and I think you know I have great respect for your ability and for you as an individual, but I find myself in the strongest disagreement possible with the policies pursued by the Department of Energy, and when we start talking about the area of enforcement, I think it is clear, at least it is clear to me, that the record of this administration is not very good.

You have found yourself in the current situation in a very bad posture because of the action taken last year—and I am reading from the Federal energy guidelines, part 212, paragraph 13,800(a)—where you put out a statement of policy on audits on June 30 of 1978, and you told the oil industry, "It is the policy of the Economic Regulatory Administration not to commence any price regulation audits after June 30, 1978."

In your budget submission for this year, you are slashing the number of enforcement personnel from 653 to 252. At the same time, just last week, the Department of Energy put out a new regulation redefining crude oil—this is in the oil sector rather than gasoline—saying newly discovered crude oil is now going to be any oil from onshore property from which no crude oil was produced in calendar year 1978 and the determination that crude oil produced from a particular property qualifies as newly discovered crude oil is to be made by the producer.

Now, what we have done is we have proceeded—this administration has proceeded—on the faulty assumption that there is some kind of free market for oil, when in fact the price is fixed by a cartel behind closed doors agreeing not to compete with each other.

We have slashed the enforcement personnel, we have informed the oil industry that we are going to stop doing any audits, and we are going to rely on them to police themselves at a time when gasoline lines are building and in a few rare instances people have committed acts of violence to jump to the front of lines.

How high do you think the price of gasoline is likely to rise in a situation like this, and how are we ever going to protect the American people from price gouging without any kind of enforcement actions?

Mr. BARDIN. Mr. Gore, we are going to try to carry out our statutory duties based on accurate facts, careful plans and the best management of the resources that we have.

I must say that the statement that you made is just not accurate. Let me start with the policy statement which I issued last year. I did not articulate a policy of initiating no new audits. I did articulate a policy of cutting out new audits in certain areas, such as audits of independent retail gasoline dealers.

Mr. GORE. And resellers, and resellers.

Mr. BARDIN. But not of crude oil production.

Mr. ECKHARDT. The gentlemen may exchange remarks in an orderly manner.

Mr. GORE. Let me clarify the question then. I will just read further from the same notice you put out publicly. "It is the policy of ERA not to commence any price regulation audits after June 30, 1978, for any resellers, reseller—retailers, or retailers, of petroleum products other than propane."

Didn't you tell the resellers and the reseller-retailers and the retailers you were no longer going to audit?

Mr. BARDIN. Let me make very clear what we said then and what we didn't say then and why certain aspects were timely and why we have changed it since. I think it is a most unfair use of that statement and it deserves clarification.

We said as to product—now we are talking about the gasoline—that downstream from the refinery, middleman and retail-dealer, we did not intend to initiate new audits, with an exception for cases where we found some indication or had reason to be concerned about willful violations, white-collar crimes as contrasted with a difference of opinion as to what our regulations meant.

Second, we made very clear in that document, which I don't have with me, if you read it, Mr. Gore, that we were going to continue to initiate new audits of producers of crude oil and of the entire chain of crude oil, including resellers of crude oil and refiners of crude oil.

As to old crude oil, upper tier crude oil and now newly discovered crude oil, our policy all along has been to start new audits.

As to the last point you asked about the newly discovered crude oil, the fact is that we have been and will continue to audit the producer's determination that his crude oil qualifies for another area.

How about gasoline at the retail-dealer and jobber stage? Back then when I issued that policy statement we had an abundant supply, highly competitive market, as I have described to Congressman Marks, and a situation in which the real constraint was not price regulations but competition. That changed. When that changed we changed our modus of operation.

We have for weeks been engaged in checking complaints from the consuming public. When the complaints are specific, tracking down to particular prices charged for gasoline in the marketplace, we have been using our limited enforcement resources to deal with that problem.

The policy we issued last year was the correct policy in a marketplace where there was no need to devote taxpayer resources to check up on gasoline dealers. There has been every reason to devote our resources to the crude oil situation, and to catch up on history in the refiner situation. Facts change, circumstances change, and so our use of our resources and policy have changed.

Mr. GORE. Could I make sure you answer the second part of my question, and I will preface it this way by saying in fact when this was put out you were proceeding on the assumption that you would go ahead with deregulation of the product and you are still proceeding on the assumption of complete deregulation and decontrol of crude and, in fact, based on that assumption you have slashed the enforcement staff from 653 in this fiscal year to 252 in the next fiscal year, in the coming fiscal year.

Now you say you are going to proceed expeditiously with the enforcement duties that you have. How are you going to do that with a slashing from 650 to 250 of the staff that you have available to you?

Mr. BARDIN. We have come to Congress with an appropriation request for the coming fiscal year which includes the staff reduction because of our success, the Office of Enforcement's very dramatic success, in slashing away at the backlog of cases representing what happened back in the embargo.

We have cut out well over half of those cases and resolved well over half of that work. Now you ask me how are we going to deal with the present situation. You quite rightly state that the budget request was based on the assumption that we would have deregulated motor gasoline prior to the beginning of fiscal year 1980.

We are using our resources differently now. We are using them in fact to deal with gasoline. We have shared our concerns with the Governors of the States and asked them whether they are prepared to take on some of the responsibilities with regard to protecting the motorists in that State as to gasoline prices——

Mr. GORE. Why doesn't the Federal Government accept the responsibilities? Why won't you do the job that you are supposed to do at the Department of Energy? And how can you possibly proceed with a proposal to cut from 650 to 250 the enforcement personnel at the time when California looks like the wild west of the 1870's?

Your audits find a 41-percent violation rate, people are being gouged at every level up and down the chain, and you are still cutting out two-thirds of your enforcement personnel.

Are you going to review that proposal and come in with a request at least for as many enforcement personnel as you have this year?

Mr. BARDIN. We are reviewing our management posture within the Department as to how we can carry out our obligations, assuming that the tight supply on the one hand continues and that the regulatory responsibilities for gasoline continues.

I do want you to understand two things. We haven't found a 43-percent violation rate in the sense that 43 percent of the dealers are violating. I think that would be most unfair to the small businessmen who are the gasoline dealers of America.

What we have found in a program which is targeted, pinpointed with the help of consumer complaints, at the high-priced dealer, is that we are getting a tremendous cost benefit dividend for the American taxpayer because we are focusing on the people who have the high violations. For those people who are charging lawful prices we do not even try to visit.

On the retail point, Mr. Gore, it seems to me better public policy if the States assume a reasonable measure of this responsibility just as in the case of natural gas and electricity. It is unthinkable that the Federal Government should regulate those prices. Those prices are regulated by the States.

Mr. GORE. The chairman has asked me to yield. Let me briefly say, first, that it is an unfortunate conclusion, but I just have to say, that this Department of Energy has been kind of the patsy for the oil industry and I really believe that.

You have given advanced, not you but someone, gave advanced notice of rulemaking. In Houston there were cases that could have been brought that weren't brought. The enforcement apparatus is being dismantled and every policy proposal is heavily weighted in favor of the oil industry—and as a Democrat, I am sad to say that—but I think that the American people are upset about it and I think during this period in our history, the American people want to take a more effective approach to the oil industry.

I yield to the chairman of the subcommittee.

Mr. BARDIN. Could I respond to that?

Mr. ECKHARDT. Yes, you may respond.

Mr. BARDIN. Mr. Gore, you are accusing us of the shortfalls of the previous administration. This administration has changed its priorities in enforcement. This administration has now identified and is trying to collect back from the oil companies $4 billion of alleged overcharges.

You will recall when the Sporkin Task Force studied the performance of the previous administration it estimated there might be $6 billion in overcharges. We have already identified $4 billion of alleged overcharges. This administration has changed the priorities with regard to white collar crime. This administration has secured convictions.

In this administration, executives who engaged in white-collar crime with regard to oil are actually sentenced to jail sentences, not suspended sentences, but real jail sentences. There has been a big turnaround——

Mr. GORE. There has been some good with the bad and there has been some excellent performance. Let me say that at the same time you bring the overcharge cases you also proposed to turn over the responsibility for making the determination on what is new oil and what is old oil to the producers, the same people that you are accusing of making faulty determinations in the overcharge cases.

You are saying go ahead and make the determinations yourself, if it is $6 oil you can sell it for $18 and you make this determination. We are going to cut the staff checking up on you from 650 to 250.

Mr. BARDIN. We are not turning over to the oil companies anymore than you, the Congress, have turned over to the oil companies to determine how much taxes they should pay.

All we are saying is that in the first instance the oil companies should calculate and then we will send our auditors to double check that calculation.

Mr GORE. Then you are cutting the auditors out. Then you are saying we are not going to have the auditors anymore, we are going from 650 to 250, so you are not going to check nearly as much.

Mr. BARDIN. We were not——

Mr. ECKHARDT. Time has expired.

Mr. GORE. I apologize for taking too much time. If I have any remaining I want to yield to you.

Mr. ECKHARDT. The chairman determines that.

Mr. GORE. OK.

Mr. ECKHARDT. I would merely like to ask unanimous consent to enter into the record at this time two tables from a document supplied the Honorable John D. Dingell, Chairman of the Energy and Power Committee on Interstate and Foreign Commerce, on May 17, 1979.

The first table is on page 8 of said document and shows crude oil refinery acquisition cost dollars per barrel from 1978, February, through 1979, February. The figure for February 1978 is $12.19, and that for 1979, February, is $13.42, which means that approximately 3 cents per gallon increase on crude oil refinery acquisition costs.

I should like to ask unanimous consent to enter the table on the next page, which shows the same information with respect to average retail gasoline selling prices cents per gallon, including tax. The summary of the difference between February 1978 and February 1979 appears to be approximately 8.5 cents per gallon gasoline as compared to the 3 cents per gallon increase on the acquisition of crude oil.

Without objection, the tables will be entered.

[The tables referred to follow:]

Please provide a table which shows for each month from April 1978 to April 1979, the average domestic refiner acquisition cost of crude oil and the average retail prices of leaded gasoline and unleaded gasoline.

The two tables provided are for February 1978 through February 1979, since the data for March and April 1979 is not yet available.

Crude Oil Refiner Acquisition Cost
(Dollars per Barrel)

1978	
February	12.19
March	12.23
April	12.20
May	12.35
June	12.48
July	12.45
August	12.46
September	12.57
October	12.62
November	12.76
December	12.93
1979	
January	13.11
February	13.42

Source: P110-M-1 ("Refiner's Monthly Cost Allocation Report") through June 1978; ERA-49 ("Domestic Crude Oil Entitlements Program") for July 1978 forward.

Average Retail Gasoline Selling Prices
(cents per gallon, including tax)

	Leaded Regular		Unleaded Regular		Leaded Premium	
	Full Serve	Self Serve	Full Serve	Self Serve	Full Serve	Self Serve
1978						
February	61.6	57.1	65.7	61.8	67.7	64.0
March	61.7	57.0	65.8	61.8	68.0	63.9
April	61.9	57.2	66.1	62.0	68.3	64.3
May	62.5	58.2	66.9	62.9	69.0	65.3
June	63.4	59.0	67.8	64.0	70.0	66.2
July	64.6	60.6	68.8	65.6	71.1	68.2
August	65.4	61.2	69.8	66.2	72.0	68.8
September	65.8	61.7	70.2	66.9	72.4	69.2
October	65.9	61.5	70.2	66.7	72.5	69.3
November	66.7	62.3	71.1	67.7	73.3	70.1
December	67.5	63.3	71.7	68.7	73.9	71.0
1979						
January	68.4	64.0	72.9	69.3	74.8	71.3
February	69.8	65.3	74.4	70.5	76.1	72.7

Sources: EIA-8 ("Retail Motor Fuel Service Station Survey") through June 1978; EIA-79 ("Monthly Motor Gasoline Service Station Survey") for July 1978 forward. February 1979 data are preliminary.

Mr. ECKHARDT. Mr. Rinaldo.

Mr. RINALDO. Thank you, Mr. Chairman.

Mr. Bardin, I want to start out by thanking you and your colleagues for being here this morning, and I want to state that I have the greatest respect for you as an individual. But I would be less than candid if I didn't say that either as a result of Department of Energy regulations or as a result of the lack of leadership by the administration there is complete and total confusion everywhere I go about the gas situation. People don't even believe that there is an energy shortage to begin with. And, second, there is confusion about the edicts and mandates and rules and regulations that are issued.

Your boss, Secretary Schlesinger, has been characterized as causing the current shortage by asking oil companies not to buy on the spot market and then reversing his position and sending out signals to oil companies to start buying on the spot market.

Is it correct that he issued an order not to buy on the spot market and now is reversing that position?

Mr. BARDIN. First, there have been no orders. It is a question of suggestion, not order.

Mr. RINALDO. Let me interrupt. If it is a suggestion, how does he make this suggestion to the oil companies? Does he call them on the telephone?

Mr. BARDIN. During the period when Iran had been down and beginning to come up and there was a big question as to what would be the price Iran would charge for its new sales of oil, various officials of the Department, in conversation, suggested to oil buyers that it would be desirable to show extreme caution and extreme restraint so that we did not see a leapfrogging of that price.

Similar suggestions were made by government officials in other industrialized countries to oil companies who are buying for their markets.

Mr. Rinaldo. I have tried to look into this in great detail. I know of absolutely no evidence that indicates other countries did that. Iranian oil is being bought up, the oil on the spot market is being purchased. I know of no other country that is experiencing the current trauma that we are undergoing in this country. When you say he made this suggestion, in other words, that there was no order, there was no directive, was it merely an off-the-cuff suggestion?

Mr. Bardin. On-the-cuff suggestion. It was a considered and deliberate suggestion but it was not an order. We shouldn't confuse apples and oranges. It is one thing for Government to suggest, it is another thing when an oil company follows it. There were American oil companies who went ahead and bought on the spot market just as you have seen in some other countries.

What I am saying to you, there were efforts by a number of countries at that time to avoid a sudden rise in price, and the Department of Energy believes that these efforts were successful at that time.

Now, the Iranian prices have been established. The oil market is what it is. The spot market has evolved, and we have to tell the oil companies that there is an attenuation of the reasons for showing that kind of restraint. Obviously, we are still concerned about the runaway spot market.

Mr. Rinaldo. It has been suggested in some quarters that after the first signal or communication or on-the-cuff comment went out not to buy on the spot market, the signal wasn't reversed until there was a definite shortage in this country; is that correct?

Mr. Bardin. The signal was reversed after the Iranian price was stabilized.

Mr. Rinaldo. Are you suggesting that the time that the Iranian price was stabilized and that the shortage occurred in this country was mere coincidence?

Mr. Bardin. The reasons for the shortages in this country have to do with the fact that for several months we have not been getting the supply of crude oil from abroad that we would otherwise have gotten. We have just been through the low point in April in terms of deliveries, imports of crude oil, it is now going up a little. There has been a slight dropoff, seasonal dropoff in the volumes produced within this country.

There is a question of a refinery utilization which President Carter has indicated we are reviewing very carefully——

Mr. Rinaldo. I understand that. Let me get on to the next point. I don't have much time.

You are mentioning the reasons for the shortage. Does the Secretary ever issue any orders or has he ever issued any orders to the oil companies telling them what to produce, what to buy, where to buy it, or when to buy it?

Mr. BARDIN. He hasn't issued orders. We have given guidance. For the home heating oil stocks for this winter, the Secretary recommended, and the President accepted, that we set targets and see to it that we realized a reasonably secure stock of home heating oil before the onset of the next winter.

Mr. RINALDO. Is it correct that DOE urged the 34 largest domestic refiners to accelerate their usual conversion of refineries to building of middle distillate stocks for winter heating oil and diesel fuel, and that this level was set at 240 million barrels?

Mr. BARDIN. In the Iranian response plan which we published and furnished to every Member of the Congress, we set forth that target. My part of the Department, the Economic Regulatory Administration, is talking with each of the 18 largest refiners to come up with specific stock targets for the individual firms and a strategy by which the target can be realized in time for next winter.

Mr. RINALDO. The DOE set a 240-million-barrel figure?

Mr. BARDIN. That is a figure we established, yes.

Mr. RINALDO. How did you arrive at that figure, simply?

Mr. BARDIN. We considered historical needs, the time frame in which they reasonably occur, the consumption of middle distillates for home heating and other purposes, the stock margins that are needed not only at the refinery but downstream in the terminals, the big terminals and the jobbers, so that we will be able to enter the winter.

Mr. RINALDO. Has that figure been revised now or has there been any change in plans as a result of the current shortage of gasoline?

Mr. BARDIN. The figure has built into it a safety margin. In discussing this figure yesterday, I believe, the Deputy Secretary suggested 230 million to 240 million in October would be a range that we could be working with.

You must understand there isn't any one correct answer. We have not completed our discussions with these refiners nor put together the data that we are getting from them.

Mr. RINALDO. What is the current percentage of total refining capacity that is being utilized in the United States by the oil companies?

Mr. BARDIN. Last week's report was just over 85 percent. In any event, in the neighborhood of 85 percent.

Mr. RINALDO. What was the percentage a year ago?

Mr. BARDIN. I don't have that figure with me. It was somewhat higher, though.

Mr. RINALDO. Have any attempts been made by the administration or by the Department of Energy to get the oil refining companies to increase their percentage right now?

Mr. BARDIN. We are discussing that with them and raising the question of whether their use of existing crude stocks is not somewhat more conservative than necessary. They do have two kinds of problems. One is normal turnaround which is typical for the industry at this time of year as it pulls out of the winter and moves toward the driving season. Second, their concern about their crude stocks which are somewhat lower.

Mr. RINALDO. Has any attempt been made by the administration or by DOE to get more oil to bolster those low stocks of crude? For example, what is happening with Mexico. Are we progressing in our discussions with Mexico to get more Mexican oil into this country?

Mr. BARDIN. Well, the problem with Mexico is that this month Mexico has not been able to meet its oil export targets. It has fallen substantially short of them. As far as we can determine there has been a combination of four different circumstances having to do with facilities to load both from the onshore tanks and tanker berths, construction of new berths and the decision as to how they would put in more gathering lines to move the oil. Whereas, previously they were doing it a little at a time and maybe having a 5-percent shortfall, they decided to try to get a lot done in May and accept a 40-percent shortfall of what they would normally be exporting.

Mr. RINALDO. What are we doing with Mexico?

Mr. BARDIN. We are contracting to buy oil from Mexico, both American oil companies and the Government strategic reserve. I understand that the Mexican authority is working diligently to try to get back up to their targeted production and they feel during the course of the year they will be able to do that.

Mr. RINALDO. What is the Department of Energy and the administration doing to expedite the construction of the pipeline from California to Texas, to relieve the glut of crude oil that is coming down from Alaska?

Mr. BARDIN. In accordance with President Carter's direction, we are drafting proposed legislation to cut through some of the redtape and delays that have held that project up.

Mr. ECKHARDT. Time has expired.

Mr. Sharp.

Mr. SHARP. Thank you, Mr. Chairman.

Mr. Bardin, I first of all want to applaud the decision made by the Department over the past 2 years to focus where the big money was in your audit system. That is exactly what should have been done, to go after the producers and big refiners, because that is where the big money was; that is where any minor change could add up to big bucks for the American consumer, and the complaints and prosecution that have followed from that have been a healthy sign of good law enforcement.

I am sure there have been difficulties and people have escaped who should not have.

I might say the Subcommittee on Energy and Power actually had hearings on that matter over the past couple of years, I think it was during one of the authorization bills, and came to the conclusion you really ought to lay off the independent gasoline dealers and go after the big stuff.

Mr. BARDIN. I appreciate your mentioning that.

Mr. SHARP. But I must say, for your benefit, if that was an irresponsible decision, then it is borne in the U.S. Congress as well as in the Department of Energy.

Mr. BARDIN. I appreciate your reminding me of that, Mr. Sharp, because, of course, the policy statement which I issued and to which Mr. Gore referred earlier, not only reflected a reaction to the congressional advice which I thought was wise, but actually quoted out verbatim the report of the subcommittee on the subject.

Mr. SHARP. I realize it may be time to shift the priority and we might have to go and get more enforcers. I would like to ask whether you have any estimate of how many final transactions occur within the whole business of the oil industry from the producer all the way down to the gasoline station in a day, any kind of guestimate as to how many transactions there are?

Mr. BARDIN. There will be in the millions.

Mr. SHARP. That is what I thought. I just think it is very important for the American people to understand that basic gut fact, that millions of financial transactions occur every day and it is absolutely naive to expect the U.S. Department of Energy to be able to supervise and manage that, and we have got some insanity in this country that we can look to Washington, D.C., to solve all of those kinds of decisions.

That doesn't absolve us of trying to enforce the program that we have got as best we can, but it seems to me with the 187,000 service stations, and most of those are not in fact employees of the big companies, that we do try to supervise, that Governor Brown and some of the other people better start taking a little more responsibility if they want to see how those operations are going.

I get a little sick and tired myself of the constant scapegoating and we are not going to have anybody in the Department of Energy who is worth their salt if we continue to shoot everybody in that Department down every time they make a decision.

We are not going to have decisionmakers when the time comes that we need them.

Mr. GORE. Would you yield?

Mr. SHARP. I will not at this point.

Mr. GORE. The witness has used my name. I will be brief—30 seconds.

Thank you very much. My complaint is not there has been a shift in priorities, that there has been a cut in enforcement personnel across the board in every category.

Mr. BARDIN. I understand that complaint and respect its author. The only quarrel I have, Mr. Gore, is suggesting that the policy I adopted then was wrong either in terms of your rights or of mine. I don't think that is right. But I understand there is a difference of opinion as to the aftermath.

Mr. SHARP. I would like to ask a question now, after I made that statement.

Are there some difficulties in the Government allocating now with the set-asides to States and various special categories? Generally I would be very supportive of some of that special category set-aside, such as agriculture, but I am wondering if the impact of creating a set-aside actually in the short run adds to the shortage and compounds the public panic of it whereas I can understand over the long term it may be a necessary action.

Mr. BARDIN. It may in two senses. There are two different kinds of categories. One, which is automatically administered by the gasoline supplier to the customers downstream. When we say agriculture must have its requirements met, it means that much less gasoline available for everybody else. If we are wrong in giving agriculture that very high priority, we cause some trouble. Of course, to the extent that the benefiting sector is relatively small in its demand, it makes it that much easier.

We are having this question most acutely presented to us across town in a hearing we are conducting on diesel and gasoline for public transportation. We are undoubtedly going to be hearing from the bus systems, on one hand, how important it is to make sure the people get out of their cars along the lines of Los Angeles County, and into buses and find the buses still running at the end of the month. Then we will have the trucker saying how important it is to get the goods and commodities of American farms and factories to their destination.

The State set-aside is a slightly different animal because there we are not really dictating what happens to the gasoline on its way to use; we are telling the State, you may intervene with the set-aside to relieve hardships. It is 3 percent now; it could be 5 percent. That could be a very beneficial tool or it could be a harmful tool.

If a State doesn't do anything with the set-aside, it means choking up the supply chain. We are urging the States out to move quickly and promptly. A State has a difficult decision to make as to how to use the set-aside.

As I mentioned before, the California decision for May was to tell the industry to take it back and distribute it through normal channels without State direction but to hold it back until the end of the month. Now, with the benefit of hindsight, anybody can see that to the extent that that kind of instruction is given and carried out, it means somewhat less supply in early May and contributes to the situation in May.

I want to be very careful, Mr. Sharp, to make clear I am not criticizing the authorities in California who gave that instruction on the basis of what they knew and what they thought and what they were concerned about. I am just saying in fact there were choices to be made.

In the case of the State set-aside program, there is potential for abuse. That is true, whether it is conducted by Federal officials out of our regional offices or State officials out of the State capitol. When I look at a State as big as California, as big as Texas, or even as big as Indiana, it seems to me that there are nonhomogenous geographic areas. At least in principle, if the State is prepared to manage some of the allocation function, There is some virtue in it, although we must be careful to recognize that the petroleum industry isn't organized along State lines.

To that extent, my analogy of the electric utilities which have much more geographic bound service areas is imperfect and should be taken with a grain of caution.

After we say all that, our tendency has been to give the States an option to handle more. We did that in the middle distillate set-aside which, even though we have decontrolled middle distillate, we revived on an optional basis for the States. They didn't all have to use it, but we may well in a new announcement offer the States an option to increase their gasoline set-aside from 3 percent to 5 percent if they have a means of managing and want to try managing it.

Mr. Sharp. Let me ask you a different kind of question that you touched upon in other questions, but I am not quite sure as directly. As I understand it, gasoline production in this country was fairly high in January and February, in January—that it dropped in the months of February and March, even though it appears that crude stocks were stable throughout that first quarter and, therefore, the refineries appeared to be running at less than normal capacity. Is that statement true?

Is there any indication then, therefore, that there is any kind of deliberate policy or is that the result of prudent management of crude oil stocks?

Mr. BARDIN. The Department is looking very carefully, Mr. Sharp, at the performance of the industry in managing its crude stocks, its refinery runs to stills, and its gasoline and distillate outputs over that time period.

I want to make clear to you that I do not have definitive conclusions until we see the results of those studies, which include some company-by-company auditing, with resources that are now available because this administration decided to devote so much more effort to our capability to review what is going on with the major refiners. The same special counsel resource that looks at past practices or prices today is available, as I said in my statement, to look at the allocation and production situation.

Mr. SHARP. What is the timetable on when you think you will have completed that?

Mr. BARDIN. We intend to share with you as we find out what we find out. We might, within the period of a few days, have some more information and we will share it with you and with the American public. It will not necessarily be the definitive last answer on the question.

We have been told by refiners that in a time of crude stringency they are very anxious that there be enough crude stock build-up so that there is no danger or minimum danger of having to close something down when a tanker that they had been counting on does not arrive. That is a factor.

It is important to understand that this industry works on a very short turnaround. For example, if the gasoline supply takes 2 or 3 days from the refinery to the pump, the turnaround on crude oil is very short also.

There is also the question of taking units out of service for routine or other maintenance, and some that we have lost—a Conoco refinery out in the West. We have had some major units down due to forced outages, but also planned outages, where you take a piece of a refinery out for 2 or 3 weeks in order to do maintenance and conversion work on it.

Mr. ECKHARDT. The time of the gentleman has expired.

The Chair would like to ask unanimous consent at this point to enter into the record a letter dated May 14, 1979, from Federal Trade Chairman Pertschuk, to Congressman Benjamin S. Rosenthal, with additional copies to—incidentally, this is not from Chairman Pertschuk but from Alfred F. Dougherty, Jr., Director of the Bureau of Competition of the Federal Trade Commission, with attachments, to Hon. James R. Schlesinger, Peter W. Rodino, John D. Dingell, Senators Metzenbaum and Henry M. Jackson.

The gist of this letter has to do with certain questions concerning the decrease in refinery runs and why crude oil inventories were reduced less in the first quarter of 1979 compared to past first quarters, and certain other questions, and raising the question of whether or not there are in fact shortages of oil or whether the same has something to do with the question of maintaining a relatively high price.

The letter also refers to the serious concern of the Bureau of Competition of the Federal Trade Commission with their lack of ability to get certain information concerning these questions, and refers to the policy of DOE regulations and informal directives to oil companies and the availability of such information between agencies.

This committee recently, in the authorization act for DOE, expressed its desire that the same openness of sharing of information provided for by ESECA be followed with respect to information obtained by DOE through other statutory authorities.

It is my understanding that DOE ordinarily receives information through its alternate areas of information gathering, so that their ESECA requirement of distribution is not applicable. Therefore, without comment on the desirability of that process, I should like to have unanimous consent to place the letter in the record, and also leave the record open at the conclusion of Mr. Bardin's testimony for staff of this committee to further explore the questions raised in the Federal Trade Commission letter, with an opportunity to reply by DOE. [See p. 96.]

Is there objection?

The Chair, hearing none, the record will be left open for that purpose.

[The letter referred to follows:]

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

CONGRESSMAN BEN ROSENTHAL
RECEIVED
REF. ____ DOC # ____
REF # ____
MAY 15 1979
PARA: ____
COMMENTS: ____
FILE CODE: ____

BUREAU OF COMPETITION

May 14, 1979

Congressman Benjamin S. Rosenthal
Room 2372
Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Congressman Rosenthal:

The Federal Trade Commission shares your concern over the recent serious gasoline shortages in the State of California, and the possibility that similar shortages may soon occur in other parts of the nation. Chairman Pertschuk has asked me, as Director of the Bureau of Competition, to coordinate an expedited inquiry into the causes of the problem. William A. Arbitman, Director of our San Francisco Regional Office, has forwarded an initial report on factors his office has observed relating to California dealer shortages (copy attached). This information is being utilized to guide our inquiry:

Since March, the FTC's Bureau of Competition has been investigating whether the "Iranian Shortfall" is being used by major domestic refiners as an excuse for recently decreased allocations of gasoline supplies to their dealers. The Bureau's concern results from reported figures revealing that in the first quarter of 1979 there was a reduction in gasoline production by domestic refiners that significantly exceeded the reduction of crude oil imports to the United States. If this cutback in the production of refined products was not justified by a scarcity of crude oil or other legitimate business reasons, the current gasoline shortage may be contrived.

Justice Department clearance for our Iranian shortfall investigation was requested in April, but thus far has not been granted because of the Antitrust Division's concern over possible overlap with its "International Oil" Investigation. The Bureau has assured Justice that our investigation is concerned only with the domestic effects of the Iranian shortfall, and we expect to receive clearance soon. The Bureau is now reviewing publicly available information and, if warranted, intends to ask the eighteen to twenty largest domestic refiners the following questions relative to gasoline supply and demand:

(1) Why refinery runs as a percentage of refiner capacity were down in the first quarter of 1979 relative to past first quarters;

(2) Whether and why crude oil inventories were reduced less in the first quarter of 1979 compared to past first quarters;

(3) Whether there was any "slow shipping" of crude oil cargoes destined for the U.S.;

(4) Whether there was any slowdown in the throughput rate of crude oil product or pipelines;

(5) Why first quarter domestic production of crude oil was less than DOE had originally projected;

(6) Whether worldwide crude oil production continued at a normal level in the first quarter as some statistics now indicate;

(7) Whether the quality of crude oil that replaced Iranian crude oil affected the refiner's ability to produce particular products;

(8) The criteria determining the size of allocations to gasoline stations in the United States generally, and California in particular.

In the interim, the Bureau of Competition has asked the Department of Energy's (DOE) Economic Regulatory Administration (ERA) for a briefing on DOE Deputy Secretary John F. O'Leary's recent statement on the NBC "Today" Show (May 8, 1979) that the largest refiners were short on middle-distillate stocks and would not be able to get those stocks up to acceptable levels without gasoline cutbacks.

We also are investigating the crude oil "glut" in California and the West Coast (PAD V) as it impacts on present gasoline dealer shortages. We have subpoenaed internal documents from Standard Oil of Ohio (SOHIO), the largest producer of West Coast crude oil. SOHIO, to date, has been unwilling to produce most of the documents.

We are also concerned about the threatened California and national gas station shutdowns on May 17-20 that are being advocated or endorsed by various state gas dealer associations (Arbitman Report, p.2). However, the Department of Justice recently announced an investigation of this matter.

Aside from investigational efforts, we are seriously concerned that DOE regulations and informal directives to the oil companies may be partially responsible for the present shortages. Absent a sufficient understanding of the market mechanisms of the oil industry, DOE's directives can be based on erroneous premises, and thus can lead to undesirable results. For this reason, it is essential that DOE give full consideration to the competitive ramifications of its orders and regulations.

As to failures caused by regulations that do not give adequate consideration to the workings of petroleum markets, Congress has stated that petroleum regulation should preserve and promote competition. Among the explicit goals of the original Emergency Petroleum Allocation Act (EPAA) are the preservation of a competitive petroleum industry, promotion of economic efficiency, and minimization of distortions of market mechanisms.

Over the last year and a half, the Commission and the Bureau of Competition have filed several extensive, analytical comments with DOE criticizing the competitive distortions caused by the new and highly complex scheme of energy regulations. Even so, it is unclear whether DOE's actions have adequately reflected significant competitive concerns.

For example, DOE price control regulations may have contributed to the failure of West Coast refiners to undertake investments that would allow them to process more Alaskan crude oil into gasoline. This lack of investment may help explain the apparent simultaneous crude glut and product shortage on the West Coast. DOE also has been pressing for a shift in refining utilization away from gasoline and toward middle-distillates. DOE's Response Plan-Reducing U.S. Impact On the World Oil Market (April 1979), at p. 2, stated:

> Refiners will be requested to establish targets to rebuild distillate fuel oil stocks to acceptable levels by next October. DOE will be prepared to implement additional measures, including voluntary or mandatory gasoline allocations fractions, if the voluntary stock effort is insufficient.

(Emphasis added)

Following this report, the Bureau of Competition was informed on Wednesday, May 9, that ERA officials are meeting with the 34 largest domestic refiners to urge them, in light of the "acceptable level" directive above, to accelerate their usual conversion of refineries to building of middle-distillate stocks for winter heating oil and diesel fuel. This level has been set at 240 million barrels (Response Plan, supra)*/. In urging the concomitant lessening of gasoline production and increase of middle-distillate, DOE should be aware of the likelihood of exacerbating the California shortage, and even of possibly severe, nationwide gasoline shortages.

Erroneous energy policy decisions also can be based on faulty or incomplete information, a chronic problem in the DOE regulatory system. The petroleum companies possess an enormous amount of information that could facilitate the formulation of effective and necessary government energy policy. These firms, however, consistently have been reluctant to provide this information to government agencies. Industry experts are usually interested parties in DOE rulemaking proceedings, and usually present only information supporting their positions. Those representing other interests, including the public interest, lack access to the type of information about the operation of the industry and firms that would permit effective rebuttal of the industry or company position. Thus, typically, the "hard" data available to government policy makers attempting to solve problems concerning the energy industries is information tailored to the result desired by those who are regulated.

DOE should be collecting critical data on the energy industries and disseminating it to appropriate government agencies and to the Congress. An example of the failure of DOE to collect sufficient data for policy decisions is its failure, in my view, to implement adequately the Financial Reporting System (FRS) congressionally mandated by Section 205 of the DOE Organization Act. For example, the Bureau of Competition, in comments submitted last summer on the proposed FRS questionnaire to major oil companies, recommended the segregation of refining and marketing profits. Under the proposed system adopted by DOE, however, DOE is not seeking data under a segregated reporting system.

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*/ This figure has also been used by Charles DiBona, President of the American Petroleum Institute, in a discussion of the tension between the needs for gasoline and fuel oil supplies. Oil Daily, April 25,1979 (Copy attached).

Where data is collected, it is not made available by DOE to the Federal Trade Commission on request to permit us to carry out our statutory duties in the energy area.*/ The apparent reason is the oil companies' refusal to turn over "sensitive" documents to DOE unless it agrees first to deny access to the FTC and other agencies.

As a result of our inability, after repeated requests, to obtain company-specific energy information from DOE, Chairman Pertschuk wrote Secretary Schlesinger on February 28, 1978 (copy attached) urging DOE to"promptly develop a policy favoring such inter-agency sharing of information." The Chairman noted that failure to develop such a policy "would severely handicap the timely enforcement of the laws relating to antitrust and consumer protection", "discourage informed contribution by the Commission in DOE regulatory and policy matters", and "could conceivably undermine public confidence in the integrity and correctness of DOE and Administration energy policy." Notwithstanding the Chairman's request, DOE has not yet developed an adequate program of inter-agency access to company-specific energy data.

The lack of adequate energy industry data and DOE's refusal to share its data with other federal agencies lead to our greatest concern about DOE's decision that the "acceptable" middle-distillate stock level is 240 million barrels at the present time: the decision apparently is based on industry information that may have been tailored to the self-serving ends of the oil companies,*/ and is not available to others in government with the knowledge and expertise to "second guess" the DOE decision.

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*/ E.g., Section 301 of the Petroleum Marketing Practices Act, 15 U.S.C. § 2841, requires "(t)he Secretary of Energy, in consultation with the Chairman of the Federal Trade Commission and the Attorney General," to conduct a study of cross-subsidization in the petroleum industry. Although it is obvious that the FTC cannot adequately consult on the study without access to factual data, DOE has thus far failed to assure such access.

**/ Charles DiBona, President of the American Petroleum Institute, in an Oil Daily article on April 25, was reported as stating that the oil industry is being faced with the "dilemma" of producing either gasoline this summer or heating oil next winter because of "mounting gasoline demand, record-low distillate stocks, and limited light crude oil supplies." (Copy attached, *supra*.)

I hope this report has been of some assistance. In you have any further questions about the matters discussed in this letter, please contact Ronald B. Rowe, Assistant Director, Bureau of Competition (202) 724-1441, who is primarily responsible for petroleum competition matters. Mr. Rowe's address is 425 13th Street, N.W., Suite 932, Washington, D.C. 20004.

Respectfully yours,

Alfred F. Dougherty, Jr.
Director
Bureau of Competition

Attachments

cc: Honorable James R. Schlesinger
Secretary
Department of Energy

Honorable Peter W. Rodino, Jr.
Chairman
Committee on the Judiciary
United States House of Representatives

Honorable John D. Dingell
Chairman
Subcommittee on Energy and Power
Committee on Interstate & Foreign Commerce
United States House of Representatives

Honorable Howard M. Metzenbaum
Chairman
Subcommittee on Antitrust, Monopoly and Business Rights
Committee on the Judiciary
United States Senate

Honorable Henry M. Jackson
Chairman
Committee on Energy and Natural Resources
United States Senate

Mr. Eckhardt. Mr. Marks.

Mr. Marks. Thank you, Mr. Chairman.

Mr. Bardin, I have several questions for you. I would appreciate your answers being as direct and as short as possible.

I think our basic concern today, and the Nation's basic concern today is determining whether a gasoline shortage exists in this country. If so, how long will that shortage last?

Last but not least, why is there the shortage? Can you answer the first question which is whether or not there is a gasoline shortage in this country today?

Mr. Bardin. Gasoline supplies are very tight indeed.

Mr. Marks. Is there a gasoline shortage in this country today?

Mr. Bardin. There is less gasoline available than what the American motorist would like to use, a little less, but there is less and in my words that is a shortage.

Mr. Marks. Thank you. There is a shortage. How long do you predict this shortage will last?

Mr. Bardin. Well, a very tight supply situation for months, throughout this driving season as best I can determine.

Mr. Marks. By that I assume that you mean June, July, August, September, perhaps into October?

Mr. Bardin. That is right. Even if we have as much gasoline available in these months as we had in the same months last year, that will not allow for the normal growth in demand.

Mr. Marks. Of course we do not have the same amount.

Mr. Bardin. Well, the best case you can construct, if a lot of things worked out well, in terms of crude imports, in terms of domestic supply response to the decontrol initiatives that begin next month, in terms of conservation, in terms of substituting natural gas production for oil, if all worked well, we might have as much as last year.

Mr. Marks. All right.

Mr. Bardin. It means more gasoline in July than in May, but of course the demand will be higher.

Mr. Marks. So we now have determined that we have a shortage which will last at least through October. My next question is, why?

Mr. Bardin. Because the world, the planet Earth has been producing less crude oil than all the people who live here on this planet would like to use.

Mr. Marks. Why is this country experiencing a shortage? Is it the fault of the Government? Is it because too many people are driving and using gas supplies they should not be using? Is it all those things? Can you be specific or at least tell us what your opinion is?

We prize your opinion.

Mr. Bardin. I cannot talk to you in terms of fault. I can talk to you in terms of facts. The fact is our demand for petroleum——

Mr. Marks. That fault is important to us because we do not want to do it again.

I have testimony in front of me that you gave to a subcommittee which I chaired in Erie, Pa., in December, and frankly, when you read that, your predictions are somewhat out of kilter with what is happening today. You suggested we would basically have enough to get through the summer unless something such as an embargo takes place, which has not been the case.

Mr. BARDIN. You will recall, Congressman, that you, looking ahead, asked me about the Iranian situation and you asked me then in December did my forecast build that in and I told you no, as I had to tell you.

Now what happened? The total productive capacity of this planet is producing less oil now and has been for some months than before. There are constraints.

Mr. MARKS. I have heard that answer before and I appreciate what you are saying. Then it is not time. We have a shortage and we are going to have one at least through October, if not longer, unless the situation changes.

Mr. BARDIN. I think we will have one next summer, too.

Mr. MARKS. Next summer. Is it not time that you, the President, and we in the Congress say to the American people, "Stay home. Do not drive. Turn off those lights. Do not use the air-conditioning?"

How much longer can we go before those voices are heard? That is the question I want answered.

Back in December in Erie, Pa., you did begin to voice those concerns and you did begin to say that until people do not take unnecessary trips and use one car instead of two, we will have a shortage. I think you ought to say it loud and clear now. There is no way to prevent a gasoline shortage, in my opinion, unless people stop using gasoline.

Mr. BARDIN. People have to use their cars less, not to stop using our cars; we have to use them a little less. Leave your car home 1 day that you would otherwise use it and we will get through this. The shortfall is one that this country and this economy and this people can overcome, but we have to use a little less.

Mr. MARKS. I think that you are saying it, but I think you ought to say it the way I am saying it, "Damn it, stay home. Do not use your cars."

Mr. BARDIN. No, Congressman——

Mr. MARKS. Stay home 1 day a week, use your car less.

Mr. BARDIN. No, Congressman, let's not shut our country down. I do not agree with you. Find ways of getting to work every day without having to use your own car to go to work every day. Double up, or triple up in a car pool. Find ways of consolidating your trips. Find ways of driving less, driving 5 percent less, driving 15 miles a week less, and we will get through this. But let's not all stay home, let's not all shut the country down.

Now where we have public transportation let's try to get on the bus and go to work on the bus, instead of using our car. Every time we do that we make more gasoline available for ourselves as well as for other people.

Mr. MARKS. Should this country now have a rationing plan in place? Should this Congress, in your opinion, have passed a rationing plan?

Mr. BARDIN. Yes, we recommended that.

Mr. MARKS. Absolutely.

Mr. BARDIN. It did not.

Mr. MARKS. The rationing plan that the President proposed was only designed for use if this country had an emergency. Is that correct?

Mr. BARDIN. That is right.

Mr. MARKS. Right. And this Congress has refused to give him that opportunity. Is that correct?

Mr. BARDIN. Thus far, yes, sir.

Mr. MARKS. And in your opinion, we ought to have an emergency rationing plan in place, should we not?

Mr. BARDIN. Yes, sir.

Mr. MARKS. Now if it were in place, would you say that we need to use it this moment?

Mr. BARDIN. No, absolutely not.

Mr. MARKS. But we ought to have it in the event of an emergency?

Mr. BARDIN. As a contingency, fall-back, as a weapon in the arsenal, keep it in the arsenal as long as you possibly can and maybe hopefully you do not ever have to use the weapon.

Mr. MARKS. You mentioned there are 847 station owners not in compliance with the law who have been cited. Are any of those station owners in the Commonwealth of Pennsylvania?

Mr. ISENBERG. Fifty-two.

Mr. MARKS. And do your records show in what part of the Commonwealth of Pennsylvania those regulation breakers are situated?

Mr. ISENBERG. They center around the urban areas, Philadelphia and Pittsburgh primarily.

Mr. MARKS. You also mentioned State participation with the Federal Government. I think we would agree that is very important.

I would like to ask how much cooperation you are getting from the States, because I am concerned that there are only three States who have agreed to work hand-in-hand with the Federal Government on this matter.

Mr. BARDIN. Well, it is a trial effort. It came as something new. I have written to each Governor. We have conversations going on with a number of States.

At this point I am not disappointed. I would assume that if the situation is one where there is a widespread feeling in the country that the gasoline prices ought to be controlled and the prices ought to be enforced at the pump, you will see the Governors, the attorneys-general, and other responsible officials in State government responding to this opportunity. I would give this, say, 60 days in which to see how many other States follow through on these initiatives.

Thus far we have three, but that has just picked up. Two of those delegations have just been issued in the case of Rhode Island and Connecticut.

Mr. MARKS. Last, would your office please make available to my office the names of those 52 station owners who have been cited? Are they public?

[The following information was received for the record:]

Northeast District

Date	Document	Name & Address	Highest Viol.¢	Penalty
4/17/79	CO	William Meglino T/A Billy's Arco 3001 E. Vare Ave. Philadelphia, PA	4.4	$50
4/18/79	CO	Milton Magwood Arco Station Broad & Bainbridge Philadelphia, PA	1.3	
4/19/79	CO	Walter Sidorsky Sid's Sunoco 501 Belmong Ave. Bala Cynwyd, PA	1.6	
4/19/79	CO	Anthony Del Campo Del Campo's Exxon 500 Belmont Ave. Bala Cynwyd, PA	1.9	
4/20/79	CO	Sol Fineman's Bennett Park Shell 11700 Roosevelt Blvd. Philadelphia, PA	8.5	
4/20/79	CO	Ethyl Shafer's Mini- Market Arco Broad St. at Hunting Park Ave. Philadelphia, PA	3.85	$100
4/20/79	CO	Bryant Shell 801 N. Broad St. Philadelphia, PA	3.85	$100
4/16/79	NOPV	G.M. Key, Inc. (Arco) 2871 W. Liberty Avenue Pittsburgh, PA	1.2	
4/16/79	NOPV	Diane's Gulf 1st & McKean Ave. Charleroi, PA	2.0	
4/17/79	NOPV	Martin's Sunoco 260 Smok Highway Meadville, PA	2.2	

Date	Document	Name & Address	Highest Viol.¢	Penalt
4/17/79	NOPV	Miller Auto Supply (Pennzoil) 217 Elm St. Oil City, PA	1.6	
4/17/79	NOPV	Carl's Atlantic (Arco) Wilson & Front Sts. Oil City, PA	1.8	
4/17/79	NOPV	Rusty's Gulf 2015 Waverly Ave. Pittsburgh, PA	1.0	
4/18/79	NOPV	Hubert Orr T/A Exxon Service Broad & Catherine Sts. Philadelphia, PA	6.7	
4/18/79	NOPV	John Stormer Gulf RD #2 Clarion, PA	2.2	
4/18/79	NOPV	Adams Exxon Murtland & Ridge Ave. Washington, PA	1.2	
4/18/79	NOPV	Richard Konzal Arco Mini-Mart 194 Mortland St. Washington, PA	1.2	
4/18/79	NOPV	Tim Murphy D/B/A Murphy's Arco 2001 Ridge Ave. Philadelphia, PA	7.3	
4/18/79	NOPV	Burchard's Exxon 5th & Avery Sts. Parkersburgh, PA	2.1	
4/19/79	NOPV	Resseler Bedford Exxon North Richmond St. Bedford, PA	2.7	

Date	Document	Name & Address	Highest Viol. ¢	Penalty
4/23/79	NOPV	Spano Amoco Broad & Glenwood Ave. Philadelphia, PA	1.8	
4/25/79	CO	Ardmore Exxon Haverford Ave. Wynne Wood Ardmore, PA	1.7	
4/26/79	CO	Mallili Exxon 1057 Easton Rd. Willow Grove, PA	1.2	
4/26/79	CO	Amenta's Exxon Rt. 611 & Sycamore Rd. Willow Grove, PA	2.5	$100
4/27/79	NOPV	Balzert's Exxon 1650 Babcock Blvd. Millvale, PA	8.14	
4/30/79	NOPV	Arie's Exxon Easton Rd. & Scheltenham Ave, Wyncote, PA	2.5	
4/30/79	NOPV	Donegal Gulf Box 91 Donegal, PA.	1.2	
4/30/79	CO	Diorio's Exxon York Rd & Easton Rd. Willow Grove, PA	1.2	
5/01/79	ROIC	Harry Burke Mobil Rt. 322 & Rt. 162 Westchester, PA	8.6	
5/01/79	NOPV	Blattenberger Gulf 600 Lincoln Way East Chambersburg, PA	5.2	
5/02/79	NOPV	Zimmerman's Exxon 47 North 21st St. Camp HIll, PA	1.7	

Date	Document	Name & Address	Highest Viol. ¢	Penalty
5/02/79	NOPV	Rossmoyne's Exxon 4800 Gettsburg Pike Mechanicsburg, PA	5.7	
5/16/79	NOPV	Plaza Mobil Service Center Rt. 202 & 363 King of Prussia, PA	6.9	
5/16/79	NOPV	Patterson Mobil Service Center Rt. 202 King of Prussia, PA	1.9	
5/16/79	NOPV	Sharmon Eger's Exxon 1070 De Kalf St. Bridgeport, PA	6.7	
5/16/79	NOPV	Auggie's Arco Ford & DeKalf St. Bridgeport, PA	1.3	
5/17/79	NOPV	Roger's Getty 455 West De Kalk St. King of Prussia, PA	1.6	
4/30/79	CO	Lou's Exxon York Rd. & Easton Rd.	1.2	
5/04/79	CO	Krewstown Krewstown & Surrey Rd. Philadelphia, PA	1.2	
5/04/79	CO	G&H Shell Roosevelt Blvd. & Red Lion Rd. Philadelphia, PA	1.0	
5/04/79	NOPV	Krewstown Amoco Welsh Road Philadelphia, PA		

Mr. ISENBERG. Yes, it is public information. I should say one thing though, that Pennsylvania has not been one of the worst areas in terms of violation. The percentage of violators we found among people we have audited in Pennsylvania has not been among the highest in the country.

Mr. MARKS. May I ask where the highest percentage of violators has been?

Mr. ISENBERG. The ones we have audited have been in southern California.

Mr. MARKS. Where the shortage is at the present time?

Mr. ISENBERG. Yes.

Mr. MARKS. Thank you very much.

Mr. ECKHARDT. It is interesting to see two persons who may agree without being totally agreeable.

Mr. MARKEY.

Mr. Gramm.

Mr. GRAMM. Thank you, Mr. Chairman.

Mr. Bardin, I would like to add my comments basically in line with Mr. Sharp's, that I recognize that you and DOE have a very difficult job. I do not underestimate the great ability of all of the employees at DOE but in my opinion as an economist, if you took every employee of DOE and tried to regulate the functioning of every filling station in America, you could not do it.

Mr. BARDIN. I agree with you, Congressman. It would take thousands, not hundreds, but thousands of people to do that job with these regulations in the traditional way of doing it. That is one of the reasons——

Mr. GRAMM. I would like to get your view of an alternative, not a very good alternative because it does not appeal to ignorance and prejudice, but I think it is a reasonable alternative from the point of view of trying to deal with the problem.

Why not in this period of shortage concentrate our regulatory forces at the production and refinery and wholesale distribution level and deregulate the price of gasoline at the pump.

Mr. BARDIN. If you ask my personal opinion, I will give it to you.

Mr. GRAMM. Both.

Mr. BARDIN. There is no plan to do that. Personally, I think that would be a salutory measure.

Mr. ECKHARDT. Will the gentleman yield?

Mr. BARDIN. But will——

Mr. GRAMM. I won't yield yet; I would like to pursue my question, if I may, because I have several followups right on the heel of this. This is the problem, if we fix the price at which someone can sell a commodity and if that price is far below what people are willing to pay for it, then we have a real problem in getting them to have any kind of distribution of sales over the 24-hour period.

If I could open my station when I wake up in the morning and sell my gas between 10 and 12, why should I stay open at 8 o'clock in the evening when some guy trying to work and earn a living after working overtime has come home from work, what are the returns to me of doing that?

Mr. BARDIN. You are probably a small businessman who is a member of his community and are not putting all of your God-given talents to getting the last buck. You probably have a sense of community responsibility as a businessman. You have a strategic interest in having these people come to you next year and 5 years from now when all kinds of conditions have changed.

I don't think there are really economic men or economic women out there. They go to church; they are members of clubs; they are members of the community. But I understand your question, and what the country is up against are two different kinds of questions.

If you thought you had a very deep shortage, you would be talking about a large price increase, assuming you believe these regulations are really working to hold the price down. That would raise a severe social question whether the people in west Texas whose incomes are middle or lower income should have that burden imposed on them.

My personal answer to you is it is a severe question and a serious one and one which deserves compassion, but so is what is happening to the price of milk in the last few months, and I don't hear the outcry about the price of milk which is also a necessity.

In addition to the question of the impact on the poor, is the impact on middle class people, the people who have no choice but to get to work and get around with a car, there is a question of the impact on the inflation rate generally. That is a very intricate one, whether price control in a time of severe shortage helps constrain inflation or whether it simply fuels the increase in prices of the foreign oil that we buy. But of course at the moment we don't have a severe shortage. We are not talking about that. We are talking about a very tight supply, a little bit less than what we would like to use.

So it seems to me that the economic and social choice, as contrasted with political choice and perception, is for a relatively small risk of price increase as against all of the dislocations in allocating supply that are going to arise and continue to arise if we have a long, sustained, very tight supply-demand situation. I believe we will have a sustained, very tight situation this year and probably next year.

Mr. GRAMM. To what extent, Mr. Bardin, do you believe that the regional shortages are due to the allocation process itself?

Mr. BARDIN. I believe the allocation process probably exacerbates the shortage, but I doubt whether it starts with that. You have a faster growth rate of consumption in some places than in others. There is a good chance that given the fact that this industry is not actually working on daily auctions, it doesn't have the competitive structure, say, of agriculture in selling produce on daily market, there is a good chance that there would be a good deal of allocation going on under any kind of system.

I don't want to overstate it, but obviously there is not an opportunity for adjustment at the retail level through the operation of the market balancing forces, and that has got to exacerbate the situation.

If you have one neighborhood in Los Angeles County where the demand is much higher, for whatever reason, than in another, perhaps, more rural neighborhood where there hasn't been growth, in a freer environment the price would go up in the first neighborhood, gasoline would be diverted in some measure—there might be contractual inhibitions—but there would be some diversion of gasoline to that first neighborhood and it would tend to smooth out the distribution.

I think we would be in better shape today, not ideal shape by any means, but better shape if we had deregulated gasoline 1 year ago or 2 years ago or 3 years ago.

Mr. GRAMM. Well, it seems to me, and I will make this my final point, since I don't want to overextend myself on time, that if you take into account the cost of the allocation program and the cost and indeed the inability to proctor behavior at the retail level and you take into account a very real factor that very seldom gets discussed in this Congress, that is the freedom, the ability of an individual to choose and make decisions and make allocations and then you add the very real inconvenience cost of getting up at 4:30 in the morning and going down and waiting in line at a filling station and you add how that might affect your productivity during the day in producing goods and services, all of those things really strengthen the argument, it seems to me, for allowing at least at the retail level where you have got 187,000 contributors, allowing competition to work where it will work.

Mr. BARDIN. Congress mandated this control system, as you appreciate, Mr. Gramm, of course before you got here, and we are operating under congressional mandates. I dare say that if Congress had mandated an identical control system for milk, we would be having milk shortages around the country.

Mr. GRAMM. And we would be decrying the fact that little children didn't have it and urging you to have more enforcement authority to make an unworkable system work.

Mr. BARDIN. Probably, perhaps. I have seen systems work in other countries where they do regulate the prices of an awful lot of commodities. What they get into invariably is a cycle of subsidy, where the government has to put up money, directly or through the equivalent of an entitlements program, where it is swapped back and forth among suppliers, and shortages and sudden governmental decisions to change the price drastically, perhaps 30 percent at a time.

Now, for the long run, in my judgment, that is the kind of price we are going to have to pay for maintaining price and allocation controls on gasoline.

Mr. GRAMM. Thank you, Mr. Chairman.

Mr. DINGELL. The Chair thanks the gentleman.

The Chair recognizes now the gentleman from Michigan, Mr. Stockman.

Mr. STOCKMAN. Mr. Bardin, I want to express my regret for some of the attacks that you have had to weather this morning. It seems to me there has been an implicit hypocrisy in much of this. What we have here is a Rube Goldberg contraption devised by this committee and this Congress that roughly has three tractor tires on one side, two moped wheels on the other side and no steering wheel, and then we are blaming you for not keeping it on the road.

It seems to me that that is exactly what underlies this regional maldistribution and spot shortage crisis that we have today. We, after all, adopted the small refiner bias. Therefore we built a lot of refinery capacity, but it can't produce gasoline or distillate at the normal ratios. We, after all, mandated the price controls on refineries. As a result, we haven't had the buildup in gasoline and unleaded gas capacity that we need. We, after all, mandated the gasoline price controls and the allocation system and refused to consider removing that or approving a decontrol plan that you had last year and now we are bearing all the fruit and blaming you, and I think it is totally unfair.

Mr. BARDIN. Nonetheless, it is my sworn duty to administer. I think the criticisms are legitimately directed at this witness and I have no complaints about any of the criticisms.

Mr. STOCKMAN. I think that you do an admirable job of trying to drive that contraption, but obviously it is not drivable in the first place.

There is one thing, that in order to focus on this question of the allocation system or harness and the exacerbation that that causes, in terms of these spot shortages, something that I saw in your report on California, is very perplexing to me, and I think that your Department ought to look into it.

Your numbers indicate that for May there is roughly 93 percent availability statewide, when all the pools are allocated in terms of last year's amount. But when what you find is that for the part of the gasoline pool from each refinery going into that State, that is the residual, in other words, after the State set-aside and the high priority users, they are on an average 81 percent fraction.

Now what that implies is that either there has been a huge increase in purchaser entitlements, new people going into that second pool, the allocation fraction pool, or those who are getting the 10 percent of current needs are really getting 100 percent of current needs, and it sends it way, way above last year. That is the only way the 93 percent overall can be balanced against an 81 percent allocation fraction for the residual pool.

Now I was talking to some refiners the other day and I understood something for the first time I don't think this committee has focused on. Those high priority users move right up through the distribution system. In other words, they are certified at the jobber or bulk distribution level, and there is no real policing or control over that that I can tell. It is a self-certification by the jobber or whoever is lifting from the refinery terminal or bulk station terminal.

And is there some possibility that an awful lot of gasoline is moving through this 100 percent of needs high priority and then into other areas that really weren't contemplated or intended by the original priority scheme? Because if you look at those numbers for California, there has to be an awful lot of gasoline moving through that high priority self-certification system that moves right up to the national pool of the refineries serving the State?

Mr. BARDIN. We are looking into a number of possible abuses or possible areas which we may not understand, but I want you to know that what we have looked at thus far on the numbers regarding agriculture, which is one of the high priority uses, compared to last year's, they are not out of line. So there doesn't seem to be that kind of accumulation.

We hear from refiners tremendous fears that in one way or another there is a multiplication of these needs, but thus far I have not seen that borne out. We do look into those questions in the

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audit effort that we have underway which will probably give us answers, at least on a spot basis to them.

There is the same kind of suspicion within the industry that has been reported to us accurately by members of the committee and their constituents, generally, vis-a-vis the oil industry, the Government and what have you.

There are two other factors you have to add to your list of possibilities. One, of course, is just an arithmetic error. It seems unlikely when you see it in so many different places. But, second, there is a conservative bias. When you are in the business you would much rather dish out bad news and make it turn a little better during the course of the month than dish out good news and have it turn out misleading or much worse.

I think you are going to find as to both of these figures, both the allocation fraction, and even more important, the supply ratio, that they tend to creep up during the course of the month. One of the interesting things to me is when I look at the State-by-State list, the supply ratio, we come up with your State, for example, is only 84 percent.

Mr. STOCKMAN. The interesting thing is we don't have any weekend closings to any appreciable degree. I was out there last weekend and the stations were open until 11 o'clock. Yet we have one of the lowest availability fractions for the whole country, 84 percent. Some States have 100 percent available. Hawaii—unless your numbers are wrong—has 126 percent relative to——

Mr. BARDIN. We are checking out the Hawaii numbers. If it is true, there ought to be a tanker load of gasoline moving to Long Beach. But it is something I gave orders to look into.

Mr. STOCKMAN. Mr. Bardin, I am not suggesting that you undertake enforcement efforts here.

Mr. BARDIN. I understand.

Mr. STOCKMAN. What I understood from the refiners I talked to yesterday is that the jobber who has 100 percent of needs customers, priority customers, can go right to that terminal, put his credit card in the slot and take whatever he wants.

Mr. BARDIN. That has been a very serious problem, as to the terminal, even as to pipelines. What this industry has to do and is doing now is to slightly deautomate, they have to post people to check, because they have been wrong in many cases.

Mr. STOCKMAN. You increase—decrease the efficiency of the distribution system and increase its cost——

Mr. BARDIN. It may.

Mr. STOCKMAN [continuing]. To enforce regulations that are compounded——

Mr. BARDIN. Here, let's be fair to the other side that disagrees with our philosophic position. Even if we had never had regulations, should you get into a situation of sudden constraints, even if the price goes up and ultimately achieves an equilibrium, there will be a period of time when companies might have to allocate. There are lots of cases where unregulated companies do.

It seems to me there is a lesson here not only for the oil industry but for others, that if you automate to the point where you lose week-to-week and day-to-day control, you may have to pay a fierce price somewhere down the line, and you ought to be in the position where you can temporarily use middle management or outside people to help you police a situation, if you have to do it. You have runs on all sorts of retailing operations, wholesaling operations in which, for reasons of business strategy or morality or whatever, you, the businessman, the unregulated businessman, allocates amongst customers for a period of time.

Mr. STOCKMAN. Mr. Bardin, I guess the only thing I am trying to say is, you put proper emphasis on the rigidities of this allocation system causes, and that is a very large contributor to the fact there are spot shortages and varying degrees of supply availability from one part of the country to another that might not be here if we didn't have that allocation harness. I remember 2 years ago we lost 50 percent of our foreign coffee supply, but we didn't have a spot shortage of coffee in Tennessee. Apparently the market can distribute those reduced supplies a lot better than the allocation system.

Mr. BARDIN. The price of coffee did shoot up.

Mr. STOCKMAN. One final point on your distillate target program. I understand from statements in recent days you are backing off. I would hope you would take a careful look at the movement of inventories from the primary systems recorded in API statistics and therefore become the basis for your target and the measurement of the rate at which it is being achieved over the summer, and the secondary inventories that are beginning to appear in very large volume, I believe, at the end-use level and at the independent jobber and distributor level that are not measured. We have done some checking around the country and you cannot get a steel tank for 90 days or 120 days. That suggests there is a lot of secondary inventory being socked away. And if we have a target geared only toward the primary inventory we may well have far more distillate than we need and that comes out of the gasoline output this summer.

Mr. BARDIN. We are doing that kind of checking. We feel already the target should be viewed as you suggest in terms of the terminal and downstream stock as well as the refiners' stock.

Mr. STOCKMAN. But that is not measureable.

Mr. BARDIN. We have to have an estimate. We are doing that. We are going to have better estimates in part because the big terminal operators will now report to us weekly what their stocks are, whereas with few exceptions they did not report it to API. We will have even more detailed information. The concept and the estimate of the translation will be built into our actual program.

Mr. STOCKMAN. Thank you.

Mr. DINGELL. The Chair thanks the gentlemen.

The Chair recognizes the gentleman from Massachusetts, Mr. Markey.

Mr. MARKEY. Thank you, Mr. Chairman.

When do you think the crude oil supplies will be back up to normal with the Iran situation somewhat stabilizing? Do you expect it to happen this summer or will we have a permanent shortage of some degree as the year goes by?

Mr. BARDIN. Because the world demand for petroleum keeps going up, I cannot hold out hope for normalcy, Mr. Markey, if by that we mean having as much petroleum available to the consuming countries as their economy has become accustomed to and has wanted to consume. What I can tell you is that the imports into our country should be going up now. The reports we have from the importing companies indicate that April was probably the bottom of that situation in which we felt the greatest brunt of the Iranian cutoff, in line with the experience, incidentally, in the oil embargo of 1973–74.

Mr. MARKEY. That would be the bottom-line question.

Mr. BARDIN. We should be getting more oil, but this is supposed to be the period of the year of considerable stock buildup both of crude and of product. We do not have quite enough oil coming in or prospect of it to maintain all of our needs. The only possible windfall in oil supply would be a greater-than-expected response to the June 1 and post-June 1 decontrol initiatives, but we have not held out magic in terms of supply response out of those in the short run.

Mr. MARKEY. So right now we are seeing middle distillate, home heating oil selling for 90 cents a gallon on the spot market in New York Harbor. What is the DOE doing to moderate that situation? How are these companies being able to engage in the market in New York Harbor which is pushing the spot market for home heating oil to 90 cents a gallon when it sits there——

Mr. BARDIN. We are looking at and trying to deal with a number of different facets of that very complicated market. There are two critical ones in my judgment that are easy to set forth but have to be translated through some rather difficult decisions. One is just to reduce the demand for distillate, particularly as we enter the peak air conditioning season of electric utility generation, by producing more natural gas and substituting natural gas for those distillate uses, so that the remaining demands will be smaller, working on the available supply.

The other is to look at the sulfur requirements which are very tight in some of our eastern seaboard centers, including New York, Boston, Philadelphia, and others. This obviously requires an assessment, the balancing of public health, air quality considerations as well as energy and price and utility bills. President Carter announced that the EPA would be looking at these issues. If it is possible for the States on the one hand, and the initiative has to come from the State here, and the Federal EPA to relax temporarily in these very stringent times, for the summer air-conditioning season, the sulfur-in-fuel requirements, it will effectively add distillate supplies in two senses. One, there are some cases where they are actually blending distillate, back into residual oil to bring down the sulfur content of that residual oil. In other cases they are using a very high-quality very low-sulfur crude, expensive crude to produce residual oil for those purposes.

Mr. MARKEY. Now, with all due respect, talking about the deregulation of gasoline, we deregulated the price of home heating oil a couple of years ago, with the promise that it would elicit the supply which was needed for home heating oil, at the same time that any average yearly increase would not exceed 5 cents per winter, per year. And we now see, we contemplate for the coming winter a home heating oil price of 90 cents a gallon. So with all, again, with all due respect, I am not sure that the deregulation of gasoline is going to give us any better response than we received from the home heating oil market because what we are seeing is a situation in which there may be 90 cents a gallon home heating oil that started out this past winter at 47 cents a gallon for New England and have a shortage at the same time. What do you think is the last moment at which DOE can begin to say to the oil companies, "You have to require, you have to change the fraction in your production mix from gasoline over to home heating oil," so that we can have enough supplies this winter to keep people's homes warm?

Mr. BARDIN. We can answer that question only when we see, in the next few days, the plans that these companies have. If their plans will bring us to the target, obviously we do not need any more change. If they bring us very close, we can defer decisions until very late in the season.

Mr. MARKEY. If they do not, if they cannot satisfy us that there are enough crude oil supplies available, what is the last possible date that you can envision that we can begin to shift over to production at the refinery to take care of the home heating oil market for the coming winter?

Mr. BARDIN. I cannot answer that question now. To answer the question, which is an important one, but to answer it meaningfully I have to have a background of fact, not just targets that we set. I need facts on what the oil refiners are planning and committed to do so we can see how much we have to change them. But if they all are already committed, given the whole balance of considerations, to achieve that target, then all we have to do is track that they are making progress along their trajectories between now and then to keep on target. If they fall short, say, by 1 percent of the target, it would be very easy to defer drastic decisions until very late. On the other hand, if they fell extremely short we would have to make decisions in May or early June to implement them. It is only when I have the results of the Office of Fuel Regulations process which involves these 18 largest refiners and will be completed very shortly—end of next week I am told by Mr. Butler—that we will get the results so that I can answer you.

I do want to make clear that you are quite right that supply-demand drives price of the unregulated product and some people would criticize and say that our ineffectiveness in administering the retail price on gasoline means that even despite regulations, supply-demand is driving the price. In these circumstances, like the coffee case that Mr. Stockman gave me, the consumer strike, demand constraint conservation, or less consumption is one of the answers. One of the critical tests is going to be can we really keep our thermostats set higher this summer, do with less air conditioning, and therefore consume less distillate for peaking purposes all around the country? If we can do it, voluntarily live with temperatures as high as 80 degrees in our homes, and in the Halls of Congress as well as in the halls of public areas, that will be a contribution.

Mr. MARKEY. I cannot disagree with you. All of the things which you are speaking of are components of a strategy to make ourselves able to weather this coming difficult period ahead of us. But I think that the example of home heating oil decontrol serves as a poor example for any kind of prediction as to how the market will respond to a gasoline decontrol, especially when I think it may indeed be very necessary for the Department of Energy within the next month or so to be making decisions that will reallocate the crude oil supplies away from gasoline production and into home heating oil production just to meet the very real need that may develop in this coming winter and become a crisis of, I think at this point, unprecedented magnitude that people really cannot envision, that will be facing those areas that are depending on home heating oil in the year ahead.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes the gentleman from Texas, Mr. Loeffler.

Mr. LOEFFLER. Thank you, Mr. Chairman.

Mr. Bardin, during the peak of the so-called Iranian turmoil, we anticipated a shortfall to the United States of available crude of approximately 500,000 barrels per day.

Currently what is the shortfall that we are experiencing in this Nation?

Mr. BARDIN. I am sorry, Mr. Loeffler, I did not bring the number with me, and I don't want to give you the wrong figure. I will be happy to supply it for you.

I have mentioned that the reports we got indicate a forecast for May, which I assume is what you mean by current, which includes a slight increase in imports over April, but I would rather give you the numbers accurately for the record, if I may.

Mr. LOEFFLER. I can appreciate that.

Would you not only submit it for the record, and also supply it to my office as well?

[The following information was received for the record:]

The shortfall for May 1979, as based upon a comparison between the average receipts (Domestic and Imported) for the fourth quarter of 1978 and the actual runs to stills of Domestic and Imported Curde reported on the ERA-59, is approximately 740,000 barrels per day. The ERA-59 is an estimated volume of next months crude runs and an actual volume of last months crude runs. The last quarter of 1978 was selected as the most recent three month period which is reasonably representative period of the crude oil supply situation.

Mr. LOEFFLER. Speaking in general terms, I assume the shortfall is not as great as it was, say, at the 500,000 barrel per day level that was the common figure used.

Mr. BARDIN. Yes, you are correct. We would be using a number that would be somewhat lower. I will provide that to the committee and to your office, Mr. Loeffler.

Mr. LOEFFLER. Thank you.

I would like to turn to a more parochial concern of mine. You have spoken earlier this morning concerning the diesel fuel shortages. I would like you to explain more thoroughly what is the cause and how do you suggest we overcome the situation, for as you well know, we are still experiencing problems in the 21st Congressional District in diesel fuel use.

Mr. BARDIN. We are looking into particular cases but I don't pretend that we have all the answers by a long shot. Looking generally nationwide, the stringency in crude oil supply and refinery runs has to do with the output of diesel. The fact that our middle distillate stocks are very low, our middle distillate stocks, entering the plowing season, was a very severe factor. Last winter started off warmer than usual, but the second half of the winter was considerably colder than usual, and we drew down very heavily on middle distillate stocks. The wherewithal to provide diesel fuel, which is just a specification product out of the middle distillate, was at unacceptably low levels. I don't mean just tight. I mean below what people would normally say is a good working level for managing middle distillate. It has been a matter of public record for weeks.

Three, in some areas of the country you had a bunching up of demand for diesel, because of factors such as rains delaying plowing, and then it just had to be done.

Four, we have refinery shortages in some areas, a total refinery going out in one case, and refining facilities in others. You always have some of that, but when you put them all together, you begin to have problems. The diesel distribution mechanism, like any other part of the petroleum distribution mechanism, is generally on a very tight framework, a few days turnaround maximum. There is no such thing as a 30-day stockpile in fact. It is very misleading. Most of those 30-day stockpiles really consist of fuel in the pipeline, which has got to stay in the pipeline as hydraulic fill to drive the pipeline. You can't drain the pipeline dry unless you want to put water behind the petroleum, in which case you have nothing coming out.

There is also probably a certain amount of the equivalent of tank topping. People are not used to having to live from hand to mouth. Our economy has been blessed, by and large, by not having run outs at the grocery store, run outs at the department store. That is one of the great differences between our economy and so many others. So when it begins to happen, dealers and customers tend to react strongly and try to secure all the stocks they can.

We had a situation in one State where a utility for whom we got a natural gas supply to substitute for distillate continued buying heavily on the distillate market for stockpiling. We had to go to them and say, wait a minute, it is all right to stockpile for the long run, but you don't need to be buying distillate just as heavily. Cut out 90 percent of that so that farmers, truckers and others can have access to the diesel fuel they need out of distillate. It is that kind of compounding that I am aware of now.

Mr. STOCKMAN. Will the gentleman yield?

Mr. Bardin, on that very point, do you know there are fuel oil dealers in Washington, D.C. who are filling home tanks right now that they would normally be filling next fall and they are calling customers asking them if they would like to have their tank filled now?

Isn't that part of that topping process you are talking about, and isn't that drawing supplies out of the recorded inventories?

Mr. BARDIN. That would probably tend to do it, and that is one of the reasons we reimposed mandatory requirements with regard to distillate in a very narrow specialized area, namely, the agricultural priority, to get distillate to agriculture, and overriding these home uses. We are establishing a specific task force which the Deputy Secretary has directed us to establish and it will be in place next week, probably in a Midwestern location, to deal with the on-the-spot problems. I fear that we are going to have to direct specific refiners to shift distillate, from certain markets to the more urgent agricultural ones.

You must understand one of the problems was a legal one. We lost a case about a month ago, brought by Mobil Oil Corp. against the Department of Energy in the District Court for the Southern District of New York. The court held that we could not, under the regulations then in effect, direct a refiner to shift product as contrasted with crude oil from one refiner to another.

We amended that regulation on behalf of agriculture in the emergency regulation with regard to diesel availability for agriculture. We are holding a hearing today about the possibility of extending similar priorities for public transportation, both with regard to diesel and gasoline.

Mr. LOEFFLER. I appreciate that, and I might just say that the shortage now being experienced in the farming and ranching community, is not going to terminate merely because the planting season will be over, and whether it rained early or rained late.

Mr. BARDIN. We come in with a harvest which is going to start in the south and move north to the wheat harvest. We have a whole season to deal with.

Mr. LOEFFLER. Not only with the harvest, but you have got the in between times when the cultivating process that will be going on as well.

I would like to ask one final question, and that is, what impact has the lack of refinery capacity in California played in their shortage situation—that lack of refinery capacity being basically a result of very strict environmental regulations?

Mr. BARDIN. I think it is playing a factor now.

Let's acknowledge at the outset that California has a larger plant capacity, and that is a blessing, 2.4 million barrels a day of capacity, that has been built up over the decades. The failure to expand or retrofit that capacity is what ought to be focused on, and that failure means that they are up close to the limit right now. This is true even though they have been operating in the last few weeks on the order of 80 percent utilization in terms of the crude oil runs. They are operating close to the limit of gasoline output, because with the kinds of crudes they have available to them if they increase crude runs, they are just going to substantially increase residual oil output, rather than gasoline output.

What they need is a significant investment in gasoline and distillate capacity, to take the heavy crudes—the less desirable crudes, which are available and will be available in the future—and translate them into the kinds of products that the Western economy demands.

Mr. LOEFFLER. There is no way that you can put a percentage on the impact of the lack of refinery capacity as to the problem California is experiencing?

Mr. BARDIN. Their utilization rate is about five points below the national average. You might want to generalize from it, although I always hesitate just taking those two averages and making a comparison, between them. There is a series of difficult decisions to be made. Some of them have to do with environment. Some of them have to do with whether you regulate the products. Some have to do with whether we have tariff protection, import quotas, or any other protection to American refiners against products imported from abroad where it may be cheaper to refine.

Once we have decontrol of crude oil, we will have eliminated by September 1981 effectively what has been about a $2 per barrel tariff wall which has protected the American refinery operation from foreign imports. These are all questions which would enter into specific managerial decisions, and there are others I wouldn't want you just to take the comparison I give you between those two utilizations, which is 5 percentage points difference, as the last word on the subject.

Mr. LOEFFLER. Thank you, Mr. Chairman.

Mr. MOORHEAD. Would the gentleman yield for one question?

Mr. LOEFFLER. I yield if the chairman will allow me to have additional time.

Mr. DINGELL. The Chair will permit it.

Mr. MOORHEAD. There is one thing disturbing me and a lot of other people around the country and that is a series of stories in the newspapers the other day about Mexico selling their oil to Cuba and to a number of European countries.

Are they getting ahead of us in finalizing contracts for oil that will affect our future supply in this country?

Mr. BARDIN. I am not aware of any such problem. I did mention previously the immediate problem of the reduced Mexican oil exports, which have various technical reasons for them, but I am not aware of a problem——

Mr. MOORHEAD. Of contracts being entered into?

Mr. BARDIN. A very substantial reduction, 400,000 barrels a day, as I recall, less Mexican oil is being delivered in May than the contract levels called for. However, I am not aware of any problem our oil companies have in contracting for Mexican oil.

Mr. DINGELL. The time of the gentleman has expired.

The Chair recognizes counsel for questions at this time, and then the Chair, if the members desire, will afford another opportunity for questions.

The Chair recognizes counsel.

Mr. SCHOOLER. The following questions concern enforcement.

First, I would like to go a little bit into the hotline issue. We are interested in pursuing exactly how one determines whether a retailer is in violation, what type of model or formula is used, to the extent that you can disclose it. We don't want to disclose to retailers what is the magic number after which they will appear in violation.

But can you give us a broad explanation of what happens when a call comes in on the hotline?

Mr. BARDIN. I think Mr. Isenberg can do that.

Mr. ISENBERG. As far as targeting, how we decide which States are audited?

Mr. SCHOOLER. Yes.

Mr. ISENBERG. The primary basis is the price, and the higher the price the station is charging the more likely it is to be audited. The exact cutoff point is determined by averages we get from our files on record as to what average costs are, what average margins are, and as to whether a particular price being charged in a geographic area is reasonable or not.

Mr. SCHOOLER. As I understand it, the rule for a retailer is that he can charge his product cost, the cost of gasoline to him, plus amounts he was receiving in 1973, plus 3 cents in nonproduct cost, plus some other amount under recent regulations for recent rent increases and vapor recovery systems. Is that essentially accurate?

Mr. ISENBERG. He may also have the benefit of some bank, some unrecovered product cost, increased product cost not passed through. In looking at hotline numbers we would estimate what a reasonable average was that someone might have passed through in that regard or for other similar factors, and again see whether the ultimate price being charged appears to be excessive. We cannot determine if a station is in violation from a hotline call. All we can do is determine if there is a likelihood of violation.

Mr. SCHOOLER. You would not know 1973 margins and you would not know his exact product costs. You would know that there is at least that 3 cents which is permitted under the regulations which would be added to that, and you can make an estimate of vapor recovery and rental increase.

Mr. ISENBERG. We would not have records on individual stations unless we went to the individual stations.

Mr. SCHOOLER. How much would you assume for rent increase and vapor recovery?

Mr. ISENBERG. I am not sure what the exact computations are. We reviewed figures that we have available and we have done this periodically.

Mr. SCHOOLER. As we understand it, you have been assuming that could be as much as 2 cents. Does that sound right?

Mr. ISENBERG. I am not sure. It could be almost anything depending on the individual experience in the geographic area.

Mr. SCHOOLER. For rent increase?

Mr. ISENBERG. For rental increase and also for vapor recovery systems.

Mr. SCHOOLER. The reason I asked that question is because in response to a question to Mr. Bardin concerning the reasons for price increases, Mr. Bardin stated, under a worst-case assumption, that rent increases and vapor recovery systems—this of course only applies in 1979—account for less than a penny a gallon under price increases under that regulation.

Mr. BARDIN. Mr. Schooler, keep in mind that those are weighted national average. In other words, you might have a filling station which had experienced a high rent increase, and would have to be looking at more than a penny a gallon. My answer to your question 7(b) is simply in terms of the worst case, our assessment of the highest national average that might be. Do you understand me?

Mr. SCHOOLER. So you are justified in assuming that it could be as much as 2 cents even though the average is less than 1 cent?

Mr. ISENBERG. You are comparing an average to a targeting device, and the targeting device is designed to make sure that we audit the most likely violators, the worst violators, and so the numbers that we use would be aimed at capturing the worst people, and not necessarily including some of the lesser types. It might well be that we use higher averages for targeting purposes than we would for answering questions such as yours in terms of what the national average actually is.

Mr. SCHOOLER. Even after you have made your computation, do you include some additional amount, perhaps to insure you are more likely to find a real violator?

Mr. ISENBERG. Yes; we are attempting to find the worst violators.

Mr. BARDIN. My advice to Mr. Isenberg and his staff around the country consistently has been to concern oneself less with the possibility of a penny here or 2 cents there, and deal with the risk of a 10-cent gouge or a 20-cent gouge.

Mr. SCHOOLER. Have you found in any of your audits of a retailer where a price seemed abnormally high that it was the result of a high price he paid to his wholesaler, if so, what would happen at that stage? Would you continue the chain back or not?

Mr. ISENBERG. Yes; that is exactly what we are doing. In many cases what seems to be a high retail price is in fact legal because the wholesale price to the gas station is higher than normally would be expected. In cases where the wholesale prices appear abnormally high, we would investigate the wholesaler pricing structure.

Mr. SCHOOLER. Can you tell us about how many of those kinds of audits are presently going on?

Mr. ISENBERG. There are a number of different devices that we can use in order to investigate at that level. Audits, information requests, subpenas, special report orders. I do not have the exact number. I know it has been greatly accelerating the last 2 or 3 weeks as we get more information in as a result of the hotline audits.

Mr. SCHOOLER. Can you give us an estimate of how many audits, and how many people are working on that aspect?

Mr. ISENBERG. I am not sure. I could get it for you and put it into the record. I know the numbers are increasing as the information comes in.

[The information was not submitted for the record.]

Mr. DINGELL. If counsel will yield, is there not a continuing decline, however, both monetarily and in terms of numbers of persons in DOE who are engaged in this kind of work over the past several years?

Mr. BARDIN. Certainly, Mr. Chairman, at the retail level and at the product reseller level over the last few years we have been closing out cases from the postembargo period, and there has been a decline in that effort. There has been a partial reversal in the last few weeks because we took some of the resources which we had frankly not programed for this purpose. We had programed them for refiner effort or crude oil production effort, but we have taken some people and assigned them to the current situation in the downstream marketing of gasoline at the retail and wholesale levels. Similarly with the Office of Special Counsel.

Mr. DINGELL. There has been a decline in the number of special persons engaged in this kind of activity, both in terms of numbers and in terms of budget?

Mr. BARDIN. Mr. Isenberg should address this.

Mr. DINGELL. Is that not a fact, in this area?

Mr. ISENBERG. Whether there has been a decline or the exact number?

Mr. Dingell. Decline both in the number of persons and decline in the amount of money.

Mr. Isenberg. There was a decline over the past 2 or 3 years as the resource shifted from auditing of retailers and resellers during the embargo period, and went into auditing of producers, crude resellers, small refiners, and other such areas.

Mr. Dingell. You expect to lose 400 people doing this kind of work, is that not right?

Mr. Bardin. Yes.

Mr. Dingell. Is that not correct, 400 people?

Mr. Bardin. In fiscal year 1980.

Mr. Dingell. Sir?

Mr. Bardin. In fiscal year 1980 we expect a decline in that order of magnitude.

Mr. Dingell. To come to the point that concerns me, if you lose those 400 people, how will you properly process the increasing number of complaints that you are receiving from citizens over your hotline and other ways as regards pricing at the retail level of product?

Mr. Bardin. First, I should say, Mr. Chairman, that we are reviewing with the top management of the Department what the resource needs are liable to be if we adhere to our present plans of continuing to regulate motor gasoline throughout this period.

Second, we will have to review how we manage the resources we have, whatever they are.

Mr. Dingell. Excepting your authorization bills and your appropriation bills will be on the floor very shortly to deal with these matters.

Mr. Bardin. As you know, this request was predicated on the assumption that motor gasoline would have been deregulated before fiscal year 1980.

Mr. Dingell. It has become very plain, however, that that is not going to occur.

Mr. Bardin. As to the actual retail function, we have recognized early the limitations on what we could do, and therefore we have proposed to the States a concurrent jurisdiction in which the State governments will take on the significant burden of dealing with the retailers.

Mr. Dingell. But you only have three States assuming this responsibility, Mr. Bardin.

Mr. Bardin. Thus far we have three States doing it. We have written to the Governors of every one of the States.

Mr. Dingell. I do not detect that the States are rushing in to engage in this activity.

Let me ask you another question. Your regulations require that price be posted on the pump; is that right?

Mr. Bardin. Yes, sir.

Mr. Dingell. Do you have any regulations that require that the oil companies insure that those prices are placed on the pump of their wholly owned stations, or that they inform their licensees and their lease operators of the requirement for posting?

Mr. Bardin. As to the first part of the question, Mr. Chairman, the oil company is responsible in its wholly owned station to make sure that the sticker is there.

Mr. DINGELL. You audit the majors who have a very large percentage of the gasoline stations either as lease, as private operators, or as wholly owned outlets. Now what do you do in regard to these audits to insure that they are either posting the price on those stations which they control, or seeing to it that their lessees and their independent contractors are informed of either the price level or the calculations that go into computing the price level? Do you do anything in either of these areas, Mr. Bardin?

Mr. BARDIN. As to the second part of your question, Mr. Chairman, I frankly do not know the answer, and I would want to doublecheck whether we have any program which speaks to it. I will ask my associates whether they can supplement my answer.

Mr. DINGELL. It would seem that some regulatory activity in this area would be in order.

Mr. BARDIN. I will ask Mr. Corrallo if he can address the first part of the question, audits of the major refiners are the work of the Office of Special Counsel. The audits are not only conducted of their production and refining activities, but also of the retailing activity through the company-owned stations.

Mr. DINGELL. Yes, but do you have any regulations? Let us take a series of situations. If you have a major oil company which owns stations of its own, what regulations do you have that would require that major which owns stations to post ceiling prices on the pump as required by your regulations, and what do your auditors do to assure that that is done?

Mr. BARDIN. The same regulation, Mr. Chairman, that applies to the independent retailer. There is a regulation that requires posting on every pump, no matter who owns it.

Mr. DINGELL. Do you engage in any auditing to see that that is done? When your auditors go in, do they inquire as to whether that is done?

Mr. BARDIN. Yes, they do.

Mr. DINGELL. They do? Would you like to go around to some wholly owned stations with me sometime and see whether or not they are posting those prices at the pump?

Mr. CORRALLO. Mr. Chairman, if I may, the intensified audits the Office of Special Counsel has been doing of the 34 refiners would necessarily focus in part on the price by their retail outlets, because under our regulations there is a single firm concept that requires them to calculate all of their sales to third parties, including those sales out of their company-owned stations. Our audit teams are onsite at their refinery operations and they are not onsite at the various company-owned stations. Within our audit plans that we have been conducting over the past 2 years, we have been focusing on the historical period 1973 through 1976, although we have been in the process for about a month of trying to develop a module for a real-time audit during 1979. However, those historical audits have not concerned themselves with the posting requirements at the company stations.

Mr. DINGELL. All right, now what do you do about requiring that they either inform or in some fashion otherwise make sure that their lessees and licensees post the information as to price, and that the licensees and lessees are informed as to how they would calculate their ceiling price for retail sales?

Mr. CORRALLO. To my knowledge there is no regulation that would require a major refiner who is selling product to an independent service station owner, whether he be leasing the property from the refiner or own it outright, that would require the refiner to provide such information to him. The price that is posted——

Mr. DINGELL. Is it not required that they do?

Mr. CORRALLO. I am sorry, sir?

Mr. DINGELL. Provide such information?

Mr. CORRALLO. Well, the price that is posted on the pump is the maximum lawful selling price for that particular operator, and would be a function of information, some of which the refiner would not have. In other words, the refiner would certainly have to certify possibly the product price maybe on a monthly basis. He may have other costs that would have to be identified, but in terms of, for example, the nonproduct cost incurred by the independent service station operator, or his margin on May 15, 1973, especially if he is buying from one or more major refiners, the major refiner may not have all the information to give him, the price that he should be posting on the pump itself.

Mr. DINGELL. You advise here that you had originally provided stickers; when the supply ran out you relied on the individual dealer to post the maximum allowable price.

That is in Mr. Bardin's statement. I don't detect you are doing anything to see to it that the stickers are received by the individual retailers, or that the majors provide these stickers or that they provide information to be the basis of the calculation by the service station operator.

Mr. BARDIN. Mr. Chairman, I called in the national associations of the various dealers last summer, and raised with them our sense then on the basis of some spot audits, that there was a rather massive disregard of the posting requirement. They conceded to me there had not been much attention paid to that. They began a program of printing stickers at National or State association levels and making it available to their members. I do want the record to be clear that we have done something to stimulate the compliance with that requirement. The impression I have from the more recent audits Mr. Isenberg's staff have been conducting, is that indeed there is a great deal more prevalence of the sticker now than before.

I should also say that we announced on May 14 we will be initiating a rulemaking proceeding with regard to various questions concerned in the retail price rules. We will certainly want to take that occasion to review the questions you are raising as to the information and support as to what he needs to know in order to comply that the independent dealer gets from his supplier.

As a practical matter, as I understand it from the dealers associations, there are many cases where they are now getting that kind of information from their suppliers. In one case, where a dealer buys a station in 1979, his price is going to be based on what the margin of that station was back in May 15, 1973, 6 years and 3 days ago.

The only way he can find that out is for the dealer to ask the supplier and the suppliers are providing them with that information.

Mr. DINGELL. I detect complaints from the Michigan dealers that there is some encouragement by the majors that the dealers should break the regulations, such as balancing over high prices for unleaded with low prices for leaded. I detect that there is considerable dissatisfaction among the dealers and their inability to get the information, or to get assistance from DOE on this particular matter. I hope you will look into that.

Mr. BARDIN. What I would like these dealers and any other dealers in a similar situation to do is call those kinds of problems to the attention of Mr. Corrallo and Paul Bloom, of the Office of Special Counsel if we are talking about major refiners, or Mr. Isenberg, any other suppliers. We want to use the enforcement resources to make it possible for the independent dealer to comply.

Mr. DINGELL. I am sure you do.

Mr. BARDIN. To crack down on noncompliance.

Mr. DINGELL. I detect a bad situation. The Chair is going to recognize my colleagues again for another round of questions. The Chair will start with the gentleman from Nevada, Mr. Santini.

Mr. SANTINI. Thank you. To follow through on the line of inquiry you are pursuing here, it seems to me, Mr. Bardin, that there is an important possibility for assistance given your money and manpower and limitation, given the very real need for some specific help at that gas station level, or enforcement at that gas station level. We need to look to the principal suppliers to assume a major responsibility in this arena.

They don't get gasoline unless they have a sticker. If they don't have a sticker, it is the individual supplier's responsibility. The supplier assumes some kind of responsibility in helping the gas station or the retailer in computing the price, and suggests that a local representative will be there to help them compute the price. This is unless they are just interested in gouging and they aren't going to consult with the local representative. You put the burden on the supplier rather than on your already-beleaguered and about-to-be reduced enforcement staff, to assume a major involvement responsibility in this whole problem area.

Then it becomes a matter of Department of Energy dealing directly with major representatives rather than Department of Energy trying to assume the responsibility of the Dutch boy with a finger in the dike about to break.

Has anything been done in the vein of rethinking an effective practical means of implementing this kind of working relationship rather than the disastrous one that exists?

Mr. BARDIN. I will ask Mr. Butler to report to you what is being done thus far along these lines. Let me just say at the outset that I am interested in the thought you have expressed and the possibility of translating that into a substantive positive requirement upon the supplier and his personnel as long as we can do it consistent with the independence of the small businessman and his competitive viability.

Mr. BUTLER. Mr. Santini, I would like to make two points. One, under our current regulations the responsibility is with the retail dealer. However, in our discussions with suppliers, we have asked them to and they have told us that they were in fact assisting retail dealers in helping them figure out ceiling prices, providing them with stickers and making them aware of the fact that the sticker requirement did exist.

I should point out that——

Mr. SANTINI. There has been a national effort to implement this program?

Mr. BUTLER. No, sir, I am sorry I didn't hear.

Mr. SANTINI. There has been a national effort to implement that program.

Mr. BUTLER. My office, which is the Office of Industry and Regional Operations, has gone to the DOE regions and provided the regional offices with batches of stickers, asked them to work with the wholesalers and other suppliers in insuring that retailers got a supply of the stickers.

Mr. SANTINI. Have you gone to the major refiners and asked them to do it?

Mr. BUTLER. Yes, sir; we have gone to the major refiners also. I don't have any data with me that would indicate the extent to which this is being complied with.

Mr. SANTINI. By unanimous consent could we leave the record open at this point to provide that information; so the extent to which you have gone to major refiners and asked for either their assistance or required their help in this regard?

Mr. BARDIN. Could we instead assure you whatever we have done in the past we will pursue your suggestion and let you know how we pursued it?

I think the real thrust of what you are——

Mr. SANTINI. I would be happy to summarize it.

Mr. BARDIN. In the meetings last summer we had the major refiners in also and I personally asked them to go ahead and see it got down, because this business of printing stickers is not either very costly or difficult; it just has to be taken care of, but I understand your suggestion is to go beyond the printing, to go to the calculating, to the checking up, to the reminding, to the whole information system.

Some of what we did starting last summer speaks to it. I think you are giving us some additional suggestions. I want to assure you that we will take a good hard look at them in the context of this new review which we are just opening up this week on the whole retail price program.

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

[The following information was received for the record:]

HELP THE MAJORS HAVE PROVIDED TO THEIR INDEPENDENT DEALERS

Before leasing a station to a new dealer, most refiners require their prospective lessees to complete a training course. Part of such training course generally deals with Department of Energy (DOE) regulations pertinent to service stations, particularly those concerning the computation and posting of ceiling prices. Although it is the dealer's responsibility to provide appropriate stickers, many refiners and dealer associations also provide them for the convenience of their dealers.

Further, the DOE publishes and makes available to dealers a booklet entitled: "A Guide for Retail Gasoline Pricing." This booklet basically lays out all that a dealer should know regarding the DOE's requirements for computing and posting maximum permissible ceiling prices. As well, the DOE continues to provide extensive assistance to dealers and their associations, in explaining the posting requirements through innumerable meetings and telephone calls.

[The booklet referred to follows:]

A Guide for Retail Gasoline Pricing

Price Regulations

Section 212.93 of the Economic Regulatory Administration (ERA) price regulations sets the maximum selling price for sales of gasoline by retailers. You can compute your maximum selling price by determining your May 15, 1973, selling price for each grade of gasoline you sold; you then add to that price the difference between the cost of that grade of gasoline in your inventory on May 15, 1973, and the current cost for that grade in your inventory. To this amount, you may add up to 3 cents per gallon for non-product cost increases incurred, and amounts which reflect increased rental costs and costs attributable to installation of a vapor recovery system.

Records to be Maintained

1. Invoices for the purchase of gasoline from your supplier(s).

2. Daily sales records, such as would be included in a retail shift checkout.

3. Such other records which you use to determine cost, selling prices, and volumes of gasoline, whether purchased or sold.

Points to Remember

- You may never exceed your maximum selling price.

- You may always sell below your maximum selling price.

Current Refund Plans

If your records were previously examined by the ERA and showed that your selling prices for gasoline were above the maximum legal price, you may be in the process of refunding these overcharges to your customers. Any refund plans now in effect should be continued until the refund is completed according to the terms of your prior agreement. If, for any reason, the refund plan cannot be completed, please notify the ERA Enforcement Office so that other arrangements can be made.

50-875 O - 79 - 5

Examination of Records

If your records are examined and you are selling gasoline at a price above the maximum legal price, you may be liable for civil penalties of up to $2,500 per violation for each day a violation has occurred. In the case of willful violations, the penalty may be $10,000 for each violation of the ERA regulations. Therefore, it is imperative that your selling price for gasoline does not exceed the maximum authorized selling price.

Table 1 shows you how to figure the maximum authorized selling price for each grade of gasoline. To compute the price for unleaded gasoline, see below.

Table 1: How to figure your maximum authorized price
(All prices are per gallon)

Line			
1	Selling price on May 15, 1973		$________
2	(a) Current product [1]	$________	
	(b) Less product cost on May 15, 1973	$________	
	(c) Balance		$________
3	Unrecouped product costs from prior calculation[2]		$________
4	Non-product costs incurred (not to exceed 3 cents per gallon)[3]		$________
5	Increased Rental Costs Incurred[4]		$________
6	Vapor Recovery Costs[5]		$________
7	Net authorized selling price (lines 1 + 2c + 3 + 4 + 5 + 6)	Subtotal	$________
8	Increase in State and local sales tax, if applicable		$________
9	Current maximum selling price (lines 7 + 8)		$________

[1]If you have one source of supply, the product cost is the net figure (the cost of the product after adjustment for such items as discounts) of the supporting invoice. If you have multiple suppliers, you must compute your current product cost as the net figure, but on a weighted average basis (total cost divided by total gallons). Contact the nearest ERA Enforcement Office if you need help in figuring this cost.

[2]Unrecouped product costs are those increases in the cost of your product you have incurred, but have not passed through as an increase in your selling price. This does not include the non-product cost allowance (currently 3 cents per gallon for retail gasoline). Section 212.93(e) of the ERA price rules states that if a seller does not recover all of his increased product costs when computing his selling price, he may add the remaining amount (which makes up a "bank") to his selling price in a subsequent price change. Contact the nearest ERA Enforcement Office if you need help in making this computation.

[3]The regulations granted a 1 cent, non-product cost increase effective January 1, 1974, and an additional 2 cent increase effective March 1, 1974 (current total: 3 cents per gallon). Note that these allowances for non-product cost increases incurred (for example, utility bills, wage rates) may <u>not</u> be used in any calculation of a "bank."

[4]The rental increase is expressed on a cents-per-gallon basis. You may pass through only rental costs incurred on or after December 1, 1978.

<u>Example</u>

December, 1978 rental cost -	$ 2,500
December, 1978 gallons sold -	125,000
May, 1973 rental -	$ 1,500
May, 1973 gallons sold -	100,000

$2,500 ÷ 125,000 = $.020
1,500 ÷ 100,000 = .015
$.005 rental increase per gallon

The $.005 per gallon rental increase would be added to the operator's January, 1979 computation of maximum permissible selling price. Any costs recovered using this method may not also be recovered as part of the three-cent-a-gallon allowance.

To be eligible for rental pass-through, the increased rent must be paid in an arm's length transaction to a lessor that is not directly controlled by the lessee or by any firm which directly or indirectly controls the lesses.

[5]Service station operators who purchased and installed vapor recovery systems because it was required by a federal, state or local governmental authority may pass through unrecovered costs incurred since May 15, 1973. These costs may be recovered in one month or may be prorated over a period of months. Each seller must establish an accounting method for recovering these costs and apply it consistently over the chosen period. In any one month the portion of vapor recovery system costs that are available for recovery in that month shall be applied equally to, and will be deemed to have been recovered on, <u>each</u> gallon of gasoline sold.

<u>Example</u>

Vapor recovery costs $10,000
Seller decides to recover over 20 month period
Estimated sales current month = 100,000 gallons

First Month Computation

$10,000 ÷ 20 months = $500
$500 ÷ 100,000 = $.005*

*Seller may add $.005 to computation of maximum lawful selling price for vapor recovery.

Actual sales current month = 75,000 gallons
75,000 gallons X .005 = $375

$10,000 - $375 = $9,625
Vapor recovery costs

Second Month Computation

Estimated Sales = 90,000 gallons
$9,625 ÷ 19 remaining months = $506.58
$506.58 ÷ 90,000 = $.0056*

*Seller may add $.0056 to computation of maximum lawful selling price for vapor recovery.

Actual sales = 110,000
110,000 gallons X $.0056 = $616

$9,625 - $616 = $9,009 remaining vapor recovery costs.

The seller repeats the computation until all vapor recovery costs have been recovered.

New Business

If you first sold gasoline after May 15, 1973 and before August 19, 1973, use the price charged on the first day the product was sold. If you first offered gasoline for sale after August 19, 1973, your May 15, 1973 selling price is the price charged by the nearest comparable outlet on the day you first sold gasoline. Your May 15, 1973 cost becomes the cost of product in your inventory on the first day the item is offered for sale.

Figuring the Cost for Unleaded Gasoline

Table 1 may be used to determine the current maximum selling price of both leaded and unleaded gasoline if these grades were offered for sale on May 15, 1973. If you did not offer unleaded gasoline on May 15, 1973, or within the 30-day period before that date, you will not have a "May 15, 1973," selling price on which to base your current price. Therefore, on line 1 of Table 1, substitute the May 15, 1973, selling price of the leaded grade whose octane number is the same or the closest to your new unleaded product. Enter the current cost of the unleaded gasoline on line 2a and the May 15, 1973, product cost of the leaded grade having the same or closest octane number to your unleaded product on line 2b. The rest of the table should be completed as for leaded gasoline.

If you find that your calculations indicate that you are now selling at a price that is greater than allowed by the regulations, you should immediately reduce your prices to the lawful amount, and contact your local ERA Enforcement Office for advice about what you should do.

Difficulties in Making Calculations

If you have problems determining your current maximum selling prices, or if you are uncertain whether they are correct, or if you are uncertain as to whether you have unrecouped increased product costs ("bank"), you should contact your local ERA Enforcement Office for assistance.

Determining Prior Compliance

Since an examination of your records by the ERA would cover the period from November 1973 to the date of the examination, you should use Table 1 to compute your maximum authorized selling price for each month in which you had a cost increase or decrease during that time.

After computing your maximum authorized selling price for each month according to these instructions, you should then compare it to your actual selling price during each prior month to determine if you have overcharges to refund to customers. You make this comparison for each grade of gasoline, and the calculation should be used for each prior month.

If you have overcharged in a prior month, you should contact your local ERA Enforcement Office for assistance in correcting your miscalculation. This is necessary because you cannot offset an overcharge in one month by sales at less than the maximum authorized price in a subsequent month, unless such subsequently lower priced sales are a direct result of a refund to the marketplace.

Again, we emphasize the importance of your determining if you are, or have been, in violation of the regulations and of your taking necessary steps, with ERA assistance, to remedy the situation voluntarily.

Price and Octane Posting Requirements

As a retailer of gasoline, you are required to post both the maximum permissible price on each pump and the octane number of the gasoline sold from that pump. The requirement is stated in Section 212.129 of the ERA regulations and is quoted below to assist you in complying with this rule.

> Each retail seller of gasoline and No. 2-D diesel fuel shall post and maintain in legible form, in numbers of a conspicuous size (not less than one-half (1/2) inch high), and in a prominent place on each face of each pump used to dispense gasoline or No. 2-D diesel fuel in retail sales, the maximum permissible price allowed to be charged pursuant to Subparts E or F of this part for such product and the octane nubmer or numbers of the gasoline dispensed from that pump. Whenever a monthly adjustment is made to the maximum permissible price, each seller must post the new adjusted maximum permissible price and remove the prior posted price. An alternative form for posting gasoline octane numbers, which may be used in lieu of the octane posting otherwise required by this paragraph, shall be the form prescribed or required by the Federal Trade Commission pursuant to its rule at 16 CFR 422.1.

If you fail to comply with these requirements, you may be liable for civil penalties of up to $2,500 per violation for each day a violation has occurred. In the case of willful violations, the penalty is up to $10,000 per day for each violation of the ERA regulations.

You should also be aware that the prices charged by your supplier are controlled by ERA.

If you have questions or problems concerning the information in this booklet, please contact the nearest ERA Enforcement Office.

Mr. SANTINI. Thank you. I want to pursue the issue that was opened initially and dramatically by the gentleman from Tennessee. The reduction in enforcement staff and in the context of the present crisis circumstances, at least in California and Nevada.

Last Monday in Los Angeles there was a backlog of 2,000 complaints. They were coming in at the rate in Los Angeles of 200 complaints a day. To date the recommendation of DOE to reduce the enforcement staff from 650 to 243 still stands. You have indicated in your statement on page 3 additional personnel have been sent to geographic areas where the greatest concentration of potential violations exist.

What additional personnel have been sent to Los Angeles or to the State of Nevada, Mr. Bardin?

Mr. BARDIN. In Los Angeles we have sent in special strike forces to clean up complaint backlogs. On occasion we have had as many as 14 or 15 people auditing in the Los Angeles area at one time. Regarding the backlog you are looking at now, I am not sure it is a backlog of complaints or a backlog of actual audits that have been targeted.

A lot of that is due to the present shortage situation that has come up in the last 7 to 14 days. During that period we have not audited as extensively as we would in terms of pricing and have been looking more toward supply problems in trying to determine the facts.

Mr. SANTINI. The point of particular concern to me is to hold out the hope and expectation through this hot line to the American people there are going to be some responsive actions taken, and that was done at your initiative, not at the recommendation of Congress, that some responsive action would be taken in the context of reduction of personnel. It seems inherently illogical, if not irresponsible.

Mr. BARDIN. Wait a minute. We held out the expectation and we produced on the expectation. I have personally been in Los Angeles during the time of this sweep. I saw the results. I talked to the auditors who were making the sweeps. I saw the newspaper headlines, heard what the press said, and I heard the complaints of the dealers that DOE regulated the prices and why an exemption from price controls occurred along the way. In California we had a threat of a dealer strike as a result.

So there has been an impact. I have seen the rollbacks in prices. I have had Members of Congress complain to us about prices here and seen rollbacks in prices and I gave the statistics.

Mr. SANTINI. Mr. Bardin, there has been abolutely no impact in the State of Nevada. The crisis hit Nevada 3 weeks before it hit California. I asked the question, what additional personnel they have? I think the answer is zilch. I don't think there has been any activity there whatsoever.

Mr. BARDIN. I thought you asked California.

Mr. SANTINI. I asked both States in view of the fact that both have been significantly impacted. The economy of our very State is in jeopardy and it seems to me that some response is in order.

Mr. BARDIN. You have two problems in Nevada. One has to do with allocation, fuel availability. Lord knows, we have added staff, we are adding staff, we have worked hard in Nevada. I appreciate your kind remarks and I think they were well taken about Mr. House's work and Mr. Judge's work and we have really worked on that.

The other side is price. I don't know whether we have had price complaints from Nevada or not. I will assume that we have. I don't happen to have the statistics here. I don't know whether Mr. Isenberg does or how they were handled.

Mr. SANTINI. Could we leave the record open for the number of additional personnel assigned in the Nevada situation?

Mr. DINGELL. I think that would be useful. Without objection, so ordered.

[The following information was received for the record:]

As a result of calls received on the hotline, letters have been sent to over one hundred retail gasoline stations in the state of Nevada. Eighty-eight of these have been targeted for audit. Three auditors have been auditing the targeted firms.

Mr. DINGELL. Time of the gentleman from Nevada has expired.

Mr. SANTINI. Thank you.

Mr. DINGELL. The Chair recognizes the gentleman from Michigan, Mr. Stockman.

Mr. STOCKMAN. Mr. Chairman, thank you.

Mr. Bardin, it appears to me from everything you say that this self-inflicted crisis will be with us for a while. It seems to me that in light of that we are going to have a lot of instant experts poring over the inventory statistics and the utilization rates for the refineries, and we are going to get a lot of erroneous conclusions drawn and conspiracy theories concocted, and so forth.

It seems to me that your Department can take some steps to mitigate against that if you could provide some statistics on the following matters that I don't believe are readily available.

No. 1, the statistic or measure that you see on refinery utilization rates, of course, has to do with the front end of the refinery that runs to crude still. Obviously you understand and the Department understands that what is important right now is what comes out of the back end in terms of distillation and cracking units for gasoline and distillates, and there is a considerable difference between the total capacity of a refining system for gasoline and distillates related to their front end capacity for crude.

I would further note there is a large overbuilding of the residual stocks and that they are at the highest level they ever have been and that might well discourage any runs that would simply produce more residual oil in a system that apparently is glutted already.

I have asked the refining companies if they can provide some kind of aggregate capacity for gasoline and distillates per se, and they said it can be done on a company-by-company basis; they can't conspire to put all the statistics together because of the antitrust law.

I would hope you could put that together and thereby publish a gasoline and distillate utilization rate as well as the aggregate or total refinery utilization rate that everyone is citing.

The second one I would appreciate or hope that you could look at is the change in crude oil composition available on the world market both during the total Iranian shutdown and now back in the partial equilibrium situation we have today.

That first shutdown, the total shutdown, did cause a substantial change in the composition of crude toward crude of less desirable quality, which has obviously had some impact on our ability to produce gasoline and distillates. But it seems to me it would be helpful to try to get some parameters or numbers on that.

Then the third thing would be the composition of the crude stocks and inventory within our domestic system. They are low, but I am sure that they are not evenly distributed among the major refineries, and that you well might find some of the inland heavily import-dependent refineries have much lower crude stock available since they were run out, given the uncertainties in the world market; they would be in a very bad way, be required to shut down their refineries entirely. They must be following a very conservative current utilization policy. It seems to me it would be important to look at that as well.

Could you pull some things together in those areas?

Mr. Bardin. We can pull some figures together in those areas.

On the question of residual oil, I have not seen indications that that is a constraining factor today. Nationally, the residual fuel stocks are slightly higher in the last few weeks than they have been at any time in the previous 3 years. In March and February, for example, they were slightly lower than they had been in 1977. I don't think they are out of line.

The most sensitive area on resid is the California area and west coast PADD V. There the recent data indicate that the residual oil stocks are lower than they were in 1977 and considerably lower than they were in 1978 and 1976 at this time.

Mr. Stockman. I was referring to the national figures for April. I think the figure was about 75 million barrels, and that is well above 1978, which was a glutted period, as you know. So I am just suggesting——

Mr. Bardin. What I am saying to you is that that is an east-of-the-Rockies phenomenon rather than a PADD V. west coast phenomenon. It is in the west coast that we really have had that constraint in the past.

We do have data and we will be happy to share it with you. In addition, the Office of Special Counsel is engaged in refiner-by-refiner review in much greater depth than has ever been done before of these questions as to refineries' utilization.

Mr. Stockman. In other words, you get specific capacity and utilization figures for gasoline and for distillate rather than total refinery runs to still, it seems to me, which is much more relevant than in the present context where the real shortages are on those products.

Mr. Bardin. Yes, sir; we are certainly focusing on the yield and percentage terms. On the question of quality of the crude generally, I think that is an important question. There has clearly been a deterioration of quality of crude and that means a lesser yield of gasoline per barrel of crude. We looked at that in a preliminary way in terms of the California refineries and, as I recall, there was a noticeable dropoff.

Mr. Stockman. Right.

Mr. BARDIN. Now, we will pursue the questions you have and see to what extent we can actually track this not only in national or regional statistics, but into more specific computation.

[Testimony resumes p.78.]

[The following information was received for the record:]

GASOLINE/DISTILLATE UTILIZATION RATE AS OPPOSED TO TOTAL REFINERY UTILIZATION RATES

DOE does not currently receive data on utilization of refinery downstream processing facilities or on operating severities of this equipment. Without this data gasoline/distillate utilization cannot be calculated.

CHANGE IN WORLD CRUDE COMPOSITION

While the average gravity of crude oil production from 1971 to 1977 did not change significantly on a worldwide basis, significant changes in average gravities did occur for production in specific countries. (See attached Tables I-IV). For example, the average gravity of crude oil produced in the United States declined by 4.3° API from 1971 to 1977. This decrease in gravity of U.S. crude oil was due to declining production of high quality lower 48 state production combined with the commencing of Alaska North Slope production, which is lower in quality.

More recently, much of the loss in Iranian production has been offset through increased production from Saudi Arabia. This substitution may have decreased the world-wide crude quality for two reasons:

(1) Iranian heavy crudy oil was approximately 4° API higher in gravity than the Saudi heavy which replaced it (see table V).

(2) For a brief period late last year and earlier this year, Saudi Arabia increased their production and required a greater percentage of liftings of their heavier crude oils to be made.

However, development and production of relatively high quality (36-37° API) crude oils such as "Forties" and "Ekofisk" in the North Sea should at least slow the rate of decline in the quality of world-wide crude oil production.

TABLE I

1971 - TWENTY TOP CRUDE PRODUCERS

Country	Production (MMB/D) 1/	Average Gravities Gravity (° API) 2/
United States	9.65	34.7
Iran	4.51	32.6
Saudi Arabia	4.46	33.9
Venezuela	3.58	25.0
Kuwait	2.90	31.0
Libya	2.80	38.4
Iraq	1.69	35.6
Nigeria	1.54	31.3
Canada	1.34	37.0
Abu Dhabi	0.90	39.4
Indonesia	0.88	34.5
Algeria	0.60	47.2
Neutral Zone	0.55	27.4
Qatar	0.43	39.2
Mexico	0.43	29.9
Argentina	0.41	34.9
Australia	0.32	43.2
Egypt	0.30	31.4
Oman	0.29	32.9
Columbia	0.23	30.7
	37.81 3/	33.6

1/ Source: Oil & Gas Journal, 12/27/71, pg. 72-73

2/ Source: Calculations of weighted averages using Oil and Gas Journal, 12/27/71, pg. 91-106

3/ 95% of total world production.

TABLE II

1977 - TWENTY TOP CRUDE PRODUCERS

Country	Production (MMB/D) 1/	Average Gravities Gravity (° API) 2/
Saudi Arabia	8.95	33.6
United States	8.24	30.4
Iran	5.65	32.3
Venezuela	2.28	26.6
Iraq	2.15	35.3
Nigeria	2.15	32.9
Libya	2.05	38.4
Kuwait	1.70	32.5
Indonesia	1.69	34.8
Abu Dhabi	1.68	38.5
Canada	1.36	38.4
Algeria	0.99	46.7
Mexico	0.99	32.2
United Kingdom	0.78	37.0
Egypt	0.45	30.8
Australia	0.43	45.6
Qatar	0.35	38.7
Oman	0.35	34.6
Dubai	0.32	31.4
Norway	0.27	37.0
	42.83 3/	33.6

1/ Source: Oil and Gas Journal 12/26/77 pg. 100-101

2/ Source: Calculation of weighted average using Oil and Gas Journal 12/26/77, pg. 148-172

3/ 92% of total world production

TABLE III

CHANGES IN PRODUCTION AND GRAVITY

1971 - 1977

Country	Change in Production (MMB/D)	Change in Production (%)	Change in Gravity (° API)
Saudi Arabia	+4.49	+99%	-0.3°
United States	-1.41	-15	-4.3
Iran	+1.14	+25	-0.3
Venezuela	-1.30	-36	+1.6
Iraq	+0.46	+27	-0.3
Nigeria	+0.61	+40	+1.6
Libya	-0.75	-27	0.0
Kuwait	-1.20	-41	+1.5
Indonesia	+0.81	+92	+0.3
Abu Dhabi	+0.78	+87	-0.9
Canada	+0.02	+ 1	+1.4
Algeria	+0.39	+65	-0.5
Mexico	+0.56	+30	+2.3
United Kingdom	+0.78	-	-
Egypt	+0.15	+50	-0.6
Australia	+0.11	+28	+2.4
Qatar	-0.08	-19	-0.5
Oman	+0.06	+21	+1.7
Dubai	+0.19	+146	-0.6
Norway	+0.26	-	-

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TABLE IV

SELLERS IN THE OIL MARKETPLACE

	1971			1977		
	Production	Market Share	Gravity	Production	Market Share	Gravity
Arab OPEC 1/	19.04	48%	34.6°	24.27	52%	34.7°
Non-Arab OPEC 2/	6.10	15	28.1	6.53	14	31.1
United States	9.65	24	34.7	8.24	18	30.4
Canada	1.34	3	37.0	1.36	3	38.4
North Sea	0.00	0	-	1.04	2	37.0
Mexico	0.43	1	29.9	.99	2	32.2
All Others 3/	3.33	8	33.2	3.95	9	34.1
TOTALS	39.89	100	33.54	46.38	100	33.5

1/ Saudi Arabia, Iran, Iraq, Libya, Kuwait, Abu Dhabi, Algeria, Neutral Zone, Qatar, Oman, Dubai, Bahrain, Sharjah (1977 only)

2/ Venezuela, Nigeria, Indonesia, Gabon, Ecuador

3/ Gravity data obtained by sampling every fourth field listen in Oil and Gas Journal for smaller producers

TABLE V

COUNTRY CODE	CRUDE TYPE	TYPICAL API GRAV
UNITED ARAB EMIRATES		
TC010	MURBAN	39.0
TC011	ZAKUM	40.0
TC012	MARINE (Umm Shaif)	37.0
TC015	DUBAI	32.0
TC016	MUBAREK	37.0
TC017	SHARJAH LIGHT	37.0
TC018	KHOOSH	31.0
ALGERIA		
AG020	ARZEW	44.0
AG021	HASSI MESSAOUD	43.0
AG022	ZARZAITINE	40.0
AG023	ALGERIAN	43.0
AG024	SKIKDA	44.0
AG025	SAHARAN BLEND	45.0
AG026	HASSI RAMAL	55.0
AG027	ALGERIAN CUND	63.0
ANGOLA		
AO030	CABINDA	34.0
BOLIVIA		
BL033	BOLIVIAN CUND	55.0
BRUNEI		
BX035	SERIA	38.0
COLOMBIA		
CO040	ONTO	33.0
CO041	PUTAMAYO	35.0
CO042	RIO ZULIA	41.0
CO043	ORITO	32.0
CONGO		
CF046	EMERAUDE	23.0
ECUADOR		
EC050	ORIENTE	29.0
EC051	ESMERALDAS	28.0
EC052	QUITO	29.0
EC053	ECUADORIAN	29.0
EGYPT		
EG055	EL MORGAN	29.0
EG057	RHAS GHARIB	21.0
EG058	GULF OF SUEZ	32.0
GABON		
GB060	GAMBA	31.0
GB061	MANDJI	30.0
GB062	LUCINA	40.0
INDONESIA		
ID070	SUMATRA LIGHT	34.0
ID071	ARDJUNA	37.0
ID072	ATTAKA	40.0
ID073	MINAS	35.0
ID074	SURI	22.0
ID075	SANGA SANGA	29.0
ID076	SEPINGGAN	35.0
ID077	WALIO	35.0
ID078	ARIMBI	32.0

COUNTRY CODE	CRUDE TYPE	TYPICAL API GRAV
INDONESIA		
ID079	INDONES-(MISC)	34.0
ID800	POLENG	43.0
ID801	HANDIL	31.0
ID802	JATIBARANG	29.0
ID803	CINTA	32.0
ID804	BEKAPAI	40.0
ID805	KATAPA	48.0
ID806	SALAWATI	39.0
ID807	DURI	18.0
ID808	SEMBAKUNG	36.0
IRAN		
IR080	IRANIAN LIGHT	34.0
IR082	IRANIAN HEAVY	31.0
IR083	AHWAZ	25.0
IR084	CYRUS	19.0
IR085	NORUZ	22.0
IR086	DARIUS	34.0
IR087	ROSTAM	36.0
IR088	SASSAN	34.0
IR090	FEREIDOON	29.0
IR091	ARDESHIR	27.0
IRAQ		
IZ100	BASRAH	35.0
IZ101	KIRKUK	36.0
IZ102	MISHRIF	30.0
KUWAIT		
KU110	KUWAIT	31.0
LIBYA		
LY120	LIBYAN (Bu Attifel)	40.0
LY121	AMNA	36.0
LY122	BREGA	40.0
LY123	ES-SIDER	37.0
LY124	NAFOORA	35.0
LY125	SIRTICA	38.0
LY126	ZUEITINA	40.0
LY127	BUNKER HUNT	38.0
LY128	EL HOFRA	42.0
LY129	DAHRA	41.0
LY130	SARIR	37.0
NEUTRAL ZONE		
IY134	NZ MIX	16.0
IY135	HOUT	35.0
IY136	KHAFJI	28.0
IY137	BURGAN	23.0
IY138	RATAWI	24.0
IY139	NAPHTHA	60.0
NIGERIA		
NI140	NIGERIAN	34.0
NI141	FORCADOS	31.0
NI142	ESCRAVOS	37.0
NI143	BRASS RIVER	43.0
NI144	QUA IBO	37.0

COUNTRY CODE	CRUDE TYPE	TYPICAL API GRAV
NIGERIA		
NI145	MEDIUM	26.0
NI146	MIDWEST	31.0
NI147	OBAN	36.0
NI148	PENNINGTON	34.0
NI149	BOMU	33.0
NI150	BONNY LIGHT	36.0
NORWAY		
NO158	EKOFISK	35.0
OMAN		
MU160	OMAN	34.0
QATAR		
QA170	DUKHAN	40.0
QA171	MARINE	36.0
SAUDI ARABIA		
SA180	ARABIAN LIGHT	34.0
SA181	ARABIAN HEAVY	27.0
SA182	ARAB MEDIUM	31.0
SA183	BERRI	39.0
SA184	ARAB LT(SIDON)	34.0
SA186	RECON	40.0
SA187	KERO	48.0
SINGAPORE		
SG420	RANTAU	51.0
TRINIDAD		
TD190	TRINIDAD	31.0
TD191	LO	33.0
TD192	MOLA	28.0
TD193	PAN AM	31.0
TD194	GALEOTA	32.0
TD195	TESORO	22.0
TD196	LAND/TRINMAR	22.0
TUNISIA		
TS197	ASHTART	31.0
TS198	TUNISIA-(MISC)	40.0
TS199	EL BORMA	43.0
VENEZUELA		
VE201	JOBO(MONAGAS)	12.0
VE202	LAMA LAMAR	36.0
VE203	MARLAGO	26.0
VE204	RUIZ	30.0
VE205	TUCIPIDO	37.0
VE206	VENEZ LOT 17	36.0
VE207	VEN WEST MARA	17.0
VE210	TIA JUANA LT	31.0
VE211	TIA JUANA MED	26.0
VE212	OFICINA	35.0
VE213	BACHAQUERO	17.0
VE214	CENTRO LAGO	36.0
VE215	LAGUNILLAS	17.0
VE216	LA ROSA	24.0
VE217	SAN JOAQUIN	41.0
VE218	LAGOTRECO	28.0

COUNTRY CODE	CRUDE TYPE	TYPICAL API GRAV
VENEZUELA		
VE219	LAGOCINCO	36.0
VE220	BOSCAN	10.0
VE221	LEONA	25.0
VE222	BARINAS	26.0
VE223	SYLVESTRE	28.0
VE224	MESA	30.0
VE225	CEUTA	31.0
VE226	LAGOMEDIO	33.0
VE227	TIGRE	24.0
VE228	ANACO WAX	41.0
VE229	SANTA ROSA	50.0
VE230	BOMBAL	20.0
VE233	VENEZ(MISC)	34.0
VE234	VE.WESTERN LT	34.0
VE235	VE.WESTERN MED	26.0
VE236	VE.WESTERN HVY	20.0
CANADA		
CA240	CANADIAN	0.0
ZZ250	SPEC FEA CODE	0.0
UNITED STATES		
US260	DOMESTIC	0.0
MALAYSIA		
MY270	MIRI	40.0
MY271	SAMARANG	36.0
MY272	TEMBUNGO	37.0
MY273	LABUAN	33.0
MEXICO		
MX280	ISTHMUS	34.0
SYRIA		
SY430	SOUEDIE	25.0
USSR		
UR290	URAL	31.0
UR291	ROMASHKIN	34.0
VENEZUELA		
VE301	AGUASAY	41.0
VE302	ANACO MED	44.0
VE303	BACH/TIAJUANA	13.0
VE305	BCF BACH/LAG17	17.0
VE306	BCF BACH/LAG21	21.0
VE307	BCF BACH/LAG23	23.0
VE308	BCF 24 CRD	24.0
VE309	BCF 31	31.0
VE310	BCF BLEND	34.0
VE311	BELLA VISTA	26.0
VE312	BOLIVAL COAST	24.0
VE313	CEUTA/BACH 18	18.0
VE314	CEUTA/BACH 24	24.0
VE315	CORRIDOR BLOCK	26.0
VE316	CRETACEOUS	42.0
VE317	GUANIPA	33.0
VE319	LAKE MIXED	23.0

COUNTRY CODE	CRUDE TYPE	TYPICA API GRA
VENEZUELA		
VE320	LAROSA/LAGUN	23.
VE321	LOT 9	12.
VE322	M/C BCF 20 MIX	20.
VE323	M/C BCF 23	23.
VE324	OFICINA/MESA	32.
VE325	MORICHAL	12.
VE326	PILON	14.
VE327	RECON(VENEZ)	39.
VE328	TIA JUANA 23	23.
VE329	TIA JUANA 24	24.
VE330	TJ 102	25.
VE331	TJL CRETACEOUS	39.
VE332	T-JUANA PESADO	12.
VE333	BOL-COASTAL-LT	34.
VE334	MESA-RECON	28.
VE336	S CRUZ	49.
VE337	ORITUPANO	20.
VE338	HOMBRE PINTADO	29.
U. KINGDOM		
UK400	MONTROSE	41.
UK401	BERYL	39.
UK402	PIPER	37.
UK403	FORTIES	37.
Z-VARIOUS		
ZZ299	MISCELLANEOUS	0.

6c) Distribution of crude stocks among refiners - he is particularly interested in the crude short inland refiners.

ANSWER: The majority of U.S. refiners are currently operating with less than normal crude stock inventories and are reluctant to drawdown stocks further without having adequate firm supply commitments. The flexibility in crude stock drawdown varies with refinery location and method by which crude is supplied. For example, an ERA crude stock analysis during July 1978 indicated that coastal refiners had approximately an 8 day supply of crude in storage, whereas inland refiners had a 5 day supply in storage. Refineries with pipeline supply may require less storage than a coastal facility dependent upon crude arrival by tanker. For this reason, the most important factor affecting crude run levels is not what is in stock, but rather the current and projected incoming crude receipt levels.

With respect to crude short inland refiners, ERA has to date assisted the following inland refiners through the Buy/Sell and Emergency Allocation Programs for the April 1, 1979 - September 30, 1979 allocation period as follows:

REGULAR (NON-EMERGENCY)
BUY/SELL ALLOCATIONS

Eligible Refineries
April 1, 1979-September 30, 1979

Refiner	Refinery Location	Allocation (barrels)
Asamera Oil Inc.	Denver, CO	421,875
Bi-Petro, Inc.	Pana, IL	0
Carbonit Ref. Inc.	Hearne, TX	0
Caribou Four Corners	Woods Cross, UT.	89,920
CRA-Farmland Ind. Inc.	Scottsbluff, NE	43,302
CRA-Framland Ind. Inc.	Phillipsburg, KS	0
Dow/Refinery	Bay City, MI	424,705
Evangeline Ref.	Jennings, LA	71,879
Farmers Union Central Exchange	Laurel, MT	744,340

Refiner	Refinery Location	Allocation (barrels)
Giant Industries	Bloomfield, NM	159,178
Hunt Oil Co.	Tuscaloosa, AL	225,030
Kenco Ref. Co. Inc.	Wolf Point, MT	0
Kentucky Oil Ref Co.	Betsy Layne, KY	9,081
Little America Ref	Sinclair, WY	0
Little America Ref	Casper, WY	61,684
Macmillan RF Oil Co.	Norphlet, AR	82,993
Marion Corp	Mobile, AL	685,659
Mount Airy	Mount Airy, LA	593,805
Newhall Ref Co.	Newhall, CA	0
OKC Corp.	Okmulgee, OK	1,014,989
Pennzoil Co. (Atlas)	Shreveport, LA	0
Plateau, Inc.	Bloomfield, NM	87,477
Plateau, Inc.	Roosevelt, UT	0
Pioneer Ref. Co.	Nixon, TX	49,383
Price Ref. Inc.	Abilene, TX	428,060
Rancho Red. Co. of Tx	Donna, TX	0
Shepherd Oil Inc.	Jennings, LA	545-739
Somerset Ref. Inc.	Somerset, KY	97,428
Southern Union	Lovington, NM	1,723,471
Southern Union	Monument, NM	110,160
Southwestern Ref. Co.	LaBarge, WY	26,415
Texas American Petrochemical Inc.	West Branch, MI	0
Thunderbird Resources (Westco)	Cut Bank, MT	0
Thunderbird Resources (Westland)	Wiliston, ND	26,878
Western Ref. Co.	Woods Cross, UT	86,230
Wyoming Ref. (Tesorp)	Newcastle, WY	0
TOTAL		7,809,679

EMERGENCY ALLOCATIONS
FOR APRIL 1979

Refiner	Refinery Location	April 1979 Allocation (Barrels)
Delta	Memphis, Tenn.	280,800
Texas City	Texas City, Tx.	604,800
United	Warren, Pa.	253,350
		1,138,950

EMERGENCY ALLOCATIONS
FOR MAY AND JUNE 1979

Refiner	Refinery Location	May 1979 Allocation (barrels)	June 1979 Allocation (barrels)
Allied Materials	Stroud, Okla.	42,067	55,710
Bruin	St. James, La.	200,477	211,260
Caribou Four Corners	Woods Cross, Ut.	20,389	15,240
Crystal Refining Co.	Carson City, Mich.	70,680	68,400
Ergon	Vicksburg, Miss.	185,473	179,190
Gladieux	Fort Wayne, Ind.	176,886	171,180
Gulf States	Corpus Christi, Tx.	40,548	95,820
Hudson	Cushing, Okla.	184,760	478,800
Industrial Fuel & Asphalt	Hammond, Ind.	0	33,030
Lakeside	Kalamazoo, Mich.	11,043	21,030
Marion	Mobile, Ala.	0	71,880
NCRA	McPherson, Kan.	597,432	352,350
Placid	Port Allen, La.	197,842	188,190
Rock Island	Rock Island, Ind.	600,501	611,130
Sage Creek	Cowley, Wyo.	1,798	1,560
Shepherd	Jennings, La.	63,829	76,770
Southern Union	Lovington, N.M.	209,002	114,330
Texas City	Texas City, Tx.	1,147,992	746,670
Tipperary	Ingleside, Tx.	63,643	55,440
United	Warren, Pa.	162,719	455,160
Western	Woods Cross, Ut.	44,175	30,180
		4,021,256	4,033,320

ADDITIONAL APRIL - SEPTEMBER 1979 ALLOCATION

Refiner	Refinery Location	Allocation (barrels)
Energy Cooperatives, Inc.	E. Chicago, Ind.	3,316,829

ALLOCATIONS ADDED SINCE PUBLICATION OF MARCH 30, 1979, ALLOCATION LIST

Emergency Supplemental Allocations

The following allocations are added to those published on the March 30, 1979, Buy/Sell list. All of the emergency supplemental allocations listed are for the month of April 1979 only.

Refiner	Refinery Location	Allocation (barrels)	Date Issued
Bruin	St. James, La.	192,000	4/10/79
Crystal Refining Co.	Carson City, Mich.	63,900	4/9/79
Ergon	Vicksburg, Miss.	189,000	4/9/79
E-Z Serve	Shallow Water, Kan.	36,000	4/9/79
Gladieux	Fort Wayne, Ind.	159,000	4/7/79
Gulf States	Corpus Christi, Tx.	64,800	4/7/79
Rock Island	Rock Island, Ind.	621,000	4/7/79
Shepherd	Jennings, La.	60,000	4/7/79
Southern Union	Lovington, N. M.	180,000	4/11/79
Tipperary	Ingleside, Tx.	48,000	4/9/79
Western	Woods Cross, Ut.	63,000	4/11/79

Total Emergency Supplemental Allocations	1,676,700	barrels
Total Previously Published Allocations	8,244,304	barrels
Total Allocations	9,921,004	

Current crude stocks by individual refinery size and location will be available shortly for approximately 100 refiners reporting on Form EIA 161, the Weekly Refinery Report

Mr. STOCKMAN. One final point. I want to go back to the California anomaly I pointed out to you before.

You had a good answer to some extent. You say the 81 percent allocation fraction for the nonpriority pool is the initial at the beginning of the month and, as they get into the month, that might increase as more allocations are made available, but I would suggest to you that even if it increased to 86 percent for the nonpriority pool, you still have a rather strange thing to explain to me because, if you are going to have 93 percent available in that nonpriority pool, which must be 90 percent of gasoline is only 86, then the priority set aside pool must be 200 percent of last year.

That is the only way the numbers add up.

So, apparently there is an awful lot of gasoline moving through the 100 percent use, current use feature or priority section.

Mr. BARDIN. Aside from arithmetic errors, there are other factors at play. One, the denominator on the allocation fraction is greater than last year's usage. For example, the denominator for the allocation fraction includes a base allowed for brand new filling stations that didn't exist last year. They are given a base not of May 1978, but what other filling stations, comparable filling stations, were getting in that area.

So that is——

Mr. STOCKMAN. I understand that. There could be some basic expansion.

Mr. BARDIN. One of the complaints you get against the system, even though in theory there ought to be a downward certification for anything that was closed between May 1978 and May 1979, that very little of that downward certification actually takes place. That was, of course, one of the reasons for updating the base period from 1972 to 1978, at least we would get rid of all of those unaccounted for changes in the interim.

But what you have is a number of factors which make for a larger denominator for purposes of calculating the allocation fraction, the 81 percent, than the denominator for purposes of calculating the supply ratio, the 93 percent.

Having said all that, a difference of 12 percentage points is very large, and it leads me to be quite cautious about each of these figures. The figures are the result of averaging suppliers reports to us.

These suppliers are staffed by human beings who give greater or lesser attention to the accuracy, of what they are doing. There may be arithmetic errors in it, and that is why we pursue with the suppliers what is really happening during the course of a month. All told, I come back to my starting point. Experience on the one hand and logic on the other suggests that during the course of the month you will see each of these numbers creeping upward rather than otherwise.

Mr. STOCKMAN. Thank you.

Mr. DINGELL. The time of the gentleman has expired.

Mr. GORE.

Mr. GORE. Thank you very much, Mr. Chairman.

Mr. Bardin, I would like to return to a couple of matters I asked you about before.

Mr. BARDIN. Certainly.

Mr. GORE. I would like to make clear the context of the questions that anybody who attempts to blame the Department of Energy for the entire energy debacle in the United States is clearly off track because Congress does share some of the blame, the American people share a large part of the blame, and the situation has been building up for a long period of time, and I want to make it clear that my questions are asked within that context, but within that context I have serious disagreements with the way in which the Department of Energy is pursuing its part of what should be the solution to this problem.

Now, I covered a lot of ground earlier. I want to focus just on two things that are matters of great concern to me.

The first is the new definition which you promulgated within the last 2 weeks of newly discovered oil, which says that new oil, which will qualify for $18 or higher, instead of $6 currently is——

Mr. BARDIN. Instead of $12——

Mr. GORE. Instead of the weighted average.

Mr. BARDIN. Mr. Gore, the way that is structured, every barrel of newly discovered oil under the new regulation would have been a barrel of upper-tier oil under the old.

Mr. GORE. I beg to differ. Under your definition, under your definition new oil is defined, newly discovered oil is defined as oil from an onshore property from which no crude oil was produced in calendar year 1978.

Now, if you discovered oil 30 years ago, if you discovered oil 30 years ago, and it has been in the ground, and for whatever reason no oil was taken up during calendar year 1978, they get $18 instead of $6 for that oil——

Mr. BARDIN. I stand corrected. You are quite correct, Mr. Gore, that one feature of the rule has that possibility.

Mr. GORE. All right.

Mr. BARDIN. I consider it remote but I understand what you are saying.

Mr. GORE. You may consider it remote, but it is a difference of 300 percent potential increase in the price, and you have got, let me say, a 200 percent potential increase in the price, and you leave it up to the producer to say whether or not his oil falls in the category that brings $18 or whether it falls in the category that brings $6.

You say OK, oil producer, you decide, and although there is the possibility that we are going to check up on you, we are slashing the enforcement personnel and therefore the chance that you will be caught if you redefine your property in a way that increases your prices 200 percent have been drastically reduced.

Now, that really troubles me a great deal and particularly in light of the overcharge cases that we have seen in the past.

Mr. BARDIN. Let me comment on that.

First, with the exception of a property that was in production 30 years ago or even in 1977, but didn't produce anything in 1978, the new rule used as the controlling definition the same definition that has bounded upper tier versus old oil in the past. In other words, this is a definition which has been in the regulations for a long time and has been the subject of litigated interpretation.

Mr. GORE. It has been the subject of litigation because it is subject to so much abuse, because the producer can redefine the property lines. Let me make a clear example.

You have got an oil field; you have got three holes drilled into the pool that is underneath the ground. OK, one of the oil wells is producing during 1978, the other two are not. What is to prevent a producer who makes the determination himself from redrawing the property lines to put the producing well in one category, or in one property, and the two nonproducing wells in another property, and raise the price from that pool of oil from $6 per barrel to $18 per barrel?

Mr. BARDIN. Well, I don't believe Mr. Corrallo would let them do it, but I will ask him.

Mr. GORE. Mr. Corrallo's staff is being cut.

Mr. BARDIN. There really seems to be a misapprehension here. We have a staff of some 1,200 people in the two enforcement programs, about 600 reporting to Mr. Bloom in the Office of Special Counsel and responsible for the 34 major largest oil companies, including their production operation.

Just under 600 report to Mr. Isenberg, responsible for everything else, for crude production by smaller companies, crude resellers, refining operations, product resales and product retailing. It is in Mr. Isenberg's area that we contemplate a reduction in personnel. We will still have a very large number of people working on crude oil production.

Somewhere along the way, I would think at the end of fiscal 1980 is a logical target, we are going to recombine these operations, so we just have one group of people working on crude oil production and whatever else we are regulating at that time.

We do not intend to let it go. But, I want to focus on the basic question about the new rule.

Today, yesterday, a year ago, there wasn't any oil entitled to the higher price as newly discovered oil. The only oil that was entitled to this kind of price was stripper oil by act of Congress, and the act of Congress said you are a stripper, and because you are a stripper you may sell your oil at the uncontrolled world price. We are using the same mechanism.

Now, in each case, when a producer says this well is a stripper well, and therefore entitled to sell its oil at the world price, we don't accept that as the last word.

The Special Counsel people, in the case of the major oil companies who produce most of the oil in this country, the Office of Enforcement in the case of the other producers, go and check. They don't check every property. I grant you that. They check some fraction of the properties. They have targeting systems to select the ones to check and methods to audit the performance.

There have been differences of opinion as to people who took advantage of this view of the regulations, very much like a taxpayer who reads the regulations of it in his favor. In some instances we may find it is worse than a difference of opinion; it is outright cheating. In such a case we would develop a case for referral to the Justice Department.

But both as to the stripper distinction, which Congress imposed, and as to this distinction, we will audit.

Now, the newly discovered oil will be few properties at the beginning. These have got to be leases in the case of the OCS, which were sold after January 1, 1979.

Mr. GORE. That is the separate part of the definition.

Mr. BARDIN. In the case of onshore leases, it will have to be production that began for the first time after January 1.

Mr. GORE. No, it doesn't say that. It doesn't say that.

All it says is that it is property from which there was no crude oil produced in calendar year 1978; it could have been produced for 30 years prior to that and then shut in and withheld.

Mr. BARDIN. As I understand the regulations and Mr. Corrallo is the solicitor who is interpreting them for the Special Counsel, they do not permit you to willy-nilly divide up your property into a producing part and a part that could produce and didn't. The only time you can divide up the property is when you have a new reservoir, a State recognized reservoir that has been discovered, and then you may carve up the property into two pieces, the new reservoir property and the remainder. There is not a carte blanche to these oil companies to carve up their properties with any well that started producing after 1978, and all the others which were producing during 1978.

Mr. GORE. Mr. Chairman, could we get Mr. Corrallo to confirm that last point and verify that statement?

Mr. DINGELL. The Chair observes the time of the gentleman has expired, but we will ask him to comment.

Mr. GORE. Thank you very much.

Mr. CORRALLO. Can you tell me what you want me to verify?

Mr. GORE. To what extent producers have leeway to redraw the property lines in order to circumvent and expand, rather, the amount of oil falling within the newly discovered category under this new regulation.

Mr. CORRALLO. The practical question whether they can do it or not, all they have to do is do it. The question is, are they allowed to do it and what can we do if we find they do it. The property difference, as was correctly pointed out, is the subject of a hot and heavy dispute. We just issued a series of proposed remedial orders a couple of weeks ago that involved very, very large dollars and tracts from 1973 through the 1978 period, through the contemporaneous period.

Under our property regulations the lease is defined. Let's just explore the area that you are concerned about and that is the property that operates and produces crude oil from 1973, 1974, 1975, 1976, 1977 and shuts down and all of a sudden is awakened by the incentive created by the rule.

The regulations require the properties to really be properties that were in place in 1972. There are certain departures that are permitted. One departure, as Mr. Bardin has already indicated, is the reservoir concept. Starting in September of 1976, a producer who is operating a property under the definition that had been in the regulations from 1973 forward could subdivide that property into separate reservoirs provided those reservoirs were independently recognized by the State and he could begin to calculate as upper and lower tier production on a reservoir basis from 1976 forward.

The only other exception in any of the regulations, or any of the rulings, reflects a ruling in 1977 that said to the extent that you had historic practices, that is practices that were in place prior to the regulations coming into effect in 1973, you could, if you could make an appropriate showing of good reasons—and there is a list of them, for example, when you have noncontiguous tracts, two tracts a distance apart and you operated them historically independently—you can go to a two-property definition on that basis.

The regulations, the conclusion I draw from that as an attorney is that the regulations provide for no radical or even conservative departures from historical practices except for the reservoir concept. That does not mean that won't happen on occasion, indeed the dispute on what a property is with the major refiners is the subject of litigation now. But the resolution of that litigation will resolve the property dispute forever with respect to those companies.

Mr. DINGELL. The time of the gentleman expired. The Chair recognizes counsel.

Mr. BARDIN. Mr. Chairman, in the interest of completeness of the record may I add two brief points here. First, I would want the record to show, Mr. Gore, that when I adopted that regulation that you are asking about, my understanding of what we were doing was incorporating by preamble in the adoption of the rule the various interpretations that had been made of the upper tier versus the lower tier bounding previously, including the interpretations that Mr. Corrallo referred to. And as I understand it, that is a position which our counsel, in prosecuting or defending our position in court, will be able to articulate.

Second, in adopting the rule, I made provision for requiring producers to file a self-reporting declaration as to newly discovered oil and the concept that I had in mind was that we would do that. The only reason we did not actually promulgate the form was that in the time available we could not design a form and go through the necessary processes.

Mr. GORE. Again I must disagree—with the Chair's indulgence——

Mr. DINGELL. The Chair's indulgence is running very thin.

Mr. GORE. I understand this.

Mr. DINGELL. It is 1:15, the gentleman has had, according to my figures, well over the normal time.

Mr. GORE. To correct the record, the rule says producers should note that the DOE is considering whether and the extent to which it will require producers to submit the information you are referring to.

Thank you for your indulgence, Mr. Chairman, and thank you for your response.

Mr. DINGELL. Counsel?

Mr. FRANDSEN. Your testimony indicates that out of the 2,000 retailers recently audited, you found 847 stations in violation. How many middlemen or resellers have you cited for violations?

Mr. ISENBERG. I don't think there have been any cited to this point. The audit processes for a middleman or reseller is more complex. We ordinarily expect it will take a longer time to discover violations in that area.

Mr. FRANDSEN. Isn't that an area of real potential abuse in the current shortages?

Mr. ISENBERG. It certainly is, and we are pursuing it actively. The point I am making is because of the law that is involved and the sorts of audits that are required for resellers as opposed to retailers and the kind of complexities of the system it ordinarily does take longer to complete audits there and find out where the violations are.

Mr. BARDIN. But I think that is a very important point, counsel, because it is an area with potential for abuse. It is a complicated set of regulations, more so than the retailer ones. And it seems to me that the conclusion to be drawn is that where you are dealing in Federal resources that is a place to focus them, on the middleman as contrasted with the retailer, and it is legitimate for us to ask the States to pick up responsiblity at the end of the chain, at the retail chain, with us making much more of an effort in the middleman as well as the refiner.

Mr. ISENBERG. Just one more point to that. In auditing retailers it is much easier because prices are posted when you go in, it is easier to find what people are charging. We have a problem with middlemen, it takes longer to gather information with regard to what a middleman is charging. That is what we are doing now, building up an information base that we can target from.

Mr. FRANDSEN. Are you reconsidering your budgetary request for additional auditors in that area?

Mr. BARDIN. We are reviewing with the management of the Department the overall resources of the Economic Regulatory Administration to deal with various gasoline questions, including the ones you are asking me about.

Mr. FRANDSEN. I note that the figures are 99 for 1979 and only 16 auditors budgeted for 1980.

Mr. BARDIN. Yes; but that was the figure we came up with when we were asking how would we use this number of people to complete cases which had been opened long before on the assumption that motor gasoline was not under continuing control in 1980. It is clear that is not the way we would use those resources or any other resources in terms of the circumstances that face us now if controls continue into fiscal year 1980.

We make the best effort we can at the time we present our budget to the President and to you to tell you how we will use the resources. But we also go out of our way, as I did in my testimony to this committee and the other committees of Congress, to say that is all subject to revision in terms of the situation at the time and what strategies are working and what strategies are not.

One of the things that I am very proud of in the work both of the Office of Special Counsel and the Office of Enforcement is they have been flexible. They have revised their strategies in terms of the problems of the day and the payoffs, the successful use of the taxpayers' resources.

Mr. FRANDSEN. Thank you, Mr. Chairman.

Mr. DINGELL. Counsel?

Mr. SIMS. I ask unanimous consent that seven exhibits prepared by the staff, which take from Department of Energy publications, factual data regarding refinery operations, crude stocks, refinery runs and the like, be placed in the record at this point.

Mr. DINGELL. Without objection, it is so orderd.

[The documents referred to follow:]

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EXHIBIT 1

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

OOM 2323
USE OFFICE BUILDING
(202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

DATE: May 16, 1979

TO: Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations

FROM: Staff

SUBJECT: Gasoline Stock Levels, 1977-1979

The volumes of gasoline reported to be in primary stocks are as follows:

GASOLINE STOCKS
(Thousand Barrels)

End of Month	1977	1978	1979	%Unleaded
January	252,608	272,287	245,287	28.8%
February	255,519	271,077	256,225*	28.0%
March	262,118	259,801	240,653*	27.5%
April	258,835	249,079	231,964*	27.4%
May	262,504	233,612		
June	256,446	219,660		
July	258,185	216,488		
August	256,904	209,194		
September	255,859	216,682		
October	255,194	213,665		
November	258,537	220,923		
December	257,578	237,221		

Source: DOE, *API

In March of 1979, a large draw down of over 15 million barrels occurred in gasoline stocks, which was followed by another draw down of almost 6.8 million barrels in April.

End of Month Stock Level		Volume Change	Net Change
December 1978	237,221		
January 1979	245,644	+8,423	+8,423
February	256,225	-10,581	+19,004
March	240,653	-15,572	+3,432
April	231,964	-8,689	-5,257

Source: DOE, *API

EXHIBIT 2

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

DATE: May 16, 1979

TO: Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations

FROM: Staff

SUBJECT: Gasoline Production and Demand, 1977-1979

Gasoline production and consumption, which is defined as apparent demand or withdrawals from primary stocks, is as follows:

MOTOR GASOLINE
(Thousand Barrels Per Day)

	PRODUCTION			CONSUMPTION		
	1977	1978	1979	1977	1978	1979
Jan.	6,934	6,832	7,301*	6,466	6,670	7,201*
Feb.	6,817	6,630	6,959*	6,897	6,854	7,209*
March	6,864	6,780	6,709*	6,899	7,256	7,370*
April	6,969	6,668	6,750*	7,345	7,206	7,213*
Average	6,896	6,728	6,930	6,902	6,997	7,248

Source: DOE, *API

EXHIBIT 3

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

DATE: May 16, 1979

TO: Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations

FROM: Staff

SUBJECT: Crude Oil Stocks, 1977-1979

Crude oil stock levels in 1977 through 1979 were reported as follows:

CRUDE OIL STOCKS
(Thousand Barrels)

	1977	1978	1979
January	294,116	340,082	296,565
February	291,462	335,794	297,100
March	299,533	345,333	320,711
April	318,872	343,201	321,806*
Average	300,996	341,103	309,046

Source: DOE, *API

EXHIBIT 4

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

DATE: May 16, 1979

TO: Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations

FROM: Staff

SUBJECT: Refinery Operations, 1977-1979

Crude oil input to refineries for the period 1977 through April 1979 was reported as follows:

CRUDE INPUT TO REFINERIES
(Thousands of Barrels Per Day)

	1977	1978	1979
January	14,130	14,139	14,821
February	14,734	13,959	14,298
March	14,263	14,141	14,160*
April	14,177	13,872	14,371*

Source: DOE, *API

Refinery utilization measured as use of available capacity for the same period is as follows:

REFINERY UTILIZATION
(Percentage Available Capacity)

	1977	1978	1979
January	89.0	85.1	87.2
February	92.6	84.1	83.8
March	89.6	84.8	84.1*
April	88.8	83.2	84.9*

Source: DOE, *API

EXHIBIT 5

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

DATE: May 16, 1979

TO: Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations

FROM: Staff

SUBJECT: U. S. Petroleum Demand, 1977-1979

Demand for all petroleum products in the U. S., defined as refinery and natural gas processing plant output, plus imports minus exports, and plus or minus changes in primary stocks, was as follows:

U. S. PETROLEUM DEMAND
(Millions of Barrels Per Day)

	1977	1978	1979
January	20.5	19.7	20.9
February	20.4	20.9	20.0
March	18.1	19.6	18.7
April	17.6	17.7	17.6*
Average	19.15	19.48	19.30

Source: DOE, *API

EXHIBIT 6

NINETY-SIXTH CONGRESS

BOB ECKHARDT, TEX., CHAIRMAN

JIM SANTINI, NEV.
ALBERT GORE, JR., TENN.
PHILIP R. SHARP, IND.
ANTHONY TOBY MOFFETT, CONN.
ANDREW MAGUIRE, N.J.
MARTY RUSSO, ILL.
DOUG WALGREN, PA.
RONALD M. MOTTL, OHIO
MICKEY LELAND, TEX.
TIMOTHY E. WIRTH, COLO.
HARLEY O. STAGGERS, W. VA.
(EX OFFICIO)
NORMAN F. LENT, N.Y.
MATTHEW J. RINALDO, N.J.
MARC L. MARKS, PA.
TOM CORCORAN, ILL.
WILLIAM E. DANNEMEYER, CALIF.
SAMUEL L. DEVINE, OHIO
(EX OFFICIO)

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

DATE: May 16, 1979

TO: Bob Eckhardt, Chairman
Subcommittee on Oversight and Investigations

FROM: Staff

SUBJECT: Gasoline Stocks in PADD 5, 1977-1979

Gasoline stocks in primary storage in PADD (petroleum allocation district for defense) 5, which includes California, Nevada, Oregon, Washington, Arizona, Alaska, and Hawaii, are as follows:

GASOLINE STOCKS PADD 5
(Thousands of Barrels)

	1977	1978	1979	1979 v. 1978	
January	32,416	27,560	30,426	+2,866	10.4%
February	31,843	26,480	28,982	+2,502	9.5%
March	31,259	24,237	26,138*	+1,901	7.8%
April	29,619	25,142	24,891*	-251	1.0%
May	29,673	23,766			

Source: DOE, *API

EXHIBIT 7

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
WASHINGTON, D.C. 20515

ROOM 2323
RAYBURN HOUSE OFFICE BUILDING
PHONE (202) 225-4441

MARK J. RAABE
CHIEF COUNSEL/STAFF DIRECTOR

MOTOR GASOLINE PRODUCTION
PADD 5
(Thousand Barrels Per Day)

	1978	1979	1979 v. 1978	
January	901	1,096	+195	21.6%
February	866	1,032	+166	19.2%
March	907	977*	+70	7.7%
April	974	1,014*	+40	4.1%
Average	912	1,030	+118	12.9%

Week ending May 4, 1979 = 1,002*

Source: DOE, *API

MOTOR GASOLINE CONSUMPTION
PADD 5
(Thousand Barrels Per Day)

	1978	1979	1979 v. 1978	
January	1,041	1,167	+126	12.1%
February	1,060	1,213	+153	14.4%
March	1,102	1,189*	+87	7.9%
April	1,092	1,214*	+122	11.2%
Average	1,074	1,196	+122	11.4%

Source: DOE, *API

Mr. SIMS. If you would please turn to exhibit No. 5, the subject of which is U.S. petroleum demand, 1977–79. These numbers are as published by the Department of Energy except where an asterisk is in place which signifies an API number.

Looking at exhibit 5, the data indicate that overall demand for petroleum products this year is down slightly from the first 4 months of 1978 and is up slightly from the same period in 1977. Now if gasoline demand is up very significantly this year over last year and gasoline is about 44 percent of the barrel of crude oil, these figures would indicate that the demand for most other products must be down somewhat. I wonder if you could tell me if that is the case, and if so, which product demand has come down?

Mr. BARDIN. You are looking at the average numbers for the 4 months?

Mr. SIMS. Yes, sir.

Mr. BARDIN. You have got to be careful. First of all, these numbers are not crude oil numbers; these are total petroleum, which is crude oil and its products plus natural gas liquids. It includes propane and the other NGL's.

Second, the term demand is most unfortunate. We have been using it year after year, but these are not really measures of demand. We simply have to develop a more accurate reference to it. These are calculating numbers, not even reported as such; they are calculated and the concept they represent is basically the removal from primary stock to somewhere else—secondary stock, consumption—there are many possibilities. They are calculated in a netting-out number.

I suppose that over the course of 1 year there is enough balancing that they are close to a measure of consumption. They are certainly not even conceptually close to the concept of demand in the economist's sense of a hypothetical demand at a hypothetical price schedule in the absence of any supply stringencies.

Mr. SIMS. Keeping that in mind——

Mr. BARDIN. Assuming this represented consumption, which it does not, but assuming it did, you are asking me why was the average withdrawal from stocks in 4 months of 1979 apparently 19.3 million barrels a day as contrasted with almost 19.5, 19.48 the previous year.

Mr. SIMS. My question really is, if these figures can be believed, then gasoline is way up, something else has to be way down. What I am saying is, perhaps we cannot believe the figures?

Mr. BARDIN. No. Look, what you have to see is the gasoline——

Mr. SIMS. Perhaps——

Mr. BARDIN. Just a minute, Mr. Sims, let me just go through this with you a minute. The gasoline numbers that are included in there go up in the very beginning of the year.

Mr. SIMS. Perhaps you could look at exhibit 2.

Mr. BARDIN. Do you have my chart there?

Mr. SIMS. They have the numbers from the document that you have in your hand.

Mr. BARDIN. Take a look at your exhibit 2 on gasoline. These numbers on consumption, I take it, are the same demand numbers; is that it?

Mr. SIMS. That is correct.

Mr. BARDIN. You see higher figures for January 1979 than January 1978 to the tune of over half a million gallons a day; right?

Mr. SIMS. Yes. In fact——

Mr. BARDIN. I now have the DOE number for February and that brings that number down considerably, below 7 million. So your February 1977 number on this table is too high. There just isn't that growth. The figure I see for February is 6.938 million, which is about 100,000 ahead of February 1978.

Mr. SIMS. Would you expect that the API figures for March, April, and May would also be reduced? Because this is really what I want to discuss.

Mr. BARDIN. The API numbers I am now getting for May are below the figures for last year. That does not mean the motorist isn't demanding it; it just means that the gasoline isn't there to move out or is not moving out toward the motorist. It therefore shows up as less consumption which is probably a closer, more fortuitous way of putting it. In the very unfortuitous way it shows up as less demand.

Mr. SIMS. Then we can agree that in fact because of the allocations that we have had, that very likely these preliminary figures for demand are much too high and they will be reduced when we get better figures, because there was a logical contradiction in a situation where at the same time we had allocations, we are allocating lesser amount of gasoline, while the demand figures showed us on a preliminary basis using more than we used last year. It just seems that the two do not add up. This has contributed somewhat to the confusion.

Mr. BARDIN. It certainly raises the same kind of concerns in your mind and in mine as to whether we were getting accurate numbers.

Mr. SIMS. If I could just take this one step further and draw your attention to exhibit 7, which has the same kinds of information for district 5, the west coast refinery district. Do you have exhibit 7?

Mr. BARDIN. I do.

Mr. SIMS. Here again it is the same problem. Both production and consumption have increased from year to year, 1979 being higher than 1978. But when you look at the percentage increases, production has increased more on average than consumption in PAD-V and there was no shortage in early 1978. These figures raise the question as to how one explains the shortage in PAD-V now. If we have gone from a situation when supplies were adequate and production has apparently increased more than consumption, could you speak to the apparent problems in these figures and how——

Mr. BARDIN. I am not sure exactly how you derive the figures and I cannot speak to them either as to accuracy or otherwise. I know one of the problems with consumption or demand, or whatever we call it, disappearance from the primary stocks, that when you start going into PADDS's, to do it accurately you need an interregional transfer number. As I understand it, we do not have that in the present data system. So you have to make some estimating assumption in order to come to a definitive conclusion on that score. You will see that in our report on the California situation that is one of the areas of concern that we flagged, the interregional transfer.

Mr. SIMS. Your report in California correctly points out that refinery runs in district 5 are up substantially from last year and that production of motor gasoline is up substantially from last year, and I must confess that looking at these kinds of figures I am puzzled by what caused the shortage. In fact, I am somewhat at a loss. The Department has suggested that interregional transfers may explain the situation but the magnitude of regional transfers seems to be somewhat small. I was wondering if you could perhaps enlighten the subcommittee a little bit further on that subject.

Mr. BARDIN. The motor gasoline stocks in PADD-V have been running in the last few weeks at well below the 1977 level and rather close to the 1978 level. They have been falling steadily throughout the first part of the year.

Mr. SIMS. Stocks were much higher than in 1978, when there was not shortage and much lower in 1977 when there also was no shortage. I must admit that all that does is make me somewhat puzzled.

Mr. BARDIN. They were declining steadily throughout the first third of the year; steadily meaning virtually every week as far as the accuracy of these data.

The apparent demand, withdrawals from stocks, seem to be very high. Now the DOE figure for February requires a downward adjustment of what we were working with previously as the apparent demand according to the API numbers. It raises some questions as to whether we have been accurately measuring the apparent demand or the withdrawal. I really do not know which figures you have used here, but one thing is clear:

When you impose upon any of these delivery systems a severe tank-topping phenomenon, you can get an acute shortage in fact, as far as the motorist is concerned. This is true even though it may be only an apparent shortage in terms of the long-range or the longer range complications. It is no comfort for the motorist to be told that when everything cools down we are going to get the gasoline flowing smoothly and it will come. The tank-topping phenomenon is related to the fact that you have at best 3 days, maybe less, between the increment of gasoline distilled at the refinery, cracked at the refinery, added to stock at the refinery, and the delivery at the pump. And you can easily drain that out and dislocate it.

Mr. SIMS. My last question, Mr. Chairman.

Is the tank topping phenomenon more of a reaction to something that went before than it is itself an explanation? Perhaps you would disagree. But do we know what in California and Nevada, what precisely commissioned the shortage which was then followed by the panic, the tank topping which made the prophecy totally self-fulfilling?

The tank topping did not suddenly start all in 1 day; something caused this reaction.

Mr. BARDIN. Wait a minute. The tank topping starts when people feel this tremendous drive. I do not know if you have ever felt it. But it just gets a hold of you and you just have to go in and fill up.

One dealer told about selling 37 cents' worth of gasoline, another one told me about 64 cents. So you have really to go into psychology. But what was the underlying shortage?

Mr. SIMS. Yes.

Mr. BARDIN. We had it all over the country, we had the same low-allocation fractions all over the country. There are various theories why it exists, one theory blames it on Mr. Isenberg's sweeps in California, creating a psychology amongst the dealers; they were afraid this Federal Government was suddenly cracking down on these price control regulations. They thought it was unfair, ill-advised, unfortunate. They thought why pick on us? There is a theory I cannot validate that said the way in which the media coverage of the general phenomenon of restrictions on gasoline supply hit the television viewer or the newspaper reader in California was significant.

If we really want to discern it, I guess I am just too close to work the problem through now to have the luxury to be able to do that, but if you really want to look at it, I would ask myself one question: How is it that some counties in California or some parts of California had acute problems? Places like Santa Clara County, Los Angeles County, and others have never had lines in this whole period of time. There obviously is something to be learned within the California area. A part of it has to do with real shortages.

Generally low-growth areas experience little shortage the way these allocation systems work. But that may not be the whole story. The audits that we have done so far have, incidentally, revealed to us that there are parts of California where the growth rate in real consumption, I mean what is really pumped through all the way to the filling tanks has been on the order of 15 percent, not in one corner, of one filling station, but station after station in an area.

That is a pretty dramatic phenomenon, when you think of new subdivisions, very fast growth in some areas, that may be a factor.

The chairman of the board of supervisors in Santa Clara County thought when he talked with our auditors that the second spouse working was a big factor, that we had lots of families who had been there all the time with two cars, that had been there all the time but suddenly the second car had to be used for getting to work on round trips that average 26 miles from here to there.

I want you to understand that President Carter, as he announced, has ordered the Department of Justice and Department of Energy to work together, putting together a task force that will look at some of these more precise questions on what really happens, who says what to whom, how these situations are interpreted, and how they are translated into the judgments which make the gasoline flow and set the dealers' minds.

Mr. SIMS. Thank you, Mr. Chairman.

Mr. DINGELL. Mr. Bardin, the committee thanks you and your associates for your testimony and great patience this morning. The Chair does observe many comments have been made regarding the phaseout of 400 auditors planned in 1980. If you could submit to us, please, for the record the additional cost if the auditors remained throughout 1980, it would be much appreciated.

Without objection, the record will remain open for that point.

[The following information was received for the record:]

The additional cost, if the 400 auditors remained throughout 1980, would be about $10 million.

Mr. DINGELL. Mr. Bardin and gentlemen, we thank you for your assistance to us. You have been most patient.

The committee stands adjourned.

[The following letters were received for the record—see also page 26 of this hearing:]

garlaine

Department of Energy
Washington, D.C. 20585

FEDERAL TRADE COMMISSION
RECEIVED
MAY 22 1979
CHAIRMAN

May 21, 1979

Honorable Michael Pertschuk
Chairman
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Pertschuk:

The Director of your Bureau of Competition, Mr. Alfred Dougherty, has recently communicated with Congressman Benjamin Rosenthal regarding the current gasoline shortages (see Enclosure 1, letter of May 14, 1979).

In his letter, Mr. Dougherty stated that reported figures reveal that in the first quarter of 1979 there was a reduction in gasoline production by domestic refiners that significantly exceeded the reduction of crude oil imports to the United States, and that, therefore, "the current gasoline shortage may be contrived." We are not aware of any information that supports either this premise or the carefully qualified conclusion. Information available to the Department of Energy (DOE) shows that the percentage of gasoline produced from available crude oil during the first four months of 1979 was very similar to the percentages in 1978 and 1977. This is shown in the tables in Enclosure 2, which show reported domestic crude oil available, crude oil imports, and the reported refinery output from the crude oil. As you can see, it is not apparent that there was any significant change in practice from prior years, either in the amount of stock growth or in the percentage of gasoline produced. If the Federal Trade Commission (FTC) has different data that supports a contrary conclusion, we certainly would like to have that data made available to DOE.

Our initial review based on formal but unverified refiner reports does not show that refiners are withholding supplies. DOE is now conducting an audit of the information provided by refiners. Until that audit is completed, we cannot conclude that there is or is not any unusual action by the industry that has increased the gasoline shortage.

You may be interested in the facts and circumstances which have significantly contributed to the gasoline shortage, other than unwarranted actions by the industry. Enclosure 3 is a copy of DOE's recent report of May 16 which was submitted to the President on Gasoline Supplies for California. It provides a detailed and balanced description of the national gasoline supply situation and the specific conditions in California. It also outlines specific measures already taken and recommendations for further voluntary and regulatory actions at the Federal, State and personal level that are intended to increase supply and limit demand.

Mr. Dougherty's letter states that "DOE regulations and informal directives to the oil companies may be partially responsible for the present shortages." In support of this allegation, he writes that DOE "has been pressing for a shift in refining utilization away from gasoline and toward middle distillate." DOE has indeed been discussing with refiners (on an individual basis) the need to rebuild distillate stocks to safe levels before next winter, but there are a number of ways to achieve this objective other than shifting refinery utilization away from gasoline, including increased crude oil input and reduced consumption of distillate this summer.

During the past two weeks (April 27 to May 11) data available to DOE indicate that distillate production has remained at about 3.0 million barrels per day and that distillate inventories have increased by only 383 thousand barrels. Similarly, gasoline production during this period has remained unchanged at about 6.6 million barrels per day. From the foregoing, it is evident that there has been neither a significant build-up of distillate stocks nor an increase in distillate production since discussions with refiners began on April 30.

A primary objective of the Department's Response Plan is to reduce consumption of oil, both gasoline and distillate, by such actions as switching to natural gas, building temperature controls, and enforcement of the 55 MPH speed limit. If these oil conservation actions are successful and if imports of crude oil are sustained at about 6.2 million barrels a day, we expect that distillate stocks can be built up to acceptable levels by next fall, and still allow gasoline use this summer at about the 1978 level. However, if these other actions are not successful, and it does become a matter of a trade-off between gasoline use and distillate heating oil stocks, it is the President's position that we must give priority to assuring adequate heating oil for next winter. DOE and the President are well aware of the implications of that decision, and believe it to be sound. We believe it is preferable to ask Americans to forego discretionary driving this summer than to freeze in their homes next winter.

Mr. Dougherty also states that DOE's regulations have inhibited new refinery investment. The Department has on a number of occasions stated that price controls on motor gasoline necessarily have the effect of reducing new refinery investment, particularly in gasoline facilities. The Department has consistently advocated complete deregulation of motor gasoline prices and allocations, as soon as market conditions will permit. Further, the Department has effected several regulatory changes designed to encourage such investment to the extent possible under a regulatory regime. Thus, the price controls have been amended to permit passthrough of increased depreciation and interest expense connected with the construction of new facilities. Moreover, the recent gasoline "tilt" amendment was designed to permit more complete recovery of increased costs associated with the manufacture of gasoline.

We believe that Mr. Dougherty's statements with respect to the Financial Reporting System (FRS) and data sharing are inaccurate and do not reflect the Department's current position. However, I have asked Lincoln Moses to reply directly to you on these subjects.

Finally, I would note that throughout the Iranian crisis, DOE has made every effort to keep the country (including other Federal agencies) fully apprised of changes in demand, supply and stock levels on a week by week basis. Please find enclosed a copy of our most recent weekly report on this subject.

Although we welcome constructive comments on the causes of the gasoline shortage, there is a danger that unsubstantial charges, even when qualified, divert attention from the underlying nature of the Nation's current energy problems. Finding scapegoats in the Government or the energy industry will not change the fact that the basic cause of the present problem is this Nation's increasing dependence on insecure sources of foreign oil. Until we reverse that increasing dependence, we can expect more shortages in the future.

Sincerely,

John F. O'Leary
Deputy Secretary

6 Enclosures

Department of Energy
Washington, D.C. 20461

MAY 25 1979

FEDERAL TRADE COMMISSION
RECEIVED
MAY 25 1979
CHAIRMAN

Honorable Michael Pertschuk
Chairman
Federal Trade Commission
Washington, D.C. 20580

Dear Mr. Pertschuk:

Mr. John F. O'Leary, the Deputy Secretary of Energy, stated in his letter to you of May 21, 1979 that I would reply directly to you regarding certain subjects. Mr. O'Leary was responding to a May 14, 1979 letter that Mr. Alfred Dougherty, the Director of your Bureau of Competition, had sent to Congressman Benjamin Rosenthal regarding the current gasoline shortages.

Mr. Dougherty's letter sharply criticized the Department's actions with respect to data collection and data sharing. First, he indicated disappointment in the failure of the Financial Reporting System (FRS) to collect certain data in the form of "segregated" refining profits and marketing profits. Design of the FRS was based on two principles:

1. In accordance with the mandate of Section 205(h) of the DOE Organization Act, the FRS, along with data available from complementary data systems, is intended to collect adequate factual data to contribute significantly to an understanding of structure and behavior within the petroleum refining and marketing sectors, and

2. It is unwise to collect inherently unreliable data.

With regard to (1), please note the FRS does collect segregated financial and statistical data for refining and marketing operations with respect to costs, property, plant and equipment, refined product movements and revenues and raw materials processed. With regard to (2), the Energy Information Administration (EIA) has shared with the FTC staff the report of an extensive study of the feasibility of segregating refining and marketing profits; that study was done by R. Shriver and Associates.

The report concluded, and the FRS staff concurs, that the accounting procedures required to split the profits of an integrated firm into "refining" vs. "marketing" entails myriad assumptions concerning the functional division of heterogeneous firms and organizational points at which to establish transfer prices. It further concluded that a division of profits between refining and marketing would lack objectivity and comparability across firms, and would be very hazardous for analytical use. I am enclosing a copy of the report.

Mr. Dougherty also criticized DOE's failure to share energy data in its possession with other Federal agencies. In fact, the DOE does have a policy to disclose to other Federal agencies, including the Federal Trade Commission, data being collected on Form EIA-28. In Federal Register notices and on the instructions to the EIA-28, DOE stated that ". . . in accordance with applicable legal authority, FRS data will be made available to the Attorney General, the Federal Trade Commission, the Secretary of Interior, the Comptroller General, and offices within DOE." However, this policy is presently being challenged by certain of the respondents to Form EIA-28. On March 15, 1979, a complaint for declaratory and injunctive relief from compliance with the EIA-28 was filed in the U.S. District Court for the District of Delaware on behalf of five respondents. Further development of a general policy regarding disclosure is being delayed until the court decides on the EIA-28 issue.

Please let me know if I can be of further assistance.

Sincerely,

Lincoln E Moses

Lincoln E. Moses
Administrator
Energy Information Administration

Enclosure

[Whereupon, at 1:40 p.m., the subcommittee adjourned.]

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