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The focus of the Department of Energy's (DOE's) emergency preparedness effort was the Energy Emergency Planning Guide. This guide was merely a list of proposed measures that might be taken at Federal, State, or local levels, and not all of these measures were feasible. DOE's response to the coal strike of 1977-78 involved two hastily organized "ad hoc" task forces to manage possible shortages of coal and electricity. The Departme concentrated on power supplies and failed to monitor consumer costs adequately. Federal actions were a minor factor in the management of the energy emergency, however. The major factors in managing the emergency were the foresight and planning of the electric utilities and the demonstrated willingness and ability of the States to respond with minimal Federal intervention. The Administration seriously overestimated the impact of the strike on unemployment levels; access to data that could clarify reasons for the overestimation has been withheld. Minor improvements in the state of preparedness of Federal and State agencies involve somewhat better staffing, revisions in the planning guide, and the learning experience of the 1977-78 winter. The use of contractors has been greatly expanded in current planning following the identification of deficiencies in DOE's handling and monitoring of contractual services for contingency planning. The expanded use of contractors will require close monitoring to ensure satisfactory performance. (RRS)

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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STATEMENT OF
J. DEXTER PEACH, DIRECTOR
ENERGY AND MINERALS DIVISION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

We appreciate your invitation to appear before the Subcommittee to discuss the review you asked us to carry out on energy emergency contingency planning at the Federal and State levels. We will be discussing our findings and conclusions in the context of whether energy emergencies can be managed more effectively.

Let me begin, Mr. Chairman, by summing up briefly the major conclusions of our report, "Improved Energy Contingency Planning Is Needed To Manage Future Energy Shortages More Effectively." They are:

--The centerpiece of the Department of Energy's (DOE) energy emergency preparedness effort was the Energy Emergency Planning Guide. However, the Guide was merely a list of proposed measures that might be taken at Federal, State, or local levels. Not all of those measures were feasible alternatives.

--DOE's most effective response to the midwinter coal strike of 1977-78 came from two hastely organized "ad hoc" task forces to manage possible shortages of coal and electricity. In concentrating on power supplies, however, DOE failed to monitor consumer costs adequately.

--Federal actions were a minor factor in the relatively successful management of the energy emergency. The two major factors were

  --the foresight and planning of the electric utilities, and

  --the demonstrated willingness and ability of the States to respond with minimal Federal intervention.

--The Administration, for reasons which are unclear, seriously overestimated the impact of the strike on unemployment levels. Access to Council of Economic Advisor's (CEA) data that could clarify the reasons has been withheld.

--Except for minor improvements, most Federal and State agencies will face this coming winter in about the same state of preparedness as last year. These changes include somewhat better staffing, revisions in the Planning Guide, and the learning experience of last winter.

--There were deficiencies in DOE's handling and monitoring of contractual services for contingency planning. The use of contractors has been greatly expanded in current planning, and will require close monitoring to ensure satisfactory performance.

Mr. Chairman, I will discuss each of these points in a little more detail, and then conclude with our recommendations.

ENERGY EMERGENCY PREPAREDNESS - 1977-78

In the early summer of 1977, the Federal Energy Administration was giving top priority to planning for emergency conditions which might result from energy shortages during the 1977-78 winter. An Interagency Task Force was established to develop energy emergency contingency plans and to prepare initiatives for any needed legislation, but the actual planning effort was delegated to a seven member working group of FEA officials.

DOE's Planning Guide

The major product of this contingency planning effort was the Energy Emergency Planning Guide: Winter of 1977-78, issued by the newly formed DOE. This Planning Guide was not the product originally envisioned. Instead of a contingency plan with specific programs to be implemented at certain stages of an emergency, the Planning Guide simply listed proposed measures that might be taken at Federal, State, or local levels prior to, or in the event of, an energy emergency. The Guide fixed no responsibilities for monitoring these actions or for assessing

and reporting on the progress being made in their implementation. Furthermore, some of the listed emergency measures were dependent on congressional approval of a National Energy Act or other specific legislation. When these legislative measures were not approved, the emergency actions could not be taken. The Guide contained no alternative actions to cope with such potential problems.

There were other measures specified in the Planning Guide which could not be readily implemented, such as: facilitating increased imports of natural gas, securing legal authority for mandatory Federal and State measures, and implementing energy information systems. These kinds of measures take time to develop, which means they are generally not applicable as short-term solutions to immediate problems. The decision to include these measures in the Guide appears to be due to the lack of technical expertise in the work group responsible for the Guide

DOE's Energy Emergency Center

Only a few of the proposed measures for Federal or State actions were actually undertaken or completed, including those within DOE. One of the more successful pre-emergency measures was the establishment of DOE's Energy Emergency Center. The Center--an energy information and communication "clearing house" between Federal, State, and local government agencies--opened on December 1, 1977, as scheduled. The Center's effectiveness was minimized for several weeks, however, because it was housed in

temporary quarters, had mostly untrained staff, minimal equipment, and no operating procedures. As the winter progressed, these problems were resolved and the Center was useful in serving as a central information point for energy data. Some State officials were critical of the accuracy and timeliness of the data sent to them from the Center. But, they generally viewed the Center operations favorably as a single reference point within the Federal sector during emergency situations.

State Plans

Most of the States we visited had developed, to some extent, contingency plans to meet their perceived needs. Most of these plans, however, were not complete enough to send to DOE at the beginning of the winter. DOE officials thus could not assess their adequacy and work with the States to coordinate proposed Federal and State actions. Some of the States relied on disaster relief plans. Because contingency plans for energy emergencies are sufficiently different from disaster plans, we believe they should be considered separately, and closely coordinated with Federal contingency plans.

Industry's Contingency Measures

The most impressive pre-emergency actions to minimize the effects of the impending coal strike were taken by the electric utility companies. On their own volition, and long before serious efforts were undertaken by Federal officials, the utilities began to build up their coal inventories to record heights.

ASSESSMENT OF DOE'S EMERGENCY ACTIONS

When coal shortages reached a point where they appeared to jeopardize the electric utilitiies' ability to continue meeting power demands, DOE reacted by forming two "ad hoc" task forces to manage possible shortages of electricity and coal. The use of such task forces was not included in the Planning Guide, yet it was probably the best method of obtaining a quick assessment of the unfolding problems. DOE's failure to assign high-level responsibility for energy emergency contingency planning probably accounts for the hurried implementation of the "ad hoc" task forces.

Although the performance of these task forces was generally adequate under the circumstances, we believe that major benefits, in terms of improved Federal credibility and reduced economic costs, could have been achieved through better planning. For example, the electric power task force was concerned only with generating and transmitting power to where it was needed and not with the costs that were incurred by the utilities and passed on to their customers. Because of this lack of cost monitoring, allegations have been made that consumers were charged excessive prices and FERC has had to conduct an extensive post-strike audit of utility costs and charges. This audit is not only costly to both the Government and the utilities but also raises questions of industry credibility during energy emergencies.

DOE did make a positive contribution to the management of the emergency by using government personnel familiar with energy industry operations on the task forces. They were able to develop the effective "ad hoc" system of monitoring energy supplies and provide this information to high level decision makers. DOE's ability to accurately assess the energy supply situation during the winter was probably the direct result of the input of the "ad hoc" task forces, and probably led to the government's decision, which we believe was correct, to maintain a "hands-off" posture during the energy emergency. Most utility and State personnel we talked to approved of the government's maintaining a low profile. It appears that DOE plans to continue this "hands-off" approach, but with a refinement of the process. Based on our brief review of the revised Planning Guide, for example, it appears that the roles to be played by responsible DOE officials will be better defined.

As effective as the task forces proved to be, we believe that they would have been more effective if they had been provided for in the Planning Guide. If so, the task forces could have been (1) already formed, (2) told what their goals were so that methods to achieve them could have been formulated, and (3) been involved earlier in an active program to cultivate industry contacts for emergency coordination with DOE during the winter.

ASSESSMENT OF INDUSTRY AND STATE ACTIONS

Two major factors contributed to the relatively successful management of last winter's energy emergency. One factor was the foresight and planning involved in the electric utilities' coal-stockpiling, coupled with the extensive interconnections of the affected area's electrical generation and transmission system. The other factor was the demonstrated willingness and ability of the States to respond to energy emergencies with minimal Federal intervention. These factors probably overshadow all the planning and energy management activities of DOE before, during, and after last winter's energy shortage. We have seen nothing that would change this view for similar energy emergencies in the future.

THE VALIDITY AND USE OF UNEMPLOYMENT DATA IS QUESTIONABLE

An increase in unemployment levels was a possible major economic consequence of a lengthy coal strike. Two basic methods were used by Federal agencies to track these levels. One method used direct contacts with affected business concerns to assess the actual unemployment levels. The other method used a computer analysis of anticipated actions to determine the consequences under various scenarios.

The direct survey method, as carried out during the past winter by the Bureau of Labor Statistics (BLS), showed a relatively small number of workers unemployed for strike-related reasons in the States comprising the East Central Area Reliability

Coordination Agreement region. BLS weekly surveys found that out of a workforce of about 14 million, weekly unemployment ranged from 9,500 to 25,500. One factor that may have contributed to this low figure was the increasing deliveries of coal during February and March 1978.

The computer model, developed jointly by DOE, BLS, and the Council of Economic Advisors (CEA), showed a "best case" projection of unemployment amounting to about 27,000--a figure comparable to the maximum unemployment level reported by BLS. The model also showed a "worst case" estimate of 3.5 million unemployed in the East Central region by mid-April 1978, under the assumptions that coal deliveries would fall to their low point of 300,000 tons per week and State curtailment plans for electric power would be imposed.

We were told by CEA officials that these estimates resulted because the computer model made a direct linkage between unemployment and coal deliveries. Other Government officials, however, told us that no reliable causal relationship can accurately be established between energy curtailments resulting from diminished coal deliveries and numbers of workers unemployed.

For reasons we could not determine, the Administration elected to use the computer-generated "worst case" scenario of 3.5 million workers unemployed, both in the public media announcements and in support of the Taft-Hartley injunction. As you are aware, Mr. Chairman, we have had a series of delays

in obtaining documentation on this matter from CEA. They did provide some of the data we requested, but it was not received until after our audit work was completed and the report was ready for issue. However, the key information we needed on CEA's analysis of the computer projections was not provided. We therefore could not determine the rationale for the Administration's use of the "worst case" scenario.

We were provided copies of data by DOE that had been given to Administration officials during the winter. These data concerned the upward trend in coal deliveries, the extent of power transfers, the results of curtailing industrial users 15-25 percent, and related documents on unemployment statistics. This information was all supportive of the BLS survey findings.

We do not believe the Administration acted as prudently as it could have, given the wide range of information it had available to it. We believe that, as a minimum, the Administration should have informed the public as to the actual unemployment and coal delivery levels, various projections of unemployment given differing assumptions, and the probability of these unemployment levels actually occurring. In contrast, however, it appears that the credibility gap regarding energy information has been widened. This could make it difficult to obtain public cooperation in future energy emergencies which may be more severe. We believe that in the Government's dealings with the public its goals will best be served if such information is presented candidly and forthrightly.

In your request for our testimony, Mr. Chairman, you specifically asked that I be accompanied by GAO's Office of General Counsel to address our reaction to the Justice Department memo of August 31, 1978. Our Office of General Counsel has prepared a statement for the record which Mr. Wray will briefly summarize at the end of my statement.

THE USE OF CONTRACTORS

DOE used contractual services amounting to nearly $200,000 to assist the working group in preparing the Planning Guide and in implementing some of the pre-emergency measures. The results of these contracts were mixed. Some contractors achieved their objective--such as the completion of the Planning Guide itself. Other contractors produced products, however, that were either not timely or not useable. In at least one case, the delay was in DOE's contract processing procedures during the reorganization. This, for example, held up the production of the Energy Handbook to complement the Planning Guide. This was especially unfortunate, since the Handbook appeared to us to be potentially more useful than the Planning Guide. In another example--involving the development of procedural guidelines for the Emergency Center--the lack of contractor monitoring by knowledgeable DOE staff probably contributed to poor contractor performance. In this case, however, we believe DOE should have been able to develop these guidelines without contractor assistance.

DOE is continuing to use contractual services in its on-going emergency preparedness planning activities. In

addition to the $7.5 million budgeted in FY 79 for the development of the Energy Emergency Management Information System, contracts amounting to about $2 million have been signed for at least eight separate projects. We are concerned about:

--The contract costs.

--The complexities of work envisioned.

--The need for such extensive contracting services in view of the improved capabilities of State agencies to handle emergency situations.

--The ability of DOE to effectively monitor these contracts in view of the relatively few personnel DOE has assigned to the emergency preparedness effort.

These concerns raise questions as to how effective and how necessary, these contracting efforts will be in helping DOE to discharge its contingency planning responsibilities.

CURRENT EFFORTS TO IMPROVE EMERGENCY PREPAREDNESS

Although the Nation managed to get through the winter's energy emergency without widespread disruptions, there were several areas where deficiencies existed and where corrective actions were needed. While some of the deficiencies can be corrected by DOE actions, most of the required actions will require the close cooperation of Federal and State agencies as well as the energy industries.

The need for improving energy emergency preparedness has been recognized and efforts to bring about these improvements at the Federal and State levels have been on-going through the

months following the coal strike settlement. However, except for a revised Planning Guide at DOE and the benefit of experiences gained during the past winter, most Federal and State agencies will face this coming winter in about the same state of preparedness as existed for the 1977-78 winter. Because of last winter's learning experience, State and electric utility industry officials should have a greater degree of confidence in their ability to manage future energy shortages. They recognize, however, that they need Federal assistance in certain areas, such as improved data management and coordination of emergency operating plans and procedures.

DOE's current planning efforts are concentrated principally in (1) developing the Energy Emergency Management Information System, (2) revising the Energy Emergency Planning Guide, (3) reorganizing the Energy Emergency Center, and (4) improving the coordination between State and Federal agencies.

The Management Information System

The Management Information System project has required extensive groundwork. Staffing, which has been minimal, has recently been expanded. At the present time it consists of the Director, three staff members detailed from other DOE components, and a secretary. If the objectives of the System are attained, it could be a very useful source of information, particularly as it related to energy emergencies.

Revisions to the Planning Guide

The revisions to the Planning Guide appear to have enhanced its usefulness to potential users, but it still remains a

reference document rather than an actual plan. We believe that DOE still needs to take the lead in coordinating and monitoring Federal energy emergency actions. Specific responsibilities need to be assigned for proposed actions. The best use of task forces needs to be determined, and decisions need to be made in advance of the organization, assignment of responsibilities, and staffing of the task forces. We also believe a single responsible high level administrator needs to be designated to coordinate emergency preparedness planning and have authority to order the implementation of the various Federal actions needed regardless of the agency involved.

Improvements in the Energy Emergency Center

Improvements in the Energy Emergency Center operations are needed and have been recognized by responsible officials. Proposed changes include coordinating a number of separate activities and upgrading the facilities and equipment within the Center. An improved data management system which is currently being incorporated into Center operations should also help overcome previous complaints about the accuracy and timeliness of information sent out from the Center during the past winter.

Coordination of Emergency Plans

The coordination of Federal, State, local, and industry emergency preparedness plans remains one of DOE's major unresolved problems. We found that some States maintained a provincial attitude towards electricity produced within their

own borders, even though such electric power was a vital segment of the total electrical energy needs of a neighboring State. The interstate and regional environment in which many of the energy industries operate make it imperative that contingency planning encompass more than an individual State or locality. Responsible officials at all levels have recognized this need and DOE has devoted a share of its resources to improving this coordination.

Most of this coordination effort will take 1 to 3 years to complete. We beleive that discussions with knowledgeable Federal, State, and industry officials need to be on-going to identify past problem areas and seek mutually agreed-on solutions for the immediate future. DOE should be initiating discussions with State agency officials on ways to remove barriers to regional planning within the context of meeting individual State needs and encouraging the States to work together to achieve compatible contingency and energy curtailment plans.

We believe that because DOE did not have early access to State contingency plans, it did not have a good understanding of how States were prepared to manage energy shortages. Had DOE been more aggressive in obtaining and analyzing these plans, we believe that some regional supply problems may have been avoided. DOE proposes to improve this situation through the use of contractual assistance. We believe that DOE should look to its own staff to develop strategies and plans for improvement.

We believe that such Federal-State coordination should be encouraged and expanded as necessary and if it is, many of the prior problems will be greatly reduced if future energy shortages should occur.

RECOMMENDATIONS

To ensure that DOE's efforts are properly directed and managed, we have recommended to the Secretary that at the Federal level, an interagency energy emergency agreement be developed which would designate the actions that can be taken, how they would be taken, and who has the responsibility and authority to take them.

We have also recommended that DOE's current planning process be critically reviewed to ensure that:

--Only those needs that cannot be met by State and industries be considered.

--Proposed emergency actions involving the energy industries are approved by energy technical specialists.

--The Planning Guide is revised to contain (1) sufficient details on Federal programs and assistance to make it more useful, (2) proposed actions that can be realistically implemented, and (3) wherever possible, specific plans of action.

--The development of the Energy Emergency Management Information System be given top priority.

To minimize poor contractor performance, we have concluded that DOE needs to critically evaluate its current contingency planning efforts to insure that all current programs are necessary and properly staffed. We have specifically recommended that the Secretary, DOE, more closely monitor the contractual services used in the energy contingency planning process so that the results of such services are both timely and useful.

Mr. Chairman, that concludes my prepared statement on the findings and recommendations contained in our report. You also asked that we comment on a number of issues related to DOE's emergency preparedness planning that were raised in our report and in a report prepared by DOE's Inspector General on the same topic. In response to that request, we are submitting a separate detailed statement for the record. We will be happy to answer any questions you may have.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
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DETAILED STATEMENT
FOR THE RECORD
OFFERED BY
J. DEXTER PEACH, DIRECTOR
ENERGY AND MINERALS DIVISION
BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
UNITED STATES HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

At your request we are submitting this detailed statement for the record covering our response to questions included in your letter of invitation to appear before the Subcommittee. On the questions that concerned matters we did not specifically cover during our review, we have provided, where applicable, comments based only on our general observations. On other questions, we have provided the detailed information requested.

USE OF CONTRACTORS BY DOE IN EMERGENCY PREPAREDNESS ACTIVITIES

DOE used four different contractors and five contracts to assist the energy emergency planning staff in developing and publishing the Energy Emergency Planning Guide: Winter of 1977-78 and to implement some of the measures proposed in the Guide. A listing of these five contracts with costs, contract objectives, and contract status is given in Appendix I. Four of the contracts were completed, with the National Oceanography and Atmospheric Administration (NOAA) contract continuing until January 1979.

Although each contractor fulfilled the contract requirements, not all of the products proved to be useful, or were used, by the DOE staff in the emergency planning effort. A brief summary of each contract follows.

The contract awarded to the American Management Systems, Inc. (AMS) was the largest in terms of cost. It was issued to AMS without bid because of the time constraints under which DOE's emergency planning group were working and because of AMS's prior work with FEA and their extensive experience in the energy field. The contract was (1) to provide assistance to the planning group in developing the Energy Emergency Planning Guide, (2) design the Energy Emergency Center (EEC), and (3) develop operating procedures for the Center.

Because of the press of time to get the Planning Guide published, AMS subcontracted with Price, Waterhouse, Inc. to develop the Center's design and operating procedures. AMS completed its work on the Planning Guide in November 1977.

Price, Waterhouse worked with the DOE staff to develop the policy on how the Center should be set up and then drafted a set of operating procedures to be used by the Center personnel when it was activated. For reasons we could not determine, the DOE staff made no use of these operating procedures when the Center was opened on December 1, 1977. The Center Director told us that she was generally unaware of what Price, Waterhouse personnel had been doing although the management of the Center was her responsibility. As a result of not using the contractor-developed procedures, the Center opened without any written guidelines for its organization and operation making it less effective than it might have been.

An important corollary to the Winter Emergency Planning Guide was a proposed handbook on Federal assistance during energy emergencies. This handbook was designed to trigger the initial actions by State or industry officials in seeking Federal assistance. To be useful, the handbook was required to be available by December 1, 1977; therefore DOE believed noncompetitive procurement was justified.

The proposed contract with Jack Faucett Associates was initiated prior to the close of FY 1977. Because of the heavy workload of the FEA contracting office at that time, the contract was not finalized and was carried over into FY 1978. According to DOE officials responsible for developing the Planning Guide, the contract was caught up in DOE's contract review procedure following its organization on October 1, 1977, and was not approved until after November 8, 1977.

The contractor completed a first draft of the handbook on December 9, 1977, and a final draft was provided on January 10, 1978. Twenty-five copies of the handbook and the reproducible master were provided to DOE in late January in compliance with the contract.

The Director of the Energy Emergency Center said that the DOE reorganization had tied up personnel needed to arrange for the distribution of the handbook. Since its distribution would be delayed until the winter was nearly gone, DOE saw no need to finish the project and no final copies of the handbook were published and issued.

We reviewed the draft copies of the handbook and believe it would have been of more use to State and industry officials than the Planning Guide. It was designed to be easily updated making it a useful reference

document in the future as well as for the 1977-78 winter. We are not aware of any plans for the handbook, or something similar, to be prepared for the 1978-79 winter as a complement to the revised Planning Guide.

We did not specifically assess the use of contractors as a viable way of preparing for, and carrying out, emergency functions. Our observations of DOE's experience with contractors during the 1977-78 emergency preparedness effort, however, leads us to the conclusion that there is considerable uncertainty attached to obtaining a useful and timely product from such contracts.

Actions taken to deal with emergencies or emergency preparedness usually require a quick response time, and DOE's efforts during the planning phase for the 1977-78 winter was no exception. A quick response requires the contracting agency to expedite the contracting process, thereby limiting the time agency personnel can spend writing adequate specifications and soliciting bids to keep the cost down. Any delays in the contracting process further limits the time allowed for contract performance. The result is--as was evidenced in some cases during the past winter--a product that is no longer needed because it is received too late. It may also result in a poorly prepared product that has limited usefulness.

We conclude that although contracting may be a viable way to accomplish a project, the responsibility rests on the contracting individual or agency to (1) determine the need for the product, (2) determine whether specifications can be prepared that clearly delineate the required end product, (3) provide adequate monitoring to insure that

the end product will be produced according to the specifications, and (4) assess the trade-offs of doing the work with agency personnel.

DOE is continuing to use contractual services in its on-going emergency preparedness planning activities. Contracts amounting to about $2 million have been authorized for at least eight separate projects. (Appendix II).

COORDINATION OF EMERGENCY PLANNING

Our review did not specifically cover the issue of coordination as did DOE's Inspector General report. During our review of DOE's efforts to develop the Planning Guide and manage the emergency caused by the coal strike it was apparent that while parts of the program may have been organized and coordinated with other groups, the total effort lacked a sense of direction and certainly lacked a designation of responsibility and authority.

Aside from the interagency coordination which must be directed from the top levels of all agencies, the diversity of DOE's internal efforts to plan for and manage energy emergencies of all kinds requires strong central direction and authority. We would agree with the Inspector General's position that "...the complexity of energy problems and the importance of emergency planning in this area makes the need for a full-time DOE emergency coordinator with a full-time staff inevitable. Such a coordinator must have the overriding authority to insure consistency and common direction in the emergency preparedness planning of the individual offices."

We do not believe that DOE's actions in dividing this responsibility and placing it on officials in a staff position within the Department will meet the need expressed by the Inspector General's report and that we observed exists in DOE.

COMMENTS ON THE INSPECTOR GENERAL'S REPORT

We have reviewed the findings developed by the Inspector General's office in relation to the results of our audit work. In those areas that were covered by both audits, we find general agreement between the two reports. The differences that we noted could generally be attributed to the differences in the time periods covered by each audit. The Inspector General's audit was essentially completed by mid-June and our audit extended to early September 1978.

We have looked closely at the Inspector General's findings numbered 3 and 7 from their legal perspective. We have also contacted DOE's General Counsel and were told that they have rendered opinions on the matters cited--the potential conflict of interest with industry personnel serving without pay on Federal emergency task forces and the matter of DOE releasing proprietary data to State agencies. These opinions will be provided to the Subcommittee at the hearing on November 17, 1978.

In view of this action by DOE, we have chosen not to comment on these two findings. If DOE's response at the hearing is not satisfactory, we can discuss the possibility of providing our comments at a later time.

ECONOMIC IMPACT OF THE ENERGY EMERGENCY

In its attempt to assess the possible consequences of the coal strike on unemployment levels, the Council of Economic Advisors, (CEA), in conjunction with DOE and Bureau of Labor Statistics (BLS) officials, developed a computer model to analyze a number of variables that were assumed to be relevant to the economic effects of the coal strike. The results of these analyses were "best" and "worst" case scenarios showing possible unemployment levels ranging from a low of 27,000 unemployed workers in the ECAR region--given increased coal deliveries in March/April--to a high of 3.5 million unemployed workers--if coal deliveries fell to 300,000 tons per week and State energy curtailment plans were implemented.

We attempted to obtain all the information available regarding these unemployment estimates from the CEA staff so that we could better analyze the rationale for the use of the "worst" case scenario by the Administration. CEA initially rejected our request for the data we felt was necessary to do this analysis, but later did provide some general data on the computer model, assumptions used, and samples of the models output. The documents provided did not met our needs, and as a consequence, we were limited in responding to the Congressional request for this analysis.

The following discussion briefly outlines (1) our efforts to obtain the necessary data, (2) our evaluation of the data that was finally provided to us, (3) our evaluation of the usefulness of a computer model in these kinds of situations, and (4) our assessment of the Administration's use of the unemployment estimates produced by the computer model.

GAO efforts to obtain computer model data

Our initial efforts to obtain information on the development and use of the Administration's unemployment estimates resulting from the coal strike led us to various officials in Commerce, FERC, DOE, and EIA. Everyone admitted to some knowledge of the estimates but no one had the kind of documentation we were looking for, ie., a description of the model, the assumptions used and their basis, the variables incorporated into the model, and an analysis of the output. The EIA staff had attempted to develop a computer model for forecasting unemployment levels but the results were determined to be too subjective, judmental, and with too many errors to represent valid estimates. After some delay in responding to our request for copies of documents on the EIA model, we were finally referred to CEA as the repository of all the information we had been looking for.

In late June, 1978, therefore, we met with a CEA official who had been active in developing the CEA computer model. He explained how CEA got involved in developing the model, the variables used (coal supplies, deliveries, burn rates, curtailment levels, and unemployment levels), and

where they obtained the data (curtailment schedule of utilities from DOE, unemployment data from BLS, and coal deliveries from EIA). CEA said the coal delivery data was the most critical but was of very low quality. However, it was all they had so it was used. One additional bit of data CEA had was the minimal economic effect on industry and commercial concerns in Indiana of electric power curtailments which ranged from 15-25 percent.

A number of computer runs were made with the model. By changing the variables on each run,the model showed that with coal deliveries at 300,000 tons per week unemployment would start to become a serious problem in late March. At 600,000 tons per week, problems would begin in April and at 900,000 tons per week there would be no serious unemployment. When the use of the Taft-Hartley provision became likely, the administration had to make policy decision on which estimate to use. CEA chose to recommend to the Administration the "pessimistic" projection because:

--Coal deliveries were increasing, and consumption was decreasing. This was offset, however, by the historical perspective that violence was usually associated with similar strike actions, and if violence did occur, coal deliveries might diminish to the low point of 300,000 tons a week or less.

--The disjointed posture of the United Mine Workers' union did not appear to lend itself to early resolution of the strike issues.

--The validity of coal source information was questionable and the reliability of continued coal supply was doubtful.

--The outlook for an occurrence of the "worst" case scenario appeared to outweigh the possibility of the "best" case scenario actually happening.

The CEA official said he would provide us copies of memos sent to EIA explaining the model, but could not provide copies of memos from CEA to the DOE Secretary. These would have to come from CEA's Chief Economist.

In mid-July, after having had no success in obtaining documentation on the model or copies of memos analyzing the computer output for the Administration, we orally requested from another CEA official the following documentation:

--Memoranda from CEA explaining the model that was developed and all the assumptions and variables involved.

--All the estimates made and updated by CEA based on the information obtained from BLS and EIA.

--Memoranda from CEA to the White House transmitting the unemployment estimates and CEA's recommendations on which estimates should be made public.

We were later told by the CEA official we would have to submit our request in writing as there was some question about CEA providing this documentation to GAO.

On July 28, 1978, we met with CEA officials, including the Chief Economist, and presented our formal written request. (See Appendix III)

At this meeting we indicated our concern that seemingly routine-type data was being withheld from us and reiterated our futile efforts during the previous weeks to obtain the data. The CEA officials said that they would be as expeditious as possible in satisfying our request but it would require White House legal clearance.

Subsequent to our July 28, 1978, meeting the President's Deputy Counsel questioned our authority for obtaining the requested data. On August 11, 1978, GAO's General Counsel sent a letter to the Deputy Counsel citing the statutory authority under which GAO claimed access to the data. (Appendix IV).

On September 14, 1978, the Deputy Counsel wrote a letter to GAO's General Counsel stating that "while we do not believe that GAO has the authority to obtain the information sought, officials of CEA have agreed on a voluntary basis to provide information concerning last winter's coal strike." (Appendix V). Included with this letter was a Justice Department memorandum concerning our request. While the White House used the memorandum in asserting GAO's lack of authority to obtain the information sought, the Justice Department was equivocal in supporting such a conclusion.

On September 25, 1978, the Special Assistant to the CEA Chairman provided a staff summary of actions taken by CEA during the coal strike. The summary described the development of the computer model and the output that was utilized by CEA in evaluating potential economic dislocations resulting from the coal strike. The summary also stated that

'We have prepared this material as a service to GAO and to the Congress. However, our submission of this material should not be construed to establish any precedent for future GAO requests for information from the Council of Economic Advisors."

The summary provided a brief overview of the parameters and assumptions which constituted the computer forecasting model. The summary noted that "Attention is concentrated on the conservative cases because they were most relevant in the government's planning effort to protect the health, safety, and welfare of the population." According to the summary the model consisted of the following "prudent planning assumptions":

1. Effective coal stocks - As of 2/25 this figure was set at 15 million tons. This figure was a 30 percent discount of available coal because of poor quality and bad location, and was supported by the best judgement of DOE personnel most familiar with utility stocks.

2. Electricity Curtailment Plan - This was described as percentage cutbacks in electricity output defined with respect to normal daily coal consumption. These plans roughly corresponded to the plans of utilities in the East Central region at tne time.

3. Coal Deliveries into the East Central Region - Normal coal consumption averaged 2.8 million tons a week. The delivery figure was placed at 300,000 tons a week based on average weekly deliveries experienced prior

to the week of February 11, which generally ran between 300,000 and 350,000 tons. Even though deliveries in the last weeks of February jumped to 800,000 and 900,000 respectively, CEA claimed that prudent planning required a lower figure because of possible aberrations in the figures or the possibility of violence or other types of disruptions.

4. Noncoal Generation and Wheeled-in Power from other Regions - This was assumed to be 10 percent and 8 percent of normal electricity consumption respectively. Actual figures in late February showed the corresponding figures to be 13 percent and 14 percent, but the lower estimates, which, according to CEA, were more consistent with prudent planning, were utilized to account for noncoal outages becoming more likely and the ability to import power from other regions declining over an extended period of time.

Besides these brief descriptions, the CEA staff also provided samples of actual computer runs of the model, with definitions of the terms used in the runs. In addition to the sample runs, unemployment charts that we had previously been seeking were provided. The final component of CEA's submission was the affidavit of the Chairman of CEA which used some of the model output in support of the request for an injunction under Taft-Hartley.

GAO evaluation of the CEA-provided data

Although CEA's summary and related material were helpful in describing its actions in developing the unemployment forecasts, much of the information had already been obtained from other sources and was reflected in our report. We did not receive the documentation that would have allowed us to determine how CEA evaluated the computer output in relation to other known data nor did we get copies of memoranda containing CEA's recommendations on how the computer estimates should be used. Consequently, a determination as to why it was felt necessary to hold to the most conservative estimates and relay that position to the public, could not be made.

Usefulness of computer models in emergency situations

We believe that the use of computer forecasting models can be useful in emergency situations. When forecasts of future events are needed,but the number of variables is too large to be manually manipulated, the computer is a useful tool to perform such manipulations in a relatively short period of time.

It is obvious, however, that the output of a computer model is no better than the data provided for analysis. Consequently, if the forecasters have questions about the quality or validity of the available data to be used, or cannot quantify some of the key variables, then it would appear that the value of the output should be analyzed and assessed for accuracy accordingly.

In our discussions with both CEA and other agency data specialists, several factors that influenced the CEA model's reliability were brought out that should have limited the Administration's reliance on the unemployment estimates produced.

1. The direct causal link between coal deliveries and unemployment is weak. It generally takes a number of adverse conditions occurring together (bad weather, high curtailments, no alternate fuels, etc.) to completely close a business. Problems occurring one at a time can usually be compensated for. Furthermore, curtailments of power or fuel supplies to a business may result in substituting manpower for machines. Productivity would decrease, however, and the model would show a proportionate increase in unemployment when employment may be staying constant or even increasing.
2. Knowledge gained during the 1973 oil embargo showed that the number of hours lost is a much more meaningful figure than number of people laid off.

3. The U.S. had no comparable coal strike experience to use as a benchmark except for the 1972 coal strike in England and Western coal had not been a major factor in previous strikes.
4. The computer model cannot accomodate to the measures taken by operating managers to avert lay-offs, including decisions to retain a labor force beyond the profitable point to minimize the impact on a local economy.

We would have to conclude, therefore, that the key is not in discounting the use of computer models but rather in critically examining the output in terms of the validity of the assumptions and variables that were used as input data.

Assessment of the Administration's use of the unemployment estimates

The Administration's dilemma as to which of several unemployment scenarios to promote was solved by assuming the "worst" case of a possible 3.5 million unemployed workers in the ECAR region by mid-April 1978. Its position was supported by the statement "...in the final analysis the public was best served by that strategy."

We have to take exception to that conclusion for several reasons.

1. There was no obvious logical support for the "worst" case scenario. It was at complete variance to all indicators that employment was being affected only minimally by the strike, coal deliveries were continually rising, and consumption was continually decreasing through February and March.

2. CEA's assessing a high probability of coal deliveries dropping back to 300,000 tons per week and violence closing down all non-union mines does not seem supportable in view of the conditions that had existed for 4-5 weeks prior to the assessment.

3. It appears to us that the public is best served, and the credibility of the government enhanced, if the facts as they are known are spelled out as clearly as possible. The Administration had a range of possible consequences, it had trend data, and firm survey statistics on what the economic conditions were. We see nothing to stop Federal planning for the "worst" case situation and it should do that if there is a reasonable probability it is likely to occur.

CONTINGENCY PLANNING

We believe that in encouraging "more aggressive and coordinated contingency planning between States and the utility industry" DOE needs to expand on its role as a moderator, working through both the National Governor's Conference and the utility industry's reliability councils. Problem and need identification is probably the area of most significance and once this identification is made, proposed solutions can be discussed with State and industry representatives. If the proposed solutions require technical or financial support, then DOE should arrange to provide if the States cannot.

From its national perspective, DOE is in a position to identify needs much better than each individual State. With its recently acquired authority under the National Energy Act, DOE can develop additional interstate data, such as contingency plans for utilities in the interstate bulk power market. Such data will reflect potential problems for States served by these utilities. These problems can then be discussed in terms of needs that are common to both States and industry.

Some State agencies will need outside funding to adequately conduct emergency planning and DOE will now have access to some funds for this purpose under terms of the Act.

In addition to monetary and technical support, however, DOE has a role to play as a catalyst in bringing States and industry together to discuss mutual problems and seek satisfactory answers. In our discussions with electric utility companies serving interstate markets, we found that they are aware of the problems caused by the lack of regional coordination and planning. One of DOE's priorities in this area, then, is to help the States recognize the need to participate in multi-state emergency planning.

EMERGENCY MANAGEMENT INFORMATION SYSTEM

We have been informed by EIA that the Program Plan for the Energy Emergency Management Information System has been completed and hearings were held on November 16, 1978. The staff has been expanded to include three staff members in addition to the Director and secretary. We have been told, however, that the additional staff are on detail from other DOE locations and we do not know if this assignment is permanent or not.

STAFFING

Our audit efforts were concentrated in the short term emergency planning area of DOE. Therefore, our comments will be limited to that aspect of emergency preparedness. We did not find an overstaffing of positions in this area, but rather questioned the lack of staff assigned when measured against the tasks to be done. Throughout most of the past summer, for example, one individual carried most of the responsibility for emergency preparedness planning for the 1978-79 winter. This

included revising the Planning Guide and arranging for numerous contracts dealing with various aspects of the Guide. The individual was assisted by contractor personnel, however, and in August was finally provided additional agency staff. The lack of staff support from within the agency and the reliance on contractor support with minimal ability to monitor their activities incurs the risk of the results being non-productive as mentioned before.

There has been some reorganization of the short term emergency planning office with a division of responsibilities. We do not know how this reorganization will affect DOE's ability to respond to emergency conditions.

DOE CONTRACTS FOR WINTER 1977-78
CONTINGENCY PLANNING

Contractor	Contract date	Contract cost	Procurement method	Contract objective
American Management Systems, Inc. 1/	8/77	$71,173	Add on to existing contract	Integrate information and measures obtained from various Federal and State agencies into a clear, comprehensive guide to prepare for energy emergencies.
Jack Faucett Associates	11/77	25,000	Sole Source	Development of a handbook on Federal assistance during energy emergencies.
American Management Systems, Inc.	11/77	30,436	Sole Source	Prepare for, conduct, and evaluate demand-restraint workshops for state and local governments held in five DOE regional offices.
National Governor's Association	11/14/77	9,600	Purchase Order	Provide DOE with a comprehensive report on State Energy Emergency Management Systems.
National Oceanography and Atmospheric Administration	10/77	49,000	Interagency Agreement	Experiments on long-range national weather forecasting.

1/ $9,940 of this contract was sub-contracted to Price-Waterhouse, Inc. in November 1977 to prepare written procedures for the operation of the Energy Emergency Center.

CURRENT DOE CONTRACTS FOR EMERGENCY PLANNING

Contractor	Amount	Procurement Method	Contract Description
Auerbach Associates	$ 48,300	Sole Source	ERA Emergency Procedures Analysis
Systems Consultants	90,600	Sole Source	STEP/ERA Multi-Year Program Plan
Argonne National Laboratory	90,000	Sole Source	Analysis and Evaluation of Energy Emergency Plans
Oak Ridge National Laboratory	225,000	Sole Source	Energy Emergency Planning
Forte, Inc.	10,000	Mini-competition	Editing and Printing of FY 1979 Energy Emergency Planning Guide
Pacific Northwest Laboratory	258,000	Sole Source	Revise economic analysis and environmental assessment for four conservation contingency plans required by EPCA of 1975
MIT	839,851	Sole Source	New conservation contingency plans for motor fuels
Oak Ridge National Laboratory	500,000	Sole Source	New conservation contingency plans for residential, commercial, and industrial customers

APPENDIX III

JUL 27 1978

The Honorable Charles L. Schultz
Chairman, Council of Economic
Advisors

Dear Mr. Schultz:

The U.S. General Accounting Office (GAO) is reviewing contingency planning efforts and actions taken by Government agencies and industry to avert or alleviate energy shortages. This work is being done by our Energy and Minerals Division at the request of Mr. John Dingell, Chairman, Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce. In his letter to GAO the Chairman specifically asked us to evaluate the estimate of unemployment due to last winter's coal strike which was developed by the Administration and released to the public in early March 1978.

We have discussed the circumstances surrounding the formulation of this unemployment estimate with staff at each of the agencies involved—the Department of Energy (DOE), the Bureau of Labor Statistics (BLS), and the Council of Economic Advisors (CEA). We have also obtained some data and documentation from DOE and BLS pertaining to this estimate. However, to present as complete a picture as possible to the Subcommittee Chairman, we need the following documentation from CEA.

—A description of the computer model developed by CEA to measure the unemployment impact of the coal strike including (1) assumptions used, (2) variables used, and (3) any limitations of the model.

—Memoranda from CEA to the White House and/or DOE concerning the computer model output on unemployment estimates and any comments, suggestions, or recommendations by CEA as to which estimate to use for policy decisions.

The Chairman has requested that we submit our report by September 1978. Therefore, if we are to consider the above information in finalizing our report, we must have it by August 4, 1978.

Elston

If you have any questions or would like to discuss this matter further, please contact either Gerald Elsken or Clifford Gardner of the Energy and Minerals Division at 275-3551.

Sincerely yours,

[illegible]

Deary Eschwege
Director

(ELSKEN/my/7/27/78)

bc: Mr. Canfield, EMD
Mr. Peach, EMD
Mr. Kelley, EMD
Mr. Elsken, EMD

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-140339

AUG 11 1978

Margaret McKenna, Esquire
Deputy Counsel to the President

Dear Ms. McKenna:

Recently, GAO auditors made two requests for White House records they need in order to perform their work. One request (See ENCLOSURE I) was for materials related to the selection of appointees to the U.S. Metric Board. The other request (See ENCLOSURE II) was for materials related to the Administration's estimate of unemployment resulting from last winter's coal strike. The GAO work in these areas is being performed pursuant to requests from an individual Congressman and a House Committee respectively. In response to the GAO requests for access to White House records, you asked for a letter from my Office setting out GAO's legal authority for such access.

GAO's right to access to the records in question stems from 31 U.S.C. §54, which provides in part:

> "All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. * * *"

The term "departments and establishments" is defined at 31 U.S.C. §2 as including "any executive department, * * * office, agency, or other establishment of the Government." This definition clearly includes White House offices.

The requested information is essential to the work of GAO auditors. With regard to the information related to the

appointment of the U.S. Metric Board, it is not our purpose to review the recommendations made by White House advisors to the President, but only to assure that statutory requirements concerning such appointments have been followed.

I hope that this letter resolves any questions you may have had regarding this matter, and that the requested records will be made available without too much further delay. If you have any other questions, please give me a call.

Very truly yours,

Paul G. Dembling

Paul G. Dembling
General Counsel

Enclosures - 2

THE WHITE HOUSE

WASHINGTON

September 14, 1978

Dear Mr. Dembling:

Thank you for your August 11 letter concerning GAO's two requests for access to White House records. I apologize for the delay in responding.

I requested the Justice Department to analyze the jurisdictional questions involved. They have prepared a memorandum and I have enclosed it for your information.

While we do not believe that GAO has the authority to obtain the information sought, officials of CEA have agreed on a voluntary basis to provide information concerning last winter's coal strike.

If there is any other information we can provide, please feel free to contact me.

Sincerely,

Margaret A. McKenna
Deputy Counsel to the President

Mr. Paul G. Dembling
General Counsel
U. S. General Accounting Office
Washington, D. C. 20548

Enclosure

Department of Justice
Washington, D.C. 20530

31 AUG 1978

MEMORANDUM FOR THE HONORABLE ROBERT J. LIPSHUTZ
Counsel to the President

Re: Right of General Accounting Office to Obtain Information

I am responding to Ms. McKenna's memorandum of July 27, 1978, asking for our advice with respect to two requests for information, each dated July 27, 1978, received from an official in the General Accounting Office (GAO). One, addressed to Ms. McKenna, relates to appointments to the United States Metric Board; the other, addressed to the Chairman of the Council of Economic Advisers (CEA), relates to data and memoranda connected with last winter's coal strike. We note that the requests were not signed by the Comptroller General but by a subordinate GAO official.

We conclude that the Comptroller General lacks authority to obtain the information sought.

I.

The request addressed to the Chairman of the CEA states that it is made in connection with an evaluation of the Administration's estimate of unemployment due to last winter's coal strike, which evaluation is being conducted by the GAO at the request of the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce. The GAO asks specifically for the following data:

> A description of the computer model developed by CEA to measure the unemployment impact of the coal strike including (1) assumptions used, (2) variables used, and (3) any limitations of the model.

Memoranda from CEA to the White House and/or DOE concerning the computer model output on unemployment estimates and any comments, suggestions, or recommendations by CEA as to which estimate to use for policy decisions.

The request thus has three elements: A computer model, memoranda to the White House, and memoranda from CEA to the Department of Energy. We have been informed by the CEA that the computer model was developed for the following purposes: Advice to the President and preparation of an affidavit by the Chairman of the CEA to be used in connection with the Taft-Hartley proceedings during last winter's coal strike. We also have been advised that the memoranda from CEA to the White House and from CEA to the Secretary of Energy also dealt with the preparation of the computer model and with advice to the President.

Our analysis proceeds from what we believe are now well accepted basic premises. First, the Comptroller General is an officer of the Legislative Branch. He has long been so viewed by Congress and by the Executive Branch. See, e.g., 1977-78 U.S. Government Manual 51; Corwin, Tenure of Office and the Removal Power, 27 Colum. L. Rev. 354, 396 (1927); Willoughby, The Legal Status and Functions of the General Accounting Office, 12-16 (1927). See also Reorganization Act of 1949, 63 Stat. 205; Reorganization Act of 1945, 59 Stat. 616. His functions derive from and must be based upon the performance of appropriate congressional functions. Second, confidential Executive Branch communications are presumptively privileged. See U.S. v. Nixon, 418 U.S. 683 (1974); Nixon v. G.S.A., 433 U.S. 425 (1977). We think it clear that this privilege, in order to be meaningful, must extend beyond the President personally to those who serve under and advise him. Thus, confidential communications between close Presidential advisers also fall within the "presumptive privilege" identified by the Supreme Court. See U.S. v. Nixon, 418 U.S. at 682 ("A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions * * * *"); Nixon v. Administrator, 97 S. Ct. at 2792 n. 10 (acknowledging the "legitimate governmental interest in

the confidentiality of communications between high government officials, e.g., those who advise the President"); Nixon v. Sampson, 389 F. Supp. 107, 150 n. 112 (D.D.C. 1975).

This conclusion is based on the same practical considerations that led the Supreme Court in Gravel v. U.S., 408 U.S. 606, 617 (1972), to conclude that a Senator's legislative aide is entitled to the protections afforded by the Speech and Debate Clause.

Third, we think it must also be acknowledged that, unlike the privilege governing sensitive military, diplomatic, and foreign affairs matters the presumptive privilege for confidential communications is not absolute. Congress has well recognized and appropriate constitutional functions which it appropriately must carry out, and where collisions occur between those appropriate congressional functions and the Executive Branch's need to preserve confidentiality a careful weighing of the respective interests must be undertaken. See Nixon v. G.S.A., supra; U.S. v. A.T. & T. Co., 567 F. 2d 121 (D.C. Cir. 1977); Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F. 2d 725 (D.C. Cir. 1974). As stated in the most recent decision by the D.C. Circuit Court of Appeals, where genuine and substantial competing interests are raised there is "an implicit constitutional mandate to seek optiminal accommodations through a realistic evaluation of the needs of the conflicting branches in the particular fact situation." U.S. v. A.T. & T. Co., 567 F. 2d at 127.

With these basic considerations in mind the Comptroller General's subordinate's request can be analyzed. First, it would appear that the three sorts of documents requested fall within the presumptive constitutional privilege and, therefore, a decision not to disclose the requested documents might be properly based on the determination that disclosure here would interfere with necessary relationships of confidentiality. For the reasons stated above, we think that the decision not to disclose could extend not only to the direct communications between the Chairman of CEA and the President but also to the communications between the Chairman and Secretary Schlesinger

and to the computer work-up done in order to assist the Chairman in providing advice to the President.

Before finally arriving at that conclusion, however, we think attention should be given to the Comptroller General's subordinate's reasons for seeking the material and the authority upon which that request is based.

In response to an inquiry from Margaret McKenna, the General Counsel to the General Accounting Office stated in a letter dated August 11, 1978 that GAO's "right to access to the records" in question stems from 31 U.S.C. § 54. This statute, which is GAO's basic provision with respect to its authority to seek documents derives from § 313 of the Budget and Accounting Act of 1921, 42 Stat. 26, and reads as follows:

> § 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. The authority contained in this section shall not be applicable to expenditures made under the provisions of section 291 of the Revised Statutes [31 U.S.C. § 107].

As a matter of normal statutory construction we seriously doubt whether this provision provides a foundation for the request made in this instance. By its terms, § 313 directs "all departments and establishments" */ to comply with

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*/ In view of the broad definition of the term "departments and establishments" in section 2 of the Budget and Accounting Act (31 U.S.C. § 2), we assume arguendo that the term includes the Executive Office of the President, in which the CEA is located, and the White House Office.

requests from the Comptroller General for information concerning the "powers, duties, activities, organization, financial transactions and methods of business of the respective offices." Since the information in question here plainly does not relate to the powers, duties, organization, financial transactions and methods of business of the CEA, this provision can only apply if the term "activities" is given its very broadest meaning.

The very breadth of that term suggests the application of the ejusdem generis rule of statutory construction to ascertain its true import. Since the other terms of the section refer to organizational and fiscal matters we can properly regard the word "activities" as relating to activities of that nature. That view is supported by the fact that § 313 was enacted at a time when the Comptroller General's functions were limited to those areas. Since the information sought here does not relate to fiscal or organizational matters, we seriously question whether the request can be based directly on § 313.

Although the most recent letter from the General Counsel of GAO does not explicitly so state, the Comptroller General himself has heretofore taken the position that § 313 does not constitute an independent source of investigatory power. Instead, that section has been cited as an aid in carrying out powers and responsibilities elsewhere conferred on the Comptroller General. In other words, if some statute directs the Comptroller General to investigate, review or evaluate, § 313 has the function of enabling him to obtain that information from the Executive Branch. In the words of Comptroller General Staats, § 313 is of a "supportive" nature.*/

While we have not been directed by the General Counsel to any other applicable provision, § 204(a) of the Legislative Reorganization Act of 1970, as amended, is the only statute

*/ Memorandum submitted by the Comptroller General in Defense Production Act Amendments, Hearings before the Subcommittee on Production and Stabilization of the Committee on Banking, Housing and Urban Affairs, U.S. Senate, 92d Cong., 2d Sess. on S. 669 and 1901, pp. 51, 53. See also in this connection Morgan, The General Accounting Office, 51 North Carolina Law Review 1279, 1352-1353 (1973).

of which we are aware which could serve as a basis for this request. That section directs the Comptroller General "to review and evaluate the results of government programs and activities carried on under existing laws." 88 Stat. 326. When this section was originally enacted in 1970 it was limited to fiscal and budgetary matters. H. Rept. 91-1215, p. 80. While certain amendments in 1974 made only minor changes in the wording of § 204(a), the relevant conference report discloses a congressional purpose to expand the scope of this section so as to enable Congress to utilize the facilities of GAO in connection with its legislative oversight functions. */

*/ The pertinent portion of the Conference Report on the Congressional Budget Act of 1974, S. Rept. 93-924, p. 72, reads:

SECTION 702. REVIEW AND EVALUATION BY COMPTROLLER GENERAL

The Senate amendment expanded the review and evaluation functions and duties of the Comptroller General, including assistance to committees and Members.

The conference substitute is a revision of the Senate provision. It amends section 204 of the 1970 Legislative Reorganization Act to expand GAO assistance to Congress. As amended, section 204(a) provides that the Comptroller General shall evaluate Government programs at his own initiative, when ordered by either House, or at the request of a congressional committee. Section 204(b) provides that upon request, the Comptroller General shall assist committees in developing statements of legislative objectives and methods for assessing program performance. The managers consider oversight of executive performance to be among the principal functions of congressional committees and they recognize that the usefulness of program evaluation can be enhanced by the clear expression of legislative objectives and the employment of modern analytic methods. The managers further believe that statements of intent can be most appropriately developed by the committee of jurisdiction. Members must be provided upon request with all related information after its release by the committee for which it was compiled.

The request for information concerning the computer model may come within the scope of § 204(a) if it can fairly be said to relate to some legislative oversight of the manner in which programs and activities of the CEA are carried on under existing law. The only substantive piece of legislation involved in the Chairman's activities here was the preparation of an affidavit under the Taft-Hartley Act. It should first be noted that this activity is not among the statutory functions imposed on CEA under § 4(c) of the Employment Act of 1946. 15 U.S.C. § 1023(c). To the contrary, when the Chairman of CEA prepared and executed the affidavit he was not administering a program subject to legislative oversight but was acting in his capacity as an adviser and assistant to the President.

Assuming arguendo that the preparation and execution of a Taft-Hartley affidavit by the Chairman of the CEA might come within the scope of § 204(a) in connection with the exercise of legislative oversight of the manner in which the Taft-Hartley Act is administered, the fact is that it appears from the request that the House Subcommittee on Energy and Power is not engaged in legislative oversight with respect to Taft-Hartley and does not appear to have jurisdiction over that program or activity. Hence, § 204(a) would not appear to constitute an authority for the review and evaluation by the Comptroller General of the manner in which the Taft-Hartley Act is administered.

We presume, although it is not entirely clear, that it might be claimed that this investigation is addressed to the more general question whether there is in existence adequate legislation to avert energy shortage crises in the future. */ If this is GAO's interest it is not clear to us how the information requested should prove relevant to that inquiry. We believe that in order to make the kind of "accommodation" suggested by the District of Columbia Circuit Court of Appeals you would want to know a good deal more about the reasons why this particular information is being requested. Ordinarily, the examination of a single historical incident would not serve as a very useful aid in evaluating the need for legislation. Moreover, to the extent that the examination of a particular

*/ There is a suggestion to this effect in the letter to Chairman Schultze dated July 27, 1978.

episode is deemed important we would think that the relevant factual details could be gathered without requiring the disclosure of this kind of confidential information.

In summary, it would appear to us that there is a substantial basis upon which a decision might be made not to share this information with the Comptroller General's staff. From the information given us by GAO we cannot readily ascertain the authority underlying the request. Nor can we assess the relevance or importance of the information sought. We suspect, however, that a more detailed factual inquiry would likely demonstrate that the interest in preserving the confidentiality of Executive Branch communications would exceed the interest GAO might identify in support of this request.